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Clean Ocean Action Comments on Orsted IHA Renewal

1 message

Erika Bosack (Clean Ocean Action) <EBosack@cleanoceanaction.org>

Tue, Sep 26, 2023 at 7:10 PM

To: "ITP.Lock@noaa.gov" <ITP.Lock@noaa.gov>

Cc: "Cindy Zipf (Clean Ocean Action)" <Zipf@cleanoceanaction.org>

Dear Ms. Harrison,

Please find attached Clean Ocean Action's comments on Orsted's Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS-A 0486, 0487, and 0500.

Thank you,

Erika Bosack, Esq.

Policy Attorney

Clean Ocean Action

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 **Orsted_IHA renewal comments_FINAL.pdf.pdf**
186K



*Ocean Advocacy
Since 1984*

Clean Ocean Action

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September 26, 2023

Jolie Harrison
Chief, Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, F/PR1 Room 13805
Silver Spring, MD 20910

Re: Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Outer Continental Shelf Lease Areas OCS-A 0486, 0487, and 0500

Dear Chief Harrison:

Clean Ocean Action (“COA”) is a regional, broad-based coalition of conservation, environmental, fishing, boating, diving, student, surfing, women’s, business, civic, and community groups with a mission to improve the water quality of the marine waters off the New Jersey/New York coast. Thus, COA speaks from this extensive experience and commitment to the region to protect the ocean.

We submit the following comments in opposition to the renewal request that has been submitted by Orsted Wind Power North America, LLC (“Orsted” or “the Applicant”) for an incidental harassment authorization (“IHA”) under the Marine Mammal Protection Act (“MMPA”). This IHA application would allow the Applicant to take marine mammals during marine site characterization surveys associated with its offshore wind (“OSW”) facility at Lease Areas OCS-A 0486, 0487, and 0500 off the coast of New York, Massachusetts, and Rhode Island.

Under the Marine Mammal Protection Act regulations, the National Marine Fisheries Service (“NMFS”) may issue a permit to incidentally take or harass small numbers of protected marine mammals if the Director finds, based on the best scientific evidence available, that the total taking will have a negligible impact on the species.¹

Clean Ocean Action previously submitted comments in opposition to Orsted’s Application to Take Marine Mammals During Construction and Operation of the Sunrise Wind Farm Offshore New York, lease area OSC-A 00487 on grounds that (1) the proposed activities would have more than a negligible impact on North Atlantic Right Whales (“NARWs”), (2) the application did not

¹ 50 C.F.R. § 18.27.

account for the severity of the effects of the activities in question on common dolphins within the survey area, and (3) there was a critical data gap with respect to harbor seals' use of the survey area.² COA maintains that offshore wind energy projects have been fast-tracked through permitting and approval processes without sufficient information on how these projects, cumulatively and individually, are affecting and will continue to affect the marine environment.³ The initial IHA and previous renewals of the consolidated project fit this pattern.

To be specific to the agency action at hand—the latest renewal of the IHA for the three lease areas—COA will focus on recent efforts to collect vital information about NARWs as well as shifting positions on the use of Protected Species Observer (“PSO”) data to estimate the level of take.

I. Data Gaps Regarding North Atlantic Right Whale

Recently, the Biden Administration has undertaken efforts to gather more information about the NARW, a highly endangered species known to migrate through the New York Bight. On September 18, 2023, the Biden Administration awarded \$82 million in funding to develop technologies to more effectively monitor NARWs' habitat use and avoid vessel strikes.⁴

Additionally, on August 10, 2023, the Bureau of Ocean Energy Management (“BOEM”), which is responsible for permitting OSW projects, published an Information Collection Request concerning the NARW as well. BOEM's purpose was to collect data to “identif[y] mitigation efforts or avoid or limit impacts on NARWs from offshore wind energy development”.⁵

Even before beginning these new research efforts, BOEM and the National Oceanic and Atmospheric Administration (“NOAA,”) NMFS's parent agency, concluded that the NARW is extremely vulnerable: “the loss of *even one* individual a year may reduce the likelihood of recovery and of the species' achieving optimum sustainable population” (emphasis added).⁶

The threats to NARWs are well-documented. Agencies including NMFS have repeatedly stated that one of the most pressing threats to NARW recovery is vessel strike.⁷ NMFS has previously recognized that offshore wind and ocean noise are major threats to NARW recovery: “[t]he impacts of construction, operation and maintenance, and decommissioning associated with wind energy on North Atlantic right whales include several threats that are already well known,” including construction noise, increased vessel traffic, or avoidance of wind energy areas, which

² Clean Ocean Action, Comments *Re: Application to Take Marine Mammals During Construction and Operation of the Sunrise Wind Farm Offshore New York* (July 5, 2022).

³ *See id.*

⁴ NOAA, *Biden-Harris Administration announces historic \$82 million for endangered North Atlantic right whales as part of Investing in America agenda* (Sept. 18, 2023) <https://www.noaa.gov/news-release/historic-82-million-for-critically-endangered-north-atlantic-right-whales#:~:text=Today%2C%20the%20Department%20of%20Commerce,and%20conservation%20investment%20in%20history>.

⁵ Notice of Information Collection; Request for Comment, 88 FR 54,351, 54,351 (Aug. 10, 2023).

⁶ BOEM & NOAA FISHERIES, DRAFT NORTH ATLANTIC RIGHT WHALE & OFFSHORE WIND STRATEGY 46-61 (Oct. 2022).

⁷ *E.g.* NMFS, Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 87 FR 46,921 (Aug. 1, 2022).

causes the animals to expend more energy to locate food or breeding grounds.⁸ Even if NMFS again relies on significant data gaps to claim that there is no evidence of OSW activities posing a serious threat to NARW and other marine life through acoustic or seismic disturbances, offshore wind development certainly threatens NARWs in the form of increased vessel traffic. Each OSW project requires hundreds of ship trips to conduct assessments and pre-construction survey work followed by each turbine development which necessitates thousands of additional trips by ships.⁹ Moreover, additional cable installation and substation construction also adds ship trips. OSW development should be paused until the permitting agencies can collect sufficient data on the impacts of OSW on marine life, including the NARW, which is on the brink of extinction.

While COA is pleased to see more efforts to collect current, more robust scientific data on NARWs, these studies should have been conducted before any OSW preconstruction activity began. The push for more research indicates that the permitting agencies do not have sufficient data to conclude that OSW will not have an impact on marine wildlife. As such, this IHA renewal should be denied, and other permits that relied on apparently incomplete data should be rescinded, until the new information can be analyzed.

II. Proposed Take Levels and Best Available Scientific Evidence

In its renewal application, Orsted proposed lower levels of take for humpback whales, Risso's dolphins, and minke whales than NMFS had previously authorized.¹⁰ Orsted recalculated its group size estimates using PSO data from March to September 2022 for humpback whales, a 2019 PSO data synthesis report (Barkaszi and Kelly) for Risso's dolphins, and a 2010 study (Kenney and Vigness-Raposa) for minke whales.¹¹ The initial IHA for the project, published in the Federal Register on October 12, 2022, used draft PSO data from 2020 to 2021 for humpback and minke whales and the Kenney and Vigness-Raposa study for Risso's dolphins.¹²

In NMFS's September 11, 2023, proposal to renew the October 2022 IHA, the agency opts to keep the same level of authorized takes as the initial IHA, stating that the data used in the initial IHA is the best scientific information available.¹³ However, the agency does not explain why. An explanation is required, because NMFS previously used PSO data collected from the project area for humpbacks and minke whales. NMFS is claiming that the 2020-2021 PSO data is the best

⁸ NMFS, NORTH AMERICAN RIGHT WHALE 5-YEAR REVIEW 24 (Nov. 2022).

⁹ See, e.g., BOEM, OCEAN WIND 1 OFFSHORE WIND FARM FINAL ENVIRONMENTAL IMPACT STATEMENT at 3.15-62 (May 2023).

¹⁰ NMFS, Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS-A 0486, 0487, and 0500, 88 FR 62,337, 62,340 (Sept. 11, 2023).

¹¹ Letter from Melanie Gearson, Orsted Head of Northeast Planning, to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, *Renewal of Incidental Harassment Authorization for Orsted Wind Power North America, LLC Site Characterization Surveys off New York to Massachusetts (OCS-A 0486, 0487, 0500)* (July 17, 2023).

¹² NMFS, Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Areas OCS-A 0486, 0487, and 0500, 87 FR 61,575, 61,584-61,585 (Oct. 12, 2022).

¹³ 88 FR 62,337, 62,339.

scientific evidence available, and the 2022 PSO data is not. Further, evidently, PSO synthesis from 2019 is not the best scientific evidence available for Risso's dolphins, but PSO data from 2020-2021 is the best scientific evidence available for humpback and minke whales. Kenney and Vigness-Raposa, for reasons unknown, may be used for Risso's dolphins and not for minke whales.

NMFS must explain these illogical choices, especially since the agency is choosing to allow more animals to be harassed than Orsted proposed. Without an explanation, the agency's choice of the best available scientific evidence is arbitrary and capricious.

Conclusion

COA opposes the renewal of Orsted's IHA for lease areas OCS-A 0486, 0487, and 0500. COA stands by its comments opposing Orsted's Application to Take Marine Mammals During Construction and Operation of the Sunrise Wind Farm Offshore New York, lease area OSC-A 00487, because of inaccuracies in the estimation of harm to NARWs, common dolphins, and harbor seals, and due to the fact that, in general, permitting agencies have insufficiently considered the impacts of OSW on marine life. The instant IHA renewal is no exception. Moreover, the agencies have failed to consider cumulative impacts of the many IHAs issued in the region.

This specific renewal request should be denied because of persistent data gaps in how to alleviate the risks of OSW development to NARWs and illogical use or nonuse of PSO data and other studies on marine wildlife in the region. If NOAA did not have enough data on NARW to determine how best to mitigate harm to the species, then NMFS should not have concluded that Orsted's proposed take would be negligible. If PSO data is the best available scientific evidence during one year and not another, or for one species and not another, NMFS must explain why. To do otherwise discounts the importance of PSO data collected during previous IHAs. PSO data is the most project- and species-specific information available, so developers should be expected to use it to modify their activities according to actual observed conditions in the project area.

Thank you for the opportunity to comment. COA looks forward to written responses to the concerns presented. Please contact us if you have questions about these comments.

Respectfully submitted,



Cindy Zipf,
Executive Director



Erika Bosack, Esq.
Policy Attorney



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

STOP HARASSMENT OF 7,086 MARINE MAMMALS BY "LEVEL B" FOR MARINE SITE CHARACTERIZATION SURVEYS USING SONAR FOR ORSTED'S THREE OFFSHORE WIND LEASE AREAS OFF NY/NJ

1 message

Devin Waldron <drwaldron95@gmail.com>
To: ITP.Lock@noaa.gov

Tue, Sep 26, 2023 at 10:30 PM

Jolie Harrison
Chief, Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
ITP.Lock@noaa.gov

Dear Jolie Harrison,

As a concerned citizen, I do not support Orsted Wind Power North America, LLC's incidental harassment authorization "take" or "harass" endangered and protected marine mammals of 16 different species. I am in favor of clean energy, though I also believe it cannot be an achieve-at-all-cost scenario where marine life and coastal populations are impacted in a way that outweighs any energy benefits. Marine life is needlessly impacted despite there being already-approved locations, and too many marine mammals have already paid the price (plus those which have tragically continued to). We must protect the waters off our shores and stop the proposal to take marine mammals during "marine site characterization surveys, using high-resolution geophysical equipment, in coastal waters" and "along potential export cable routes (ECR)s to landfall locations between Raritan Bay and Falmouth, MA." The National Marine Fisheries Service proposes to issue an IHA for the harassment of 7,086 marine mammals in addition to previous harassment authorizations already issued for these three lease areas. This is disgusting and must be stopped.

The waters off of New Jersey and New York are generally one of the most diverse in the world with 33 species of whales (including the endangered North Atlantic Right Whale), dolphins and a porpoise (5 endangered and all protected species), 4 species of seals (all protected) and 5 species of sea turtles (all endangered and protected). Plus, the threatened Piping Plover resides along the coast of New Jersey. We must do more to protect these beautiful creatures.

The equipment being used can be harmful to marine life (naturally, why else request an IHA), but more investigations must be done before any more requests can be considered. As you know, these IHAs allow "the potential to disturb (but not injure) a marine mammal or marine mammal stock in the wild by disrupting behavioral patterns, including, but not limited to, MIGRATION, BREATHING, NURSING, BREEDING, FEEDING, or SHELTERING." The idea that someone can think an animal will not be injured (or worse) but can have its migration, breathing, nursing, breeding, feeding, and/or sheltering affected is disturbing.

This must be denied in order to further protect marine populations and the Eastern coast before it's too late.

Sincerely,
Devin

--
Devin Waldron
(201) 602-7417
drwaldron95@gmail.com



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Orsted Wind Power North America COMMENTS : LLC (Orsted) for the renewal of their 2022 incidental harassment authorization (IHA)

1 message

PATRICK YANANTON <yananton@comcast.net>
To: "ITP.Lock@noaa.gov" <ITP.Lock@noaa.gov>

Mon, Sep 25, 2023 at 4:43 PM

DEAR National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce TEAM,

I am writing to you as the representative of the Environmental Committee within the Eastern Dive Boat Association, and I would like to submit our observations and comments concerning Ørsted's request for a 2022 Incidental Harassment Authorization (IHA) for activities involving marine mammals in the coastal waters spanning from New York to Massachusetts. This request encompasses the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Areas OCS-A 0486, 0487, 0500, as well as potential export cable routes (ECR).

Our comments and concerns are as follows:

NMFS proposes to authorize the same number of incidental takes for all species as the initial IHA because the activities remain identical, and NMFS deems the data sources used in the initial IHA to represent the best available scientific information. However, we express our concern regarding the 5% take allowance during sonar activities for the Right whale. This percentage appears excessive in light of the newly proposed conservation efforts for the Right whale under the Biden administration. Over the next three years, the National Oceanic and Atmospheric Administration (NOAA) plans to allocate \$82 million from the Inflation Reduction Act towards improving monitoring and modeling, as well as implementing technology to assist boats in avoiding whale interactions.

While the current Takes are not intended to be harmful or lethal, the absence of accurate on-site data for these waters and a lack of clearly defined proposed mitigation measures for this phase raise significant concerns. Without access to this newly refined and updated knowledge, we strongly recommend that Orsted's application be temporarily placed on hold pending further evaluation and consideration of the potential impact on marine life.

Crucially, Ørsted's documentation does not address the potential detrimental impacts on Marine Mammals and Endangered Species, nor does it provide a comprehensive plan for mitigation once buoys, pilings or solid cement/steel structures are installed and left in place for future construction phases. Important questions remain unanswered: Are these structures monitored and maintained? Could they pose risks to marine animals, particularly during storms? Are monitoring systems in place to address these concerns?

In accordance with regulatory requirements, Ørsted's application must be reassessed to accommodate newly generated data pertaining to RIGHT WHALES and potentially other marine species. This evaluation process sets the foundation for subsequent phases, each building upon the last. Failing to study this phase adequately or lacking essential data could have adverse repercussions on subsequent phases.

The Atlantic coast represents a complex and resilient ecosystem that has evolved over millions of years, shaped by the forces of severe storms and hurricanes, distinct from those experienced in Europe. Therefore, any data provided by Ørsted, particularly in the context of the upcoming Biden/NOAA Right whale studies, must undergo a thorough reevaluation, and it may even warrant reconsideration or dismissal when applied to the Atlantic region.

During hurricanes and severe storms, ocean currents can reach speeds of 12 to 20 knots or even greater, accompanied by waves ranging from 20 to 60 feet, or sometimes even higher. The potential for blunt force trauma impacts on marine mammals such as Right whales, Sea turtles, and other endangered species is a matter of significant concern, especially given the extensive presence of solid structures and vast acreage involved in offshore renewable energy projects. It raises questions about how these issues will be addressed and mitigated. Are there plans to mitigate and develop shock-absorbing bumpers or innovative types of netting engineered to encircle each structure, providing protection for these creatures weighing tons or be considerably smaller in size?

Regrettably, there is currently no available data, either from Ørsted or other sources, regarding the specific impacts of these offshore structures, or farms of structures, on marine species along the entire east coast as a system, particularly over an extended period of time. This absence of data is a critical omission that raises concerns about the potential cumulative negative effects on marine life. Our entire East Coast serves as an ecosystem for numerous marine species, supporting their migrations, reproduction, and overall well-being. This ecosystem faces a significant threat from hastily executed, inadequately studied fixed wind generating stations.

Therefore, we assert that the existing "RENEWAL IHA" application lacks the necessary data to comply with the requirements of the National Environmental Policy Act (NEPA), the Marine Mammal Protection Act (MMPA), and the Endangered Species Act (ESA).

In light of this deficiency, we respectfully request that this application be denied until comprehensive research and data collection can be conducted to assess the impacts on marine species and develop effective mitigation strategies.

Sincerely,
Patrick M. Yananton
Microbiologist, Environmental Committee
Eastern Dive Boat Association



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Outer Continental Shelf Lease Areas OCS-A 0486, 0487, and 0500 – Due Sept 26

1 message

Elizabeth Quattrochi <eequat@gmail.com>
To: "itp.lock@noaa.gov" <itp.lock@noaa.gov>
Cc: Elizabeth Quattrochi <eequat@gmail.com>

Mon, Sep 25, 2023 at 8:47 AM

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.Lock@noaa.gov.

RE: Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS-A 0486, 0487, and 0500 – Due Sept 26

THANK YOU FOR THE OPPORTUNITY TO COMMENT.

Elizabeth Quattrochi

Avon, CT 06001

eequat@gmail.com

 **Characterization Surveys(DueSept26).docx**
1540K

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS-A 0486, 0487, and 0500 – Due Sept 26

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 JTP.Lock@noaa.gov.

OPPOSING TAKE AUTHORIZATIONS

I spent my career developing and implementing compliance programs. Policy and Decision makers in all big organizations are often unfamiliar with legal requirements or even ethical considerations. It behooves those in Legal or Compliance positions to intervene, assuming an organization's program respects those interventions. When an organization does not embrace compliance, then whistleblowers may be the result. Dr. Sean Hayes, NOAA's Chief of Endangered Species, became that whistleblower in a May 13, 2022 letter to BOEM. He warns that mitigation strategies can help to "some extent" but oceanographic impacts from installed and operating turbines cannot be mitigated for the 30-year lifespan of the project, unless they are decommissioned. <https://saverightwhales.org/media/noaa-calls-for-right-whale-protections>

As we all know, there have been an extraordinary number of whale deaths along the East Coast, over 70 since December 1, 2022. An effective compliance program would not continue authorizing "takes" without an immediate investigation.

Likely explanations for these deaths are illustrated by the documentary "Thrown to the Wind." Deaths correlate with increased boat traffic and sonar used during surveying of the ocean floor. Yet has even one whale death been allocated as a "take" to a Wind Developer?

NOAA's proposed mitigation measures are beneficial but not reliable, "practical" but not effective. Complex formulas are flawed, and inappropriately applied.

Estimated take = species density × ZOI × # of survey days
<https://www.federalregister.gov/d/2022-18454/p-140>

Where Zone of Influence is defined as
$$ZOI = (\text{Distance/day} \times 2r) + \pi r^2$$

The foremost principle of renewable development is to avoid locations of high biodiversity. The Atlantic East Coast is one of the most biologically diverse regions of the world, home to a whale migratory "superhighway" as well as many other marine animals and shorebirds.

- i. The turbines will block the migration route northward of whales (shorebirds, too).
- ii. Large-scale wind farms in areas of biodiversity should be a "no-go"
- iii. Large-scale wind farms accelerate the effects of climate change.
- iv. Loss of biodiversity from renewables accelerates the effects of climate change

Offshore Wind Results to date are non-compliant with stated ecosystem objectives to save the planet with clean energy. The ocean will never be the same, and the marine food chain will be permanently damaged from the smallest plankton to the largest marine whales.

- ***Site selection was wrong from the beginning and cannot be fully mitigated.***
- ***The mitigation measures are unreliable and unsuitable; large scale offshore industrial wind should be a no-go in areas of rich biodiversity as this will intensify the effects of climate change rather than mitigate them.¹***
- ***Biodiversity loss and climate change are interconnected and must be tackled simultaneously. Whales cannot play second fiddle to Turbines. Whales are “nature’s solution to climate change” with their innate ability to capture carbon. In addition, where there are whales there are plankton, and this tiny organism, nourished by whale poop, produces over 60% of the planet’s oxygen.***

The actions underway fail to comply with international Conservation Standards, they fail to comply with the United States laws MMPA, ESA and they contradict the policy objectives to save the planet!



Whales are known for being the largest and most intelligent creatures in the ocean. Now, marine biologists have discovered that they also capture tonnes of carbon from the atmosphere, a service with an economic value of US\$1 trillion for all the great whales, according to a study published by the [International Monetary Fund](#).



Whales are known for being the largest and most intelligent creatures in the ocean. Now, marine biologists have discovered that they also capture tonnes of carbon from the atmosphere, a service with an economic value of US\$1 trillion for all the great whales, according to a study published by the [International Monetary Fund](#). *Read More:* <https://www.unep.org/news-and-stories/story/protecting-whales-protect-planet>

¹ Climate change effects on the ecophysiology and ecological functioning of an offshore wind farm artificial hard substrate community. <https://www.sciencedirect.com/science/article/pii/S0048969721072703>

ATTACHMENT

USA fails to protect biodiversity through its failure to look regionally and cumulatively at effects of industrialization

(E) -> All deaths from anthropogenic threats considered cumulatively, and precautionary approach.

(F & G) -> Monitoring ensures mitigation is working correctly and a compliance mechanism is in place to ensure carried out correctly. (Are Wind companies monitoring themselves with no audit?).

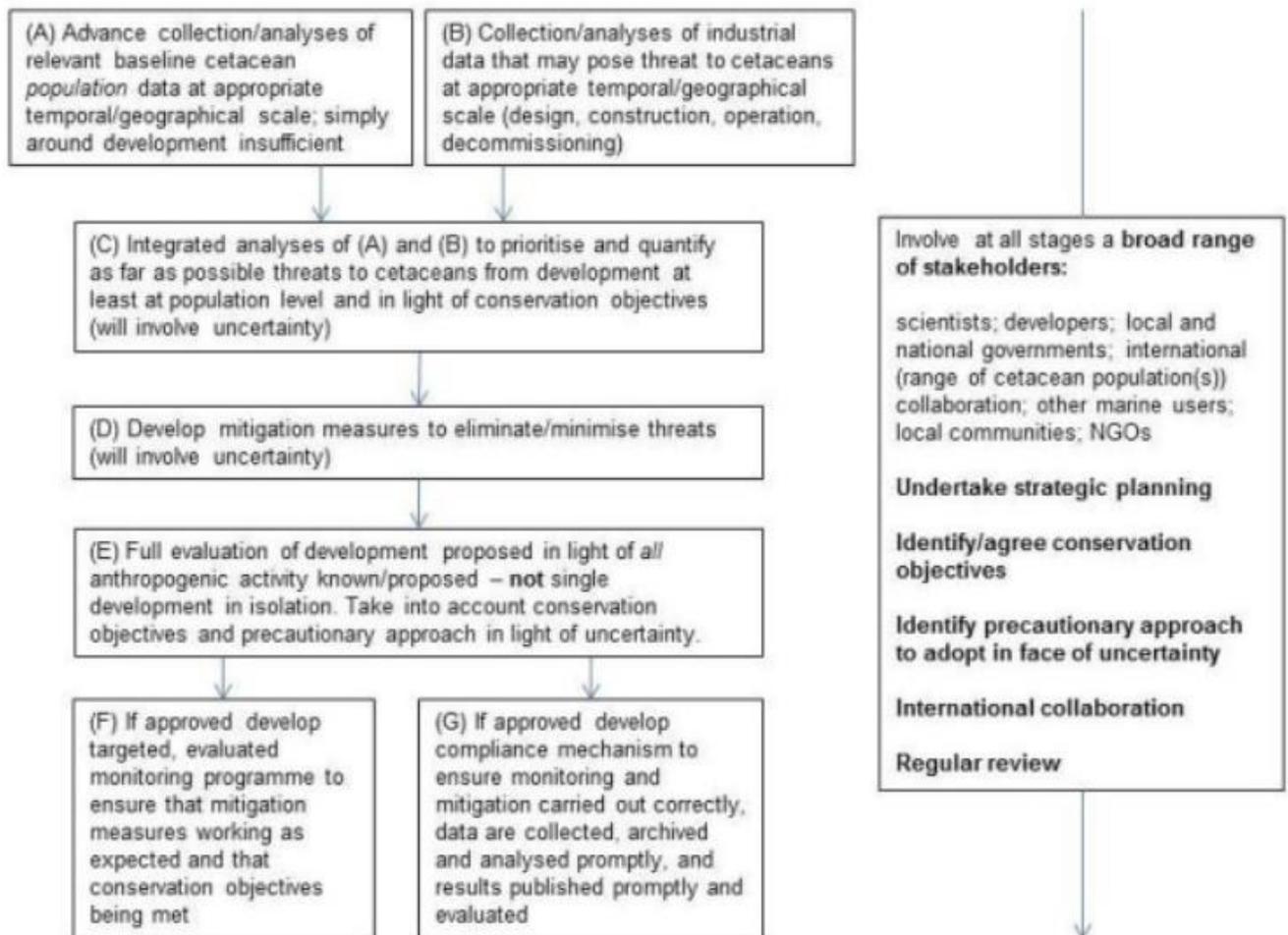
International Whaling Commission: Marine Renewable Energy Developments

<https://iwc.int/management-and-conservation/environment/marine-renewable-energy-developments>

In 2012 the IWC held a workshop on Interactions between Marine Renewable Projects and Cetaceans Worldwide. The workshop report highlighted the potential for the IWC to coordinate international efforts and develop global best practice guidelines. This resulted in a management strategy for minimising the environmental threats posed by marine renewable developments and you can read it below:

Strategy & principles to minimise environmental threats posed by Marine Renewable Energy Developments.

(Some stages will occur in parallel while others involve feedback).



USA fails to protect biodiversity – Large Scale Offshore Wind should be sited away from important habitat

Renewable energy carries substantial biodiversity risk. The IUCN has released guidance on mitigating biodiversity impacts associated with solar and wind energy.² The USA approach to East Coast Offshore Wind is surprising non-compliant with sensible conservation standards.

“Most industrial scale activities are therefore incompatible in protected areas, as the likelihood of their impacts on the objectives of the protected area would be very high.” Large-scale, industrial renewable developments likely to have impacts that cannot be **fully** mitigated should in all circumstances be considered a ‘no go’.

The top two steps in the IUCN mitigation hierarchy consists of:

1. **Avoidance** is the first and most important step of the mitigation hierarchy. It is based on measures taken to anticipate and prevent the creation of impacts. For avoidance to be effective, biodiversity risks need to be identified early in the project planning stages, or opportunities will be missed. **Effective avoidance can occur through site selection (to ensure projects are not located in areas of high risk)**, project design (to locate infrastructure and select designs that avoid impacts) and scheduling (to ensure the timing of project activities is favourable for biodiversity).

The USA has done the opposite by placing thousands of wind turbines across the migratory “superhighway” of whales. The most effective measure is to locate renewables developments away from important habitat and migration routes for cetaceans.

2. **Minimisation** refers to measures taken to reduce the duration, intensity and/or extent of impacts that cannot be completely avoided, as far as is practically feasible. Potential minimisation measures can be identified during early planning, and when developing design alternatives to be considered. Measures to minimise impacts can be applied throughout the project cycle, from design through construction, operations and closure, decommissioning and repowering.

For example, one would choose quiet foundations in lieu of pile driving, as the USA has not done. Further the mitigation strategies deemed sufficient within this “take” authorization are heavily reliant on PTOs subject to human fatigue or error to watch for whales (poor visibility and at night!)

The direction that the USA is going, putting thousands of turbines in the ocean, will have enormous implications for ocean ecosystem structure and health.

² Mitigating biodiversity impacts associated with solar and wind energy development
<https://portals.iucn.org/library/sites/library/files/documents/2021-004-En-Summ.pdf>



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Offshore wind

1 message

Elizabeth Raleigh <lizromansky@comcast.net>
To: "Itp.lock@noaa.gov" <itp.lock@noaa.gov>

Mon, Sep 25, 2023 at 6:46 AM

Hello,

why is the wind turbine project being pushed through so fast when there are clear indications of harm to our sea life? The never before seen high number of whales, dolphins, turtles and other sea life that are washing ashore dead is a tragedy. The endangered species act was put in place in 1973 to protect any endangered species. However it is not being enforced. It is the law to protect an endangered species. Why are you allowing a crime to be committed against our sea life? I plead with you to pause this project and allow extensive investigation into the number of sea life deaths...before it is too late. I hope my grandchildren will still be able to visit our beautiful Jersey shore and see whakes in real life. And not only see pictures of them in books, and ask why did they let them all due?

Liz Raleigh



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Comment - 88 FR 62337

1 message

Rob Huss <rhuss@friendsofanimals.org>
To: "ITP.Lock@noaa.gov" <ITP.Lock@noaa.gov>

Tue, Sep 26, 2023 at 6:47 PM

Good Evening -

Please find attached a comment from Friends of Animals on 88 FR 62337 - *Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS-A 0486, 0487, and 0500* from September 11, 2023. Please advise if additional information is required. Thank you.

-Rob

Rob Huss
Senior Attorney, Wildlife Law Program
Friends of Animals
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 **FoA_Orsted IHA Comment_9-26-2023.pdf**
237K



September 26, 2023

Submitted via email to: ITP.Lock@noaa.gov

RE: Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OSC-A 0486, 0487, and 0500.

To Whom it May Concern:

Friends of Animals submits this comment in response to the National Oceanic and Atmospheric Administration's (NOAA) notice regarding "Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OSC-A 0486, 0487, and 0500," [hereinafter, "Notice"] issued on September 11, 2023. Friends of Animals is a non-profit international advocacy organization incorporated in the state of New York since 1957. Friends of Animals has nearly 200,000 members worldwide. Friends of Animals, and its members, seek to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals, and wildlife throughout the world.

FACTUAL BACKGROUND & COMMENT

The Notice states that the National Marine Fisheries Service (NMFS), a division of the NOAA and acting on NOAA's behalf, received a request for renewal of a 2022 incidental harassment authorization (IHA) issued to Orsted Wind Power North America, LLC ("Orsted").¹ The request, if approved, would renew a permit for "site characterization surveys, using high-resolution geophysical (HRG) equipment, in coastal waters from New York to Massachusetts, including the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Areas OCS-A 0486, 0487, and 0500 and along potential export cable route (ECR)."² The current authorization will expire on October 5, 2023 and

¹ National Oceanic and Atmospheric Administration, *Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS-A 0486, 0487, and 0500*, 88 FR 62337 (September 11, 2023).

² *Id.*

the renewal, if granted, will be effective for one-year from the date the renewal request is approved.³

NMFS initially sought comments starting August 26, 2022 after Orsted sought an IHA for marine site characterization surveys in Federal and state waters “off the coasts from New York to Massachusetts and along potential ECRs to landfall locations between Raritan Bay (part of the New York Bight) and Falmouth.”⁴ NMFS issued an IHA on October 6, 2022 “to take small numbers of marine mammals incidental to site characterization surveys.”⁵ On May 26, 2023, Orsted sought renewal of the IHA because the surveys had not yet taken place and more time was needed.⁶ The purpose of the surveys is “to support the characterization of the existing seabed and subsurface geological conditions . . . for the development of an offshore electric transmission system.”⁷ Orsted anticipated that the project would include the potential for incidental takes of marine mammals by Level B harassment through use of acoustic sources.⁸ Included in the list are various species of dolphins, porpoises, seals, and whales, including the North Atlantic right whale.⁹

Orsted included in its request for renewal various measures to mitigate the impact the acoustic geophysical surveys will have on marine mammals in the project area.¹⁰ Proposed restrictions include ramp-up procedures to adjust energy levels at the start or re-start of acoustic testing, use of protected species observers during both daytime and nighttime operations, use of a 30-minute pre-operation clearance period to detect marine mammals in the Exclusion Zone and shutting down operations if marine mammals are detected, implementing vessel strike avoidance measures, and submitting reports within 90 days following completion of surveys.¹¹

Friends of Animals supports energy from renewable sources, including wind energy, and the positive results such operations provide to the environment and wildlife. However, before renewing Orsted’s IHA, NMFS must consider also the adverse impacts, and potential mitigation, before developing wind energy facilities, particularly offshore wind energy operations in the coastal Northeast, including Massachusetts, New York, Rhode Island, and New Jersey.

³ *Id.*

⁴ *Id.* at 62338; see also, National Oceanic and Atmospheric Administration, *Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS-A 0486, 0487, and 0500*, 87 FR 52515 (August 26, 2022).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 62338-62339.

⁹ *Id.* at 62339-62340.

¹⁰ *Id.* at 62340.

¹¹ *Id.*

As stated in the Notice, Orsted intends to conduct survey operations utilizing acoustic sources, specifically operations using high-resolution geophysical equipment.¹² Such surveys focus soundwaves to the seafloor or a shallow subsurface utilizing a high frequency acoustic source.¹³ Science has shown that soundwaves can cause behavioral changes and stress to marine mammals that can, sometimes, lead to episodes of beaching. Such episodes have seen an increase in the region in which Orsted seeks renewal of its IHA. For instance, from December, 2022 to February, 2023, 18 whales were stranded on the shores of coastal New Jersey.¹⁴ While there have been incidents of stranding in the past, the current statistics are significantly greater than previously seen in the region. In January alone, three humpback whales washed ashore in New Jersey, a high number considering a total of just 23 had experienced the same fate in the years before, dating back to 2016.¹⁵ The increase in whale mortality is a continuation of a pattern NOAA acknowledges extends retrospectively from 2017 to the present, evidenced by “elevated mortalities in North Atlantic right whales” in Canada and the United States. This resulted in a declaration of an Unusual Mortality Event (UME) by NOAA for the multiple dead, sick, and injured whales.¹⁶ The rapid increase in whale mortality is even more alarming when one considers there are fewer than 350 North Atlantic right whales remaining in the wild, a statistic that is similar to that noted in the Notice.¹⁷ NMFS cannot overlook or deny that a dramatic increase in whale deaths occurred immediately after offshore wind energy development began in December, 2022, continuing the pattern acknowledged by NOAA.

The region in which Orsted seeks to conduct acoustic operations is a habitat for various species of marine mammals. It is well known that whales and other marine mammals are sentient and highly intelligent creatures that use echolocation and sonography to communicate and travel. The use of sonography by humans for human activities, such as military operations, construction operations, and acoustic geographic surveys preceding offshore development, can inhibit marine mammals’ ability to utilize their echolocation and sonographic abilities. Underwater sound pollution from acoustic surveying contributes to such interference. Friends of Animals urges NOAA and NMFS to postpone or deny renewal of Orsted’s IHA until studies have been conducted in greater depth to determine the effect such activities have on marine mammals. Because Orsted’s

¹² *Id.* at 62337.

¹³ Bureau of Energy Management, *Fact Sheet*, <https://boem.gov/sites/default/files/about-boem/BOEM-Regions/Atlantic-Region/Outreach-Meetings/HRG-Surveys-Handout.pdf> (accessed September 25, 2023).

¹⁴ “Pleas to pause wind farm plans over whale deaths have fallen on deaf ears,” Kayla Bailey, *Fox News*, published Feb. 3, 2023. at: <https://www.foxnews.com/media/pleas-pause-wind-farms-plans-whale-deaths-fallen-deaf-ears-nj-mayo-reeks-hypocrisy>.

¹⁵ “Whale deaths along East Coast prompt 12 NJ Mayors call for offshore wind farm moratorium,” Amanda Oglesby and Dan Radel, *Asbury Park Press*, published Jan. 31, 2023. at: <https://www.usatoday.com/story/news/nation/2023/01/31>.

¹⁶ NOAA Fisheries, *2017-2023 North Atlantic Right Whale Unusual Mortality Event*, <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-north-atlantic-right-whale-unusual-mortality-event> (accessed, September 25, 2023).

¹⁷ *Id.*; see also, *Notice*, Table 2, 88 FR 62340.

operations, and other similar operations, will have a negative impact on marine mammals, evidenced by the population decline of North Atlantic right whales, NMFS should complete a Programmatic Environmental Impact Statement (PEIS) to ensure marine mammals are protected and to evaluate mitigation measures to be utilized to protect marine mammals.

1. Renewal of Orsted's IHA will violate the Marine Mammal Protection Act.

In the Notice, NMFS notes that the proposed activity, for which Orsted seeks an IHA renewal, falls under the Marine Mammal Protection Act (MMPA), passed to establish a national policy to prevent the decline of marine mammal species caused by human activities. All marine mammals are protected under the MMPA. The goal of the MMPA is to ensure that human activities do not diminish the marine mammal species and populations to a point at which such species and populations are no longer a significant functioning element of the ecosystem in which they exist.¹⁸ A “take” of a marine mammal under the MMPA is defined as “harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill” any marine mammal.¹⁹ Proposed conduct regulated by the MMPA is “any act of pursuit, torment, or annoyance, which has the potential to: 1) injure a marine mammal or marine mammal stock in the wild (Level A harassment); or 2) disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).²⁰ While Orsted takes the position that its operations will cause only Level B harassment of 17 North Atlantic right whales, affecting approximately 5% of the mammal’s population, the documented increase in whale deaths following the commencement of wind energy operations, shows that renewing Orsted’s IHA will invariably lead to both Level A and Level B harassment of marine mammals.²¹ Moreover, because there are so few right whales left, any take could diminish this critically endangered population to the point where it is no longer a significant functioning element of the ecosystem.

While NOAA and the BOEM do not attribute whale deaths specifically to energy development, the absence of a determinative cause for the increased deaths of right whales demands a delay in renewal of Orsted’s IHA until there is a clear scientific consensus that the deaths are not the result of acoustic surveying. The best course is to scientifically verify the causes of the deaths. Noise pollution related to underwater seabed mapping and acoustic surveying must be considered as contributing factors to the whale deaths. The absence of consensus supports that there must be further study to determine if whale strandings, deaths, entanglements, and boat strikes are related to the ocean noise caused by wind energy facilities and related activities, including acoustic geophysical surveying.

¹⁸ NOAA Fisheries, *Laws & Policies: Marine Mammal Protection Act*, <https://www.fisheries.noaa.gov/topic/laws-policies#marine-mammal-protection-act> (September 25, 2023).

¹⁹ 16 U.S.C. § 1362(13).

²⁰ 16 U.S.C. § 1362(18).

²¹ *Notice*, 88 FR 62341.

Friends of Animals strongly opposes the renewal Orsted's IHA until there is a clear scientific consensus of the cause of the multiple whale deaths, acknowledged by NOAA as showing an increasing trend in recent years, and the role played by wind energy activities in the increased mortality rate. This includes the role such activities may have on the ability of whales to navigate and communicate and whether it makes it more likely that whales will beach themselves or have difficulty avoiding hazards, such as boats and fishing equipment. Without additional investigation and clear scientific consensus, the pattern of whale mortality will only continue to get worse. This is the case for not only this IHA renewal, but for multiple other offshore operations recently addressed through comment and may be up for renewal in the future, including operations offshore of Rhode Island, Massachusetts, New York, and New Jersey.²² These proposed operations involve the use of acoustic site characterization and other activities that result in noise pollution in the marine environment. The potential for harm and the numerous operations proposed for this region strongly suggest that a PEIS is the best solution to protect the marine mammals in the region.

2. Changed circumstances since approving of the IHA should be considered under the National Environmental Policy Act through a PEIS.

The National Environmental Policy Act (NEPA) is the "basic national charter for protection of the environment."²³ One way in which agencies are held accountable by NEPA is through the creation of an EIS. Proposed agency plans that significantly affect the human and natural environment necessitate an EIS. NMFS must prepare an EIS to mitigate undesirable impacts, weigh alternatives, communicate all relevant information to the public, and adequately measure the impacts to the natural environment, wildlife, humans, and their resources that could result from renewing Orsted's IHA. Preparing an EIS is a requirement for all "major Federal actions significantly affecting the quality of the human environment."²⁴ The Council on Environmental Quality (CEQ) defines "major federal action" to include "actions with effects that may be major, and which are potentially subject to Federal control and responsibility."²⁵

Orsted's proposed acoustic surveying and its takes, which require federal authorization, are subject to federal control. NEPA regulations require the agency to consider the cumulative effects of its proposed actions which "result [] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions" with the goal of making sure that "individually minor but collectively significant" actions are properly analyzed.²⁶ NMFS must complete its duties

²² See, 88 FR 42387 (June 30, 2023); 88 FR 41912 (June 28, 2023); 88 FR 40212 (June 21, 2023); 88 FR 22696 (April 13, 2023); 88 FR 3375 (January 19, 2023); 88 FR 2325 (January 13, 2023).

²³ 40 C.F.R. § 1500.1(a).

²⁴ 42 U.S.C. § 4332(2)(C).

²⁵ 40 C.F.R. § 1508.18.

²⁶ 40 C.F.R. § 1508.7.

under NEPA and consider all relevant information provided in the EIS comments prior to reaching a final determination on the proposed project.

To fully comply with NEPA, NMFS should prepare a PEIS to evaluate the impact acoustic surveying and other offshore anthropogenic activities have on marine mammals in the Northeastern coastal region that has seen a dramatic and recent increase in the beaching, stranding, striking, and killing of whales. While Orsted's proposed project currently being reviewed for renewal takes place off the coast of Massachusetts and New York, other similar activities have been the subject of NMFS authorization process offshore of New Jersey, the New York, and Massachusetts, and Rhode Island.²⁷ A consistent question in each of these projects is the impact acoustic operations, including geophysical surveying, will have on the marine environment and marine mammals. Before renewing Orsted's IHA, NMFS should determine if a generic or programmatic environmental document exists that analyzes "actions, effects or issues similar to those involved in the proposed action."²⁸ "A generic environmental document reviews the environmental effects that are generic or common to a class of Departmental actions which may not be specific to any single country or area."²⁹ In the absence of such a generic document, NOAA guidelines state that "[p]rogrammatic reviews should be considered, in particular when a decision maker is . . . (3) making decisions on common elements or aspects of a series or suite of closely related projects."³⁰ Here, the use of acoustic site characterization operations is similar to multiple other operations in the same region, all of which use acoustic mechanisms for site characterization or cause other types of aquatic noise pollution that have been shown to inhibit marine mammals ability to utilize their own sonographic forms of communication.

Without a PEIS, NMFS cannot adequately understand the comprehensive and cumulative impacts acoustic surveying and similar operations, such as Orsted's, will have on the rapidly declining North Atlantic right whale populations or the negative impacts on other marine mammals. Given the clear evidence of the negative impacts on marine mammals and the significant number of proposed operations in the offshore region of New York, New Jersey, Massachusetts, and Rhode Island, it is critical that NMFS and other governmental agencies approve such projects only after there is a scientific consensus that such operations do not harm the marine mammals in the region. Thus, NMFS should defer renewal of Orsted's IHR until NMFS completes a PEIS that cumulatively considers all activities in that offshore region that utilize acoustic sources or otherwise cause aquatic noise pollution. In addition, NMFS should establish limits on the total number and type of takes that are authorized for all sound producing activities in this region.

²⁷ See, 88 FR 42387 (June 30, 2023); 88 FR 41912 (June 28, 2023); 88 FR 40212 (June 21, 2023); 88 FR 22696 (April 13, 2023); 88 FR 3375 (January 19, 2023); 88 FR 2325 (January 13, 2023).

²⁸ 22 C.F.R. § 161.9(l)(1).

²⁹ *Id.*

³⁰ National Oceanic and Atmospheric Administration, *Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities*, §6(E) (Effective: January 13, 2017).

CONCLUSION

Friends of Animals urges NMFS to thoroughly analyze all potential impacts of renewing Orsted's IHA for geophysical acoustic surveying in the coastal regions of New York and Massachusetts, specifically the impacts on marine mammals and the marine environment. This is critical given the rapid increase in the number of whale deaths, a continuation of a pattern acknowledged by NMFS in their own report. Friends of Animals urges NMFS to deny the renewal and, instead, draft a PEIS taking into consideration not just Orsted's operations, but the various operations throughout the region that contribute to the aquatic noise pollution that is contributing to the demise of North Atlantic right whales and other marine mammals. In the absence of further investigation and analysis of greater depth, Friends of Animals urges NMFS to deny renewal of Orsted's IHR.

Sincerely,
Rob Huss
Senior Attorney
Friends of Animals
Wildlife Law Program



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Reject Orsted's IHA Request

1 message

Harrison Popp <harrisonpopp@gmail.com>

Tue, Sep 26, 2023 at 9:14 PM

To: itp.lock@noaa.gov

> Jolie Harrison
> Chief of Permits and Conservation Division
> Office of Protected Resources
> National Marine Fisheries Service

>

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> Dear Jolie Harrison:

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> Please reject Orsted's IHA to take/harass endangered and protected marine mammals. Permitting them to do so is a disgrace. Letting Orsted take/harass these species will set an extremely dangerous precedent that will only be multiplied by the many other requests you will get from other offshore wind developers. We have the ESA and the MMPA for a reason. What's the point of having these acts and so-called "protections" if we're just going to make exceptions for these big corporations that just see these regulations as a minor speed bump on their way to fortune via the industrialization of our oceans? It's a disgrace that your office is considering permitting the harassment of 7,068 marine mammals. Where will this end? Where do we draw the line? What happens when these wind turbines rust up just a few decades from now and need to be removed (assuming that they even will)? Why are we not looking into solar and nuclear energy sources? Why are we even considering permitting this when our government is probably going to have to bail out these big developers to complete projects? How can you even pretend to care about our coastal waters and fisheries when you're just rubber stamping every single proposal that threatens the fishery industry itself in addition to our environment.

>

> How can we possibly approve this when there are less than 340 North Atlantic right whales left? Sure the Biden administration recently put aside some money for the whales, but what's the point when there will shortly be none left? This is a slap in the face to those of us that actually care about our environment. Approving this request will show that all of your previous work to protect these species is for nothing. Please think long and hard before you disregard the well-being of marine mammals which are supposed to be "protected."

>

> Best,

> Harrison Popp



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Wind

1 message

info 333productions.com <info@333productions.com>
To: "ITP.Lock@noaa.gov" <ITP.Lock@noaa.gov>

Wed, Sep 13, 2023 at 8:41 PM

Dear Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service

Hope you all are doing well. I wanted to express my concern about the multiple offshore wind projects that are overwhelming our beautiful Rhode Island waters. I own a shark research vessel out of Point Judith and have been studying the waters here for over two decades. I get calls for dead whales every year. Approximately 3 or 4 a year are called in in New England, this year alone and its only September there have been 70+ whales and dolphins reported. The only change is wind farm survey and construction. I understand some of these whales may have died from ship strikes, but to say that 70+ have is funny at this point. Clean energy should not come out of the expense of the environment. The amount of fuel and oil it even takes to build and keep these farms operational is not clean.

No one is supportive of these wind farms, they are being build on popular grounds for fishing and even a spot where I go frequently for juvenile makos every year. Unfortunately, since construction has started zero shark have been in the area. Theres only one reason for this, the noise. Military sonar has been shown to affect whales and this is the same frequency. Its no doubt that their permit cannot be renewed. The North Atlantic Right Whale only has approximately three hundred individuals and building is happening right tin their critical feeding grounds. These whales will not survive.

No environmental impact assessments were done for these wind farms. They were rushed and pushed through and we all know people were paid off to say what they are told to. They are destroying our oceans and the people who make a living off of it. If all wind farm projects get approved I will only be able to study sharks east of Nantucket, Cape Cod and Maine. I cannot sit and drift in my boat without coming across a wind farm. If you see the map below, the circled spots are areas I got to and are also frequented by fishermen. These areas are in the lease areas and are not accessible to anyone. They are important foraging, breeding and mating grounds for many species that live here. This area is for the animals first not to become industrialized It is taking up way to much of our area and putting the people who depend on the animals out of business. Please reconsider these projects. I am doing a PhD right now at URI and I will not be able to continue without any sharks.

 **IMG_1401.pdf**
3897K



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Re: no more leasing of ocan to private profiteers - keep it safe as sanctuary all of it

1 message

jean public <jeanpublic1@gmail.com>

Mon, Sep 11, 2023 at 2:08 PM

To: ITP.Lock@noaa.gov, DRBOBSTERN@gmail.com, JEFF.VANDREW@mail.house.gov, INFO@apl nj.org, INFO@lohv.org, INFO@defenders.org, INFO@mercyforanimals.org

PUBLIC COMMENT ON FEDERAL REGISTER

NO RENEWAL PERMIT SHOUDL BE ISSUED FOR ORSTED. ORSTED IS A COMPANY IN FINANCIAL DEFICIT. I SEE NO REASON FOR THE PEOPLE OF THIS STATE/COUNTRY TO GET INVOLVED WITH A DANISH COMPANY IN FINANCIALDIFFICULTY TO WORK ON OUR OCEAN. THIS IS A DETRIMENTAL ACTIVITY FOR OUR MARINE LIFE. COMPLETELY DETRIMENTAL. IT IS HARASSING AND KILLIN WHALS RIGHT NOW IN THIS AREA WITH ITS GEO EXPLORATION CAUSING HEMORRHAGES. THIS TRAFFICKED SITE IS ALREADY HEAVILY TRAFFICKED WITH CARGO SHIPS, FISHIG BOATS, MUCH USAGE BY PLEASURE BOATS, FERRIES, BRIDGES, ETC AND WE DO NOT NEED ADDITIONAL IMPEDIMENTS TO HARASS AND KILL OUR WHALES, SEALS, SEA LIONS, ETC THAT TRY TO EXIST OFF OUR COAST. THIS IS A KILLING PROJECT THAT SHOUDL NTO BE RENEWED AT ALL.THIS COMMENT IS FOR THE PUBLIC RECOR.DPLEASE RECEIPT. JEAN PUBLIEE JEANPUBLIC1@GMAIL.COM

On Mon, Sep 11, 2023 at 12:19 PM jean public <jeanpublic1@gmail.com> wrote:

[Federal Register Volume 88, Number 174 (Monday, September 11, 2023)]
 [Notices]
 [Pages 62337-62341]
 From the Federal Register Online via the Government Publishing Office [www.gpo.gov]
 [FR Doc No: 2023-19508]

 DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD248]

Takes of Marine Mammals Incidental to Specified Activities;
 Taking Marine Mammals Incidental to Marine Site Characterization
 Surveys in the Area of Commercial Lease of Submerged Lands for
 Renewable Energy Development on the Outer Continental Shelf Lease Areas
 OCS-A 0486, 0487, and 0500

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 Orsted Wind Power North America LLC (Orsted) for the renewal of their 2022 incidental harassment authorization (IHA) (hereinafter, the 2022 IHA is referred to as the ``initial IHA'' and the requested IHA is referred to as the ``Renewal IHA'') to take marine mammals incidental to marine site characterization surveys, using high-resolution geophysical (HRG) equipment, in coastal waters from New York to Massachusetts, including the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Areas OCS-A 0486, 0487, 0500 and along potential export cable routes (ECR). The activities are identical to those covered under the initial IHA, which expires on October 5, 2023. 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. If issued, the renewal IHA would be effective from the date of issuance.

DATES: Comments and information must be received no later than September 26, 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.Lock@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 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 application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: 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: Karolyn Lock, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (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). 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 definitions of key terms such as ``take,'' ``harassment,'' and ``negligible impact'' can be found in the MMPA and NMFS implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.3; 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 1-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

[[Page 62338]]

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 of the initial IHA effective date (recognizing that the renewal's 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 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; and

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: 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

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 preliminarily determined that the application of this categorical exclusion remains appropriate for this Renewal IHA.

Summary of Request

On October 6, 2022, NMFS issued an IHA to Orsted to take small numbers of marine mammals incidental to marine site characterization surveys in Federal and state waters located in Lease Areas OCS-A 0486, 0487, 0500 off the coasts from New York to Massachusetts and along

potential ECRs to landfall locations between Raritan Bay (part of the New York Bight) and Falmouth, Massachusetts. On May 26, 2023, NMFS received a request for a renewal of that initial IHA because Orsted's marine site characterization surveys under the initial IHA had not yet occurred and more time is required. As described in the application for the Renewal IHA, the activities for which incidental take is requested are identical to those covered by the initial IHA. However, Orsted decreased the number of survey days from 400 to 390 based on the assumption that subsidiaries of Orsted will have separate incidental take authorizations for marine site characterization surveys in Lease Areas OCS-A 0486 (Revolution Wind; 88 FR 8996, February 10, 2023) and OCS-A 0487 (Sunrise Wind; 87 FR 79072, January 19, 2023) during the proposed effective period of the Renewal IHA. NMFS is proposing to authorize incidental take through this proposed Renewal IHA assuming 400 survey days will be necessary as NMFS has not promulgated final rules for Revolution Wind and Sunrise Wind.

As no work has commenced under the initial IHA, Orsted cannot provide a preliminary monitoring report. However, if work occurs before the effective date of the proposed Renewal IHA, a preliminary monitoring report would be required and be made available on NMFS' website (available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>) and would detail any implemented mitigation and monitoring and show that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. Orsted has complied with all the requirements (e.g., mitigation, monitoring, and reporting) of the previous IHAs in Lease Areas OCS-A 0486, 0487, and 0500 (84 FR 52464, October 2, 2019; 85 FR 63508, October 8, 2020; 87 FR 13975, March 11, 2022).

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). 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.

Description of the Specified Activities and Anticipated Impacts

Orsted plans to conduct marine site characterization surveys, specifically HRG surveys, in the Lease Areas OCS-A 0486, 0487, 0500 and

ECR Area in Federal and state waters from New York to Massachusetts to support the characterization of the existing seabed and subsurface geological conditions, which is necessary for the development of an offshore electric transmission system. The project would use active acoustic sources, including some with potential to result in the incidental take of marine mammals by Level B harassment.

[[Page 62339]]

This proposed Renewal IHA is identical to the initial IHA and conservatively assumes no work will occur for the remainder of the initial IHA.

The Renewal IHA would authorize incidental take, by Level B harassment only (in the form of behavioral disturbance), of 16 species or stocks of marine mammals for identical marine site characterization survey activities to be completed in one year, in the same area, using survey methods identical to those described in the initial IHA application. Therefore, the anticipated effects on marine mammals and the affected stocks also remain the same. The amount of take, by Level B harassment, requested for the Renewal IHA is also identical to that authorized in the initial IHA. All mitigation, monitoring, and reporting measures would remain exactly as described in the Federal Register notice of the issued initial IHA (87 FR 61575, October 12, 2022).

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 (87 FR 52515, August 26, 2022) for the initial authorization. The location and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices.

Table 1--Number of Survey Days for Each Lease Area and ECR \1\

Area	IHA Total number of survey days \2\
OCS-A-0486.....	10
OCA-A-0487.....	10
OCS-A-0500.....	200
ECR.....	180
Total.....	400

\1\ Up to three total survey vessels may be operating within both of the survey areas concurrently. Orsted estimated it would conduct surveys at a rate of 70 kilometers (km) per survey day.

\2\ NMFS proposes to authorize work for the same number of vessel days as described in the initial IHA.

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 (87 FR 52515, August 26, 2022). NMFS has reviewed the recently finalized 2022 Stock Assessment Reports (SARs), which included updates to stock abundances since the initial IHA was issued, information on relevant Unusual Mortality Events, and other scientific literature. In August 2023, NMFS released its final 2022 SARs, which updated the population estimate (Nbest) of North Atlantic right whales from 368 to 338 and annual mortality and serious injury increased from 8.1 to 31.2. This large increase in annual serious injury/mortality is a result of NMFS including undetected annual mortality and serious injury in the total annual serious injury/mortality, which had not been previously included in the SARs. The population estimate is slightly lower than the North Atlantic Right Whale Consortium's 2022 Report Card, which identifies the population estimate as 340 individuals (Pettis et al., 2023). 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 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 take is proposed here may be found in the Federal Register notice of the proposed IHA for the initial authorization proposed (87 FR 52515, August 26, 2022). NMFS has reviewed information on relevant Unusual Mortality Events, the 2022 SARs, and other scientific literature and data, and preliminarily 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 notices of the proposed (87 FR 52515, August 26, 2022) and issued (87 FR 61575; October 12, 2022) IHAs for the initial authorization. Specifically, the acoustic sources and levels, survey days, and marine mammal density applicable to this authorization remain unchanged from the initial IHA. Similarly, the stocks taken, methods of take and type of take (i.e., Level B harassment in the form of behavioral disturbance) remain unchanged from the initial IHA.

As was done in the initial IHA, Orsted requested a deviation from the calculated take for some species given to account for group size or

observations during surveys in the surrounding area. Other than in the instances described below, Orsted's requested take matches their initial IHA. Orsted's Renewal IHA request references new data sources to inform group sizes for humpback whale (collected under the Northeast Projects IHA (87 FR 13975, March 11, 2022)), minke whale (Kenney and Vigness-Raposa, 2010); and Risso's dolphin (Barkaszi and Kelly, 2019). When these group size data were considered, the takes requested by Orsted for these species in their application were equal to or less than that authorized under the initial IHA. However, NMFS proposes to authorize the same number of incidental takes for all species as the initial IHA as the activities are identical and NMFS considers the data sources used in the initial IHA the best scientific information available.

During consideration of this Renewal IHA request, a typographical error in the proposed and notice of issuance Federal Register publications was identified that stated 17 pilot whales were authorized for take when 52 were requested and authorized within the IHA (as stated in the initial IHA application and issued IHA). The number of takes included in the Renewal IHA application and within this proposed Renewal IHA is 52, which equates to 0.13 percent of the population abundance. Lastly, the stock abundance amounts used for the initial IHA were from the 2021 SARs (Hayes et al., 2022), the most recent available at the time of publication; the abundance amounts used for this proposed Renewal IHA are the final 2022 SARs (Hayes et al., 2023).

[[Page 62340]]

Table 2--Initial IHA Take Authorized and Renewal IHA Proposed Take by Level B Harassment \1\

Species	Population abundance \2\	Take authorized initial IHA	Requested proposed take renewal IHA	NMFS proposed take renewal IHA \3\	Percent of population for renewal IHA
North Atlantic right whale \4\.....	338	17	16	17	5.03
Humpback whale.....	1,396	34	19	34	2.44
Fin whale.....	6,802	14	14	14	0.21
Sei whale.....	6,292	3	3	3	0.05
Minke whale.....	21,968	13	9	13	0.06
Sperm whale.....	4,349	2	2	2	0.05
Long-finned Pilot whale \5\.....	39,215	52	52	52	0.13
Bottlenose dolphin \6\.....	62,851	139	139	139	0.22
Common Dolphin.....	172,974	6,000	6,000	6,000	3.47
Atlantic white-sided dolphin.....	93,233	210	206	210	0.23
Atlantic spotted dolphin.....	39,921	29	29	29	0.07
Risso's dolphin.....	35,215	30	30	30	0.09
Striped dolphin.....	67,036	20	20	20	0.03
Harbor porpoise.....	95,543	287	279	287	0.30
Gray seal.....	27,300	118	116	118	0.43

Harbor seal.....	61,336	118	116	118	<0.01
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- \1\ No take by Level A harassment is anticipated nor proposed to be authorized.
- \2\ Final 2022 SARs (Hayes et al., 2023). At the time of the issuance of the initial IHA, the 2021 SARs were used as the best available science. This table utilizes the 2022 SARs abundance numbers. The only species where the abundance number changed between the initial IHA and this proposed renewal was the North Atlantic right whale.
- \3\ While Orsted adjusted their requested take numbers for some species based on 10 less survey days or by utilizing a different data source, NMFS proposes to authorize the same amount of take as the initial IHA; as previously described.
- \4\ The SARs stock abundance number at the time of issuance for the initial IHA was 368. The percent of population affected under the initial IHA was 4.62%. While the total number of proposed takes remains the same between the initial IHA and this proposed renewal, due to the decrease in the population abundance to 338 (2022 SARs), the percent of the population affected would increase slightly to 5.03%.
- \5\ While the original Federal Register publications for the initial IHA contained a typo of 17 takes by Level B harassment instead of the 52 requested and eventually authorized, the percent abundance affected provided in those publications was correct (0.13%) as that value had been correctly calculated using 52. Therefore, as the population abundance remains unchanged from the initial IHA, the correction in this proposed renewal notice of 17 to 52 does not change the percent of the population proposed to be affected (0.13%).
- \6\ Western North Atlantic, Offshore stock.

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 (87 FR 61575; October 12, 2022), and the discussion of the least practicable adverse impact determination included in that document remains applicable and accurate. All mitigation, monitoring, and reporting measures in the initial IHA are identical this proposed Renewal IHA and summarized below.

Ramp-up: A ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities;

Protected Species Observers: A minimum of one NMFS-approved Protected Species Observer (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 will be on watch during nighttime operations;

Pre-Operation Clearance Protocols: Prior to initiating HRG survey activities, Orsted would 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. Note this shutdown requirement would be waived for certain genera of small delphinids and pinnipeds;

Vessel strike avoidance measures: Separation distances for large whales (500 m North Atlantic right whales and other ESA-listed marine mammals; 100 m for all other non-ESA listed baleen whales; 50 m

all other marine mammals); restricted vessel speeds and operational maneuvers; and

Reporting: Orsted will submit a marine mammal report within 90 days following completion of the surveys.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (87 FR 52515, August 26, 2022), 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 (87 FR 61575; October 12, 2022) and none of the comments specifically pertained to the renewal of the initial IHA.

Preliminary Determinations

The survey activities proposed by Orsted are identical to those analyzed in the initial IHA, as are the method of taking and the effects of the action. The mitigation measures and monitoring and reporting requirements as described above are also identical to the initial IHA. The number of takes proposed is equal to that authorized in the initial IHA. The potential effect of the proposed activities remains limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS determined that the activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (e.g., less than one-third of the abundance of all stocks).

[[Page 62341]]

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 2022 SAR estimated abundance of the North Atlantic right whale stock. Specifically, NMFS is proposing to authorize 17 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 5 percent of the stock abundance is proposed for take by Level B harassment.

Based on the information and analysis contained here and in the referenced documents, including the consideration of the final 2022 SARs, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Orsted's activities will not have an unmitigable adverse impact on taking for subsistence

purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the 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 authorized 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 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.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to Orsted for conducting marine site characterization surveys off New York to Massachusetts (Lease Areas OCS-A 0486, 0487, and 0500), effective from October 6, 2023 through October 5, 2024, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and initial IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. 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: September 1, 2023.
Kimberly Damon-Randall,
Director, Office of Protected Resources, National Marine Fisheries
Service.

[FR Doc. 2023-19508 Filed 9-8-23; 8:45 am]
BILLING CODE 3510-22-P

9/19/23, 3:55 PM

National Oceanic and Atmospheric Administration Mail - Re: no more leasing of ocan to private profiteers - keep it safe as sanctuary all of it



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Public comment for IHA renewal

1 message

Jeffrey Cameron <bassguy22178@gmail.com>
To: ITP.Lock@noaa.gov

Wed, Sep 13, 2023 at 3:41 PM

First off, the public comment access is now more difficult to find.

We are over 70 whale deaths and over 300 dolphin/porpoise deaths in proximity to these survey and construction sites. It has been scientifically proven by outside sources that the db levels exceed the "acceptable" limits and push level b harassment into level a threshold. NOAA wants to know nothing other than "move forward". We need to look more closely at the possibility that this is doing much more harm than expected

Sent from my iPhone



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Fwd: Please reject Orsted's IHA request

1 message

Maddie Popp <madeleinepopp@gmail.com>

Tue, Sep 26, 2023 at 8:54 PM

To: ITP.Lock@noaa.gov

----- Forwarded message -----

From: **Maddie Popp** <madeleinepopp@gmail.com>

Date: Tue, Sep 26, 2023 at 8:52 PM

Subject: Please reject Orsted's IHA request

To: <ITP.lock@noaa.gov>

Jolie Harrison
Chief of Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service

Dear Jolie Harrison:

Please reject Orsted's IHA to take/harass endangered and protected marine mammals. Permitting them to do so is a disgrace. Letting Orsted take/harass these species will set an extremely dangerous precedent that will only be multiplied by the many other requests you will get from other offshore wind developers. We have the ESA and the MMPA for a reason. What's the point of having these acts and so-called "protections" if we're just going to make exceptions for these big corporations that just see these regulations as a minor speed bump on their way to fortune via the industrialization of our oceans? It's a disgrace that your office is considering permitting the harassment of 7.068 marine mammals. Where will this end? Where do we draw the line? What happens when these wind turbines rust up just a few decades from now and need to be removed (assuming that they even will)? Why are we not looking into solar and nuclear energy sources? Why are we even considering permitting this when our government is probably going to have to bail out these big developers to complete projects? How can you even pretend to care about our coastal waters and fisheries when you're just rubber stamping every single proposal that threatens the fishery industry itself in addition to our environment.

How can we possibly approve this when there are less than 340 North Atlantic right whales left? Sure the Biden administration recently put aside some money for the whales, but what's the point when there will shortly be none left? This is a slap in the face to those of us that actually care about our environment. Approving this request will show that all of your previous work to protect these species is for nothing. Please think long and hard before you disregard the well-being of marine mammals which are supposed to be "protected."

Best,
Madeleine Popp



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Please reject Orsted's IHA request

1 message

Maria Popp <poppmariap@gmail.com>

Tue, Sep 26, 2023 at 9:35 PM

To: itp.lock@noaa.gov

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>> Jolie Harrison

>> Chief of Permits and Conservation Division

>> Office of Protected Resources

>> National Marine Fisheries Service

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>> Dear Jolie Harrison:

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>> Please reject Orsted's IHA to take/harass endangered and protected marine mammals. Permitting them to do so is a disgrace. Letting Orsted take/harass these species will set an extremely dangerous precedent that will only be multiplied by the many other requests you will get from other offshore wind developers. We have the ESA and the MMPA for a reason. What's the point of having these acts and so-called "protections" if we're just going to make exceptions for these big corporations that just see these regulations as a minor speed bump on their way to fortune via the industrialization of our oceans? It's a disgrace that your office is considering permitting the harassment of 7,068 marine mammals. Where will this end? Where do we draw the line? What happens when these wind turbines rust up just a few decades from now and need to be removed (assuming that they even will)? Why are we not looking into solar and nuclear energy sources? Why are we even considering permitting this when our government is probably going to have to bail out these big developers to complete projects? How can you even pretend to care about our coastal waters and fisheries when you're just rubber stamping every single proposal that threatens the fishery industry itself in addition to our environment. I am so upset and this makes me question the intentions of NOAA. With all the current allegations of excluding true data because it does not align with the current administration's green agenda, this legislation reeks of the same. It is certainly questionable why the NOAA would support legislation that would so harm marine mammals which are dying in unprecedented numbers.

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>> How can we possibly approve this when there are less than 340 North Atlantic right whales left? Sure the Biden administration recently put aside some money for the whales, but what's the point when there will shortly be none left? This is a slap in the face to those of us that actually care about our environment. Approving this request will show that all of your previous work to protect these species is for nothing. Please think long and hard before you disregard the well-being of marine mammals which are supposed to be "protected." I expect a response in this matter and need to know exactly what action your organization intends to take. At this time please be aware that I am forwarding a copy of my letter to my Senator and Congressman.

Thank you for your immediate attention to this matter.

9/27/23, 8:33 AM

National Oceanic and Atmospheric Administration Mail - Please reject Orsted's IHA request

>>

>> Best,

>> Maria Potter Popp



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Stop Whale Killing

1 message

Matt Popp <poppmatthew@gmail.com>

Tue, Sep 26, 2023 at 9:33 PM

To: itp.lock@noaa.gov

> Dear Jolie Harrison:

>

> Please reject Orsted's IHA to take/harass endangered and protected marine mammals. Permitting them to do so is a disgrace. Letting Orsted take/harass these species will set a dangerous precedent that will only be multiplied by the many other requests you will get from other offshore wind developers. We have the ESA and the MMPA for a reason. What's the point of having these acts and so-called "protections" if we're just going to make exceptions for these big corporations that just see these regulations as a minor speed bump on their way to fortune via the industrialization of our oceans? It's a disgrace that your office is considering permitting the harassment of 7.068 marine mammals. Where will this end? Where do we draw the line? What happens when these wind turbines rust up just a few decades from now and need to be removed (assuming that they even will)? Why are we not looking into solar and nuclear energy sources? Why are we even considering permitting this when our government is probably going to have to bail out these big developers to complete projects? How can you even pretend to care about our coastal waters and fisheries when you're just rubber stamping every single proposal that threatens the fishery industry itself in addition to our environment.

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>

> Best,

> Matt Popp

203.219.5455

Sent from my iPhone

September 26, 2023

Submitted via electronic mail to ITP.Lock@noaa.gov.

Jolie Harrison, Chief, Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service

Re: Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS-A 0486, 0487, and 0500 (88 Fed. Reg. 62,337, September 11, 2023)

Dear Jolie Harrison:

Oceana is the largest international conservation organization solely focused on protecting the world's oceans, with more than 1.2 million members and supporters in the United States, including over 340,000 members and supporters on the U.S. Atlantic seaboard. For twenty years, Oceana has campaigned to win strategic, directed campaigns that achieve measurable outcomes to help make our oceans more biodiverse and abundant.

Addressing climate change is important for oceans, wildlife, and our future. By shifting from fossil fuel energy to clean, renewable energy sources, the United States can help address this crisis. Oceana was pleased to see the Biden Administration's goal to deploy 30 GW of offshore wind power by 2030 while protecting biodiversity and cultural resources, including imperiled marine life such as the critically endangered North Atlantic right whale (NARW).

Oceana has engaged as a stakeholder in the management of U.S. fisheries and interactions with endangered species, with a particular interest in effective bycatch minimization and reduction, if not elimination, of fishing gear entanglement-related death, injury, and harm to protected species, including the NARW. In addition, Oceana is interested in seeing the reduction, if not elimination, of vessel strike-related death, injury, and harm to NARWs. For these reasons, in 2019, Oceana launched a binational campaign in the United States and Canada to urge the respective governments to effectively enforce environmental laws to protect this critically endangered species and Oceana is currently campaigning to protect these whales from their two biggest threats—entanglement in fishing gear and vessel strikes.

For over 15 years, Oceana has been campaigning to oppose expanded offshore oil and gas exploration and development. Offshore drilling causes dangerous oil spills and perpetuates energy development based on fossil fuels. The United States must shift from fossil fuel-based energy

sources to clean energy. Offshore wind development has the potential to help bridge the transition to our clean energy future.

Oceana is supportive of offshore wind energy if it is responsibly sited, built, and operated throughout its lifespan. The proposals for offshore wind development in areas that the critically endangered NARW may frequent need to consider, avoid, and mitigate effects to protected species, particularly the NARW, to ensure that wind development will not come at the expense of the species. NARWs spend much of the year in the waters of New England and Eastern Canada with mothers migrating south to have calves in the U.S. Southeast region. Wind development in persistent aggregation habitats and calving grounds pose particular concern but the areas where NARWs migrate are likely more appropriate for offshore wind farms because of the reduced frequency, intensity, and duration of NARW interactions within these areas. As offshore wind is developed along the eastern seaboard, strong measures are needed to protect this critically endangered species.

Oceana thanks you for the opportunity to submit comments as your agency considers an application for a renewed Incidental Harassment Authorization (IHA) to support the site characterization of offshore wind projects in coastal waters from New York to Massachusetts. To comply with the Marine Mammal Protection Act (MMPA), the Fisheries Service must reconsider its approach to renewing IHAs, including this one, with a shortened comment period. The Fisheries Service must reissue this notice and provide a full 30-day comment period to ensure adequate public engagement.

This comment letter includes the following key points:

- The Fisheries Service must open a 30-day comment period to reauthorize the IHA.
- The IHA must include use of best available science, cumulative impacts analysis, and project conditions that avoid, minimize, and mitigate adverse environmental impacts.
- The IHA must include a vessel traffic plan to minimize the effects of service vessels on marine wildlife.
- The IHA must include requirements to use effective reactive restrictions that are triggered by detection of protected species before or during site characterization activities.

In the event the Fisheries Service moves forward with the expedited process in violation of the MMPA, Oceana submits these comments to help ensure that the proposed activities avoid adverse effects on marine mammals and if adverse effects cannot be avoided, minimize, or mitigate effects. The Fisheries Service is the steward of the remaining NARWs that swim along our coasts and, as the agency responsible for their recovery, should ensure that the continued authorization of site characterization is based on the Best Scientific Information Available and that strong protections are in place before approving this or any proposed activity that may take, harass, or cause stress to NARWs.

1) The role of Incidental Harassment Authorizations

The MMPA was adopted fifty years ago with the goal of protecting and promoting the growth of marine mammal populations “to the greatest extent feasible commensurate with sound policies of resource management” in order to “maintain the health and stability of the marine ecosystem.”¹ To protect marine mammals from human activities, the MMPA prohibits the “take” of marine mammals including activities that harass, hunt, capture, or kill, or any attempt to harass, hunt, capture, or kill any marine mammal.² In limited circumstances, the Fisheries Service, the agency responsible for protecting most marine mammal species,³ may grant exceptions to the take prohibition, such as for the incidental, but not intentional, taking of marine mammals for certain activities, which is done via incidental take authorizations.⁴

The Fisheries Service can only grant an incidental take authorization if the take request is for “small numbers of marine mammals of a species or stock” and will have only “negligible impact.”⁵ It is important to note that when granting an incidental take authorization, the Fisheries Service must require mitigation measures that achieve “the least practicable impact on such [marine mammal] species or stock and its habitat.”⁶

Under the Fisheries Service’s regulations, there are two types of incidental take authorizations: IHAs and Letters of Authorization (LOA). LOAs can only be issued after the Fisheries Service promulgates incidental take regulations for the activity. An IHA is limited to one year, and the action authorized may only have the potential to result in harassment.⁷ For actions that could result in any “serious injury”⁸ or mortality of a marine mammal, the Fisheries Service’s regulations indicate that incidental take regulations must be promulgated after notice and the opportunity to comment.⁹ LOAs can be issued pursuant to incidental take regulations for up to five years.¹⁰

2) The Fisheries Service Must Open a 30-Day Comment Period to Reauthorize the IHA

The Fisheries Service must end its approach of renewing IHAs while only giving the public 15 days to comment. The expedited process that the Fisheries Service included in the IHA is a violation of the MMPA, which requires a 30-day public comment period for all IHAs, including reauthorizations. The Fisheries Service should not be adopting processes that are inconsistent with

¹ 16 U.S.C. § 1361(6).

² 16 U.S.C. §§ 1361(2), 1371.

³ The Fish and Wildlife Service, within the Department of the Interior, is responsible for dugongs, manatees, polar bears, sea otters and walruses. See U.S. Fish and Wildlife Service, *Marine Mammals*, <https://www.fws.gov/international/animals/marine-mammals.html> (last visited May 3, 2021).

⁴ 16 U.S.C. § 1371(a); *Incidental Take Authorizations under the Marine Mammal Protection Act*, NOAA FISHERIES <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> (last visited May 3, 2021) (listing renewable energy activities as activities for which incidental take authorizations have been issued).

⁵ 16 U.S.C. § 1371(a)(5)(A), (D).

⁶ 16 U.S.C. § 1371(a)(5)(D)(ii)(I) (for IHAs); 16 U.S.C. § 1371(a)(5)(A)(i)(II)(a) (for LOAs).

⁷ 16 U.S.C. § 1371(a)(5)(D)(ii)(I).

⁸ The Fisheries Service defines the term “serious injury” as “any injury that will likely result in mortality. 50 C.F.R. § 216.3.

⁹ 50 C.F.R. § 216.105(b).

¹⁰ 50 C.F.R. § 216.106(a).

its statutory obligations. The IHA renewal process runs contrary to the text and legislative history of the MMPA and finds no support in MMPA regulations.

In the event of a need for IHA renewal, the agency must issue a Federal Register notice and open a 30-day public comment period. Otherwise, the IHA will be procedurally deficient, making it vulnerable to litigation and creating uncertainty for the project proponents.

a) *The expedited renewal process violates the plain language of the MMPA*

The Fisheries Service's failure to give the public 30 days to comment on the reauthorization of the IHA is a violation of the MMPA's plain language. The MMPA clearly states that the Fisheries Service must provide a 30-day public comment period for every IHA, and the agency has failed to provide an adequate explanation of why the 30 days are not required for renewals.

Section 101(a)(5)(D)(i) of the MMPA states that an IHA may be granted "for periods of not more than 1 year."¹¹ When the Fisheries Service receives an application, it must publish a proposed IHA in the Federal Register "not later than 45 days" after receiving the application and must provide a 30-day public comment period.¹² The Fisheries Service must then approve the IHA "not later than 45 days" after the end of the public comment period if the IHA meets the MMPA's standards.¹³ Therefore, the agency may publish a proposed IHA in the Federal Register and make a final decision faster than the 45-day windows, but the 30-day public comment period cannot be shortened. In other words, a decision on an IHA must be made no later than 120 days of receiving an application but can be made in less time so long as there is a 30-day public comment period.

The agency asserts that if it includes an opportunity to comment on a renewal at the time of the proposed IHA, the original comment period will count towards the 30-day requirement.¹⁴ The text of the MMPA, however, does not explicitly or implicitly recognize an expedited renewal process with a 15-day comment period for IHAs even if the agency determines the activities are nearly identical.

The agency's explanation ignores the timeframe set out in the MMPA. The 30-day comment period must be opened after receiving the application for the IHA. Regardless of how the agency attempts to frame it, the expedited process is a violation of the MMPA. The Fisheries Service cannot segment the original IHA from the renewal for the purpose of keeping IHAs below the one-year limit but also have them count as the same IHA for purposes of the 30-day comment requirement. The only interpretation that comports with the language of the MMPA is for the Fisheries Service to require applicants to submit a new application and open a new 30-day public comment period.

b) *The expedited renewal provision is inconsistent with the legislative history of the MMPA*

¹¹ 16 U.S.C. § 1371(a)(5)(D)(i).

¹² 16 U.S.C. § 1371(a)(5)(D)(iii).

¹³ *Id.*

¹⁴ Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys, 85 Fed. Reg. 63,508 (Oct. 8, 2020).

The legislative history of Section 101(a)(5)(D) similarly provides no support for the Fisheries Service's position. In fact, it provides evidence that the agency's interpretation is a violation of the MMPA. The MMPA's IHA provision was added as part of the statute's 1994 amendments, with the stated purpose of addressing procedural problems with harassment authorizations.¹⁵ The Committee on Merchant Marine and Fisheries, which added the section to the bill, included the following statement in its report:

New subparagraph (D)(iii) establishes specific time limits for public notice and comment on any requests for authorization which would be granted under this paragraph. The Committee notes that, in some instances, a request will be made for an authorization identical to one issued in the previous year. In such circumstances, the Committee expects the Secretary to act expeditiously in complying with the notice and comment requirements. There is no need, in such a case, for the Secretary to use the full 120 days allowed.¹⁶

This statement corroborates the plain reading of the MMPA. The statement shows that the specific timing Congress set out for authorizations includes any reauthorizations. While there is room for the Fisheries Service to expedite the 45-day periods before and after the comment period, the legislative history makes clear that it must comply with the 30-day notice and comment requirement. This is consistent with Congress using the phrase "not later than 45 days" for these decision-making periods but not using similar language for the 30-day period. The Fisheries Service must therefore continue to offer a 30-day public comment period even for re-authorizations like the one at issue here.

c) *The expedited renewal provision is not supported by MMPA regulations*

The Fisheries Service has previously cited to 50 C.F.R. § 216.107(e) as its authority for renewing IHAs with a truncated comment period, but that provision does not authorize the agency to avoid the 30-day public comment period and does not apply outside of Arctic waters. 50 C.F.R. § 216.107(e) states that IHAs in Arctic waters may be renewed for additional year-long periods,¹⁷ but the provision makes no mention of avoiding the 30-day comment period. Even if that regulation were interpreted to eliminate the 30-day comment period for renewals, it would also be a violation of the MMPA for the reasons outlined above. When adopting a process to issue IHAs, the agency must look to the text of the statute. The agency cannot rely on previous regulations to support its current unlawful interpretation.

For these reasons, it is clear that the agency's interpretation of the MMPA finds no support in the text, legislative history, or implementing regulations of the statute. To cure this deficiency, the Fisheries Service must reissue the Federal Register notice and give the public a full opportunity to comment.

¹⁵ Marine Mammal Protection Act Amendments of 1994, P.L. 103-238, § 4, 108 Stat. 532 (1994); H.R. Rep. No. 103-439 (1994).

¹⁶ H.R. Rep. No. 103-439 (1994).

¹⁷ 50 C.F.R. § 216.107(e).

3) Comments on the Contents of an IHA for Site Characterization

In order to issue an IHA for site characterization or any offshore wind project, the Fisheries Service must ensure that the application meets the requirements for an IHA and that the IHA includes conditions that will guarantee the site characterization surveys have the least practicable impact on marine mammal species or stocks and their habitats in and around the project site. Oceana hopes the comments provided on these important elements will make the site characterization successful while also considering the adverse effects on marine mammals.

a) Use Best Available Science

The MMPA was the first congressional act to include a “best available science” mandate.¹⁸ The statute requires use of “best scientific evidence available” in determining any waiver of the moratorium on the taking and importation of marine mammals and marine mammal products.¹⁹ Additionally, MMPA implementing regulations require the agency to use the “best scientific information available.”²⁰ The Fisheries Service must therefore comply with the “best available science” mandate in analyzing whether or not to authorize incidental takes.

The NARW is a critically endangered species that has experienced a large decline in the last decade. The most recent population estimate is just 340 remaining whales.²¹ This 2021 population estimate is a 2.3 percent decrease from the previous year’s estimate, representing a continued decline for the species. As NOAA considers the IHA application, it must use the most recent population estimate.

NARWs are known to feed, socialize and breed in the U.S. northeast and eastern Canada before mothers migrate south to calve and then return to the Northeast. As the Federal Register notes, NARWs use the proposed survey area as part of a migratory corridor Biologically Important Area (BIA) for NARWs. However, in the last decade the seasonal habitat usage of NARWs has shifted to include new waters and different seasonality. The IHA application and analysis must be sure to use the most recent and best available science for this critically endangered species, including recent habitat usage patterns for the study area and up to date seasonality information that may differ from the March-April and November-December migration periods cited in the notice. The Fisheries Service should fully consider both the use of the area and the effects of chronic stressors on the health and fitness of NARWs.

¹⁸ 16 U.S.C. §§ 1361 et seq. (mandating the use of “best scientific evidence” as well as the “best scientific information available” in several provisions, including the moratorium provision at 16 U.S.C. § 1371).

¹⁹ 16 U.S.C. § 1371(a)(3)(A).

²⁰ 16 U.S.C. § 1371(a)(3)(A); 50 C.F.R. § 216.105(c) (“[R]egulations will be established based on the best available information.”).

²¹New England Aquarium. 2022. North Atlantic right whales’ downward trend continues as updated population numbers released,

<https://www.neaq.org/about-us/news-media/press-kit/press-releases/north-atlantic-right-whales-downward-trend-continues-as-updated-population-numbers-released/>

Chronic stressors are an emerging concern for NARW conservation and recovery, and research suggests that a range of stressors on NARWs have stunted growth rates.²² Disruptive site characterization activities may not only startle NARWs in this area, but also cause chronic stress to the whales. The whales may seek other feeding areas at great energetic cost, decreasing their fitness, body condition and ability to successfully feed, socialize and mate.

The IHA renewal must be sure to use the most recent and best available science for this critically endangered species, including updated population estimates, recent habitat usage patterns for the study area, and a revised discussion of acute and cumulative stress on whales in the region.

b) Fully Consider Cumulative Effects

While an individual activity such as a site characterization may have negligible effects on the marine environment or a negligible number of interactions with protected species, many offshore wind-related activities are being considered in the region. It is important that the Fisheries Service fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed, and potential activities on marine mammals including NARWs and ensure that the cumulative effects are not excessive before issuing or renewing an IHA.

c) Project Conditions

Consistent with the requirement to achieve “the least practicable impact on such species or stock and its habitat,” the IHA must include conditions for the survey activities that will first avoid adverse effects on NARWs in and around the survey site and then minimize and mitigate the effects that cannot be avoided. This should include a full assessment of which activities, technologies and strategies are truly necessary to achieve site characterization to inform development of the offshore wind projects and which are not critical. If, for example, a lower impact technique or technology will provide necessary information about the site without adverse effects, that should be permitted while other tools with more frequent, intense, or long-lasting effects should be prohibited.

4) Vessel traffic associated with Wind Energy Area

Site characterization activities will increase the vessel traffic in and around the project area. The IHA must include a vessel traffic plan to minimize the effects of service vessels on marine wildlife including requirements for all vessels associated with the project, regardless of function, ownership, or operator to meet the following:

a) Observers

All vessels associated with the proposed site characterization should be required to carry and use protected species observers (PSOs) at all times when under way. Because visual sighting of whales, including NARWs is difficult, particularly in low light conditions, the IHA should require service vessels to complement observer coverage with additional monitoring technologies, such as infrared (IR) detection devices for whales and other protected species. Research suggests that a

²² Stewart, et al. 2021. Decreasing body lengths in North Atlantic right whales. *Current Biology* 2021, 31, 1-6.

complementary approach combining human and technological tools is most effective for marine mammal detection.²³

b) Speed

Research suggests that reducing vessel speed can reduce risk of vessel collision mortality by 80-90 percent for large whales like the NARW.²⁴ Due to the risk of ship strikes to NARWs in the project area, the IHA should limit all vessels of all sizes associated with the proposed site characterization to speeds less than 10 knots at all times with no exceptions.

c) Separation Distance

Consistent with Fisheries Service regulations under the Endangered Species Act for all vessels and aircrafts, the IHA must include requirements for all vessels to maintain a separation distance of at least 500 meters from NARWs at all times.

d) Vessel Transparency

To support oversight and enforcement of the conditions on the high-resolution geophysical (HRG) survey, the IHA should require all vessels to be equipped with and using a Class A Automatic Identification System (AIS) device at all times while on the water. This should apply to all vessels, regardless of size, associated with the project. Class A AIS is a cost-effective technology used in marine industries around the world. AIS provides information including the vessel's identity, location, course, and speed in a format that is compatible with most data collection, storage, and analysis programs.

e) Applicability and Liability

The IHA must require all vessels associated with the project, at all phases of development, follow the vessel plan and rules regardless of ownership, operator, contract. Exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. The Fisheries Service can simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract, or other specifics. The IHA must also specify that developers are explicitly liable for behavior of all employees, contractors, subcontractors, consultants, and associated vessels and machinery.

f) Transparency and Reporting

The project will be a private enterprise conducted on shared public waters and as such, the IHA must include a requirement for all phases of the site characterization to subscribe to the highest level of transparency, including frequent reporting to federal agencies, requirements to report all visual and acoustic detections of NARWs and any dead, injured, or entangled marine mammals to the Fisheries Service or the Coast Guard as soon as possible and no later than the end of the PSO shift.

²³ Smith, et al. 2020. A field comparison of marine mammal detections via visual, acoustic, and infrared (IR) imaging methods offshore Atlantic Canada. *Marine Pollution Bulletin*. 154 (2020) 111026.

²⁴ Conn and Silber. 2013. Vessel speed restrictions reduce risk of collision-related mortality for North Atlantic right whales. *Ecosphere* (4)4. April, 2013. 1-16.

To foster stakeholder relationships and allow public engagement and oversight of the permitting, the IHA should require all reports and data to be accessible on a publicly available website.

5) **Shutdown Requirements**

Despite the best information informing seasonal restriction on site characterization activities, it is likely interactions with NARWs will occur in and around the project site. The IHA must include requirements to use effective reactive restrictions that are triggered by detection of protected species by visual, acoustic, or other means before or during site characterization activities. Key conditions should include:

- Creation of clearance zones for NARWs that extend at least 1,000 meters with requirements for HRG survey vessels to use PSOs and Passive Acoustic Monitoring (PAM) to establish and monitor these zones with requirements to cease surveys if a NARW enters the clearance zone.
- A shutdown requirement if a NARW or other protected species is detected in the clearance zones noted above, unless necessary for human safety. If this exemption occurs the project must immediately notify the Fisheries Service with reasons and explanation for exemption and a summary of the frequency of these exceptions must be publicly available to ensure that these are the exception rather than the norm for the project.
- When safe to resume, HRG surveys should be required to use a soft start, ramp-up procedure to encourage any nearby marine life to leave the area.

6) **Conclusion**

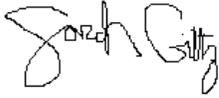
Oceana is supportive of the Biden Administration's focus on development of offshore wind in U.S. waters as part of an effective and responsible response to the climate crisis. As the Administration advances offshore wind development projects, there is an opportunity to advance clean energy goals while protecting biodiversity.

Oceana recognizes the necessity of site characterization in the wind development process and urges the Fisheries Service to only issue an IHA for this survey **after a full 30-day comment period** and if it includes a thorough discussion of the best available science discussed above and includes the range of conditions that will ensure the site characterization surveys are conducted responsibly with the least practicable impact on marine mammals.

Oceana looks forward to our ongoing engagement in this project and offshore wind more generally and appreciates the opportunity to provide these comments. These comments have been carefully developed and we consider these to be substantial comments deserving a response from the agency.

We look forward to working with you to advance responsibly developed offshore wind to meet this Administration's ambitious clean energy goals while protecting biodiversity, including the critically endangered North Atlantic right whale.

Thank you,



Sarah Giltz, Ph.D.
Marine Scientist
Oceana
Washington, DC



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Comment submission

1 message

Giltz, Sarah <sgiltz@oceana.org>

Mon, Sep 25, 2023 at 11:55 AM

To: "ITP.Lock@noaa.gov" <ITP.Lock@noaa.gov>

Good morning,

I submit the attached comment letter on behalf of Oceana regarding the Orsted IHA renewal for Lease Areas OCS-A 0486, 0487, and 0500.

Sarah Giltz, Ph.D. (she/her) | Marine Scientist

OCEANA | Protecting the World's Oceans

sgiltz@oceana.org | www.oceana.org

 **Oceana comments Orsted IHA 9-26-2023.pdf**
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ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Wind farms in our ocean

1 message

Patti Stuart <bballchick9865@yahoo.com>

Mon, Sep 25, 2023 at 10:51 AM

To: Itp.Lock@noaa.gov

To whom it may concern ;

Please stop the building of wind farms in our oceans !
You more than anyone know this is bad for sea life!
With global warming ramping up , this can only go badly for our world .
Find wind farms on land but please don't trash our oceans and kill our sea life!

Sent from my iPhone



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Site characterization surveys deadline Sept 26

1 message

ty1ash2@aol.com <ty1ash2@aol.com>
To: "ITP.Lock@noaa.gov" <ITP.Lock@noaa.gov>

Fri, Sep 15, 2023 at 12:28 PM

Dear Ms. Harrison,

I have many concerns and am against offshore wind. Below are a few reasons why the permit should not be awarded:

Orsted Wind Power North America, LLC, requested an incidental harassment authorization to “take” or “harass” endangered and protected marine mammals of 16 different species (Orsted proposes to take marine mammals “incidental to marine site characterization surveys, using high-resolution geophysical equipment, in coastal waters” and “along potential export cable routes (ECR)s to landfall locations between Raritan Bay and Falmouth, MA.” To date there have been over 70 whales and hundreds of dolphins and porpoises that have died and we are still waiting on necropsy reports; not all were ship strikes and entanglements and the noise can affect their behavior adversely.

Regarding the marine life deaths that your organization claims there is no evidence, click on link: <https://static1.squarespace.com/static/61132164df0a2c56cfb0ffbd/t/64ff90b6b04c2e78dde07ade/1694470326669/SRWC+press+release+2023-09-11+-+FINAL%5B1%5D.pdf>

In 2018, NJBPU denied the petition of Nautilus Offshore Wind, LLC to install a 25 MW offshore wind demonstration project in state waters off the coast of Atlantic City. According to the NJBPU the project does not demonstrate the economic and environmental benefits required under the Offshore Wind Economic Development Act (OWEDA). As required by OWEDA, an offshore wind project must demonstrate “positive economic and environmental net benefits to the State.” The price quoted by Nautilus was too high given the unsubstantiated benefits, and therefore an unacceptable burden for the state’s ratepayers. What has changed since then to give the go ahead?

On 9/13/23, about 1,200 gallons of diesel spilled into the Thames River as a ship used to help install wind turbines was refueled. The same ship was used this summer during the construction of the foundations of 62 wind turbines for Vineyard Wind, an offshore wind farm being built south of Martha’s Vineyard. This can certainly happen off our coast.

If you want to move away from fossil fuels, why does the Inflation Reduction Act, Section 50265 – Requiring Oil & Gas Lease Sales In Exchange For Solar & Wind Development Offshore Leases? During the 10-year period after the IRA was enacted, BOEM may not issue a lease for offshore wind development unless the agency had offered at least 60 million acres for oil and gas leasing on the Outer Continental Shelf in the previous year.

The erosion of the turbine blades will cause the fiberglass and BPA (forever plastics) to fall into the ocean which will affect the food chain and ecosystem.

This will forever change our ecosystem negatively. There are too many unanswered questions and/or studies on how life will be impacted. Please do not grant the permit.

Sincerely,
Regina Littwin



ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Wind Turbine Fields

1 message

SUSAN RING <sring4992@aol.com>
To: ITP.Lock@noaa.gov

Mon, Sep 25, 2023 at 8:37 PM

Jolie Harrison,

Please stop this madness. Our oceans are screaming for help from the work being done by these foreign companies. These same companies who murder thousands of whales and dolphins in bays as a 4 century year old tradition.

They do not care to protect or spare our sea life. How can anyone with a 4 century tradition see sea life as something to save or respect. Or our American values to protect our endangered 338 North Atlantic Right Whale.

Our sea life is showing up dead on our beaches at record numbers.

Please do not allow more to be abused.

Thank you for your time and consideration.
Susan Ring.

Enjoy life! Get out and make the best of it!

Enjoy life! Get out and make the best of it!



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