



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

MAR 21 2013

Rachel Pachter
Project Manager
Cape Wind Associates, LLC
75 Arlington Street, Suite 704
Boston, MA 02116

Dear Ms. Pachter,

Enclosed is an Incidental Harassment Authorization (IHA) issued pursuant to section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.), to take small numbers of marine mammals, by Level B harassment, incidental to high resolution geophysical survey operations in Nantucket Sound. You are required to comply with the conditions contained in the IHA, including all mitigation, monitoring, and reporting requirements. In addition, you must cooperate with any federal, state, or local agency monitoring the impacts of your activities.

If you have any questions concerning the IHA or its requirements, please contact Michelle Magliocca, Office of Protected Resources (NMFS), at 301-427-8426.

Sincerely,

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

Enclosure



Incidental Harassment Authorization

Cape Wind Associates, LLC (CWA), 75 Arlington Street, Suite 704, Boston, Massachusetts 02116, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)) to harass small numbers of marine mammals incidental to a high resolution geophysical survey conducted in Nantucket Sound, contingent upon the following conditions:

1. This Authorization is valid from April 1, 2013, through March 31, 2014.
2. This Authorization is valid only for CWA's activities associated with the high resolution geophysical survey operations that shall occur in the following specified area:

Around Horseshoe Shoal in Nantucket Sound, as specified in CWA's July 29, 2011, final revised IHA application.

3. Species Impacted and Level of Takes

(a). The incidental taking of marine mammals, by Level B harassment only, is limited to the following species in the waters of Nantucket Sound:

- (i). Minke whale (*Balaenoptera actuorostrata*) - 9
- (ii). Atlantic white-sided dolphin (*Lagenorhynchus acutus*) - 185
- (iii). Harbor porpoise (*Phocoena phocoena*) - 110
- (iv). Gray seal (*Halichoerus grypis*) – 314
- (v). Harbor seal (*Phoca vitulina*) – 79
- (vi). If any marine mammal species are encountered during survey activities that are not listed here for authorized taking and are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μ Pa (rms), then the Holder of this Authorization must alter speed or course, power-down or shut-down survey activities to avoid take.

(b). The taking by injury (Level A harassment), serious injury, or mortality of any of the species listed in Condition 3(a) above or the taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

4. The methods authorized for taking, by Level B harassment only, are limited to the following acoustic sources, without an amendment to this Authorization:

- (a). shallow-penetration subbottom profiler; and
- (b). medium-penetration subbottom profiler.

5. The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service (NMFS) or his designee, at 301-427-8401.

6. Mitigation Requirements: The Holder of this Authorization is required to implement the following mitigation requirements when conducting the specified activities to achieve the least practicable impact on affected marine mammal species or stocks:

(a). Establishment of an exclusion zone – During all survey activities involving the shallow-penetration and medium-penetration subbottom profilers, a 500-m radius exclusion zone shall be established around each survey vessel. This area will be monitored for marine mammals 60 minutes prior to starting or restarting surveys, during surveys, and 60 minutes after survey equipment has been turned off. The exclusion zone must not be obscured by fog or poor lighting conditions.

(b). Shut down and delay procedures – If a protected species observer sees a marine mammal within or approaching the exclusion zone prior to the start of surveying, the observer will notify the appropriate individual who will then be required to delay surveying or shut down survey equipment until the marine mammal moves outside of the exclusion zone or if the animal has not been resighted for 60 minutes. If a protected species observer sees a marine mammal within or approaching the exclusion zone during survey activities, the observer will notify the appropriate individual who will then be required to shut down surveying until the marine mammal moves outside of the exclusion zone or if the animal has not been resighted for 60 minutes.

(c). Soft-start procedures – A “soft-start” technique shall be used at the beginning of survey activities each day (or following a shut down) to allow any marine mammal that may be in the immediate area to leave before the sound sources reach full energy. Surveys shall not commence at nighttime or when the exclusion zone cannot be effectively monitored.

7. Monitoring Requirements: The Holder of this Authorization is required to implement the following monitoring requirements when conducting the specified activities to result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Visual monitoring – At least one biologically trained, on-site individual, approved in advance by NMFS, shall implement the mitigation measures that require real-time monitoring. Protected species observers (PSOs) shall monitor for marine mammals 60 minutes before, during, and 60 minutes after all survey activities and call for delay or shutdown if any marine

mammal is observed approaching or within the 500-m exclusion zone. Should a marine mammal not included in an incidental take authorization be observed at any time within the 500-m exclusion zone, shut down and delay procedures shall be followed.

The Holder shall provide additional monitoring efforts to increase knowledge of marine mammal species in Nantucket Sound. At least one NMFS-approved protected species observer shall conduct behavioral monitoring from the survey vessel at least twice a week to estimate take and evaluate the behavioral impacts that survey activities have on marine mammals outside of the 500-m exclusion zone. In addition, a separate vessel with a NMFS-approved protected species observer shall collect data on species presence and behavior before surveys begin and once a month during survey activities.

Protected species observers shall be provided with the equipment necessary to effectively monitor for marine mammals (e.g., high-quality binoculars, compass, and range-finder) in order to determine if animals have entered into the harassment isopleths and to record marine mammal sighting information. Protected species observers must be able to effectively monitor the 500-m exclusion zone whenever the subbottom profilers are in use. Survey efforts shall only take place during daylight hours and visibility must not be obscured by fog, lighting conditions, etc.

8. Reporting Requirements: The Holder of this Authorization is required to:

(a). Submit a report on all activities and monitoring results to the Office of Protected Resources, NMFS, within 90 days of expiration of the IHA or completion of surveying, whichever comes first. This report must contain and summarize the following information:

(i). Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all survey operations and marine mammal sightings;

(ii). Species, number, location, distance from the vessel, and behavior of any marine mammals, as well as associated survey activity (number of shut-downs or delays), observed throughout all monitoring activities.

(iii). An estimate of the number (by species) of marine mammals that are known to have been exposed to the survey activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μ Pa (rms) and/or 180 dB re 1 μ Pa (rms) for cetaceans and 190 dB re 1 μ Pa (rms) for pinnipeds with a discussion of any specific behaviors those individuals exhibited.

(iv). A description of the implementation and effectiveness of the mitigation measures of the Incidental Harassment Authorization.

(b). Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East West Highway, Silver Spring, Maryland, 20910, within 30 days after receiving comments from NMFS on the draft report. If NMFS decides that the draft report needs no comments, the draft report shall be considered the final report.

(c). In the unanticipated event that the survey operations clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), CWA shall immediately cease survey operations and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email to Michael.Payne@noaa.gov and Michelle.Magliocca@noaa.gov and the Northeast Regional Stranding Coordinator (Mendy.Garron@noaa.gov). The report must include the following information:

- (i) time, date, and location (latitude/longitude) of the incident;
- (ii) the name and type of vessel involved;
- (iii) the vessel's speed during and leading up to the incident;
- (iv) description of the incident;
- (v) status of all sound source use in the 24 hours preceding the incident;
- (vi) water depth;
- (vii) environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- (viii) description of marine mammal observations in the 24 hours preceding the incident;
- (ix) species identification or description of the animal(s) involved;
- (x) the fate of the animal(s); and
- (xi) photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with CWA to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CWA may not resume their activities until notified by NMFS via letter, email, or telephone.

(d). In the event that CWA discovers an injured or dead marine mammal, and the lead protected species observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), CWA will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401, and/or by email to Michael.Payne@noaa.gov and Michelle.Magliocca@noaa.gov and the Northeast Regional Stranding Coordinator at 978-281-9300 (Mendy.Garron@noaa.gov). The report must include the same information identified in the paragraph above. Activities may continue while NMFS

reviews the circumstances of the incident. NMFS will work with CWA to determine whether modifications to the activities are appropriate.

(e). In the event that CWA discovers an injured or dead marine mammal, and the lead protected species observer determines that the injury or death is not associated with or related to the activities authorized in Condition 2 of this Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CWA shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401, and/or by email to Michael.Payne@noaa.gov and Michelle.Magliocca@noaa.gov and the NMFS Northeast Stranding Hotline (866-755-6622) and/or by email to the Northeast Regional Stranding Coordinator (Mendy.Garron@noaa.gov), within 24 hours of the discovery. CWA shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

10. A copy of this Authorization must be in the possession of all contractors and protected species observers operating under the authority of this Incidental Harassment Authorization.

11. Penalties and Permit Sanctions

Any person who violates any provision of this Incidental Harassment Authorization is subject to civil and criminal penalties, permit sanctions, and forfeiture as authorized under the MMPA.

MAR 21 2013



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

Date