



Itp Demarest - NOAA Service Account <itp.demarest@noaa.gov>

Renewal Notice: Invenergy Wind Offshore LLC's Marine Site Characterization Surveys in the New York Bight (88 FR 32735)

2 messages

Itp Demarest - NOAA Service Account <itp.demarest@noaa.gov>
To: susankinsella92@gmail.com

Tue, Jul 16, 2024 at 3:58 PM

Good Afternoon,

You previously commented on the proposed Federal Register notice for Invenergy Wind Offshore LLC's Marine Site Characterization Surveys in the New York Bight (88 FR 32735). We are contacting you to inform you that a proposed notice for a renewal of this project will be publishing on July 17, 2024 for a 15-day public comment period. On that day, you will be able to submit public comments from July 17, 2024 through July 31, 2024 to itp.demarest@noaa.gov. The proposed renewal notice will be posted at:

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-invenergy-wind-offshore-lcs-site-characterization-surveys-new>

Thank you,
Austin Demarest

Susan Kinsella <susankinsella92@gmail.com>
To: Itp Demarest - NOAA Service Account <itp.demarest@noaa.gov>

Tue, Jul 16, 2024 at 6:14 PM

Thank you, but why do I feel like my comments are not really being considered?

[Quoted text hidden]



Itp Demarest - NOAA Service Account <itp.demarest@noaa.gov>

Invenergy Wind Offshore LLC's Marine Site Characterization Surveys in the New York Bight (88 FR 32735)

1 message

Stephen Rhodes <stephenjrhodes3@gmail.com>
To: itp.demarest@noaa.gov

Wed, Jul 17, 2024 at 1:07 PM

Greetings. I am a lifelong fisherman from the New York and New Jersey area that has held a Masters Captains License for vessels to 100 gross tons since 1993. I have fished my entire life off the Long Island and New Jersey shores since the mid-1970s. I have seen many cycles in the oceans and have never once thought that building windmills in the ocean was a smart idea. The saltwater environment is too harsh for the equipment and these proposed wind farms should be built in the valleys of New York, New Jersey and Pennsylvania. Land-based windmills like those to the west of San Francisco in the desert seem like a logical choice for wind energy. The proposed windmills off the NY and NJ coast will become an unmitigated disaster and provide huge obstacles for mariners while deteriorating rapidly in the rough North Atlantic environment.

I am a graduate of the University of Notre Dame ('91 Business Administration) and have an MBA from New York University ('99 Technology). Despite having these degrees a fifth grader could tell you that building windmills in the ocean environment makes no sense at all - the cost of building and ongoing maintenance will far exceed windmills built on land. The distance offshore and depth of water will expose the windmills to rough seas and constant erosion. Rust never sleeps.

I have fished off of Prince Edward Island, Nova Scotia and the smart folks on that island build their windmills on their shores and not in the ocean. The number of windmills proposed is shocking and already we have seen a huge increase in the number of mammal deaths. Despite claims from folks paid by the windmill companies, these deaths have never happened in the past 40 years that I have spent on the ocean. The only new variable this past winter was all the soundings done by the windmill survey vessels.

It is shocking to see that all this windmill activity was never voted on by the people of NY and NJ. Nobody wants the ocean environment destroyed by windmill farms of such proposed numbers. I would be happy to provide additional comments and feedback if you would like. I am trying to keep the length of this email manageable.

Best Regards - Captain Stephen J. Rhodes III



Itp Demarest - NOAA Service Account <itp.demarest@noaa.gov>

public comment on federal register

1 message

Jean Public <jeanpublic1@yahoo.com>

Wed, Jul 17, 2024 at 6:24 PM

To: "itp.demarest@noaa.gov" <itp.demarest@noaa.gov>, "info@oceana.org" <info@oceana.org>, "info@defenders.org" <info@defenders.org>, "info@savelbi.org" <info@savelbi.org>, "jeff.vandrew@mail.house.gov" <jeff.vandrew@mail.house.gov>, "srussell@verizon.net" <srussell@verizon.net>, "info@njara.org" <info@njara.org>, "dfrega@gmail.com" <dfrega@gmail.com>, "scoops@huffpost.com" <scoops@huffpost.com>

this is dangerous for right whales which are already almost all extinct. there should be no renewal permitted. this killing is wrong. it needs to be stopped. there is major opposition to these wind towers and their corruption of prices for electric. the fact that they are foreign and the fact that they are killing environment. this is the profiteering by selfish greedy people who won't let God's creatures have even a few feet to stay alive in. they want to make money from every inch of land/ocean and don't care how they wreck the world to make the money for their pocket and wealth. stop those greedy selfish killers now. jean public
jeanpublic1@yahoo.com, noaa is full of employees afraid to speak truth and just want to hold onto their jobs so they say whatever their bosses demand.



Itp Demarest - NOAA Service Account <itp.demarest@noaa.gov>

Opposition

1 message

Carolyn Kaschak <ck102102@gmail.com>
To: itp.demarest@noaa.gov

Mon, Jul 22, 2024 at 7:38 AM

I am writing to express my opposition for Invenergy Wind Offshore LLC's Marine Site Characterization Surveys in the New York Bight (88 FR 32735). This will cause more marine mammal deaths. Just this past weekend, Whales were happily swimming off the coast. Let's keep it that way. In November when Trump is elected this will be a non issue.



Clean Ocean Action
49 Avenel Blvd.
Long Branch, NJ 07740
Info@cleanoceanaction.org
732-872-0111

August 1, 2024

Attn: Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
Submitted via email

Re: Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Invenergy Wind Offshore, LLC's Marine Site Characterization Surveys in the New York Bight, Agency/Docket No. RTID 0648-XE042

Dear Chief Harrison:

Clean Ocean Action (COA) is a regional, nonpartisan environmental organization with a mission to improve the water quality of the marine waters off the New Jersey/New York coast. COA has been actively following offshore wind development in the New York/New Jersey Bight for almost two decades. Over the past several years, COA has engaged with the National Marine Fisheries Service (NMFS) and other state and federal agencies regarding offshore wind development in this region, including the original Incidental Harassment Authorization (IHA) issued to Invenergy Wind Offshore, LLC (IWO) in 2023.¹

IWO has been conducting surveys under the original IHA and requests a renewal IHA to conduct identical activities for an additional year.² The renewal would authorize 5,450 level B takes, including six (6) North Atlantic right whale (NARW) that are critically endangered, as well as

¹ E.g. Clean Ocean Action, Comments re. Incidental Take Authorization: "Leading Light"/Invenergy Wind Offshore, LLC Marine Site Characterization Surveys off New Jersey and New York, Agency/Docket Number: RTID 0648-XC970 (June 21, 2023); Clean Ocean Action, Comments re. Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off New York, New Jersey, Delaware, and Maryland (Feb. 5, 2024); Clean Ocean Action, Comments re. Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Offshore from Massachusetts to New Jersey for Vineyard Northeast, LLC, Docket No. RTID 0648-XD978 (July 3, 2024).

² Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Invenergy Wind Offshore, LLC's Marine Site Characterization Surveys in the New York Bight, 89 FR 58124, 58125 (July 17, 2024).

thirteen (13) Humpback and ninety-two (92) Minke whale takes,³ all of which are experiencing an Unusual Mortality Event (UME) and should be protected more carefully.⁴

COA stands by and incorporates by reference its comments on the initial IHA, as we disagree with NMFS's counterarguments to those comments and maintain more clarification is needed. COA submits the following additional comments.

I. Categorical Exclusion & Cumulative Impacts

In the notice for the proposed renewal IHA, NMFS states that it is using Categorical Exclusion B4 of its Companion Manual for the National Oceanic and Atmospheric Administration's Administrative Order 216-6A, excluding incidental take authorizations with no anticipated serious injury or mortality from subsequent National Environmental Policy Act (NEPA) analysis.⁵ No further NEPA analysis is anticipated, though this is only a preliminary determination.⁶ However, NMFS provides no justification as to why it believes no extraordinary circumstances apply.⁷

The Companion Manual states that a categorical exclusion may only be applied when no extraordinary circumstances apply and lists several extraordinary circumstances including "highly controversial environmental effects . . . environmental effects that are uncertain, unique, or unknown; or the potential for significant cumulative impacts when the proposed action is combined with other past, present and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves."⁸

The term "controversial" refers to "[the existence of a] substantial dispute . . . as to the size, nature, or *effect* of the major federal action rather than to the existence of opposition to a use."⁹ Commenters are not limited to the sources in the administrative record to establish controversy; in *Greenpeace U.S.A. v. Evans*, the district court used scientific literature outside of the administrative record to establish scientific controversy.¹⁰

³ *Id.* at 58126.

⁴ NOAA FISHERIES, *2017-2024 North Atlantic Right Whale Unusual Mortality Event* (last updated July 29, 2024), <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2024-north-atlantic-right-whale-unusual-mortality-event>; NOAA FISHERIES, *2016-2024 Humpback Whale Unusual Mortality Event Along the Atlantic Coast* (last updated July 16, 2024), <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2024-humpback-whale-unusual-mortality-event-along-atlantic-coast>; NOAA FISHERIES, *2017-2024 Minke Whale Unusual Mortality Event Along the Atlantic Coast* (last updated July 16, 2024), <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2024-minke-whale-unusual-mortality-event-along-atlantic-coast>.

⁵ *Id.* at 58125.

⁶ *Id.*

⁷ *See id.*

⁸ NAT'L OCEANIC & ATMOSPHERIC ADMIN., POLICY & PROCEDURES FOR COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT AND RELATED AUTHORITIES (effective Jan. 13, 2017), <https://www.noaa.gov/sites/default/files/2021-10/NOAA-NAO-216-6A-Companion-Manual-03012018%20%281%29.pdf>.

⁹ *Greenpeace U.S.A. v. Evans*, 688 F. Supp. 579, 582 (W.D. Wash. 1987).

¹⁰ *Id.* at 584.

There is considerable uncertainty regarding the effects of preconstruction surveying on marine mammals, as outlined in COA's comments on the 2023 IHA. To add to that analysis, because marine mammal hearing is difficult to study, animals are often grouped based on anatomy, rather than studying the hearing of specific species and how they may be impacted by surveying activities and construction noise.¹¹ There is a particularly glaring data gap regarding mysticete hearing: "no direct measurements of hearing ability have been successfully completed for mysticetes."¹² A 2015 University of Santa Cruz study indicated that pinnipeds were more sensitive to high-frequency noise than was previously predicted.¹³ The same study outlined a myriad of factors that could affect how noise travels in the marine environment, suggesting that frequency is far from the whole story of how noise reaches and affects pinnipeds.¹⁴

This speaks to how little is currently understood, especially given that proposed offshore wind development has increased exponentially in the New York Bight in a short amount of time. Although multiple entities have been conducting marine site characterization surveys as offshore wind continues to rapidly develop, COA's concerns about insufficient baseline study of marine mammal hearing applies to any offshore wind project that does not properly account for the remaining scientific uncertainty described above. Changes to a population or species can happen quickly, so if BOEM has an underdeveloped understanding of marine mammal species' current status, the agency cannot accurately plan for future protections and mitigation of potential impacts. Further, courts have held that the presence of mitigation measures including protected species observers does not eliminate the existence of a controversy, since logistical and financial constraints could prevent those measures from being enforced.¹⁵

NMFS recently responded to a different set of comments by COA expressing concerns with an IHA for another offshore wind project by referencing Thorne and Wiley's 2024 paper. Importantly, the authors' conclusion highlights the need for further study of marine mammal strandings, cumulative impacts of offshore wind development, and mitigation measures, rather than suggesting their findings should be treated as the final resolution of the issue.¹⁶ COA has also reached out to the authors proposing to discuss methodological questions, such as the focus on commercial vessel traffic and not other economic sectors, and the methodology for defining the location and year of each IHA.

¹¹ Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the New York Bight, 88 FR 32735, 32744 (May 22, 2023).

¹² *Id.*

¹³ Kane Cunningham, *Pinniped Hearing in a Changing Acoustic Environment*, U.C.S.C. ESCHOLARSHIP (2015), <https://escholarship.org/uc/item/737223k8>

¹⁴ *Id.*

¹⁵ See *Greenpeace U.S.A. v. Evans* at 585.

¹⁶ L.H. Thorne & D.N Wiley, *Evaluating drivers of recent large whale strandings on the East Coast of the United States*, Conservation Biology (May 29, 2024), <https://doi.org/10.1111/cobi.14302>.

NMFS also does not provide a justification in the IHA proposal for its claim that this IHA does not cumulatively have the potential for significant impacts on the quality of the environment.¹⁷ In the New York Bight since 2015, a total of 565,846 takes have been authorized by IHAs, 1,445 by Level A harassment and 564,401 by Level B harassment.¹⁸ At the time of writing, there are thirteen (13) separate active IHAs in the New York Bight, and three (3) in progress, seven (7) of which will likely overlap with IWO's survey area and active dates.¹⁹ The offshore wind development proposed in recent years, particularly during the Biden Administration, is part of a federal and state governmental effort to increase domestic offshore wind generation according to targets and mandates.²⁰ Therefore, surveying and construction for multiple projects around the same time and location is completely foreseeable; indeed, many surveying projects are already occurring.

Because of the uncertainty of the impacts of offshore wind development combined with the number of projects that are reasonably certain to occur in similar timeframes and geographic areas, the categorical exclusion should not apply. Instead, NMFS should be required to conduct further NEPA analysis for the project, considering the cumulative effects of the proposed IHA relative to other authorized takes in the area, including the activities conducted under the 2023 IHA.

II. Unclear Number of Anticipated Renewals

IWO's original IHA was granted on July 25, 2023, and the proposed IHA would extend until 2025.²¹ According to the proposed rule,

¹⁷ Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Invenenergy Wind Offshore, LLC's Marine Site Characterization Surveys in the New York Bight, 89 FR at 58124.

¹⁸ See, e.g., NOAA FISHERIES, *Incidental Take Authorizations for Other Energy Activities (Renewable/LNG)*, <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable> (last updated June 25, 2024).

¹⁹ *Id.* (Terrasond Limited Marine Site Characterization Surveys in the New York Bight & Central Atlantic Call Area; Renewal of Vineyard Northeast, LLC 's Marine Site Characterization Survey from Massachusetts to New Jersey; Atlantic Shores Offshore Wind, LLC's Construction of the Atlantic Shores Offshore Wind Energy Projects; Orsted Wind Power North America, LLC's Site Characterization Surveys off Delaware; Revolution Wind, LLC Construction of the Revolution Wind Energy Facility off of Rhode Island; Empire Wind, LLC Construction of the Empire Wind Project (EW1 and EW2) off of New York; Renewal of Bluepoint Wind, LLC's Marine Site Characterization Surveys off of New York and New Jersey in the New York Bight; Reissuance of Park City Wind Marine Site Characterization Surveys off of Massachusetts to New York; Atlantic Shores Offshore Wind, LLC's marine site characterization surveys off of New York, New Jersey, Delaware, and Maryland; Sunrise Wind, LLC's Construction and Operation of the Sunrise Wind Offshore Wind Farm off of New York; Avangrid Renewables, LLC's Construction of the New England Wind Offshore Wind Farm Project off of Massachusetts; Vineyard Wind 1 LLC's Construction of the Vineyard Wind Offshore Wind Project off of Massachusetts (Phase 2); Orsted Wind, LLC Construction of the Ocean Wind 1 Wind Energy Facility off New Jersey).

²⁰ The White House, FACT SHEET: Biden Administration Jumpstarts Offshore Wind Energy Projects to Create Jobs (Mar. 29, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/29/fact-sheet-biden-administration-jumpstarts-offshore-wind-energy-projects-to-create-jobs/>; N.J. Exec. Order No. 307 (Sept. 21, 2022); N.Y. Climate Leadership & Community Protection Act (L. 2019, ch. 106).

²¹ Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Invenenergy Wind Offshore, LLC's Marine Site Characterization Surveys in the New York Bight, 89 FR at 58125.

“The purpose of IWO's proposed surveys is to provide sufficient data to meet BOEM guidelines and support the development of offshore wind facilities in the Survey Area. Specifically, data collected would support site characterization, siting, and engineering design of offshore wind facilities including turbine generators, offshore substations, submarine cables and data necessary for project review requirements”.²²

This explanation does not indicate that the additional year will be sufficient to satisfy BOEM’s guidelines, or why the data collected in the first year is insufficient. As such, it is unclear whether there will likely be another renewal IHA proposed and authorized at the end of the current IHA, should it be granted.

NMFS commonly issues multiple consecutive approvals; for example, similar surveying activities by Atlantic Shores Offshore Wind, LLC and Vineyard Wind Northeast, LLC have been approved in this region since 2020 and 2022, respectively, either by one-time renewals or in the form of new IHAs.²³ In circumstances such as these, when it is not clear how long the proposed activities will span, a Letter of Authorization (LOA) would be more appropriate. NMFS recommends that agencies apply for LOAs rather than IHAs when the proposed activities are expected to last longer than one year.²⁴

III. North Atlantic Right Whales (NARW)

COA maintains our objection to allowing takes of NARW due to the species’ fragile status. Although no serious injury or mortality is proposed to be authorized in this instance, even Level B harassment could, by definition, affect migration, breathing, nursing, breeding, feeding, or sheltering.²⁵ Noise disturbances to NARW could increase the species’ stress levels, according to information on NOAA’s website.²⁶ NMFS proposes to require a 500-meter distance between

²² *Id.*

²³ Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Off of New York and New Jersey, 85 FR 21198 (Apr. 16, 2020); Taking Marine Mammals Incidental to Marine Site Characterization Off of New York and New Jersey, 86 FR 21289 (Apr. 22, 2021); Taking Marine Mammals Incidental to Marine Site Characterization Off New Jersey and New York for Atlantic Shores Offshore Wind, LLC, 87 FR 24103 (Apr. 20, 2022); Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore of New Jersey and New York, 88 FR 38821 (June 9, 2023); Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off New Jersey and New York, 88 FR 54575 (August 10, 2023); Takes of Marine Mammals Incidental to Specified Activities; Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Offshore From Massachusetts to New Jersey for Vineyard Northeast, LLC, 87 FR 52913 (Aug. 30, 2022); Taking Marine Mammals Incidental to Site Characterization Surveys Offshore From Massachusetts to New Jersey for Vineyard Northeast, LLC, 89 FR 51501 (June 18, 2024).

²⁴ NOAA FISHERIES, *Incidental Authorizations Under the Marine Mammal Protection Act*, <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> (last visited June 26, 2024).

²⁵ 16 U.S.C. § 1362(18).

²⁶ NOAA FISHERIES, *North Atlantic Right Whale*, <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale> (last visited Feb. 2, 2024).

vessels, equipment, and NARW and all other federally endangered marine mammals, but the agency is still being realistic in assuming that the mitigation measure will not be able to completely prevent animals from experiencing Level B harassment.²⁷

COA believes that preserving the existence of the NARW warrants pausing offshore development off the Atlantic coast, but NMFS is only required to ensure that small numbers of individuals are taken that will have a negligible impact on the stock.²⁸ As discussed in Section I, NMFS should consider cumulative impacts, including the total number, speed, and distance of vessel trips for preconstruction, construction, operation/maintenance, and decommissioning activities for all the concurrent projects in the region, and adjust the permitted activities accordingly.

IV. Conclusion

For the above reasons, NMFS should reject IWO's application to renew its IHA. In addition, NMFS should work with other agencies to produce or commission an independent study about marine mammal mortality on the east coast. In New Jersey and New York, 59 whales and 146 dolphins or porpoises have stranded since December 2022.²⁹ It is both reasonable and responsible to conduct further investigation into the cause of these deaths and refrain from issuing IHAs until the agency can definitively determine the cause(s).

Respectfully submitted,



Cindy Zipf
Executive Director
Clean Ocean Action



Erika Bosack, Esq.
Policy Attorney
Clean Ocean Action

²⁷ Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Invenenergy Wind Offshore, LLC's Marine Site Characterization Surveys in the New York Bight, 89 FR at 58126.

²⁸ 16 U.S.C. § 1371(a)(5)(A)(i).

²⁹ Nat'l Oceanic & Atmospheric Admin., Marine Mammal Health & Stranding Response Program Nat'l Stranding & Response Prog., National Stranding Database (received May 20, 2024) (supplemented with verified volunteer/local news reports, on file with Clean Ocean Action).