

**Finding of No Significant Impact
on Issuance of an Incidental Harassment Authorization to the U.S. Fish and Wildlife
Service Eastern Massachusetts National Wildlife Refuge Complex for
Take of Marine Mammals Incidental to Seabird and Shorebird Monitoring and Research
Activities in the Eastern Massachusetts National Wildlife Refuge Complex**

National Marine Fisheries Service

BACKGROUND

The National Oceanic Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) proposes to issue an Incidental Harassment Authorization (IHA) to the U.S. Fish and Wildlife Service Eastern Massachusetts National Wildlife Refuge Complex (USFWS) pursuant to section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. §§ 1631 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 Code of Federal Regulations (CFR) Part 216). This IHA will be valid from April 1, 2017 through March 31, 2018 and authorizes takes, by Level B harassment only, of marine mammals incidental to conducting seabird and shorebird monitoring and other research activities in the Eastern Massachusetts National Wildlife Refuge Complex (Complex).

NMFS's proposed action is a direct outcome of the USFWS's request for an IHA for seabird and shorebird monitoring and other research activities, which involves vessel landings, monitoring and research activities, and human presence within the Complex. These types of activities have the potential to cause marine mammals in the vicinity of the project area to be behaviorally disturbed; therefore, qualifies for a permit from NMFS. NMFS's criteria for an IHA requires that the taking of marine mammals authorized by an IHA will have a negligible impact on the species or stock(s), and, where relevant, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, the IHA must set forth, where applicable, the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the monitoring and reporting of such takings.

The issuance of an IHA to the USFWS allows the taking of marine mammals, consistent with provisions under MMPA, and is considered a major federal action under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). Therefore, we prepared this Finding of No Significant Impact (FONSI) to evaluate the significance of the impacts associated with NMFS's issuance of an IHA. The preparation of this FONSI was completed in accordance with NEPA and the Council on Environmental Quality (CEQ) regulations in 40 CFR §§ 1500-1508.

ANALYSIS

The Council on Environmental Quality (CEQ) regulations at 40 C.F.R. § 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of NMFS's proposed action is analyzed based on 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 (EFH) as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans (FMPs)?*

EFH can consist of both the water column and the underlying surface (e.g. seafloor) of a particular area. Certain properties of the water column such as temperature, nutrients, or salinity are essential to various species and may support the different life stages of each managed species.

The effects of monitoring and research activities would not occur in the surrounding water column and thus would not impact EFH or fish populations. Accordingly, the EA does not consider EFH in greater detail. Further, NMFS has not designated any Habitat Areas of Particular Concern (HAPC) within the action area.

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.)?*

The authorization of marine mammal take incidental to the USFWS's activities will not have a substantial impact on biodiversity or ecosystem function. The only habitat modification associated with the proposed activity is the installation of signs within the Complex, which would be approximately 150 ft (50 meters) from the seal haul-outs. Thus, NMFS does not expect the activity to have any effects on marine mammal habitat and NMFS expects that there will be no long-term physical impacts to pinniped habitat in the Complex.

The proposed activities will not result in any permanent impact on habitats used by marine mammals, including prey species and foraging habitat. The main impact associated with the proposed activity will be temporarily visual and acoustic disturbance and the associated direct effects on marine mammals (*i.e.*, the potential for temporary abandonment of the site), from vessel landings, monitoring and research activities, and human presence.

NMFS does not anticipate that the proposed restoration activities would result in any permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (*i.e.*, fish and invertebrates). Based on the preceding discussion, NMFS does not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

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

The proposed action is not expected to result in any impacts related to public health and safety. Monitoring and research activities occur within the Complex in some areas where public access is restricted (e.g. Nomans Land Island NWR,). In other areas where the public may visit, the USFWS staff provide educational and outreach materials to reduce the disturbance to marine mammals.

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?*

Issuance of the IHA is likely to result in limited adverse effects to gray and harbor seals. The EA evaluates the affected environment and potential effects of NMFS' (i.e., issuing an IHA to the USFWS) and the USFWS's proposed actions, indicating that only the visual and acoustic effects of the vessels, monitoring and research activities, and human presence in the Complex have the potential to affect marine mammals in a way that requires authorization under the MMPA. The short-term surveys and any required mitigation measures 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 two species of marine mammals, neither of which are listed under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). Based on this, NMFS determined that the proposed action would not adversely affect endangered or threatened species.

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

1. Time restrictions: The USFWS shall not operate during the months of December 2017 through March 2018 in order to avoid impacts to pinnipeds during pupping season;
2. Vessel Approach Techniques: The USFWS would ensure that its vessel approaches to beaches with pinniped haul outs would be conducted so as to not disturb marine mammals as most practicable. To the extent possible, the vessel should approach the beaches in a slow and controlled approach, as far away as possible from haul outs to prevent or minimize flushing. Staff would also avoid or proceed cautiously when operating boats in the direct path of swimming seals that may be present in the area.
3. Avoidance of Acoustic Impacts from Cannon nets: Cannon nets have a measured SL of 128 dB at one meter (estimated based on a measurement of 98.4 dB at 30 m; L. Niles, pers. comm., December 2016); however, the sound pressure level (SPL) is expected to be less than the thresholds for airborne pinniped disturbance (e.g. 90 dB for harbor seals, and 100 dB for all other pinnipeds) at 80 meters from the source. The USFWS proposes to stay at least 100 meters from all pinnipeds if cannon nets are to be used for research purposes.
4. Avoidance of Visual and Acoustic Contact with People: The USFWS would instruct its members and research staff to avoid making unnecessary noise and not expose themselves visually to pinnipeds whenever practicable. USFWS staff would stay at least 50 meters from hauled out pinnipeds, unless it is absolutely necessary to approach seals closer, or potentially flush a pinniped, in order to continue conducting endangered species conservation work. When disturbance is unavoidable, staff will work quickly and efficiently to minimize the length of

disturbance. Researchers and staff will do so by proceeding in a slow and controlled manner, which allows for the seals to slowly flush into the water. Staff will also maintain a quiet working atmosphere, avoiding loud noises, and using hushed voices in the presence of hauled-out pinnipeds. Pathways of approach to the desired study or nesting site will be chosen to minimize seal disturbance if an activity event may result in the disturbance of seals. USFWS staff will scan the surrounding waters near the haul outs, and if predators (*i.e.* sharks) are seen, seals will not be flushed by USFWS staff.

5. Researchers, USFWS staff, and volunteers will be properly informed about the MMPA take prohibitions, and will educate the public on the importance of not disturbing marine mammals, when applicable. Staff at Nantucket NWR will remain present on the beaches utilized by pinnipeds to prevent anthropogenic disturbance during times of high public use (late spring-early fall). Staff at Monomoy NWR will also be present on beaches utilized by seals during the same time of year, and will inform the public to keep a distance from haul outs if an issue is noticed.

Taking these measures into consideration, responses of marine mammals from the preferred alternative are expected to be limited to temporary avoidance of the area 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 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?*

The proposed action will not have any social or environmental impacts. The impacts resulting from NMFS’ authorization of marine mammal take incidental to the USFWS’s activities will be limited to temporary behavioral harassment of two species of marine mammals.

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

NMFS’s issuance of an IHA will not have effects on the human environment that are likely to be highly controversial. There is not substantial debate over the proposed action’s size, nature, or effect, nor is there such debate over the underlying action (the USFWS’s activities). Due to the limited duration and intensity of the project, and the implementation of appropriate mitigation and monitoring measures, there will not be significant impacts to natural resources in the project area. During the public comment period on the proposed IHA, NMFS only received comments

from the Marine Mammal Commission, which did not indicate that the environmental effects of NMFS's action were likely to be highly controversial.

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?*

Since the activities are of short duration, public recreational uses that may occur in the action area, will not be significantly affected. Traditional resources would not be impacted. The USFWS's activities will occur only within the Complex, away from any structures, and will not significantly degrade the existing environment. The goal of the USFWS's activities is to monitor seabirds and shorebirds as well as conduct additional research on coastal species. No unique characteristics of the geographic area are known. NMFS's issuance of an IHA would not result in substantial impacts to any such places. NMFS's proposed action will not adversely affect that habitat area.

8. *Are the proposed action's effects on the human environment likely to be highly uncertain or involve unique or unknown risks?*

The potential risks regarding the presence of USFWS staff and the effects of the activities are not unique or unknown, nor is there significant uncertainty about impacts. Because the USFWS's activities are of limited duration and in some areas where public access is restricted or minimal, we have determined that 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?*

NMFS's issuance of an IHA is not related to other actions off the Massachusetts coast. The environmental impacts of the proposed activities may result in only temporary changes to the environment.

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 (NRHP) or may cause loss or destruction of significant scientific, cultural, or historical resources?*

The proposed action is not likely to adversely affect districts, sites, highways, structures or objects listed in or eligible in the NRHP, because there are no such places within the Complex. Traditional resources would not be impacted. Potential impacts to cultural resources are considered to be negligible or non-existent.

11. *Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?*

Neither the proposed action nor the underlying action is expected to result in the spread of any nonindigenous species. Sufficient precautionary measures will be taken by the USFWS to ensure that no introduction or spread of such species occurs.

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

Each MMPA authorization applied for under section 101(a)(5) must contain information identified in NMFS' implementing regulations. 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 per the requirements of the MMPA. NMFS' 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 Federal, state, or local law or requirements imposed for the protection of the environment?

The proposed action – NMFS' issuance of an IHA – is conducted in conformance with the MMPA. NMFS has made all appropriate determinations under other applicable statutes, and NMFS' action will not violate any laws or requirements. However, it is the USFWS' responsibility to secure other necessary permits, licenses and approvals.

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?

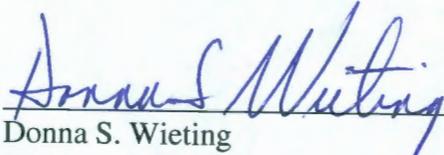
NMFS' issuance of an IHA is specifically designed to reduce the effects of the USFWS' activities to the least practicable impact to marine mammals, through the inclusion of appropriate mitigation and monitoring measures. The issuance of an IHA does not result in significant cumulative impacts when considered with all other past, present, and reasonably foreseeable projects.

Similarly, the cumulative effects of the USFWS' activities and other past, present, and reasonably foreseeable activities are not considered significant. Specifically, the USFWS' proposed action is likely to result in no more than temporary changes to the visual and acoustic environment. Therefore, there is limited potential for those effects to interact cumulatively with the effects of other past, present, and reasonably foreseeable projects. The Cumulative Impacts section of NMFS' EA addresses this topic in greater detail.

Implementation of the proposed action, in conjunction with other past, present, and reasonably foreseeable future actions, would not be expected to result in significant cumulative impacts to the environment. As such, the proposed action will not result in cumulative adverse effects that could have a substantial effect on species in the action area.

DETERMINATION

In view of the information presented in this document, the USFWS's application and the analysis contained in the Final EA, it is hereby determined the issuance of an IHA to the USFWS would not significantly affect the quality of the human environment. In addition, we have analyzed all beneficial and adverse impacts of the action to reach the conclusion of no significant impacts.



Donna S. Wieting
Director, Office of Protected Resources

FEB 24 2017

Date