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Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: August 22, 2024.

Rey Israel Marquez,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE143]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Invenergy Wind Offshore, LLC's Marine Site Characterization Surveys 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 an incidental harassment authorization (IHA) to Invenergy Wind Offshore, LLC (IWO) for the renewal of their 2023 IHA to take marine mammals incidental to marine site characterization surveys in waters off of New Jersey and New York in the New York Bight.

DATES: This authorization is effective from August 21, 2024 through July 30, 2025.

ADDRESSES: Electronic copies of the initial IHA application, Renewal IHA request, Renewal IHA, and supporting documents, including **Federal Register** notices of the initial proposed and final authorizations, the initial IHA, and the proposed IHA Renewal, 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: Austin Demarest, 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 one 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: (a) 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

(b) 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; and

4. 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: <http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals>.

History of Request

On July 19, 2023, NMFS issued the 2023 IHA (hereinafter, the 2023 IHA is referred to as the "initial IHA" and the 2024 IHA is referred to as the "Renewal IHA") to IWO to take small numbers of marine mammals incidental to site characterization surveys off the coast of New York and New Jersey in the New

York Bight (88 FR 47846, July 25, 2023), effective from July 31, 2023 through July 30, 2024. On May 3, 2024, NMFS received a request for the renewal of the initial IHA, which was deemed adequate and complete on May 24, 2024. As described in the application for renewal IHA, the specified activities for which incidental take is requested are identical to those included in the initial authorization. As required, IWO provided a preliminary monitoring report, which shows that it has implemented the required mitigation and monitoring measures and 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 July 17, 2024 (89 FR 58124).

Description of the Specified Activity and Anticipated Impacts

IWO plans to conduct an additional year of marine site characterization surveys, including high-resolution geophysical (HRG) surveys, in waters off the coast of New Jersey and New York 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 (OCS) Lease Area OCS-A 0542 and the associated Export Cable Route (ECR) Area. Hereafter, both the areas are referred to as the Survey Area.

The purpose of IWO's proposed surveys is to provide sufficient data to meet BOEM guidelines and support the development of offshore wind facilities in the Survey Area. Specifically, data collected would support site characterization, siting, and engineering design of offshore wind facilities including turbine generators, offshore substations, submarine cables and data necessary for project review requirements. IWO will have a maximum of three vessels surveying concurrently. Underwater sounds produced from sparkers and boomers during IWO's surveys has the potential to result in Level B harassment of 15 species (comprising 16 stocks) of marine mammals. The specified activities that may result in take of marine mammals are identical in scope, effort, potential harassment to marine mammals, and mitigation measures as the Initial IHA (88 FR 47846).

Detailed Description of the Activity

A detailed description of the surveys for which incidental take is proposed

here may be found in the **Federal Register** notice of the initial Proposed IHA (88 FR 32735, May 22, 2023). The location, duration, and nature of the activities, including the types of equipment planned for use, are identical to those described in the notice referenced above. The IHA is effective from August 21, 2024 through July 30, 2025.

Comments and Responses

A notice of NMFS' proposal to issue a renewal IHA to IWO was published in the **Federal Register** on July 17, 2024 (89 FR 58124). That notice described, in detail, or referenced descriptions of IWO's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated number and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received a total of five public comment letters. Four of these comment letters were from private citizens and one was from a non-governmental organization (Clean Ocean Action (COA)). The public comments expressed general opposition to the underlying associated activities. These comments do not raise significant points for NMFS to consider or are out of the scope of this activity.

We reiterate here that NMFS' proposed action concerns only the authorization of marine mammal take incidental to the planned surveys—NMFS' authority under the MMPA does not extend to the surveys themselves or to wind energy development more generally. The public comments requested that NMFS not issue any IHAs related to wind energy development and/or expressed opposition for wind energy development generally. We do not specifically address these comments because they are out of scope of the proposed Renewal IHA (89 FR 58124, July 17, 2024) or do not raise significant points for NMFS to consider.

All substantive comments and NMFS' responses are provided below, and all comment letters are available online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-in-venery-wind-offshore-llcs-site-characterization-surveys-new>.

Comment 1: Several commenters expressed a concern that the proposed IHA and its associated specified activities would lead to mortality (death) of marine mammals.

Response: The public commenters did not provide any scientific evidence to support their claim that the proposed IHA and specific activities would lead to mortality of marine mammal. NMFS emphasizes that there is no credible

scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned survey activity. NMFS notes there has never been a report of any serious injuries or mortalities of a marine mammal associated with site characterization surveys.

The best available science indicates that Level B harassment (*i.e.*, disruption of behavioral patterns may occur as a result of IWO's specified activities. We also refer to the Greater Atlantic Regional Fisheries Office (GARFO) 2021 Programmatic Consultation, which finds that these survey activities are in general not likely to adversely affect Endangered Species Act (ESA)-listed marine mammal species. That document is found at <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>.

Comment 2: COA stated that marine mammal species experiencing Unusual Mortality Events (UMEs), such as North Atlantic right whales, humpback whales, and minke whales should be protected more carefully.

Response: NMFS appreciates COAs concern for marine mammals experiencing UMEs. However, COA did not suggest any additional mitigation measures that NMFS should consider incorporating into the IHA.

Comment 3: COA states the use of a Categorical Exclusion (CE) under National Environmental Policy Act (NEPA) should not apply and further analysis should be conducted while considering cumulative effects of the proposed IHA relative to other authorized takes in the area, including takes under the 2023 IHA.

Response: NMFS disagrees. 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. Potential effects of NMFS' action are limited to those that would occur due to the authorization of incidental take of marine mammals. NMFS prepared numerous EAs analyzing the environmental impacts of the categories of activities encompassed by CE B4, which resulted in Findings of No Significant Impacts (FONSI) and, in particular, numerous EAs prepared in support of issuance of IHAs related to similar survey actions are part of NMFS' administrative record supporting CE B4. These EAs demonstrate the issuance of a given incidental harassment authorization does not affect other aspects of the human environment because the action only affects the marine mammals that are the subject of the incidental harassment authorization.

Specifically for this action, NMFS independently evaluated the use of the CE for issuance of IWO'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 IWO 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 IWO'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 IWO's 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), which concluded surveys such as those planned by IWO are not likely to adversely affect ESA-listed species or adversely modify or destroy critical habitat. Accordingly, NMFS has determined that the issuance of this IHA will result in no more than negligible (as that term is defined by the Companion Manual for NAO 216-6A) adverse effects on species protected by the ESA and the MMPA.

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 states there is considerable uncertainty regarding the effect of preconstruction surveying on marine mammals.

Response: NMFS disagrees. NMFS has issued IHAs for marine site characterization surveys and HRG surveys since 2014 and marine mammal behavioral responses, or lack thereof, from these activities are well documented. Marine mammal monitoring reports from authorized

surveys and the best available science indicates that only Level B harassment (*i.e.*, temporary disruption of behavioral patterns) may occur. No mortality or serious injury is expected to occur as a result of IWOs planned surveys, and there is no scientific evidence indicating that any marine mammal could experience these as a direct result of noise from geophysical survey activity.

Comment 5: COA asserted that NMFS should reject IWOs 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 (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 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 IWO 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 CE for issuance of IWO'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 (BiOp) for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (<https://repository.library.noaa.gov/view/noaa/29291>). Analyzed activities include those for which NMFS issued previous IHAs (82 FR 31562, July 7, 2017; 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 IWO under this current IHA request. This BiOp 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 BiOp remains valid.

Comment 6: A commenter stated that Letters of Authorizations (LOA) would be more appropriate than IHAs and IHA renewals when time to complete proposed activities are unclear.

Response: Under section 101(a)(5)(D)(i) of the MMPA, the Secretary of Commerce, as delegated to NMFS, shall authorize the requested incidental, but not intentional, taking by harassment of small numbers of marine mammals by the requestor while engaged in the specified activities if NMFS finds the harassment (1) will have a negligible impact of such species or stock and (2) will not have an unmitigable adverse impact on the availability of such stocks for the taking for subsistence uses, if applicable. IWO requested an IHA for specified activities that could reasonably be completed within 1 year, and NMFS has made the required findings.

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 IHAs (88 FR 32735, May 22, 2023) for the initial IHA. 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 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 population estimates (N_{best}) also increased for the North Atlantic stock of Sperm whales, the Western North Atlantic Offshore stock of Common bottlenose dolphins, Western North Atlantic stocks of Risso's dolphins, Atlantic spotted dolphins, and Gray seals. However, abundance estimates slightly decreased for the Western North Atlantic stocks of Common dolphins and Harbor Porpoises. NMFS has determined there is no new information that affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

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 IHA is proposed here may be found in the notice of the proposed IHA (88 FR 32735, May 22, 2023) for the initial IHA. NMFS has reviewed the monitoring data from the initial IHA, recent draft SARs, information on relevant UME's, 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. Therefore, that information is not repeated here; please refer to the **Federal Register** notice (88 FR 32735, May 22, 2023).

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notice of the Final IHA (88 FR 47846, July 25, 2023) for the initial IHA. Specifically, the source levels, days of operation, and marine mammal density/occurrence data applicable to this authorization remain unchanged from the initial IHA. Similarly, the stocks taken, methods of take, and type of take remain unchanged from the initial IHA, as do the number of takes, which are indicated below in table 1.

TABLE 1—ESTIMATED TAKE NUMBER AND TOTAL AUTHORIZED TAKE BY LEVEL B HARASSMENT

Species	Ensonified area (km ²)	Density (animals/km ²)	Estimated take	Total take authorized	Percent of abundance
North Atlantic right whale	3,615	0.001748	6	6	^A 1.76
Humpback whale	3,615	0.003657	13	13	0.93
Fin whale	3,615	0.004856	18	18	0.26
Sei whale	3,615	0.001813	7	7	0.11
Minke whale	3,615	0.025476	92	92	0.42
Sperm whale	3,615	0.000371	1	2	^A 0.03
Risso's dolphin	3,615	0.002841	10	10	^A 0.02
Long-finned pilot whale	3,615	0.003363	12	15	0.03
Atlantic white-sided dolphin	3,615	0.027836	101	101	0.11
Common dolphin	3,615	0.245719	888	888	^A 0.95
Atlantic spotted dolphin	3,615	0.011683	42	42	^A 0.13
Harbor porpoise	3,615	0.262904	950	950	^A 1.11
Common bottlenose dolphin (Offshore Stock) ^B	3,164	0.193127	611	611	^A 0.95
Common bottlenose dolphin (Northern Migratory Coastal Stock) ^C	452	1.758553	795	795	11.97
Gray seal	3,615	^D 0.262904	950	950	^A ^E 0.26
Harbor seal	3,615	^D 0.262904	950	950	1.55

Note: Take request based on average group size using sightings data from (CETAP, 1982, Palka *et al.*, 2017, Palka *et al.*, 2021) (see Attachment 3 of the application for the initial IHA).

^A Based on the 2023 draft marine mammal stock assessment reports (SAR).

^B The ensonified area for the offshore stock is for greater than 20 m water depth includes all the lease area and portions of the ECR.

^C The ensonified area for the migratory coastal stock is only the areas of less than 20 m water depth (found only in portions of the ECR).

^D These each represent 50 percent of a generic seal density value.

^E This abundance estimate is based on the total stock abundance (including animals in Canada). The NMFS stock abundance estimate for U.S. population is 27,911.

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in the IHA are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (88 FR 47846, July 25, 2023) and the discussion of the least practicable adverse impact determination included in that document remains applicable and accurate. The following measures required in this renewal IHA:

• *Protected Species Observers (PSO):*

A minimum of one visual PSO must be on duty on each source vessel and conducting visual observations at all times during daylight hours (*i.e.*, from 30 minutes (min) prior to sunrise through 30 min following sunset). A minimum of two PSOs must be on duty on each source vessel during nighttime hours;

• *Pre-Start Clearance Protocols:* Prior to activating sparker systems, IWO must implement a 30-minute pre-start clearance observation period. If any marine mammals are detected within the shutdown zones prior to or during ramp-up, the sparker system equipment must be shutdown (as described above). Pre-start clearance is waived for certain genera of small delphinids and pinnipeds;

• *Ramp-up:* A ramp-up procedure must be used for the activation of sparker systems by gradually increasing

source levels at the start or re-start of survey activities (when technically feasible);

• *Shutdown Zones:* If a sparker system is active and a marine mammal is observed within or entering a relevant shutdown zone, an immediate shutdown of the sparker system equipment is required. Shutdown requirements are waived for certain genera of small delphinids and pinnipeds;

• *Vessel strike avoidance measures:* Minimum separation distances must be maintained for marine mammals (500 m for North Atlantic right whales, baleen whales (except humpback and minke), sperm whales, and unidentified large whales; 100 m for humpback and minke whales; 50 m for all other marine mammals); restricted vessel speeds and operational maneuvers; and

• *Reporting:* IWO must submit a marine mammal monitoring report within 90 days of completion of the surveys.

Determinations

NMFS is authorizing the incidental take of small numbers of marine mammals from specified activities identical to those analyzed in the initial IHA and is requiring identical mitigation, monitoring, and reporting measures as those specified in the initial IHA. The number of takes by Level B harassment authorized is equal to that authorized in the initial IHA. In the initial IHA, NMFS determined that

IWO's specified activities would have a negligible impact on the affected species and/or stocks and the authorized take for each stock would be small relative to individual stock abundance (less than one third).

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 estimated abundance of seven stocks decreasing/increasing slightly. Specifically, NMFS is authorizing six 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, approximately 1.76 percent of the stock abundance is authorized 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 effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) IWO's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no

relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

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 Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS' Office of Protected Resources has authorized take of four species of marine mammals that are listed under the ESA (*i.e.*, North Atlantic Right Whale, fin whale, sei whale, and sperm whale) and has determined these activities fall within the scope of activities analyzed in the NMFS 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). The Renewal IHA neither provides new information about the effects of the action nor change the extent of effects of the action or any other basis to require reinitiation of consultation with NMFS GARFO. Therefore, the ESA consultation has been satisfied for the initial IHA and remains valid for the Renewal IHA.

Renewal IHA

NMFS has issued a renewal IHA to IWO for conducting marine site

characterization with HRG surveys off the coast of New York and New Jersey in the New York Bight in BOEM Lease Area OCS-A 0542 and the associated Export ECR Area from August 21, 2024 through July 30, 2025.

Dated: August 22, 2024.

Kimberly Damon-Randall,

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

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COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 ("PRA"), this notice announces that the Information Collection Request ("ICR") abstracted below has been forwarded to the Office of Management and Budget ("OMB") for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before September 26, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the website's search function. Comments can be entered electronically by clicking on the "comment" button next to the information collection on the "OIRA Information Collections Under Review" page, or the "View ICR—Agency Submission" page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the "Commission" or "CFTC") by clicking on the "Submit Comment" box next to the descriptive entry for OMB Control No. 3038-0095, at <https://>

comments.cftc.gov/FederalRegister/PublicInfo.aspx.

Or by either of the following methods:

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations. The Commission reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Chief Counsel and Senior Advisor, Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418-5092; email: rwasserman@cftc.gov, and refer to OMB Control No. 3038-0021.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Bankruptcies of Commodity Brokers (OMB Control No. 3038-0021). This is a request for an extension of a currently approved information collection.¹

¹ There are two information collections associated with OMB Control No. 3038-0021. The first includes the reporting, recordkeeping, and third party disclosure requirements applicable to a single respondent in a commodity broker liquidation (*e.g.*, a single commodity broker or a single trustee) within the relevant time period provided for in Commission regulations 190.02(b)(1), 190.02(b)(2), 190.02(c)(1), 190.02(c)(2), 190.02(c)(4), 190.05(b), 190.05(d), 190.07(b)(5), 190.12(a)(2), 190.12(b)(1), 190.12(b)(2), 190.12(c)(1), 190.12(c)(2), and 190.14(a), and 190.14(d). The second information collection includes third party disclosure requirements that are applicable on a regular basis to multiple respondents (*i.e.*, multiple FCMs) provided for in Commission regulations 1.41, 1.43 and 1.55(p).