

TABLE 1—TAKE ANALYSIS—Continued

Species	Authorized take <sup>1</sup>	Abundance <sup>2</sup>	Percent abundance
Melon-headed whale .....	163	7,003	2.3
Pygmy killer whale .....	38	2,126	1.8
False killer whale .....	63	3,204	2.0
Killer whale .....	0	267	n/a
Short-finned pilot whale .....	96	1,981	4.8

<sup>1</sup> Scalar ratios were not applied in this case due to brief survey duration.

<sup>2</sup> Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.*, 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and killer whale, the larger estimated SAR abundance estimate is used.

<sup>3</sup> Includes 1 take by Level A harassment and 26 takes by Level B harassment.

<sup>4</sup> Modeled exposure estimate less than assumed average group size (Maze-Foley and Mullin, 2006).

Based on the analysis contained herein of LLOG's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.*, less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

**Authorization**

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to LLOG authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: June 23, 2023.

**Kimberly Damon-Randall,**

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

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**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[RTID 0648-XC903]

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off New Jersey and New York**

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

**ACTION:** Notice; proposed incidental harassment authorization; request for

comments on proposed authorization and possible renewal.

**SUMMARY:** NMFS has received a request from Atlantic Shores Offshore Wind Bight, LLC (Atlantic Shores) for authorization to take marine mammals incidental to marine site characterization surveys offshore of New Jersey and New York in the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Area OCS-A 0541 and associated export cable route (ECR) area. NMFS is requesting comments on its proposal to issue an incidental harassment authorization to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in the Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than July 28, 2023.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to [ITP.Taylor@noaa.gov](mailto:ITP.Taylor@noaa.gov).

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/>

*incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Jessica Taylor, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

The activities described in Atlantic Shores' request, the overall survey duration, the project location, and the acoustic sources proposed for use are identical to what was previously analyzed in support of the IHA issued by NMFS to Atlantic Shores for 2022 site characterization surveys (2022 IHA) (87 FR 38067, June 27, 2022; 87 FR 50293, August 16, 2022). All proposed mitigation, monitoring, and reporting requirements remain the same. While Atlantic Shores' planned activity would qualify for renewal of the 2022 IHA, due to the availability of updated marine mammal density data (<https://seamap.env.duke.edu/models/Duke/EC/>), which NMFS has determined represents the best available scientific data, NMFS has determined to proceed with a new IHA process rather than a renewal, providing a 30-day period for

the public to comment on this proposed action.

Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to allow Atlantic Shores to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible 1-year Renewal IHA that could be issued under certain circumstances and if all requirements are met, as described in the Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

#### National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment. This action

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

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

#### Summary of Request

On March 20, 2023, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to high-resolution geophysical (HRG) marine site characterization surveys offshore of New Jersey and New York in the areas of BOEM Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS Lease Area OCS A–0541 and associated ECR area. Following NMFS’ review of the application, Atlantic Shores submitted a revised request on April 7, 2023. The application (the 2023 request) was deemed adequate and complete on April 20, 2023. Atlantic Shores’ request is for take of 15 species of marine mammals, by Level B harassment only. Neither Atlantic Shores nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. Take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use.

NMFS has previously issued a similar IHA to Atlantic Shores. On April 8, 2022, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to marine site characterization surveys offshore of New Jersey and New York, in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS–A 0541 and the associated ECR area. Atlantic Shores requested authorization to take small numbers of 15 species (comprising 15 stocks) of marine mammals by Level B harassment only. NMFS published a notice of the proposed IHA in the **Federal Register** on June 27, 2022 (87 FR 30867). After a 30-day public

comment period and consideration of all public comments received, we subsequently issued the 2022 IHA, which is effective from August 10, 2022, to August 9, 2023 (87 FR 50293, August 16, 2022).

Atlantic Shores completed a subset of the survey work under the 2022 IHA. This request is identical to the 2022 IHA.

However, Duke University’s Marine Geospatial Ecology Laboratory released updated marine mammal density information for all species in the project area (<https://seamap.env.duke.edu/models/Duke/EC/>), and NMFS determined it would issue a proposed IHA rather than undertake the renewal process. In evaluating the 2023 request and to the extent deemed appropriate, NMFS also relies on the information presented in notices associated with issuance of the 2022 IHA (87 FR 38067, June 27, 2022; 87 FR 50293, August 16, 2022).

Atlantic Shores conducted the required marine mammal mitigation and monitoring and did not exceed authorized levels of take under previous IHAs issued for surveys offshore of New York and New Jersey (see 85 FR 21198, April 16, 2020 and 86 FR 21289, April 22, 2021). These previous monitoring results are available to the public on our website: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-characterization>.

#### Description of the Proposed Activity and Anticipated Impacts

##### Overview

Atlantic Shores proposes to conduct HRG marine site characterization surveys in BOEM Lease Area OCS–A 0541 and along the ECR off of New Jersey and New York. The purpose of the proposed surveys is to obtain an assessment of seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of a planned offshore wind facility development area. Surveys are also conducted to support engineering design and to map unexploded ordnance. As many as three survey vessels may operate concurrently as part of the proposed surveys. During survey effort, the vessels would operate at a maximum speed of 3.5 knots (kns) (6.5 kilometers (km)). Underwater sound resulting from Atlantic Shores’ proposed activities has the potential to result in incidental take of marine mammals in the form of Level B harassment.

*Dates and Duration*

The proposed activity is estimated to require up to 360 survey days using a maximum of three vessels operating concurrently over the course of the 1-year period of effectiveness of the proposed IHA (Table 1). A “survey day” is defined as a 24-hour activity period in which active acoustic sound sources are used. This schedule is inclusive of any inclement weather downtime and crew transfers. It is expected that each vessel would cover approximately 55 km of track line per day based on

Atlantic Shores’ data acquisition efficiency expectations.

TABLE 1—PROPOSED SURVEY DAYS

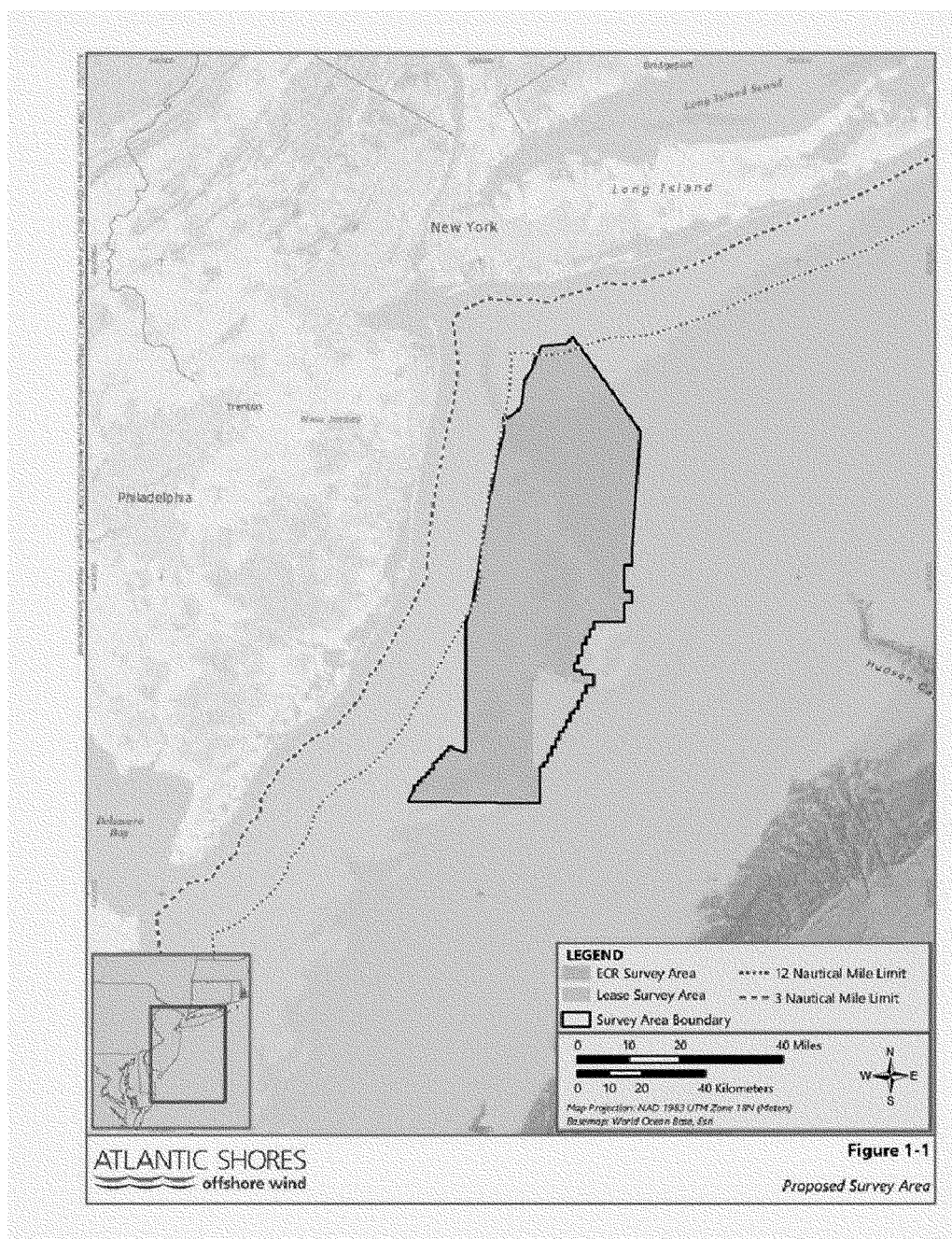
Survey areas	Number of active survey days expected
Lease Survey Area (OCS–A 541) .....	180
ECR Survey Area .....	180

*Specified Geographic Region*

Atlantic Shores’ proposed activities would occur in the Northwest Atlantic

Ocean within Federal and state waters offshore of New York and New Jersey in BOEM Lease Area OCS–A 0541 and along the associated potential ECR (Figure 1). Overall, the survey area is approximately 1,375,710 acres (5,567.3 km<sup>2</sup>) and extends from approximately 11 nautical miles (nm) (20 km) to 40 nm (74 km) offshore of New York and New Jersey. In general, the survey area spans from Sandy Hook Bay to Ocean City, New Jersey. No nearshore surveys are planned.

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**Figure 1 -- Map of the Proposed Survey Area**

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*Detailed Description of the Action*

A detailed description of the proposed survey activities can be found in the previous **Federal Register** notices (87 FR 38067, June 27, 2022; 87 FR 50293, August 16, 2022) and supplementary documents, available online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-bight-llc-marine-site>. The specific geographic region;

duration (360 total survey days); and nature of specified activities, including the types of HRG equipment planned for use (sparkers and CHIRPs), daily trackline distances (55 km per day), and number of survey vessels (up to three operating concurrently) are identical to those described in the previous notices.

Atlantic Shores plans to conduct geotechnical surveys, which consists of identical activities (*i.e.*, drilling of sample boreholes, deep cone penetration tests (CPTs), and shallow CPTs) previously described in its

application for the 2022 IHA (87 FR 38067, June 27, 2022; 87 FR 50293, August 16, 2022). Consistent with NMFS' previous analysis of these activities, no take of marine mammals is expected to occur as a result of geotechnical survey activities. As a result, these activities will not be discussed further herein.

*Description of Marine Mammals*

A description of the marine mammals in the area of the activities can be found in the previous documents and notices

for the 2022 IHA (87 FR 38067, June 27, 2022; 87 FR 50293, August 16, 2022), which remain applicable to this proposed IHA. NMFS reviewed the most recent draft Stock Assessment Reports (SARs, found on NMFS' website at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>), up-to-date information on relevant Unusual Mortality Events (UMEs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events>), and recent scientific literature and determined that no new information affects our original analysis of impacts under the 2022 IHA.

NMFS notes that, since issuance of the 2022 IHA, a new SAR is available for the North Atlantic right whale (NARW). Estimated abundance for the species declined from 368 to 338. However, this change does not affect our analysis of impacts, as described under the 2022 IHA.

*Potential Effects on Marine Mammals and Their Habitat*

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the 2022 IHA (87 FR 38067, June 27, 2022; 87 FR 50293, August 16, 2022). At present, there is no new information on potential effects that would impact our analysis.

*Estimated Take*

A detailed description of the methods used to estimate take anticipated to occur incidental to the project is found in the previous **Federal Register** notices (87 FR 38067, June 27, 2022; 87 FR 50293, August 16, 2022). The methods of estimating take are identical to those used in the 2022 IHA. Atlantic Shores updated the marine mammal densities based on new information (Roberts *et al.*, 2016; Roberts *et al.*, 2023), available online at: <https://seamap.env.duke.edu/>

*models/Duke/EC/*. We refer the reader to Table 6 in Atlantic Shores' 2023 IHA request for specific density values used in the analysis. The IHA request is available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

The take that NMFS proposes to authorize can be found in Table 2, which presents the results of Atlantic Shores' density-based calculations for the survey area. For comparative purposes, we have provided the 2022 IHA authorized take (87 FR 50293, August 16, 2022). NMFS notes that take by Level A harassment was not requested nor does NMFS anticipate that it could occur. Therefore, NMFS has not proposed to authorize any take by Level A harassment. Mortality or serious injury is neither anticipated to occur nor proposed for authorization.

TABLE 2—SUMMARY OF TAKE NUMBERS PROPOSED FOR AUTHORIZATION

Species	Scientific name	Stock	Abundance	2022 Authorized take	2023 Proposed IHA take proposed for authorization <sup>1</sup>	Max percent population
North Atlantic right whale	<i>Eubalaena glacialis</i>	Western Atlantic	338	24	5	1.5
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	1,396	8	<sup>6</sup> 8 (16)	1.2
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic	6,802	16	9	<1
Sei whale <sup>2</sup>	<i>Balaenoptera borealis</i>	Nova Scotia	6,292	2	4	<1
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian East Coastal	21,968	8	46	<1
Sperm whale <sup>2</sup>	<i>Physeter macrocephalus</i>	Western Atlantic	4,349	3	2	<1
Long-finned pilot whale <sup>3</sup>	<i>Globicephala melas</i>	Western North Atlantic	39,215	20	8 (20)	<1
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic Offshore Stock	62,851	232	179	<1
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic	172,974	911	588	<1
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	93,233	108	63	<1
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic	39,921	100	42 (100)	<1
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic	35,215	30	7 (30)	<1
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	95,543	357	281	<1
Harbor seal <sup>4</sup>	<i>Phoca vitulina</i>	Western North Atlantic	61,336	263	374	<1
Gray seal <sup>4,5</sup>	<i>Halichoerus grypus</i>	Western North Atlantic	27,300	263	374	1.37

<sup>1</sup> Parentheses denote proposed take authorization where different from calculated take estimates. Increases from calculated values are based on average group size for the following species: humpback whale, King *et al.*, 2021; long-finned pilot whale and Risso's dolphin, NOAA, 2022; and Atlantic spotted dolphin, Jefferson *et al.*, 2008.

<sup>2</sup> Where calculated takes for a species in a given survey area were less than 1 individual, the number was rounded up to 1 take in each survey area.

<sup>3</sup> Roberts *et al.* (2023) only provides density estimates for pilot whales as a guild. Given the project's location, NMFS assumes that all take will be of long-finned pilot whales.

<sup>4</sup> 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 2 species, *i.e.*, total estimated take for "seals" is 748.

<sup>5</sup> NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600.

<sup>6</sup> According to recent findings that humpback whales were the most commonly sighted species in the New York Bight (King *et al.*, 2021), the number of modeled exposures (4) for each of the lease area and ECR is multiplied by an average whale size of 2 for a total of 8 estimated takes in the lease area and 8 estimated takes in the ECR. The total request (16) represents the sum of estimated take in the lease area (8) and ECR (8).

*Description of Proposed Mitigation, Monitoring and Reporting Measures*

The mitigation, monitoring, and reporting measures proposed here are identical to those included in the **Federal Register** notice announcing the final 2022 IHA and the discussion of the least practicable adverse impact included in that document remains accurate. As described in the previous

**Federal Register** notices (87 FR 38067, June 27, 2022; 87 FR 50293, August 16, 2022), NMFS determined that issuance of the 2022 IHA to Atlantic Shores was within the scope of the NOAA Fisheries Greater Atlantic Regional Office (GARFO) programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (NOAA

GARFO, 2021; <https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation>). NMFS similarly concludes that the currently proposed survey activities are within scope of the consultation, and thus will

require adherence to the relevant Project Design Criteria (PDC) (specifically PDCs 4, 5, and 7).

Additionally, on August 1, 2022, NMFS announced proposed changes to the existing NARW vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered NARWs from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921, August 1, 2023). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify Atlantic Shores if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer applicable.

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

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

If a marine mammal is detected approaching or entering the SZs during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to

minimize noise impacts on the animals. During use of acoustic sources with the potential to result in marine mammal harassment (sparkers and non-parametric sub-bottom profilers; *i.e.*, anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the monitoring zone (but outside the SZs) must be communicated to the vessel operator to prepare for potential shutdown of the acoustic source.

**Visual Monitoring**—Monitoring must be conducted by qualified PSOs who are trained biologists, with minimum qualifications described in the **Federal Register** notices for the 2022 project (87 FR 38067, June 27, 2022; 87 FR 50293, August 16, 2022). Atlantic Shores must have one PSO on duty during the day and a minimum of two NMFS-approved PSOs must be on duty and conducting visual observations when HRG equipment is in use at night. Visual monitoring must begin no less than 30 minutes prior to ramp-up of HRG equipment and continue until 30 minutes after use of the acoustic source. PSOs must establish and monitor the applicable clearance zones, SZs, and vessel separation distances as described in the 2022 IHA (87 FR 38067, June 27, 2022; 87 FR 50293, August 16, 2022). PSOs must coordinate to ensure 360-degree visual coverage around the vessel from the most appropriate observation posts, and must conduct observations while free from distractions and in a consistent, systematic, and diligent manner. PSOs are required to estimate distances to observed marine mammals. It is the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

**Pre-Start Clearance**—Marine mammal clearance zones (CZs) would be established around the HRG survey equipment and monitored by NMFS-approved protected species observers (PSOs) prior to use of sparkers and non-parametric sub-bottom profilers as follows:

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

Prior to initiating HRG survey activities, Atlantic Shores should implement a 30-minute pre-start clearance period. The operator must notify a designated PSO of the planned start of ramp-up where the notification time should not be less than 60 minutes prior to the planned ramp-up to allow the PSOs to monitor the CZs for 30

minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Atlantic Shores would receive confirmation from the PSO that the CZs are clear prior to preceding. Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zones.

During this 30-minute period, the entire CZ must be visible. The exception to this would be in situations where ramp-up must occur during periods of poor visibility (inclusive of nighttime) as long as appropriate visual monitoring has occurred with no detections of marine mammals in 30 minutes prior to the beginning of ramp-up. Acoustic source activation must only occur at night where operational planning cannot reasonably avoid such circumstances.

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

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

**Shutdown Procedures**—If an HRG source is active and a marine mammal is observed within or entering a relevant SZ (as described above), an immediate shutdown of the HRG survey equipment is required. When shutdown is called for by a PSO, the acoustic source must

be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable SZ. The vessel operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment may only occur after the marine mammal has been observed exiting the relevant SZ, or, until an additional period has elapsed with no further sighting of the animal within the relevant SZ.

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable SZ or, following a clearance period of 15 minutes for small odontocetes and seals and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant SZ. If the HRG equipment is shut down for brief periods (*i.e.*, less than 30 minutes) for reasons other than mitigation (*e.g.*, mechanical or electronic failure), the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable SZs during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above. The acoustic source(s) must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided.

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

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth (141 m), shutdown must occur.

**Vessel Strike Avoidance**—Atlantic Shores must comply with vessel strike avoidance measures as described in the **Federal Register** notice for the 2022 IHA (87 FR 50293, August 16, 2022). This includes speed restrictions (10 kn (5.14 m/s) or less) when mother/calf pairs, pods, or large assemblages of cetaceans are spotted near a vessel; species-specific vessel separation distances; appropriate vessel actions when a marine mammal is sighted (*e.g.*, avoid excessive speed, remain parallel to animal's course, *etc.*); and monitoring of the NMFS North Atlantic Right Whale reporting system and WhaleAlert daily.

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

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

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

**Reporting**—PSOs must record specific information as described in the **Federal Register** notice of the issuance of the 2022 IHA (87 FR 50293, August 16, 2022). Within 90 days after completion of survey activities, Atlantic Shores must provide NMFS with a monitoring report, which must include summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

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

initial IHA (87 FR 50293, August 16, 2022).

### Preliminary Determinations

Atlantic Shores' HRG survey activities are unchanged from those analyzed in support of the 2022 IHA. The effects of the activity, taking into consideration the proposed mitigation and related monitoring measures, remain unchanged from those evaluated in support of the 2022 IHA, regardless of the minor increases in estimated take for two marine mammal species (humpback whale and minke whale). NMFS expects that all potential takes would be short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.*, Southall *et al.*, 2007). In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m from use of the AA Dura-spark sparker. Although this distance is assumed for all survey activity evaluated here and in estimating take numbers proposed for authorization, in reality, much of the survey activity would involve use of non-impulsive acoustic sources with a reduced acoustic harassment zone of up to 56 m, producing expected effects of particularly low severity. The ensounded area surrounding each vessel is extremely small compared to the overall distribution of the animals in the area and the available habitat.

Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Even considering the increased estimated take for some species, the impacts of these lower severity exposures are not expected to accrue to a degree that the fitness of any individuals would be impacted and, therefore, no impacts on the annual rates of recruitment or survival would result.

As previously discussed in the 2022 IHA (87 FR 50293, August 16, 2022),

impacts from the survey are expected to be localized to the specific area of activity and only during periods when Atlantic Shores' acoustic sources are active. There are no rookeries, mating or calving grounds, or any feeding areas known to be biologically important to marine mammals within the proposed survey area. There is no designated critical habitat for any marine mammals listed under the Endangered Species Act (ESA) in the survey area.

As noted for the 2022 IHA (87 FR 50293, August 16, 2022), the survey area overlaps a migratory corridor biologically important area (BIA) and migratory route seasonal management area (SMA) (Port of New Jersey/New York) for North Atlantic right whales. As the survey activities would be temporary and the spatial acoustic footprint produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA (269,448 km<sup>2</sup>), NMFS does not expect North Atlantic right whale migration to be impacted by the survey. Required vessel strike avoidance measures would also decrease risk of ship strike during migration; no ship strike is expected to occur during Atlantic Shores' proposed activities. Atlantic Shores would be required to comply with seasonal speed restrictions of these SMAs, and in any dynamic management area (DMA), should NMFS establish one (or more) in the proposed survey area. Additionally, Atlantic Shores requested, and NMFS proposes, to authorize only five takes by Level B harassment of North Atlantic right whales. This amount is less than the 24 Level B harassment takes authorized in the 2022 IHA due to the updated Duke University density data (Roberts *et al.*, 2023).

Although take by Level B harassment of North Atlantic right whales has been proposed for authorization by NMFS, we anticipate such take may not actually occur, and should it occur, we anticipate a very low level of harassment because Atlantic Shores is required to maintain a shutdown zone of 500 m if a North Atlantic right whale is observed. The takes proposed for authorization account for any missed animals wherein the survey equipment is not shut down immediately. As shutdown would be called for immediately upon detection (if the whale is within 500 m), it is likely the exposure time would be very limited and received levels would not be much above the harassment threshold. Further, the 500-m SZ for North Atlantic right whales is conservative, considering the Level B harassment isopleth for the most impactful acoustic

source (*i.e.*, AA Dura-spark sparker) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small permanent threshold shift (PTS) zones associated with HRG equipment types proposed for use. NMFS does not anticipate North Atlantic right whale takes that would result from Atlantic Shores' activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

We also note that our findings for other species with active UMEs that were previously described for the 2022 IHA remain applicable to this project. Therefore, in conclusion, there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) the required mitigation measures would effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes would have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Atlantic Shores' activities would 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 Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA, the North Atlantic right, fin, sei, and sperm whale, and has determined that this activity falls within the scope of activities analyzed in NMFS Greater Atlantic Regional Fisheries Office's programmatic consultation regarding geophysical surveys along the U.S.

Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

#### Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Atlantic Shores for conducting high-resolution geophysical site characterization surveys off New Jersey and New York for a period of 1 year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

#### Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the 2022 IHA (ITA application; issued IHA; and **Federal Register** notices including 87 FR 38067, June 27, 2022; 87 FR 50293, August 16, 2022)), the proposed authorization, and any other aspect of this notice of proposed IHA for the HRG marine site characterization surveys. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of the Proposed Activity and Anticipated Impacts section of this notice is planned, or (2) the activities as described in the Description of the Proposed Activity and Anticipated Impacts section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

- The request for renewal must include the following:

- (1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial



IHA, are a subset of the activities, or include changes so minor (e.g., reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

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

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

Dated: June 23, 2023.

**Kimberly Damon-Randall,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XD056]

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

**SUMMARY:** NMFS has received a request from the California Department of Transportation (Caltrans) for authorization to take marine mammals incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, CA. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all

requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than July 28, 2023.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to [ITP.cockrell@noaa.gov](mailto:ITP.cockrell@noaa.gov).

**Instructions:** NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

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-construction-activities>. In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Craig Cockrell, 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 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 the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

#### National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

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

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

#### Summary of Request

On December 28, 2022, NMFS received a request from Caltrans for an IHA to take marine mammals incidental to construction activities to restore portions of the Richmond-San Rafael Bridge. Following NMFS’ review of the application, Caltrans submitted a revised version on April 14, 2023, which was deemed adequate and