

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[RTID 0648-XE194]

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys off New York and New Jersey in the New York Bight**

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

**ACTION:** Notice; issuance of renewal 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 a renewal incidental harassment authorization (IHA) to Attentive Energy, LLC (Attentive Energy), associated with marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, specifically within the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (Lease) Area OCS-A 0538 and associated export cable route (ECR) area.

**DATES:** This renewal IHA is effective from September 18, 2024 through June 19, 2025.

**ADDRESSES:** Electronic copies of the original application, renewal request, and supporting documents (including the **Federal Register** notices of the original proposed and final authorizations, and the previously issued and renewal IHA), 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:** Kelsey Potlock, 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 promulgated or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definition of key terms such as “take,” “harassment,” and “negligible impact” can be found in the MMPA and NMFS’s implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial IHA, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned, or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed

renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

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

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

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

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals>.

**History of Request**

On June 20, 2023, NMFS issued an IHA to Attentive Energy, a company registered in the state of Delaware, to take marine mammals incidental to marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight region, specifically within BOEM Lease Area OCS-A-0538 and associated ECR area (88 FR 41888, June 28, 2023), effective from June 20, 2023, through June 19, 2024. On May 24, 2024, NMFS received an application from Attentive Energy for the renewal of the 2023 IHA. As described in the application for renewal IHA, the activities for which incidental take was requested consisted of activities that were analyzed for the initial 2023 authorization, but were not able to be completed prior to its expiration. As required, Attentive

Energy also provided a final monitoring report (available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>) which confirms that Attentive Energy had implemented the required mitigation and monitoring, and also showed that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed renewal incidental harassment authorization was published for public comment on August 7, 2024 (89 FR 64414). There are no changes from the proposed authorization to this final authorization.

### Description of the Specified Activities and Anticipated Impacts

Under the initial IHA, Attentive Energy planned to conduct marine site characterization surveys, including high-resolution geophysical (HRG) surveys, in coastal waters off of New Jersey and New York in the New York Bight, specifically within BOEM Lease Area OCS-A 0538 and associated ECR areas. Challenges and delays with procurement, mobilization, and downtime contributed to less survey being completed during the initial IHA period than anticipated.

The surveys were designed to obtain data sufficient to meet BOEM guidelines for providing geophysical, geotechnical, and geo-hazard information for site assessment plan surveys and/or construction and operations plan development. The objective of the surveys was to support the site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Area. At least two survey vessels would operate as part of the planned surveys with a maximum of two nearshore (<20 meters (m); <65.6 feet (ft)) vessels and a maximum of two offshore (≥20 m (≥65.6 ft)) vessels operating concurrently.

Attentive Energy plans to continue to conduct these survey activities, as per the initial IHA application, up to approximately 6,936 kilometers (km; 4,309.8 miles (mi)) of trackline. This is a subset of the survey trackline included in the initial IHA; the initial survey plan included 21,745 km (13,511.72 mi) across the entire project area (maximum-case scenario), which was split up by approximately 14,025 km (8,714.7 mi) in the Lease Area and 7,720 km (4,797 mi) in the ECR area. We note here that the Project Area is minimally expanded (primarily to the south) in the current survey plan as compared with

the survey plan associated with the initial IHA (see figure 1 in the proposed renewal **Federal Register** notice); however, this expansion of the survey area will not result in any increase to the amount of planned survey trackline distance. NMFS has determined that this slight change to the survey area constitutes a minor change that does not affect the previous analyses, mitigation and monitoring requirements, or take estimates.

The potential impacts of Attentive Energy's planned activities on marine mammals involve potential acoustic stressors and are unchanged from the impacts described in the **Federal Register** notice for the proposed 2023 IHA (88 FR 24553, April 21, 2023). Underwater sound, resulting from particular components of Attentive Energy's HRG survey activities, has the potential to result in incidental take of marine mammals, in the form of Level B harassment only, in the specified geographic region.

This renewal IHA is for the remainder of work that was not completed by the expiration date of the 2023 IHA. The renewal IHA authorizes incidental take, by Level B harassment only, of 15 species (comprising 16 stocks) of marine mammals for a subset of marine site characterization survey activities to be completed in less than 1 year (*i.e.*, by June 19, 2025), in the same general area, using survey methods identical to those conducted under the initial 2023 IHA. Neither Attentive Energy nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. Take by Level A harassment (injury) is unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use. Therefore, the anticipated effects on marine mammals and the affected stocks also remain the same. All mitigation, monitoring, and reporting measures would remain exactly as described in the **Federal Register** notice for the issued 2023 IHA (88 FR 41888, June 28, 2023).

### Detailed Description of the Specified Activity

A detailed description of the marine site characterization survey activities for which incidental take is authorized here may be found in the **Federal Register** notice of the proposed 2023 IHA (88 FR 24553, April 21, 2023). The specific geographic region and specified activities, including the types of survey equipment and number of survey vessels planned for use, are identical to those described in the previous notices, with the exception of a minor increase

in the size of the survey area to the south to accommodate expanded survey options for the ECR.

### Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (88 FR 24553, April 21, 2023). Since the publication of the final **Federal Register** notice (88 FR 41888, June 28, 2023), NMFS has reviewed the monitoring data from the initial IHA, the draft 2023 stock assessment reports (SARs), which included updates to certain stock abundances since the initial IHA was issued, information on relevant unusual mortality events (UME), and other scientific literature. The draft 2023 SAR updated the population estimate ( $N_{best}$ ) of North Atlantic right whales from 338 to 340 and annual mortality and serious injury from 31.2 to 27.2. The updated population estimate in the draft 2023 SAR is based upon sighting history through December 2021 (89 FR 5495, January 29, 2024). Total annual average observed North Atlantic right whale mortality during the 2017–2021 period was 7.1 animals and annual average observed fishery mortality was 4.6 animals, however, estimates of 27.2 total mortality and 17.6 fishery mortality account for undetected mortality and serious injury (89 FR 5495, January 29, 2024). In October 2023, NMFS released a technical report identifying that the North Atlantic right whale population size based on sighting history through 2022 was 356 whales, with a 95 percent credible interval ranging from 346 to 363 (Linden, 2023).

The draft 2023 SARs include updates for additional marine mammal species and stocks (*i.e.*, North Atlantic right whale, fin whale, sei whale, minke whale, sperm whale, Atlantic spotted dolphin, Atlantic white-sided dolphin, bottlenose dolphin (Western North Atlantic—Offshore stock), common dolphin, long-finned pilot whales, Risso's dolphin, harbor porpoise, and gray seal), which are specifically included in table 1 in the proposed renewal **Federal Register** notice (89 FR 64414, August 7, 2024). For species for which there has been no change between the finalization of the final 2022 SARs to the release of the draft 2023 SARs, NMFS has also noted this in table 1 of the proposed renewal **Federal Register** notice.

On August 1, 2022, NMFS announced proposed changes to the existing North

Atlantic right whale vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered North Atlantic right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921, August 1, 2022). Should a final vessel speed rule be issued and become effective during the effective period of this proposed renewal IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. These changes would become effective immediately

upon the effective date of any final vessel speed rule and would not require any further action on NMFS's part.

NMFS has determined that no new information has been presented that may affect or change any other information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents and in the **Federal Register** notice for the proposed renewal IHA (89 FR 64414, August 7, 2024).

*Potential Effects on Marine Mammals and Their Habitat*

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (88 FR 24553, April 21, 2023). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports, information on relevant Unusual Mortality Events, other scientific literature, and the public comments, and determined that there is no new

information that affects our initial analysis of impacts on marine mammals and their habitat.

*Estimated Take*

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices of the proposed and final IHAs for the initial authorization (88 FR 24553, April 21, 2023; 88 FR 41888, June 28, 2023) and referenced in the **Federal Register** notice for the proposed renewal IHA (89 FR 64414, August 7, 2024). Specifically, the source levels, days of operation, and marine mammal density/occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA. The number of takes authorized in this renewal IHA are a subset of the initial authorized takes that better represent the amount of activity that Attentive Energy has left to complete. These estimated takes, which reflect the remaining survey days, are indicated below in table 1.

TABLE 1—NUMBER OF TAKES BY LEVEL B HARASSMENT BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Common name	Population abundance	Percentage of trackline remaining in relevant habitat	Authorized takes based on remaining trackline	Percent of population
North Atlantic right whale	340	32	4	1.18
Fin whale	6,802	32	12	0.18
Humpback whale	1,396	32	8	0.57
Minke whale	21,968	32	57	0.26
Sei whale	6,292	32	4	0.06
Sperm whale	5,895	32	1	0.02
Atlantic spotted dolphin	31,506	32	28	0.09
Atlantic white-sided dolphin	93,233	32	66	0.07
Bottlenose dolphin—Western North Atlantic Offshore	64,587	28	489	0.76
Bottlenose dolphin—Northern Migratory Coastal	6,639	93	362	5.45
Common dolphin	93,100	32	658	0.71
Long-finned pilot whale	39,215	32	7	0.02
Risso's dolphin	44,067	32	7	0.02
Harbor porpoise	85,765	32	350	0.41
Gray seal	27,911	32	511	1.83
Harbor seal	61,336	32	511	0.83

*Description of Mitigation, Monitoring and Reporting Measures*

The required mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (88 FR 41888, June 28, 2023), the **Federal Register** notice for the proposed renewal IHA (89 FR 64414, August 7, 2024), and the discussion of the least practicable adverse impact included in that

document and the **Federal Register** notice of the proposed IHA (88 FR 24553, April 21, 2023) remains accurate. The following measures are required for this renewal IHA:

- *Ramp-up*: A ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels (*i.e.*, any acoustic source with a non-binary switch) at the start or re-start of survey activities;
- *Protected Species Observers (PSOs)*: A minimum of one NMFS-approved PSO must be on duty and conducting

visual observations at all times during daylight hours (*i.e.*, from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs would be on duty during nighttime operations;

- *Pre-Operation Clearance Protocols*: Prior to initiating HRG survey activities, Attentive Energy would be required to implement a 30-minute pre-operation clearance period. If any marine mammals are detected within the Exclusion Zones prior to or during ramp-up, the HRG equipment would be shut down (as described below);

- **Shutdown Zones:** If an HRG source is active and a marine mammal is observed within or entering a relevant shutdown zone, an immediate shutdown of the HRG survey equipment would be required. We note that this shutdown requirement would be waived for certain genera of small delphinids (*i.e.*, *Delphinus*, *Lagenorhynchus*, *Stenella*, or *Tursiops*) and pinnipeds;

- **Vessel Strike Avoidance Measures:** 500 m (1,640 ft) separation distances for North Atlantic right whales and other large Endangered Species Act (ESA) listed whales (*i.e.*, fin whale, sei whale, and sperm whale), 100 m (328 ft) for other non-ESA listed baleen whales (*i.e.*, minke whale and humpback whale), and 50 m (164 ft) for all other marine mammals); as well as restricted vessel speeds and operational maneuvers; and

- **Reporting:** Attentive Energy would submit a marine mammal report within 90 days following their completion of the surveys.

### Comments and Responses

A notice of NMFS' proposal to issue a renewal IHA to Attentive Energy was published in the **Federal Register** on August 7, 2024 (89 FR 64414). That notice either described, or referenced descriptions of, Attentive Energy's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures.

During the 15-day public comment period, NMFS received one comment from a member of the public and one comment letter from a non-governmental organization, Clean Ocean Action (COA). NMFS has reviewed all public comments received on the Attentive Energy renewal HRG IHA. All relevant, substantive comments, and NMFS' responses, are provided below. Comments indicating general opposition to offshore wind construction are not relevant to the proposed action and therefore were not considered and are not addressed here. The comments and recommendations are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. Please see the comment submissions for full details regarding the recommendations and supporting rationale.

**Comment 1:** COA expressed concern with the slight modification to the survey area described in Attentive Energy's renewal request (89 FR 64414, August 7, 2024). COA asserts that NMFS has provided insufficient support for its

determination that this is a minor change to the initial action that would not affect any previous analysis, mitigation and monitoring requirements, and take estimates. COA states that NMFS should provide additional support for its conclusion and that it does not believe that the survey area is "nearly identical." COA claims that the expanded survey area now includes additional haulout sites for seals along Barnegat Light on Long Beach Island (Normandeau Associates, Inc., 2019) and a migratory corridor for several marine mammals (*i.e.*, humpback whale, fin whale, and North Atlantic right whales) not previously included. COA also stated that NMFS did not adjust the number of takes proposed for authorization based on this additional information and, therefore, should not issue the renewal IHA to Attentive Energy.

**Response:** Regarding the take estimates, NMFS disagrees with COA's suggestion that the minor change to the planned survey area presents new information requiring additional analysis. We note that the total amount of trackline planned to be surveyed under this renewal IHA has not increased, when compared to what remains from the initial IHA even given the minor shift in the planned survey area. Changes to the density values over the entirety of the survey area are, overall, inconsequential and do not result in meaningful changes to the take numbers which, in context of the subset of activity that remains, are less than those estimated and authorized through the initial IHA.

NMFS agrees with COA that the expanded area, inclusive of the initial project area as well, includes habitat for marine mammals, including pinniped haulouts and migratory habitat for certain cetacean species. The survey area described for the initial IHA included the same migratory habitat for the same cetacean species, as well as coastal habitat where pinnipeds may choose to haul out. Contrary to COA's assertion that the minor expansion of the survey area to cover a new potential ECR would affect new habitat areas not previously considered, cetacean migratory habitat is typically broad and there are not differences in the type, location, or use of such habitat over the relatively fine scales considered here. Regarding pinniped haulout habitat, such locations are typically opportunistic and, given their shore-based locations, unlikely to be affected at all by the planned survey activity. Furthermore, while they may now fall within the slightly expanded project area, there is no new information about

the haulout sites along Barnegat Light on Long Beach Island to suggest that they are dissimilar from those off the Long Island area, as compared with those previously analyzed for pinnipeds under the initial **Federal Register** notice. Therefore, there is nothing new to consider in relation to the analysis described herein. NMFS adequately considered all available information regarding potential impacts to all marine mammal habitat in its analysis supporting the issuance of the initial IHA, and the minor change considered as part of this renewal IHA presents no new information regarding potential impacts to marine mammal habitat.

**Comment 2:** COA asserted that NMFS should reject Attentive Energy's application until the cumulative impacts of every incidental take authorization on marine mammals are considered. COA also stated that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed, and potential offshore wind activities on marine mammals and ensure that the cumulative effects are not excessive before issuing or renewing an IHA.

**Response:** NMFS is required to authorize the requested incidental take if it finds the incidental take by harassment of small numbers of marine mammals by U.S. citizens "while engaging in that [specified] activity" within a specified geographic region will have a negligible impact on such species or stock and where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses (see 16 U.S.C. 1371(a)(5)(D)). Negligible impact is defined 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" (50 CFR 216.103). Neither the MMPA, nor NMFS' implementing regulations, require consideration of other unrelated activities and their impacts on marine mammal populations in the negligible impact determination. Additionally, NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals (50 CFR 216.104(a)(1)). Thus, the "specified activity" for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Consistent with the preamble of NMFS' implementing regulations (54 FR 40338,

September 29, 1989), the impacts from other past and ongoing anthropogenic activities are factored into the baseline, which is used in the negligible impact analysis. Here, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (e.g., as reflected in the density, distribution and status of the species, population size and growth rate, and other relevant stressors).

The preamble of NMFS' implementing regulations (54 FR 40338, September 29, 1989) also addresses cumulative effects from future, unrelated activities. Such effects are not considered in making the negligible impact determination under MMPA section 101(a)(5). NMFS considers (1) cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis, and (2) reasonably foreseeable cumulative effects under section 7 of the ESA for listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities in similar locations (e.g., the 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey; and the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island). Cumulative impacts regarding issuance of IHAs for site characterization survey activities such as those planned by Attentive Energy have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion (CE) for issuance of Attentive Energy's IHA, which included consideration of extraordinary circumstances.

Separately, 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 has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Activities on the Atlantic Outer Continental Shelf in 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; 83 FR 28808, June 21, 2018; 83 FR 36539, July

30, 2018; and 86 FR 26465, May 10, 2021), which are similar to those planned by Attentive Energy under this current IHA request. This Biological Opinion determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually and cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes that, while issuance of this IHA is covered under a different consultation, this Biological Opinion remains valid. Additionally, to date, Biological Opinions have been developed and competed for several ongoing offshore wind construction projects, which all include HRG surveys within the scope of the proposed actions (see the final Biological Opinions for Ocean Wind 1 (<https://repository.library.noaa.gov/view/noaa/49689>), Revolution Wind's original (<https://repository.library.noaa.gov/view/noaa/51759>) and reintiated (<https://www.fisheries.noaa.gov/s3/2024-05/2024-Rev-Wind-BiOp-508.pdf>), CVOW-C (<https://repository.library.noaa.gov/view/noaa/55495>), Empire Wind (<https://repository.library.noaa.gov/view/noaa/55324>), Sunrise Wind (<https://repository.library.noaa.gov/view/noaa/55726>), New England Wind (<https://repository.library.noaa.gov/view/noaa/60610>), and Maryland Wind (<https://repository.library.noaa.gov/view/noaa/61632>)). These Biological Opinions for larger-scale construction and development projects have all assessed the cumulative activities occurring within the relevant project areas, which include HRG activities occurring under IHAs, as well as HRG surveys and other construction activities occurring under Incidental Take Regulations and associated issued Letters of Authorization. In all cases, the HRG surveys analyzed within these Biological Opinions are of substantially similar activities, using the same or similar acoustic sources as those planned for use by Attentive Energy under this renewal IHA. Based on this information, NMFS believes the discrete and cumulative effects have been adequately analyzed and considered under these existing documents.

*Comment 3:* COA states its opposition to the use of a categorical exclusion under NEPA for this renewal action.

*Response:* NMFS does not agree with COA's comment. A 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 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 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 that 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 IHAs. These EAs also addressed factors in 40 CFR 1508.27 regarding the potential for significant impacts and demonstrate the issuance of IHAs 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 Attentive Energy'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 Attentive Energy 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 possible to occur intermittently in the vicinity of Attentive Energy'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 Attentive Energy's activities fall within the scope of activities analyzed in the Greater Atlantic Regional Fisheries Office's (GARFO) programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021), which concluded surveys such as those planned by Attentive Energy are not likely to adversely affect endangered 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.

Further, 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 demonstrates 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.

*Comment 4:* COA suggested that a Letter of Authorization (LOA) would be more appropriate than an IHA for the proposed survey activities as the survey activities have spanned more than 1 year and "it is not clear how long the proposed activities would span given past delays."

*Response:* NMFS disagrees with the commenter that an LOA would be more appropriate for the planned survey activities than an IHA. All IHAs issued, whether an initial IHA or a renewal, are valid for a period of not more than 1 year. Attentive Energy's request for the initial IHA indicated a project duration of 1 year. As delays may be encountered, applicants may apply for a renewal IHA if the work under the initial IHA is not able to be completed within the effective period of the authorization. In order to qualify for a renewal IHA, the proposed renewal must consist of up to another year of identical, or nearly identical, activities as were covered by the initial IHA or a subset of the activities covered by the initial IHA. Attentive Energy's request falls under the latter requirements and the necessary preliminary monitoring data collected under the initial IHA were provided. Therefore, Attentive Energy's request is appropriate for a renewal IHA.

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 (although not all ITRs include mortality). 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 section 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 5:* COA urged NMFS to deny the proposed project and/or postpone any offshore wind activities until NMFS determines effects of all offshore wind-related activities on marine mammals in the region and determines that the recent whale deaths are not related to offshore wind activities. COA stated general concerns regarding recent whale stranding events on the Atlantic Coast, including speculation that the strandings may be related to wind energy development activities.

*Response:* NMFS authorizes take of marine mammals incidental to marine site characterization surveys but does not authorize the surveys themselves. NMFS has the authority to modify, suspend, or revoke an IHA if the IHA holder fails to abide by the conditions prescribed therein (including, but not limited to, failure to comply with monitoring or reporting requirements), or if NMFS determines that (1) the authorized taking is having or is likely to have more than a negligible impact on the species or stocks of affected marine mammals, or (2) the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat. NMFS has analyzed the planned activity, as proposed by Attentive Energy, within the discrete context for which it was requested (*i.e.*, as a stand-alone activity and not part of a larger programmatic survey effort or group of specific activities). It is in this context that NMFS has authority to authorize incidental take and to prescribe mitigation, monitoring, and reporting requirements, as appropriate, and can revoke or suspend any IHA issued under the MMPA if and when action is warranted.

In this comment letter, COA speaks more broadly about all offshore wind efforts along the U.S. East Coast, not just specific to this discrete IHA. It is not within NMFS' jurisdiction to impose a moratorium on all offshore wind development activities unrelated to this specific IHA request and planned activities. NMFS reiterates that there is no evidence that noise resulting from offshore wind development-related site characterization surveys could potentially cause marine mammal stranding, and there is no evidence linking recent large whale mortalities and currently ongoing surveys. The commenters offer no such evidence to the contrary. NMFS will continue to gather data to help us determine the

cause of death for these stranded whales. We note the Marine Mammal Commission's recent statement: "There continues to be no evidence to link these large whale strandings to offshore wind energy development, including no evidence to link them to sound emitted during wind development-related site characterization surveys, known as HRG surveys. Although HRG surveys have been occurring off New England and the mid-Atlantic coast, HRG devices have never been implicated or causatively-associated with baleen whale strandings" (Marine Mammal Commission Newsletter, Spring 2023). Furthermore, NMFS does not expect that the marine site characterization survey activities planned by Attentive Energy will create conditions of acute or chronic acoustic exposure leading to long-term physiological impacts in whales.

There is an ongoing Unusual Mortality Event 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) with limited or no access. Of the whales examined (roughly 90), about 40 percent had evidence of human interaction, either vessel strike or entanglement. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales. The approximately 50 remaining 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 including parasite-caused organ damage and starvation. As discussed herein, HRG sources may behaviorally disturb marine mammals (*e.g.*, avoidance of the immediate area). But these HRG surveys are very different from seismic airguns used in oil and gas surveys or tactical military sonar. They produce much smaller impact zones because, in general, they have lower source levels and produce output at higher frequencies. The area within which HRG sources might behaviorally disturb a marine mammal is orders of magnitude smaller than the impact areas for seismic airguns or military sonar. Any marine mammal exposure would be at significantly lower levels and shorter duration, which is associated with less severe impacts to marine mammals. For these reasons, NMFS observes a lack of evidentiary support

for a link between wind energy development activities and whale stranding.

#### **Changes From Proposed to Final Renewal IHA**

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

#### **Determinations**

Attentive Energy's planned activities consist of a subset of activities analyzed in the initial IHA. In analyzing the effects of the activities for the initial IHA, NMFS determined that Attentive Energy's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third the abundance of all stocks). The required mitigation measures and monitoring and reporting requirements, as described above, are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the draft 2023 SAR estimated abundance of the North Atlantic right whale stock and other stocks, as shown in table 1 of the **Federal Register** notice for the proposed renewal IHA (89 FR 64414, August 7, 2024). NMFS has authorized four takes of North Atlantic right whales, by Level B harassment only, and the impacts resulting from the project's activities are neither reasonably expected nor reasonably likely to adversely affect the stock through effects on annual rates of recruitment or survival. Additionally, only about 1.2 percent of this stock's abundance is authorized to be taken by Level B harassment.

Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable adverse impact on marine mammal species or stocks and their habitat; (2) the authorized takes would 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) Attentive Energy'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. This includes consideration of the estimated abundance of 13 stock(s)

decreasing or increasing slightly, specific to each stock.

#### **National Environmental Policy Act**

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

#### **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 Office of Protected Resources consults internally whenever we propose to authorize take of endangered or threatened species.

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

#### **Renewal**

NMFS has issued a renewal IHA to Attentive Energy for the take of 15 species (comprising 16 stocks) of marine mammals incidental to conducting marine site characterization surveys offshore from New York to New Jersey in the BOEM Lease Area OCS-A-0538 and associated ECR areas, which include the previously explained mitigation, monitoring, and reporting requirements.



Dated: September 18, 2024.

**Kimberly Damon-Randall,**

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

[FR Doc. 2024-21670 Filed 9-20-24; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XE305]

#### South Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council's (Council) will hold a meeting of the Outreach and Communications Advisory Panel (AP) October 9-10, 2024. The meeting will be held in North Charleston, SC.

**DATES:** The Outreach and Communications AP meeting will be held October 9, 2024, from 9 a.m. until 5 p.m. and October 10, 2024, from 9 a.m. until 12 p.m.

**ADDRESSES:**

*Meeting address:* The meeting will be held at the Embassy Suites by Hilton Charleston Airport, 5055 International Blvd., North Charleston, SC 29418; phone: (843) 747-1882. The meeting is open to the public and will also be available via webinar.

Webinar registration, an online public comment form, and briefing book materials will be available two weeks prior to the meeting at: <https://safmc.net/advisory-panel-meetings/>.

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: [kim.iverson@safmc.net](mailto:kim.iverson@safmc.net).

**SUPPLEMENTARY INFORMATION:** Agenda items for the Outreach and Communications AP meeting include: updates from AP members on recent outreach and communication efforts and needs; update on the Council's Best Fishing Practices Program and the Citizen Science Program and projects; a review of the Council's draft Habitat Blueprint relative to outreach and communication needs; and an update on the Council's digital communications

efforts and needs. AP members will also receive an update on port meetings conducted for the mackerel fishery in 2024 and plans to conduct stakeholder meetings in 2025. The AP will review draft outreach documents being developed for the upcoming 50th anniversary of the regional fishery management councils and the Magnuson-Stevens Fishery Conservation and Management Act. The AP will address other business as needed and provide recommendations for Council consideration.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: September 18, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024-21691 Filed 9-20-24; 8:45 am]

**BILLING CODE 3510-22-P**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA-DR")

**AGENCY:** The Committee for the Implementation of Textile Agreements.

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR.

**SUMMARY:** The Committee for the Implementation of Textile Agreements ("CITA") has determined that certain two-way stretch woven polyester, rayon, spandex fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product is added to the list in Annex 3.25 of the CAFTA-DR in unrestricted quantities.

**DATES:** *Applicable Date:* September 23, 2024.

**ADDRESSES:** <https://otexaprod.trade.gov/otexacapublicsite/requests/cafta> under "Approved Requests," File Number: CA2024004.

**FOR FURTHER INFORMATION CONTACT:** Kayla Johnson, Office of Textiles and Apparel, U.S. Department of Commerce,

(202) 482-2532 or [Kayla.Johnson@trade.gov](mailto:Kayla.Johnson@trade.gov).

#### SUPPLEMENTARY INFORMATION:

*Authority:* The CAFTA-DR; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("CAFTA-DR Implementation Act"), Public Law 109-53; the Statement of Administrative Action accompanying the CAFTA-DR Implementation Act; and Presidential Proclamation 7987 (February 28, 2006).

*Background:* The CAFTA-DR provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR provides that this list may be modified pursuant to Article 3.25.4, when the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25 of the CAFTA-DR; see also section 203(o)(4)(C) of the CAFTA-DR Implementation Act.

The CAFTA-DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamation 7987, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to the CAFTA-DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement*, 73 FR 53200) ("CITA's Procedures").

On August 12, 2024, CITA received a Commercial Availability Request ("Request") from CFI Textiles ("CFI") for certain two-way stretch woven polyester, rayon, spandex fabric, as specified below. On August 14, 2024, in accordance with CITA's Procedures, CITA notified interested parties of the Request, which was posted on the dedicated website for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply