are incorporated. A draft of the proposed and final initial IHA can be found at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* 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: April 19, 2021.

Catherine Marzin,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB005]

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

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

ACTION: Notice; issuance of Renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to Atlantic Shores Offshore Wind, LLC (Atlantic Shores) to incidentally harass marine mammals incidental to marine site characterization surveys off the coasts of New York and New Jersey in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0499) and along potential submarine cable routes to a landfall location in New York or New Jersey.

DATES: This Renewal IHA is valid for one year from date of issuance.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notifications of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

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 issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 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 authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this document is planned or (2) the activities as described in the Specified Activities section of this document 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:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for renewal must include the following:

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

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

- 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.*

History of Request

On April 10, 2020, NMFS issued an IHA to Atlantic Shores to take marine mammals incidental to marine site characterization surveys off the coast of New York and New Jersey (85 FR 21198), effective from April 20, 2020

through April 19, 2021. On February 3, 2021, NMFS received a request from Atlantic Shores for the renewal of that initial IHA so that Atlantic Shores can continue its survey activities beyond April 19, 2021. As described in the request for the renewal IHA, the activities for which incidental take is requested are identical to those covered in the initial authorization. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-characterization*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

Atlantic Shores proposes to conduct a second year of marine site characterization surveys, consisting of high-resolution geophysical (HRG) and geotechnical surveys, within the 183,353-acre Lease Area, located approximately 18 nautical miles southeast of Atlantic City, New Jersey, and proposed Export Cable Route (ECRs) corridors from the Lease Area to shore landing locations along the coast of New Jersey and New York. The purpose of the HRG and geotechnical surveys is to support site characterization, siting, and engineering design of offshore Project facilities including wind turbine generators (WTGs), offshore substation(s), and submarine cables within the Lease Area and proposed ECR Areas. Atlantic Shores requested renewal of the initial IHA that was issued by NMFS in April 2020 on the basis that (1) up to another year of identical or nearly identical, activities as described in the Specified Activities section of the initial IHA is planned and, (2) the activities as described in the Specified Activities section of the initial IHA would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the initial IHA.

In their 2020 IHA application, Atlantic Shores estimated it would conduct surveys for 350 days at a rate of 85 kilometers (km) per day for a total of 29,750 km. However, in 2020, Atlantic Shores completed only 16,893 km of geophysical surveys; therefore, approximately 12,857 km remain to be surveyed. Atlantic Shores also recognized they were able to survey approximately 55 km per day versus the predicted rate of 85 km per day considered in the initial IHA. Therefore, Atlantic Shores predicts the 12,857 km of survey planned in 2021 under the renewal IHA will occur over 234 days (12,857 km/55 km per day). The renewal IHA would authorize harassment to marine mammals for this remaining survey distance using survey methods identical to those described in the initial IHA application, hence the anticipated effects on marine mammals remain the same as well. All active acoustic sources and mitigation and monitoring measures would remain as described in the initial IHA. The amount of take requested for the renewal IHA reflects the amount of remaining work in consideration of marine mammal monitoring data from the 2020 survey season resulting in equal or less take than that authorized in the initial IHA.

Detailed Description of the Activity

A detailed description of the survey activities for which take is authorized here may be found in the **Federal Register** notices of the proposed IHA (85 FR 7926, February 12, 2020) and issued IHA (85 FR 21198, April 10, 2020) 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 notifications. As described in the notice of proposed IHA (86 FR 16327, March 29, 2021), because part of the work has already been completed, the duration of the surveys conducted under the renewal IHA will occur over less time than that described for the initial IHA (234 days versus 350 days). The Renewal IHA is effective for a period of one year from the date of issuance.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is authorized 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 (85 FR 7926, February 12, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (85 FR 7926, February 12, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods used to estimate take for the specified activity are found in the **Federal Register** notices of the proposed and final IHA for the initial authorization. The acoustic source types, as well as source levels and marine mammal density and occurrence data 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 only) remain unchanged from the initial IHA.

In the initial IHA application submitted in 2019 for the 2020 HRG survey activities, Atlantic Shores used the following parameters to estimate the potential for take: (1) Maximum number of days of survey that could occur over a 12-month period in each of the identified survey areas; (2) maximum distance each vessel could travel per 24-hour period in each of the identified survey areas; (3) maximum ensonified area (zone of influence (ZOI)); and (4) maximum marine mammal densities for any given season that a survey could occur. The calculated radial distances to the Level B harassment threshold (160 decibel (dB) root mean square (rms)) from a survey vessel are included in Table 1.

TABLE 1—MODELED RADIAL DISTANCES FROM HRG SURVEY EQUIPMENT TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS

Sound source	Distance to level B harassment threshold (m)
Kongsberg EA 400	172
Teledyne ODOM Echotrac CVM	173
Applied Acoustics Dura-Spark 240	372
Edgetech 2000–DSS	4
Edgetech 216	5
Edgetech 424	6
Edgetech 512i	7
Teledyne Benthos Chirp III	71
Kongsberg GeoPulse	231
Innomar SES–2000 Medium-100 Parametric	116
Applied Acoustics S-Boom Triple Plate	97
Applied Acoustics S-Boom	56

The equation for estimating take for all species remains the same as the initial IHA:

Estimated Take = D × ZOI × # of days

Where: D = species density (per km²) and ZOI = maximum daily ensonified area

In the original 2019 IHA application, Atlantic Shores calculated a conservative ZOI by applying the maximum radial distance for any category and type of HRG survey equipment considered in its assessment to the mobile source ZOI calculation. This maximum calculated distance to the Level B harassment threshold for the sparker of 372 m was also used to calculate the ZOI for the requested extension. The resulting ZOI is 41.36 square kilometers (km²).

This methodology of calculating take in the initial IHA applies to the issued renewal IHA for all species, with the only difference being the fewer amount of days (*i.e.,* 234 versus 350). The result is that the amount of take is reduced proportionally to the reduction in the number of days of work remaining. As was done in the initial IHA, in some cases, Atlantic Shores has requested a modification to the calculated take for some species given it does not account for group size. In other cases, the authorized amount of take is modified from the calculated take based on observations during the 2020 surveys. Other than in the instances described below, NMFS agrees with Atlantic Shores' request for take and we authorized the same amount of take as described in their request.

As described in the renewal IHA request, large groups of common dolphins commonly approached the HRG survey vessels to bow ride during the 2020 surveys. Despite completing approximately 56.7 percent of the planned survey distance, Atlantic Shores reported using 67.3 percent of total take authorized in the initial IHA for this species. In 2019, the IHA application used seasonal density data to calculate requested take for 544 common dolphins. However, 2020 survey activities resulted in 366 takes accumulated for this species, which involved 58 common dolphin detection events where the mean pod size reported was 6.79. For the 2021 surveys, Atlantic Shores requested 406 common dolphin takes based on an encounter rate similar to that observed in 2020 (58 detection events × 7 animals/group). However, to ensure adequate take coverage should the surveys encounter greater numbers than expected, NMFS authorized the same amount of take of common dolphins as authorized in the initial IHA (544). Recently, NMFS has modified other HRG IHAs in the same geographic region due to underestimates of take for bowriding dolphins (*e.g.,* 86 FR 13695, March 10, 2021; 85 FR 55415, September 8, 2020). Because of these experiences, we have determined this approach is necessary to ensure take is not exceeded.

In the initial IHA application, Atlantic Shores also adjusted calculated take (per the equation above) to consider group size for Risso's dolphin, Atlantic spotted dolphins, and long-finned pilot whales, specifically increasing from the very small calculated take to cover at least one group, based on the average group size. As described in Atlantic Shores' interim monitoring report, they did not observe any of these species during the 2020 surveys. Therefore, we have authorized the same amount of take as proposed in the initial IHA. Atlantic Shores is also requesting the same amount of sei whale take as authorized in the previous IHA based on an encounter during 2020 survey operations where a single sei whale surfaced inside the Level B exposure zone resulting in a take.

Finally, during consideration of this renewal request, an error in the application information supporting the harbor porpoise take estimate was identified. Specifically, the density for harbor porpoise was accurate; however, the calculated take for each lease area was incorrectly reported which led to an inaccurate total take amount. The amount of take authorized in the 2020 IHA was 115 when it should have been 847 based on the method used. The correct take estimate for the remaining survey lines covered under the renewal, using that same method, would be 266 takes of harbor porpoise. However, zero harbor porpoises were detected during the 2020 surveys, suggesting that the corrected estimate would likely be an overestimate and the number of takes authorized in the initial IHA is sufficient, and therefore the IHA authorizes the same number of harbor porpoise take included in the initial IHA (115).

TABLE 2—INITIAL IHA TAKE AUTHORIZED AND RENEWAL IHA AUTHORIZED TAKE

Species	Level B harassment		Percent of population [5]
	Take authorized initial IHA	Authorized take renewal IHA	
North Atlantic right whale	9	8	1.9
Humpback whale	18	8	<1
Fin whale	20	9	<1
Sei whale	2	[1] 2	<1
Minke whale	9	5	<1
Sperm whale	3	1	<1
Long-finned pilot whale	6	[2] 6	<1
Bottlenose dolphin (W.N. Atlantic Coastal Migratory)	1,102	663	9.9
Bottlenose dolphin (W.N. Atlantic Offshore)	5,113	2408	3.8
Common dolphin	544	[3] 544	<1
Atlantic white-sided dolphin	82	[4] 42	<1

TABLE 2—INITIAL IHA TAKE AUTHORIZED AND RENEWAL IHA AUTHORIZED TAKE—Continued

Species	Level B harassment		Percent of population [5]
	Take authorized initial IHA	Authorized take renewal IHA	
Atlantic spotted dolphin	100	[2] 50	<1
Risso's Dolphin	6	[2] 6	<1
Harbor porpoise	115	[2] 115	<1
Harbor seal	1,404	529	<1
Gray seal	1,404	529	1.9

[1] Adjusted from 1 to 2 animals based on 2020 field observations.
[2] Adjusted from calculated and requested take considering these species were not observed during the 2020 surveys.
[3] Atlantic Shores requested fewer takes than authorized in the IHA; however, we authorized the same amount of take authorized in the initial IHA to account for the propensity for this species to bowride and travel in large groups.
[4] Adjusted from calculated take to account for group size.
[5] Population numbers in the initial IHA were generated from the Draft 2020 Stock Assessment Reports and remain valid to calculate percent of population here (NMFS, 2021).

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in the Renewal IHA are identical to those included in the **Federal Register** notification announcing the issuance of the initial IHA (85 FR 21198, April 10, 2020), and the discussion of how we reached a least practicable adverse impact determination included in that document remains applicable. All mitigation, monitoring and reporting measures in the initial IHA are carried over to this renewal IHA and summarized here:

- *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) and 30 minutes prior to and during nighttime ramp-ups of HRG equipment;
- *Exclusion Zones (EZ):* Marine mammal EZ would be established around the HRG survey equipment and monitored by PSO during HRG surveys as follows: A 500-m EZ would be required for North Atlantic right whales and a 100-m EZ would be required for all other marine mammals;
- *Pre-Operation Clearance Protocols:* Prior to initiating HRG survey activities, Atlantic Shores would implement a 30-minute pre-operation clearance period. Ramp-up of the survey equipment would not begin until the relevant EZs have been cleared by the PSOs, as described above. HRG equipment would be initiated at their lowest power output and would be incrementally increased to full power. If any marine mammals are detected within the EZs prior to or during ramp-up, the HRG equipment would be shut down (as described below);
- *Shutdown of HRG Equipment:* If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment would be required. Note this shutdown requirement would be waived for certain genera of small delphinids;
- *Vessel strike avoidance measures:* separation distances for large whales (500 m NAWRD, 100 m other large whales; 50 m other cetaceans and pinnipeds); restricted vessel speeds and operational maneuvers; and
- *Reporting:* Atlantic Shores will submit a marine mammal report within 90 days following completion of the surveys.

Comments and Responses

A notification of NMFS' proposal to issue a Renewal IHA to Atlantic Shores was published in the **Federal Register** March 29, 2021 (86 FR 16327). That notification either described, or referenced descriptions of, Atlantic Shores' activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and mitigation, monitoring and reporting measures. During the 30-day comment period, NMFS received an email from the Long Beach Island, New Jersey, Coalition for Wind Without Impact (Coalition) that included a comment letter signed by a group of environmental non-governmental organizations (ENGOs) including the, Natural Resources Defense Council, Conservation Law Foundation, National Wildlife Federation, Defenders of Wildlife, Southern Environmental Law Center, Wildlife Conservation Society, Surfrider Foundation, Mass Audubon, Friends of the Earth, International Fund for Animal Welfare, NY4WHALES, WDC Whale and Dolphin Conservation, Marine Mammal Alliance Nantucket, Gotham Whale, All Our Energy, Seatuck Environmental Association, and Inland Ocean Coalition. We note the Coalition was not a signatory to the letter and the letter was dated September 9, 2020 (approximately 7 months prior to our notice of the proposed Renewal IHA to Atlantic Shores). However, because the Coalition indicated that letter reflected their concerns, we have addressed the comments below and have posted the comments online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* Please see the letter for full detail and rationale for the comments.

Comment 1: The ENGOs recommended that NMFS incorporate additional data sources into calculations of marine mammal density and take and that NMFS must ensure all available data are used to ensure that any potential shifts in North Atlantic right whale habitat usage are reflected in estimations of marine mammal density and take. The ENGOs asserted in general that the density models used by NMFS do not fully reflect the abundance, distribution, and density of marine mammals for the U.S. East Coast and therefore result in an underestimate of take.

Response: At the outset of their letter, the ENGOs note that the comments reflect overarching concerns regarding NMFS' IHAs for marine site characterization survey (including HRG survey) activities required for offshore wind energy development, as well as their intention that the comments be

considered in relation to all authorizations associated with marine site characterization activities for offshore wind energy off the U.S. East Coast. The comments provided in the letter apparently focus concern on available data regarding the Massachusetts and Rhode Island and Massachusetts Wind Energy Areas, and on North Atlantic right whale habitat usage within those areas. As such, the specific comments pertaining to those data and right whale habitat usage within those areas are not germane to this specific action, *i.e.,* issuance of an IHA associated with HRG survey activity off of New York and New Jersey. We address the general comments regarding sufficiency of the available data on marine mammal occurrence below.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Lab (MGEL) (Roberts *et al.* 2016, 2017, 2018, 2020) represent the best available scientific information concerning marine mammal occurrence within the U.S. Atlantic Ocean. Density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016); more information, including the model results and supplementary information for each of those models, is available at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.* These models provided key improvements over previously available information, by incorporating additional aerial and shipboard survey data from NMFS and from other organizations collected over the period 1992–2014, incorporating 60 percent more shipboard and 500 percent more aerial survey hours than did previously available models; controlling for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting; and modeling density from an expanded set of eight physiographic and 16 dynamic oceanographic and biological covariates. In subsequent years, certain models have been updated on the basis of additional data as well as methodological improvements. In addition, a new density model for seals was produced as part of the 2017–18 round of model updates. Of particular note, Roberts *et al.* (2020) further updated density model results for North Atlantic right whales by incorporating additional sighting data and implementing three major changes: Increasing spatial resolution, generating monthly estimates on three time periods of survey data, and dividing the study area into five discrete regions. This most recent update—model version 9 for North Atlantic right whales—was undertaken with the following objectives (Roberts *et al.,* 2020):

- To account for recent changes to right whale distributions, the model should be based on survey data that extend through 2018, or later if possible. In addition to updates from existing collaborators, data should be solicited from two survey programs not used in prior model versions:
- Aerial surveys of the Massachusetts and Rhode Island Wind Energy Areas led by New England Aquarium (Kraus *et al.,* 2016), spanning 2011–2015 and 2017–2018;
- Recent surveys of New York waters, either traditional aerial surveys initiated by the New York State Department of Environmental Conservation in 2017, or digital aerial surveys initiated by the New York State Energy Research and Development Authority in 2016, or both;
- To reflect a view in the right whale research community that spatiotemporal patterns in right whale density changed around the time the species entered a decline in approximately 2010, consider basing the new model only on recent years, including contrasting ''before'' and ''after'' models that might illustrate shifts in density, as well as a model spanning both periods, and specifically consider which model would best represent right whale density in the near future;
- To facilitate better application of the model to near-shore management questions, extend the spatial extent of the model farther in-shore, particularly north of New York; and
- Increase the resolution of the model beyond 10 km, if possible.

All of these objectives were met in developing the most recent update to the North Atlantic right whale density model. The commenters do not cite this most recent report, and the comments suggest that the aforementioned data collected by the New England Aquarium is not reflected in the model. Therefore, it is unclear whether the commenters are aware of the most recently available data, which is used herein.

As noted above, NMFS has determined that the Roberts *et al.* suite of density models represent the best available scientific information, and we specifically note that the most recent version of the North Atlantic right whale model may address some of the specific concerns provided by the commenters. However, NMFS acknowledges that there will always be additional data that is not reflected in the models and that may inform our analyses, whether because the data were not made available to the model authors or because the data is more recent than the latest model version for a specific taxon. NMFS will review any recommended data sources to evaluate their applicability in a quantitative sense (*e.g.,* to an estimate of take numbers) and, separately, to ensure that relevant information is considered qualitatively when assessing the impacts of the specified activity on the affected species or stocks and their habitat. NMFS will continue to use the best available scientific information, and we welcome future input from interested parties on data sources that may be of use in analyzing the potential presence and movement patterns of marine mammals, including North Atlantic right whales, in U.S. Atlantic waters.

The ENGOs cited several additional sources of information that are not reflected in currently available density models, including sightings databases and passive acoustic monitoring (PAM) efforts. However, no specific recommendations were made with regard to use of this information in informing the take estimates. Rather, the commenters reference a disparate array of data sources (some which are indeed reflected in the most recent models) and suggest that NMFS should ''collate and integrate these and more recent data sets to more accurately reflect marine mammal presence for future IHAs and other work.'' NMFS would welcome in the future constructive suggestions as to how these objectives might be more effectively accomplished. NMFS used the best scientific information available at the time the analyses for the Renewal IHA were conducted, and has considered all available data, including sources referenced by the commenters, in reaching its determinations in support of issuance of the Renewal IHA requested by Atlantic Shores.

Comment 2: The ENGOs noted that the Roberts *et al.* model does not differentiate between species of pilot whale or seal or between stocks of bottlenose dolphin. The ENGOs express concern that, as a result, NMFS may not conduct the appropriate species-or stock-specific negligible impact analysis. The ENGOs also imply that use of these models may produce inaccurate take numbers by stating that ''[m]iscalculation of take levels based on incomplete data could have serious implications for the future conservation of these species and stocks.''

Response: The MMPA requires that species- or stock-specific negligible impact determinations be made, and NMFS has done so. In this case, NMFS has authorized take numbers specific to each affected species or stock. As a

general matter, NMFS is unaware of any available density data which differentiates between species of pilot whales or seals, or stocks of bottlenose dolphins. However, lack of such data does not preclude the requisite species- or stock-specific findings. In the event that an amount of take is authorized at the guild or species level only, *e.g.,* for pilot whales or bottlenose dolphins, respectively, NMFS may adequately evaluate the effects of the activity by conservatively assuming (for example) that all takes authorized for the guild or species would accrue to each potentially affected species or stock. In this case, NMFS has apportioned the overall take number for bottlenose dolphins according to stock, as described in the Estimated Take section and, for pilot whales, has assigned take on the basis of an assumed group size of 10 for each potentially affected species. NMFS does not agree that use of these models is likely to result in miscalculation of take levels, and the commenters do not provide support for this statement.

Comment 3: The ENGOs assert that NMFS has not acknowledged the use of areas south of Nantucket and Martha's Vineyard as important habitat for foraging and social behavior for North Atlantic right whales, but rather that NMFS believes the areas are important solely as a migratory pathway. The commenters also asserted that NMFS is overly reliant on the description of biologically important areas (BIA) provided in LaBrecque *et al.* (2015), stating that ''NMFS should not rely on the North Atlantic right whale migratory corridor BIA as the sole indicator of habitat importance for the species.''

Response: The specified activity associated with the IHA addressed herein is located off of New York and New Jersey. Therefore, this comment is not relevant to issuance of this IHA. However, as a general matter, NMFS disagrees with the commenters' assertion. Although NMFS has, in other notifications, discussed at length the use of the referenced area as a migratory pathway (and recognition of such use through the area's description as a BIA for right whales), we have also acknowledged the more recent data and its implications for the use of the referenced area (see, *e.g.,* 85 FR 63508; December 7, 2018; 86 FR 11930; March 1, 2021). Similarly, NMFS does not agree with the assertion that our understanding of important habitat for marine mammals stems solely from existing, described BIAs. NMFS concurs with the statement that BIAs are not comprehensive and are intended to be periodically reviewed and updated and we routinely review newly available information to inform our understanding of important marine mammal habitat. In this case, the specified geographical region does not include important habitat other than that described as being the migratory pathway for right whales.

Comment 4: The ENGOs commented that the waters off Cape Hatteras, North Carolina, have high marine mammal biodiversity and that marine mammals occur at unusually high densities off Cape Hatteras compared to other areas along the U.S. East Coast. The ENGOs asserted that this area demands special attention from NMFS.

Response: NMFS concurs with the commenters regarding the importance of deepwater areas off of Cape Hatteras. However, the specific activity associated with the IHA addressed herein does not occur off of Cape Hatteras and, in general, the site characterization surveys conducted in support of wind energy development that are the subject of the ENGO comment letter occur in shallow water (not the area of high biodiversity and density referenced by commenters). When appropriate, NMFS has accorded special attention to the development of additional mitigation for activities conducted in that location (*e.g.,* 83 FR 63268; December 7, 2018). NMFS uses the best available scientific information when analyzing potential impacts to marine mammals and in developing prescribed mitigation sufficient to meet the MMPA's ''least practicable adverse impact'' standard, and has done so in this case.

Comment 5: The ENGOs asserted that NMFS must analyze cumulative impacts to North Atlantic right whales and other marine mammal species and stocks and ensure appropriate mitigation of these cumulative impacts. The commenters express particular concern about the cumulative impacts of survey activities off Rhode Island and Massachusetts on North Atlantic right whales. They further recommended that NMFS develop programmatic incidental take regulations applicable to site characterization activities.

Response: Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, both this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Atlantic Shores was the applicant for the Renewal IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis). Through the response to public comments in the 1989 implementing regulations, we also indicated (1) that NMFS would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for ESA-listed species. In this case, cumulative impacts have been adequately addressed under NEPA in prior environmental analyses that form the basis for NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. Regarding activities in the Mid- and South Atlantic region, in 2018 NMFS signed a Record of Decision that (1) adopted the Bureau of Ocean Energy Management's 2014 Final Programmatic Environmental Impact Statement that evaluated the direct, indirect, and cumulative impacts of geological and geophysical survey activities on the

Mid- and South Atlantic Outer Continental Shelf to support NMFS' analysis associated with issuance of incidental take authorizations pursuant to sections 101(a)(5)(A) or (D) of the MMPA and the regulations governing the taking and importing of marine mammals (50 CFR part 216), and (2) in accordance with 40 CFR 1505.2, announced and explained the basis for our decision to review and potentially issue incidental take authorizations under the MMPA on a case-by-case basis, if appropriate. Separately, NMFS has previously written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* 2019 Orsted EA for survey activities offshore southern New England; 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island.

Separately, cumulative effects were analyzed as required through NMFS' required intra-agency consultation under section 7 of the ESA, which determined that NMFS' action of issuing the IHA is not likely to adversely affect listed marine mammals or their critical habitat.

Finally, the ENGOs suggested that NMFS should promulgate programmatic incidental take regulations for site characterization activities. Although NMFS is open to this approach, we have not received a request for such regulations. The ENGOs do not explain their apparent position that NMFS may advance regulations absent a requester.

Comment 6: The ENGOs state that NMFS should not adjust estimated take numbers for large whales on the basis of assumed efficacy of mitigation requirements, and assert that NMFS' assumptions regarding effectiveness of mitigation requirements are unfounded.

Response: In this case, NMFS did not propose to adjust downward any estimated take number based on proposed mitigation measures, and has not done so in the issued Renewal IHA. In fact, the take authorized is likely an overestimated as it is based on the maximum seasonal density when, in reality, the surveys are likely to occur during a time of lesser density. Therefore, the comment is not relevant to this specific action. Generally, NMFS does not agree with the apparent contention that it is never appropriate to reduce estimated take numbers based on anticipated implementation and effectiveness of mitigation measures, and will continue to evaluate the appropriateness of doing so on a case-specific basis.

While we acknowledge the commenters' concerns regarding unfounded assumptions concerning the effectiveness of mitigation requirements in reducing actual take, it is important to also acknowledge the circumstances of a particular action. In most cases, the maximum estimated Level B harassment zone associated with commonly-used acoustic sources is approximately 150 meters (m), whereas the typically-required shutdown zone for North Atlantic right whales is 500 m. For North Atlantic right whales, NMFS expects that this requirement will indeed be effective in reducing actual take below the estimated amount, which typically does not account for the beneficial effects of mitigation.

Comment 7: The ENGOs state that NMFS must require mitigation measures that meet the least practicable adverse impact standard, imply that the requirements prescribed by NMFS have not met that standard, and recommend various measures that the commenters state NMFS should require.

The ENGOs first state that NMFS should prohibit site assessment and characterization activities involving equipment with noise levels that the commenters assert could cause injury or harassment to North Atlantic right whales during periods of highest risk, which the commenters define as times of highest relative density of animals during their migration, and times when mother-calf pairs, pregnant females, surface active groups, or aggregations of three or more whales are, or are expected to be, present. The commenters additionally state that NMFS should require that work commence only during daylight hours and good visibility conditions to maximize the probability that marine mammals are detected and confirmed clear of the exclusion zone before activities begin. If the activity is halted or delayed because of documented or suspected North Atlantic right whale presence in the area, the commenters state that NMFS should require operators to wait until daylight hours and good visibility conditions to recommence.

Response: NMFS acknowledges the limitations inherent in detection of marine mammals at night. However, no injury is expected to result even in the absence of mitigation, given the characteristics of the sources planned for use (supported by the very small estimated Level A harassment zones). The ENGOs do not provide any support for the apparent contention that injury is a potential outcome of these activities. Regarding Level B harassment, any potential impacts would be limited to short-term behavioral responses, as described in greater detail herein. The commenters establish that the status of North Atlantic right whales in particular is precarious. NMFS agrees in general with the discussion of this status provided by the commenters. NMFS also agrees with the commenters that certain recommended mitigation requirements, *e.g.,* avoiding impacts in places and times of greatest importance to marine mammals, limiting operations to times of greatest visibility, would be effective in reducing impacts. However, the commenters fail entirely to establish that Atlantic Shores' marine site characterization survey activities—or site assessment and characterization survey activities in general—would have impacts on North Atlantic right whales (or any other species) such that operational limitations would be warranted. In fact, NMFS considers this category of survey operations to be near *de minimis,* with the potential for Level A harassment for any species to be discountable and the severity of Level B harassment (and, therefore, the impacts of the take event on the affected individual), if any, to be low. In that context, there is no need for more restrictive mitigation requirements, and the commenters offer no justification to the contrary.

Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure. Vessels would also potentially be on the water for an extended time introducing noise into the marine environment. The restrictions recommended by the commenters could result in the surveys spending increased time on the water, which may result in greater overall exposure to sound for marine mammals; thus the commenters have not demonstrated that such a requirement would result in a net benefit. Furthermore, restricting the applicant to begin operations only during daylight hours would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary and, subsequently, the need to conduct additional surveys the following year. This would result in significantly increased costs incurred by the applicant. Thus, the restriction suggested by the commenters would not be practicable for the applicant to implement. In consideration of the

likely effects of the activity on marine mammals absent mitigation, potential unintended consequences of the measures as proposed by the commenters, and practicability of the recommended measures for the applicant, NMFS has determined that restricting operations as recommended is not warranted or practicable in this case.

Comment 8: The ENGOs recommended that NMFS establish an exclusion zone (EZ) of 1,000-m around each vessel conducting activities with noise levels that they assert could result in injury or harassment to North Atlantic right whales, and a minimum EZ of 500 m for all other large whale species and strategic stocks of small cetaceans.

Response: NMFS disagrees with this recommendation, and has determined that the EZs included here are sufficiently protective. We note that the 500-m EZ for North Atlantic right whales exceeds the modeled distance to the largest Level B harassment isopleth distance (370 m). The commenters do not provide any justification for the contention that the existing EZs are insufficient, and do not provide any rationale for their recommended alternatives (other than that they are larger).

Comment 9: The ENGOs stated that NMFS' requirements related to visual monitoring are inadequate. The commenters specifically noted their belief that a requirement for one Protected Species Observer (PSO) to be on duty during daylight hours is insufficient, and recommended that NMFS require the use of infrared equipment to support visual monitoring by PSOs during periods of darkness.

Response: NMFS typically requires that a single PSO must be stationed at the highest vantage point and engaged in general 360-degree scanning during daylight hours only. Although NMFS acknowledges that the single PSO cannot reasonably maintain observation of the entire 360-degree area around the vessel, it is reasonable to assume that the single PSO engaged in continual scanning of such a small area (*i.e.,* 500-m EZ, which is greater than the maximum 141-m harassment zone) will be successful in detecting marine mammals that are available for detection at the surface. The monitoring reports submitted to NMFS have demonstrated that PSOs active only during daylight operations are able to detect marine mammals and implement appropriate mitigation measures. As far as visual monitoring at night, we have not historically required visual monitoring at night because available information demonstrated that such monitoring should not be considered effective. However, as night vision technology has continued to improve, NMFS has adapted its practice, and two PSOs are required to be on duty at night. Moreover, NMFS has included a requirement in the final IHA that night-vision equipment (*i.e.,* night-vision goggles and/or infrared technology) must be available for use.

Regarding specific technology cited by the ENGOs, NMFS appreciates the suggestion and agrees that relatively new detection platforms have shown promising results. Following review of the ENGO's letter, we considered these and other supplemental platforms as suggested. However, to our knowledge, there is no clear guidance available for operators regarding characteristics of effective systems, and the detection systems cited by the commenters are typically extremely expensive, and are therefore considered impracticable for use in most surveys. The commenters do not provide specific suggestions with regard to recommended systems or characteristics of systems. NMFS does not generally consider requirements to use systems such as those cited by the commenters to currently be practicable.

Comment 10: The ENGOs recommended that NMFS should require PAM at all times, both day and night, to maximize the probability of detection for North Atlantic right whales, and other species and stocks.

Response: The foremost concern expressed by the ENGOs in making the recommendation to require use of PAM is with regard to North Atlantic right whales. However, the commenters do not explain why they expect that PAM would be effective in detecting other species and stocks. It is generally well-accepted fact that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including right whales) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 dB re 1 μPa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.,* 2012; McKenna *et al.,* 2012; Rolland *et al.,* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low-frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.,* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 370 m)—this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low—together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for right whales and other low frequency

cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat.

Comment 11: The ENGOs recommended that NMFS require applicants to use the lowest practicable source level.

Response: Wind energy developers selected the equipment necessary during HRG surveys to achieve their objectives. As part of the analysis for all HRG IHAs, NMFS evaluated the effects expected as a result of use of this equipment, made the necessary findings, and imposed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgments regarding what constitutes the ''lowest practicable source level'' for an operator's survey objectives.

Comment 12: The ENGOs recommended that NMFS require all offshore wind energy related project vessels operating within or transiting to/from survey areas, regardless of size, to observe a 10-knot speed restriction during the entire survey period.

Response: NMFS does not concur with these measures. NMFS has analyzed the potential for ship strike resulting from various HRG activities and has determined that the mitigation measures specific to ship strike avoidance are sufficient to avoid the potential for ship strike. These include: A requirement that all vessel operators comply with 10 knot (18.5 km/hour) or less speed restrictions in any established dynamic management area (DMA) or seasonal management area (SMA); a requirement that all vessel operators reduce vessel speed to 10 knots (18.5 km/hour) or less when any large whale, mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed within 100 m of an underway vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale; a requirement that, if underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots or less until the 500 m minimum separation distance has been established; a requirement that all vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales; and a requirement that all vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the ship strike avoidance measures in the Renewal IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred during any marine site characterization survey activities for which NMFS issued an IHA.

Comment 13: The ENGOs recommend that NMFS work with relevant experts and stakeholders towards developing a robust and effective near real-time monitoring and mitigation system for North Atlantic right whales and other endangered and protected species (*e.g.,* fin, sei, minke, and humpback whales) during offshore wind energy development.

Response: NMFS is generally supportive of this concept. A network of near real-time baleen whale monitoring devices are active or have been tested in portions of New England and Canadian waters. These systems employ various digital acoustic monitoring instruments which have been placed on autonomous platforms including slocum gliders, wave gliders, profiling floats and moored buoys. Systems that have proven to be successful will likely see increased use as operational tools for many whale monitoring and mitigation applications. The ENGOs cited the NMFS publication ''Technical Memorandum NMFS-OPR-64: North Atlantic Right Whale Monitoring and Surveillance: Report and Recommendations of the National Marine Fisheries Service's Expert Working Group'' which is available at: *https://www.fisheries.noaa.gov/resource/document/north-atlantic-right-whale-monitoring-and-surveillance-report-and-recommendations.* This report summarizes a workshop NMFS convened to address objectives related to monitoring North Atlantic right whales and presents the Expert Working Group's recommendations for a comprehensive monitoring strategy to guide future analyses and data collection. Among the numerous recommendations found in the report, the Expert Working Group encouraged the widespread deployment of auto-buoys to provide near real-time detections of North Atlantic right whale calls that visual survey teams can then respond to for collection of identification photographs or biological samples.

Comment 14: The ENGOs state that NMFS must not issue Renewal IHAs, and assert that the process is contrary to statutory requirements.

Response: NMFS' IHA Renewal process meets all statutory requirements. All IHAs issued, whether an initial IHA or a Renewal IHA, are valid for a period of not more than one year. And the public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA Renewals. As noted above, the Comments and Responses section made clear that the agency was seeking comment on both the initial proposed IHA and the potential issuance of a Renewal for this project. Because any Renewal (as explained in the Comments and Responses section) is limited to another year of identical or nearly identical activities in the same location (as described in the Description of Specified Activity section) or the same activities that were not completed within the one-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible one-year Renewal, should the IHA holder choose to request one in the coming months.

While there will be additional documents submitted with a Renewal request, for a qualifying Renewal these will be limited to documentation that NMFS will make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS will also confirm, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The Renewal request will also contain a preliminary monitoring report, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a Renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a Renewal is 45 days.

Comment 15: The ENGOs expressed concern about past instances where NMFS has modified issued IHAs in response to preliminary monitoring data indicating that certain species of marine mammal were being encountered more frequently than anticipated.

Response: No modifications are included as part of this action and, therefore, this comment is not relevant to this IHA.

Determinations

The survey activities proposed by Atlantic Shores are identical to (and a subset of) 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 planned number of days of activity will be reduced given the completion of a small portion of the originally planned work. Therefore, the amount of take authorized is equal to or less than that authorized in the initial IHA. The potential effect of Atlantic Shores' 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 Atlantic Shores' 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).

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Atlantic Shore's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

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

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the proposed action qualifies to be categorically excluded from further NEPA review.

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.

On April 13, 2020, GARFO determined that the 2013 Biological Opinion remained valid for issuance of Atlantic Shores' initial IHA and that the proposed MMPA authorization 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 the Opinion. Similarly, on March 3, 2021, GARFO concluded the same for issuance of the Renewal IHA to Atlantic Shores. Therefore, the 2013 Biological Opinion meets the requirements of section 7(a)(2) of the ESA and implementing regulations at 50 CFR 402 for our proposed action to issue an IHA under the MMPA, and no further consultation is required. The 2013 Biological Opinion and amended ITS can be found at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

Renewal

NMFS has issued a Renewal IHA to Atlantic Shores for the take of marine mammals incidental to conducting marine site characterization surveys off New York and New Jersey for one year from date of issuance.

Dated: April 19, 2021.

Catherine Marzin,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB020]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of Coastal Virginia

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

ACTION: Issuance of a modified incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a modified incidental harassment authorization (IHA) to Dominion Energy Virginia (Dominion) to incidentally harass marine mammals incidental to marine site characterization surveys conducted in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Offshore Virginia (Lease No. OCS–A–0483) as well as in coastal waters where an export cable corridor will be established in support of the Coastal Virginia Offshore Wind Commercial (CVOW Commercial) Project.

DATES: This modified IHA is valid from April 12, 2021 until through August 27, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.