



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

Tom Eagle  
Acting Project Leader  
Eastern Massachusetts National Wildlife Refuge  
U.S. Fish and Wildlife Service  
73 Weir Hill Road  
Sudbury, MA 01776

Dear Mr. Eagle,

Enclosed is an Incidental Harassment Authorization (IHA) issued pursuant to Section 101(a)(5)(D) of the Marine Mammal Protection Act, to take small numbers of marine mammals, by Level B harassment, incidental to seabird and shorebird monitoring and other research activities in the Eastern Massachusetts National Wildlife Refuge Complex, Massachusetts, from April 1, 2018 to March 31, 2019.

You are required to comply with the conditions contained in the IHA, including all mitigation, monitoring and reporting requirements. Along with mitigation measures to be incorporated, the IHA requires monitoring for the presence and behavior of marine mammals prior to, during, and after all research and monitoring activities.

If you have any questions concerning the IHA or its requirements, please contact Amy Fowler, Office of Protected Resources, at (301) 427-8401.

Sincerely,

A handwritten signature in blue ink that reads "Donna S. Wieting".

Donna S. Wieting  
Director, Office of Protected Resources

Enclosure



Printed on Recycled Paper





## INCIDENTAL HARASSMENT AUTHORIZATION

The U.S. Fish and Wildlife Service (USFWS) 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 marine mammals incidental to seabird and shorebird research and monitoring at the Eastern Massachusetts National Wildlife Refuge Complex (Complex) in Massachusetts, when adhering to the following terms and conditions.

1. This Incidental Harassment Authorization (IHA) is valid from April 1, 2018 to March 31, 2019.
2. This IHA is valid only for activities associated with research activities and human presence (See items 2(a) – (c)) in the Complex.
  - (a) The use of a small vessel to transit to Nomans National Wildlife Refuge (NWR);
  - (b) Research activities (*e.g.*, shorebird and seabird nest monitoring and research; Roseate tern (*Sterna dougallii*) staging count and resighting; Red knot (*Calidris canutus*) stopover study; Northeastern beach tiger beetle (*Cicindela dorsalis*) census; and coastal shoreline change survey) conducted at the Complex; and
  - (c) Human presence.
3. General Conditions
  - (a) A copy of this IHA must be in the possession of the USFWS, its designees, and work crew personnel operating under the authority of this IHA.
  - (b) The species authorized for taking are the gray seal (*Halichoerus grypus atlantica*) and harbor seal (*Phoca vitulina concolor*).
  - (c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). The authorized take limits are shown below:
    - (i) Gray seal: 39,280
    - (ii) Harbor seal: 1,964
  - (d) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.
  - (e) The USFWS shall conduct briefings between marine mammal monitoring team and survey staff prior to the start of all seabird and shorebird monitoring and

when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

- (f) The USFWS may not conduct activities between the dates of December 1, 2018 and March 31, 2019.

#### 4. Mitigation Measures

The holder of this Authorization is required to implement the following mitigation measures:

- (a) Conduct research activities in the Complex between April 1, 2018 and November 30, 2018.
- (b) Ensure that vessel approaches to Nomans NWR will be such that the techniques are the least disturbing to marine mammals. To the extent possible, the vessel shall conduct a slow and control approach to the island as far away as possible from haulouts. USFWS shall avoid or proceed cautiously when operating boats in the direct path of swimming seals that may be present in the area.
- (c) Provide instructions to USFWS staff and team members, and if applicable, to tourists, on appropriate conduct when in the vicinity of hauled out marine mammals. The USFWS research teams shall maintain a quiet working atmosphere by avoiding making unnecessary noise and using hushed voices while near hauled out seals. The USFWS teams shall remain at least 50 meters (m) from seals when possible, and shall choose pathways to study sites that will minimize disturbance to seals.
- (d) Ensure cannon nets shall not be used closer than 100 m from seals.
- (e) Scan the waters surrounding the haulouts for predators (*e.g.*, sharks) before USFWS staff flush seals from the haulouts. If predators are detected, USFWS staff shall not flush any animals.
- (f) If pinniped mothers and pups are observed near the activity sites, USFWS staff shall avoid disturbing them by rescheduling surveys, if possible, or by refraining from activities that may cause disturbance (*e.g.*, large movements or flushing) to mothers and pups.

#### 5. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during research and monitoring surveys. The holder of this IHA is required to:

- (a) Monitor seals when research activities are conducted in the presence of marine mammals.
- (b) Record the date, time, and location (or closest point of ingress) of each of the research activities in the presence of marine mammals.
- (c) Collect the following information for each visit:

- (i) Information on the numbers (by species) of marine mammals observed during the activities, by age and sex, if possible;
- (ii) The estimated number of marine mammals (by species) that may have been harassed during the activities based on the 3-point disturbance scale;
- (iii) Any behavioral responses or modifications of behaviors that may be attributed to the specific activities (*e.g.*, flushing into the water, becoming alert and moving, rafting);
- (iv) The date, location, and start and end times of the event;
- (v) Information on the weather, including the tidal state and horizontal visibility; and
- (vi) Observations of sick, injured or entangled marine mammals, and any tagged, marked, or unusual marine mammals. Photographs shall be taken when possible.

6. Reporting

The holder of this Authorization is required to:

- (a) Report observations of unusual behaviors, numbers, or distributions of pinnipeds, or of tag-bearing carcasses, to NMFS Northeast Fisheries Science Center (508-495-2000).
- (b) Submit a draft report on all monitoring conducted under the IHA within 90 days of completion of research and monitoring surveys to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, 13<sup>th</sup> Floor, Silver Spring, MD 20910. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS. This report must include:
  - (i) A summary of the dates, times, and weather during all research activities;
  - (ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities;
  - (iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to visual and acoustic stimuli associated with the research activities; and
  - (iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.
- (c) Reporting injured or dead marine mammals:

- (i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, the USFWS shall immediately cease the specified activities and report the incident to the Office of Protected Resources (301-427-8401), NMFS, and the Greater Atlantic Regional Stranding Coordinator (978) 282-8478, NMFS. The report must include the following information:
1. Time and date of the incident;
  2. Description of the incident;
  3. Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
  4. Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;
  5. Species identification or description of the animal(s) involved;
  6. Fate of the animal(s); and
  7. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the USFWS to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The USFWS may not resume their activities until notified by NMFS.

- (ii) In the event that the USFWS discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), the USFWS shall immediately report the incident to the Office of Protected Resources, NMFS, and the Greater Atlantic Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the USFWS to determine whether additional mitigation measures or modifications to the activities are appropriate.

- (iii) In the event that the USFWS discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the USFWS shall report the incident to the Office of Protected Resources, NMFS, and the Greater

Atlantic Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. The USFWS shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.
8. Renewals - On a case-by-case basis, NMFS may issue a second one-year IHA without additional notice when 1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or 2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:
  - (a) A request for renewal is received no later than 60 days prior to expiration of the current IHA.
  - (b) The request for renewal must include the following:
    - (i) An explanation that the activities to be conducted beyond the initial dates are either identical to the previously analyzed activities or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements.
    - (ii) 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.
  - (c) 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 remain the same and appropriate, and the original findings remain valid.

  
\_\_\_\_\_  
Donna S. Wieting,  
Director, Office of Protected Resources,  
National Marine Fisheries Service.

APR 13 2018  
\_\_\_\_\_  
Date