

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

[RTID 0648-XE026]

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; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from Attentive Energy, LLC (Attentive Energy), a company registered in Delaware, for the renewal of their previously issued incidental harassment authorization (IHA) (hereafter, the “initial IHA”) 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, 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. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the initial IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than August 22, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and should be submitted via email to ITP.Potlock@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. Attachments to comments will be accepted in Microsoft

Word, Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Electronic copies of the original application, renewal request, 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/action/incidental-take-authorization-attentive-energy-llc-marine-site-characterization-surveys-0>. 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 the 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 of an 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); and

- 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>. Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

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 renewal of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in “Categorical Exclusion B4” (incidental take authorizations with no anticipated serious injury or mortality) of the “Companion Manual for 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 for categorical exclusion from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the request to renew the IHA.

History of Request

On June 20, 2023, NMFS issued an IHA to Attentive Energy to take marine mammals incidental to conducting marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight region, specifically within the 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 for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that were analyzed for the initial 2023 authorization, but would not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

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 the 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 is proposing 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); however, per discussions with Attentive Energy, this expanded area will not result in the need to survey additional tracklines. 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.

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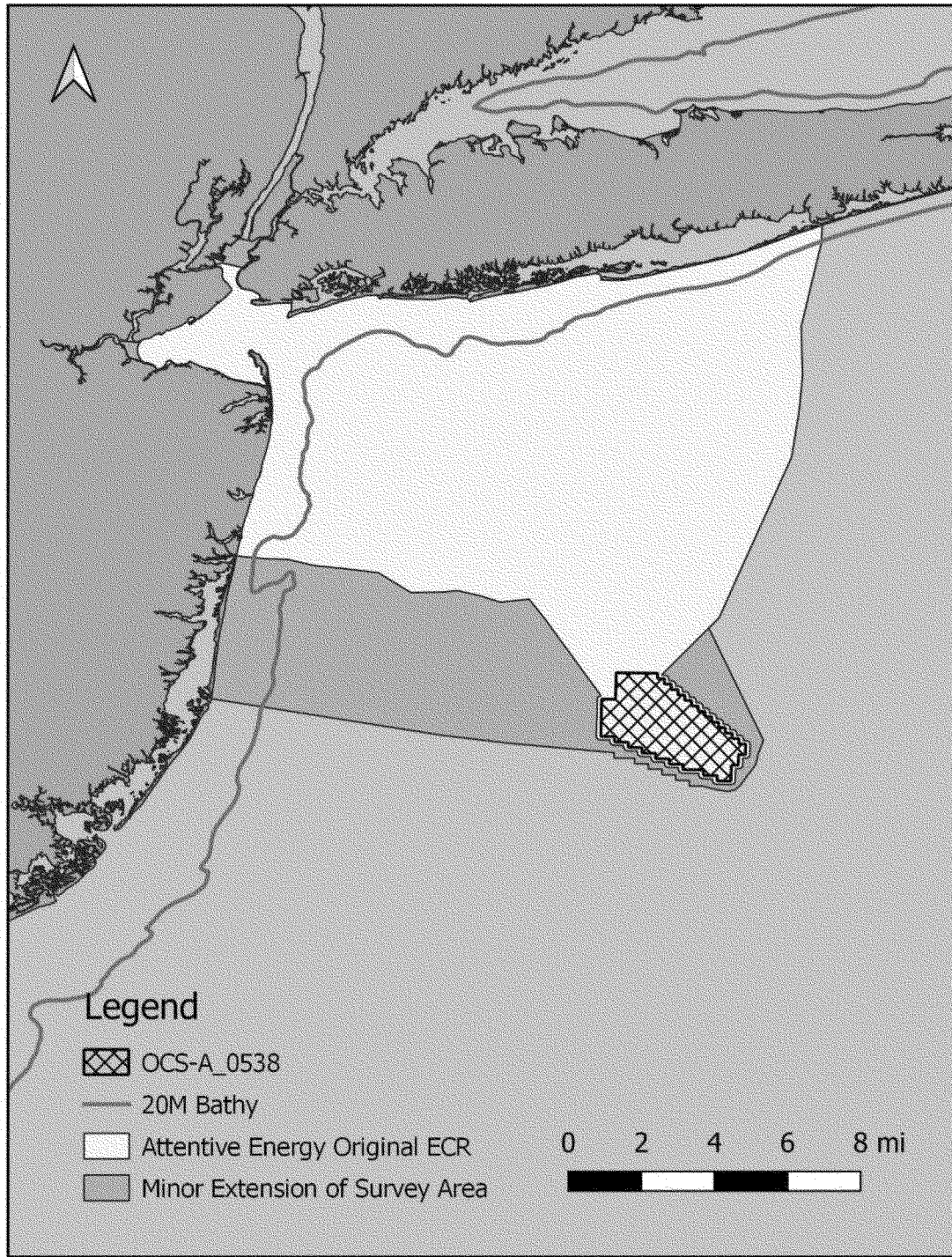


Figure 1 – Planned Survey Area

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The survey effort in the proposed project would be conducted over up to approximately 80 days across two vessels (in the same manner as the initial IHA). The survey effort proposed for this renewal IHA conservatively assumes that sparker acoustic sources, which have the largest estimated Level

B harassment area, would be used exclusively. In reality, other sources with smaller estimated harassment areas would be used during some proportion of survey effort.

The potential impacts of Attentive Energy’s proposed activity on marine mammals would involve acoustic

stressors and are unchanged from the impacts described in the **Federal Register** notice for the proposed IHA (88 FR 41888, June 28, 2023). Acoustic stressors include effects of the marine site characterization surveys. Underwater disturbances from Attentive Energy’s proposed activities has the

potential to result in Level B harassment of marine mammals in the specified geographic region.

This proposed renewal IHA is for the remainder of work that was not completed by the expiration of the initial IHA. This proposed renewal IHA would authorize incidental take, by Level B harassment only, of 15 species (16 stocks) of marine mammals for a subset of the initially planned marine site characterization survey activities to be completed in approximately 1 year, in a substantially similar area, and using the same survey methods and acoustic sources to those described in the initial IHA application. 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 of the issued initial IHA (88 FR 41888, June 28, 2023).

Detailed Description of the Activity

A detailed description of the marine site characterization survey activities for which incidental take is proposed here may be found in the **Federal Register** notice of the proposed IHA (88 FR 41888, June 28, 2023). The location and nature of these activities, including the types of equipment planned for use, are nearly identical to those described in the previous notice (as referenced in the request from Attentive Energy, available at: [https://www.fisheries.noaa.gov/action/incidental-take-authorization-](https://www.fisheries.noaa.gov/action/incidental-take-authorization-attentive-energy-llc-marine-site-characterization-surveys-0)

attentive-energy-llc-marine-site-characterization-surveys-0). The proposed renewal would be effective for a period not exceeding 1 year from the date of the expiration of the initial IHA.

The only change to this project would be the aforementioned slight expansion of the survey area to the south of the initial project area, which consists of additional potential ECRs (refer back to figure 1). However, as described above, Attentive Energy intends to maintain the same amount of remaining trackline, using the same number of vessels, and using the same acoustic sources as previously analyzed (*i.e.*, boomers and sparkers).

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 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 period 2017–2021 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 below. 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 noted that below.

TABLE 1—SPECIES AND STOCKS^a LIKELY IMPACTED BY THE PROPOSED SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) ^b	Stock abundance (CV, N_{min} , most recent abundance survey) ^c	PBR	Annual M/SI ^d
Order Artiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
<i>Family Balaenidae:</i> North Atlantic right whale ^e .	<i>Eubalaena glacialis</i>	Western Atlantic	E, D, Y	340 (0, 337, 2021)	0.7	127.2
<i>Family Balaenopteridae (rorquals):</i> Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic	E, D, Y	6,802 (0.24, 5,573, 2021)	11	2.05
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	- , - , N	No changes.	170	9.4
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal	- , - , N	21,968 (0.31, 17,002, 2021).	6.2	0.6
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia	E, D, Y	6,292 (1.02, 3,098, 2021)		
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Physeteridae:</i> Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic	E, D, Y	5,895 (0.29, 4,639, 2021)	9.28	0.2
<i>Family Delphinidae:</i> Atlantic spotted dolphin.	<i>Stenella frontalis</i>	Western North Atlantic	- , - , N	31,506 (0.28, 25,042, 2021).	250	0
Atlantic white-sided dolphin.	<i>Lagenorhynchus acutus</i>	Western North Atlantic	- , - , N	93,233 (0.71, 54,443, 2021).	544	28
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic—Offshore ^f .	- , - , N	64,587 (0.24, 52,801, 2021).	507	28
Common dolphin	<i>Delphinus delphis</i>	Northern Migratory Coastal	- , - , N	No changes.	1,452	414
		Western North Atlantic	- , - , N	93,100 (0.56, 59,897, 2021).		

TABLE 1—SPECIES AND STOCKS ^a LIKELY IMPACTED BY THE PROPOSED SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ^b	Stock abundance (CV, Nmin, most recent abundance survey) ^c	PBR	Annual M/SI ^d
Long-finned pilot whale ^e .	<i>Globicephala melas</i>	Western North Atlantic	- , - , N	39,215 (0.30, 30,627, 2021).	306	5.7
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic	- , - , N	44,067 (0.19, 30,662, 2021).	307	18
<i>Family Phocoenidae (porpoises)</i>						
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	- , - , N	85,765 (0.53, 56,420, 2021).	649	145
Order Carnivora—Superfamily Pinnipedia						
<i>Family Phocidae (earless seals):</i>						
Gray seal ^h	<i>Halichoerus grypus</i>	Western North Atlantic	- , - , N	27,911 (0.20, 23,624, 2021).	1,512	4,570
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic		No changes.		

^aInformation on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies>).

^bEndangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

^cNMFS' marine mammal stock assessment reports can be found online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is the coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

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

^eThe current SAR includes an estimated population (Nbest = 340) based on sighting history through December 2021 (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>). 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).

^fEstimates may include sightings of the coastal form.

^gKey uncertainties exist in the population size estimate for this species, including uncertain separation between short-finned and long-finned pilot whales, small negative bias due to lack of abundance estimate in the region between US and the Newfoundland/Labrador survey area, and uncertainty due to unknown precision and accuracy of the availability bias correction factor that was applied.

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

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.

Based on the information presented above, NMFS has determined that neither this nor any other new information affects which species or stocks have the potential to be affected or any other pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial proposed (88 FR 24553, April 21, 2023) and final (88 FR 41888, June 28, 2023) **Federal Register** notices.

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 an authorization of incidental take is proposed here may be found in the **Federal Register** notice for the proposed IHA for the initial authorization (88 FR 24553, April 21, 2023). NMFS has reviewed the monitoring data from the initial IHA, recent draft SAR, information on relevant Unusual Mortality Events, and other scientific literature, 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 (88 FR 24553, April 21, 2023) and final (88 FR 41888, June 28, 2023) IHA for the initial authorization. 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 proposed for authorization 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. The percentage of trackline remaining, for most stocks, is approximately 32 percent. The most variation in effort exists for both the Migratory Coastal and Offshore stocks of bottlenose dolphins as the estimated trackline remaining is based on the estimated overlapping

trackline with the cutoffs for the 20-m (<65.6-ft) isobath for the Migratory Coastal stock). All of these estimated takes, which reflect the estimated remaining tracklines and survey days, are indicated below in table 2.

TABLE 2—PROPOSED NUMBER OF TAKES BY LEVEL B HARASSMENT BY SPECIES AND STOCKS, AND PERCENT OF TAKE BY STOCK

Common name	Population abundance	Percentage of trackline remaining in relevant habitat	Takes proposed for authorization based on remaining trackline	Percentage of population proposed to be taken
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

Here, NMFS have utilized the draft 2023 SARs, rather than the final 2022 SARs, as the draft 2023 SARs represent the best available science and the most recently available data.

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed 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), and the discussion of the least practicable adverse impact included in that document and the **Federal Register** notice of the proposed IHA remains accurate (88 FR 24553, April 21, 2023). The following measures are proposed for this renewal:

- *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 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

NMFS published a notice of a proposed IHA (88 FR 24553, April 21, 2023) and solicited public comments on both our proposal to issue the initial IHA for marine site characterization surveys and on the potential for a renewal IHA, should certain

requirements be met. All public comments were addressed in the notice announcing the issuance of the initial IHA (88 FR 41888, June 28, 2023) and none of the comments specifically pertained to the potential renewal of the 2023 IHA.

Preliminary Determinations

Attentive Energy's proposed 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 mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily 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 above in table 1. Specifically, NMFS is proposing to authorize 4 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 proposed for take 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 affect the least practicable adverse impact on marine mammal species or stocks and their habitat; (2) the proposed takes for authorization would have a negligible impact on the affected marine mammal species or stocks; (3) the takes proposed for authorization 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.

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, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

NMFS Office of Protected Resources has proposed 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 these activities fall within the scope of activities analyzed in 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). The proposed renewal IHA provides no new information about the effects of the action, nor does it change the extent of effects of the action, or present any other basis to require re-initiation of consultation with NMFS GARFO; therefore, the ESA consultation has been

satisfied for the initial IHA and remains valid for the Renewal IHA.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to Attentive Energy for conducting marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, from the date of issuance through June 19, 2025, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-attentive-energy-llc-marine-site-characterization-surveys-0>. We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: August 2, 2024.

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-XE088]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Weyerhaeuser Company for Their Log Export Dock Project on the Columbia River Near Longview, Washington

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Weyerhaeuser Company (Weyerhaeuser) to incidentally harass marine mammals during construction activities associated with the Log Export Dock Project on the Columbia River near Longview, Washington.

DATES: This authorization is effective from September 1, 2025 through August 31, 2026.

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

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources (OPR), 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 monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On October 29, 2023, NMFS received a request from Weyerhaeuser for an IHA to take marine mammals incidental to pile driving and removal activities associated with the Log Export Dock