FINDING OF NO SIGNIFICANT IMPACT
FOR THE ISSUANCE OF AN INCIDENTAL HARASSMENT AUTHORIZATION
TO FISHERMEN'S ATLANTIC CITY WINDFARM, LLC TO TAKE MARINE MAMMALS
BY HARASSMENT INCIDENTAL TO PILE DRIVING OFF NEW JERSEY

NATIONAL MARINE FISHERIES SERVICE

BACKGROUND

The National Marine Fisheries Service (NMFS) received an application from AMEC Environment & Infrastructure, on behalf of Fishermen's Atlantic City Windfarm, LLC (Fishermen's), for an Incidental Harassment Authorization (IHA) to take marine mammals, by Level B harassment, incidental to pile driving in New Jersey state waters. Pursuant to the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1631 *et seq*.), authorization for incidental taking shall be granted provided that NMFS: (1) determines that the action would have a negligible impact on the affected species or stocks of marine mammals; (2) finds the action would not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals for taking for subsistence uses; and (3) sets forth the permissible methods of taking, other means of effecting the least practicable impact on affected species and stocks and their habitat, and requirements pertaining to the mitigation, monitoring, and reporting of such takes.

In accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq*.), NMFS completed an Environmental Assessment (EA) titled "*Issuance of an Incidental Harassment Authorization to Fishermen's Atlantic City Windfarm, LLC to Take Marine Mammals by Harassment Incidental to Pile Driving off New Jersey*."

NMFS has prepared this Finding of No Significant Impact (FONSI) to evaluate the significance of the impacts of NMFS' action. It is specific to Alternative 2 in the EA, identified as the Preferred Alternative. Under this alternative, NMFS would issue an IHA with required mitigation, monitoring, and reporting measures. Based on NMFS' review of Fishermen's proposed activities and the measures contained in Alternative 2, NMFS has determined that no significant impacts to the human environment would occur from implementing the Preferred Alternative.

ANALYSIS

NAO 216-6 contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 CFR § 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below this section is relevant to making a FONSI and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to cause substantial damage to the ocean

and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans (FMP)?

Response: NMFS' limited action of issuing an IHA is not expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat. Fishermen's proposed action of pile driving may cause limited adverse impacts to fish and their habitats; however, these impacts are expected to be minimal and the long-term project of installing wind turbines may even provide additional fish habitat.

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCA) govern marine fisheries management in waters within the U.S. Exclusive Economic Zone, and require federal agencies to consult with NMFS with respect to actions that may adversely impact Essential Fish Habitat (EFH). As the federal action agency for Fishermen's construction activities, the U.S. Army Corps of Engineers will consult with NMFS Northeast Region on EFH. There are no independent adverse effects to EFH from issuance of the IHA.

2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: NMFS does not expect either Fishermen's proposed action or NMFS' proposed action (i.e., issuing an IHA to Fishermen's that authorizes Level B harassment) to have a substantial impact on biodiversity or ecosystem function within the affected environment. The proposed action area may be used by marine mammals for opportunistic foraging during May and June but is not considered a primary foraging ground. Any impacts to prey species or marine mammal behavior would be temporary.

3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: NMFS does not expect either Fishermen's proposed action or NMFS' proposed action (i.e., issuing an IHA to Fishermen's) to have a substantial adverse impact on public health or safety. The proposed pile driving activities would occur during daylight hours and constant monitoring for marine mammals and other marine life during operations effectively eliminates the possibility of any humans being inadvertently exposed to levels of sound that might have adverse effects. Although the conduct of pile driving activities may carry some risk to the personnel involved (e.g., mechanical accidents), the applicant and those individuals working with the applicant would be required to be adequately trained or supervised in performance of the underlying activity to minimize such risk to personnel.

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: The EA evaluates the affected environment and potential effects of NMFS' (i.e., issuing an IHA to Fishermen's) and Fishermen's (i.e. pile driving activities) actions, indicating that only the acoustic activities have the potential to affect marine mammals in a way that requires authorization under the MMPA. These temporary acoustic activities would not affect physical habitat features, such as substrates and water quality.

NMFS has determined that the proposed activity may result in some Level B harassment (in the form of short-term and localized changes in behavior) of small numbers, relative to the population sizes, of three species of marine mammals, none of which are listed under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq*.). The U.S. Army Corps of Engineers will consult on EFH with NMFS' Northeast Region.

The following mitigation measures are planned for the proposed action to minimize adverse effects to protected species:

(1) exclusion zones;
(2) shut down and delay procedures;
(3) soft-start procedures;
(4) visual monitoring; and
(5) hydroacoustic monitoring.

Taking these measures into consideration, responses of marine mammals from the preferred alternative are expected to be limited to temporary avoidance of the area around the sound source and short-term behavioral changes, falling within the MMPA definition of "Level B harassment."

NMFS does not anticipate that marine mammal take by injury (Level A harassment), serious injury, or mortality would occur and expects that harassment takes would be at the lowest level practicable due to the incorporation of the mitigation measures required by the IHA. Numbers of individuals of all marine mammal species taken by harassment are expected to be small (relative to species or stock abundance), and the take is anticipated to have a negligible impact on any species or stock. The impacts of the proposed action on marine mammals are specifically related to acoustic activities, and these are expected to be temporary in nature, negligible, and would not result in substantial impact to marine mammals or to their role in the ecosystem.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: The primary impacts to the natural and physical environment are expected to be acoustic and temporary in nature (and not significant), and not interrelated with significant social or economic impacts. Issuance of the IHA would not result in inequitable distributions of environmental burdens or access to environmental goods.

NMFS has determined that issuance of the IHA would not adversely affect low-income or minority populations. Further, there would be no impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses. Therefore, no significant social or economic effects are expected to result from issuance of the IHA or the proposed action.

6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: The effects of this action on the quality of the human environment, that is, NMFS' issuance of an IHA for the take of marine mammals incidental to pile driving activities, are not highly controversial. Specifically, NMFS did not receive any comments raising substantial

questions or concerns about the size, nature, or effect of potential impacts from NMFS's proposed action or Fishermen's proposed project.

7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

Response: Issuance of the IHA is not expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas as it would only authorize harassment to marine mammals. The action area does not contain, and is not adjacent to unique areas. While there may be adverse impacts to EFH, those impacts are likely to be minor, localized, and short-term (see responses to question 1).

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: The potential risks of pile driving are not unique or unknown, nor is there significant uncertainty about impacts. NMFS has issued numerous IHAs for pile driving activities and conducted NEPA analysis on those projects. Each of these projects required marine mammal monitoring and monitoring reports have been reviewed by NMFS to ensure that activities have a negligible impact on marine mammals. In no case have impacts to marine mammals, as determined from monitoring reports, exceeded NMFS' analysis under the MMPA and NEPA. Therefore, the effects on the human environment are not likely to be highly uncertain or involve unique or unknown risks.

9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: Issuance of an IHA to Fishermen's is not related to other actions with individually insignificant, but cumulatively significant impacts. The environmental effects of Fishermen's long-term wind turbine project will be analyzed by the U.S. Army Corps of Engineers in a NEPA document. Although the development of a wind turbine project is new to this area, significant cumulative impacts to the natural environment are not anticipated. Any future authorizations would have to undergo the same permitting process and would take the Fishermen's project into consideration when addressing cumulative effects.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: The proposed action would not take place in any areas listed in or eligible for listing in the National Register of Historic Places and would not cause loss or destruction of significant scientific, cultural, or historical resources, as none exist within the action area.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: The proposed action cannot be reasonably expected to result in the introduction or spread of a non-indigenous species. The spread of non-indigenous species generally occurs through ballast water exchange or hull attachment. Support vessels used during construction would likely be small, local vessels that do not make trans-ocean trips.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or does it represent a decision in principle about a future consideration?

Response: The proposed action would not set a precedent for future actions with significant effects or represent a decision in principle. Each MMPA authorization applied for under 101(a)(5) must contain information identified in NMFS' implementing regulations with no exceptions. NMFS considers each activity specified in an application separately and, if it issues an IHA to the applicant, NMFS must determine that the impacts from the specified activity would result in a negligible impact to the affected species or stocks.

NMFS has issued many authorizations for pile driving activities. A finding of no significant impact for this action, and for NMFS's issuance of an IHA, may inform the environmental review for future projects but would not establish a precedent or represent a decision in principle about a future consideration.

13) Can the proposed action reasonably be expected to threaten a violation of any Federal, State, or local law or requirements imposed for the protection of the environment?

Response: Issuance of the proposed IHA would not result in any violation of Federal, State, or local laws for environmental protection. The applicant consulted with the appropriate Federal, State, and local agencies during the application process and would be required to follow associated laws as a condition of the IHA.

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: The proposed action allows for the taking, by incidental harassment, of marine mammals during the proposed pile driving activities. NMFS has determined that marine mammals may exhibit behavioral changes such as avoidance of or changes in foraging patterns within the action area. However, NMFS does not expect the authorized harassment to result in significant cumulative adverse effects on the affected species or stocks. Pile driving activities and the issuance of an IHA are not expected to result in any significant cumulative adverse effects on target or non-target species incidentally taken by harassment due to pile driving activities.

Cumulative effects refer to the impacts on the environment that result from a combination of past, existing, and reasonably foreseeable human activities and natural processes Human activities in the region of the proposed action include vessel traffic and commercial or recreational fishing. Because of the relatively small area of ensonification and mitigation measures, the action would not result in synergistic or cumulative adverse effects that could have a substantial effect on any species.

The proposed action does not target any marine species and is not expected to result in any individual, long-term, or cumulative adverse effects on the species incidentally taken by harassment due to these activities. The potential temporary behavioral disturbance of marine species might

result in short-term behavioral effects for these marine species within the ensonified zones, but no long-term displacement of marine mammals, endangered species, or their prey is expected as a result of the proposed action conducted under the requirements of the IHA. Therefore, NMFS does not expect any cumulative adverse effects on any species as a result of pile driving activities.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting EA titled "*Issuance of an Incidental Harassment Authorization to Fishermen's Atlantic City Windfarm, LLC to Take Marine Mammals by Harassment Incidental to Pile Driving off New Jersey,*" and documents that it references, NMFS has determined that issuance of an IHA to Fishermen's for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting pile driving activities in New Jersey state waters in accordance with Alternative 2 in NMFS' 2012 EA would not significantly impact the quality of the human environment, as described in this FONSI and in the EA.

In addition, all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary. The EA thereby provides a supporting analysis for this FONSI.

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Date