

**Finding of No Significant Impact  
on Issuance of an Incidental Harassment Authorization to Statoil Wind U.S. LLC  
for Take of Marine Mammals Incidental to Site Characterization Surveys  
off the Coast of New York**

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 Statoil Wind U.S. LLC (Statoil) 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 for one year from the date of issuance and authorizes takes, by Level B harassment, of marine mammals incidental to conducting geophysical survey investigations in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) (OCS-A 0512) (Lease Area) and along potential submarine cable routes to a landfall location in New York (Submarine Cable Corridor) (collectively the Lease Area and Submarine Cable Corridor are the Project Area).

NMFS's proposed action is a direct outcome of Statoil's request for an IHA for marine site characterization surveys. These activities have the potential to cause marine mammals in the vicinity of the project area to be behaviorally disturbed; therefore, they qualify for an IHA 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 Statoil 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, NMFS prepared an Environmental Assessment (EA) and 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 the EA and this FONSI were completed in accordance with NEPA and the Council on Environmental Quality (CEQ) regulations in 40 CFR §§ 1500-1508.

The EA addresses the potential environmental impacts of two alternatives to meet NMFS's purpose and need:

- Alternative 1 (Preferred Alternative): Under the Preferred Alternative, NMFS would issue the IHA to Statoil to authorize take, by harassment, of marine mammals incidental to the planned survey, taking into account the prescribed means of take, mitigation measures, and monitoring requirements

- Alternative 2 (No Action Alternative): For NMFS, denial of an MMPA authorization constitutes the NMFS No Action Alternative, which is consistent with our statutory obligation under the MMPA to grant or deny incidental take authorization requests and to prescribe mitigation, monitoring, and reporting with any authorizations. Under NMFS's No Action Alternative, NMFS would not issue the IHA, and NMFS assumes Statoil would not conduct their planned survey. The No Action Alternative served as a baseline in the EA against which the impacts of the Preferred Alternative were compared and contrasted.

### 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' 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.

EFH has been identified in the waters near the Project Area for several species of shark, flounder, tuna, hake, pout, monkfish, spearfish, squid, cod, herring, bluefish, bass, skate, scup, and butterfish. No habitat areas of particular concern were identified for this area. In accordance with the EFH requirements of the MSA, NMFS notified the Greater Atlantic Regional Office (GARFO) about this activity, and EFH consultation was not considered necessary for issuance of this 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.)?*

The authorization of marine mammal take incidental to Statoil's activities will not have a substantial impact on biodiversity or ecosystem function.

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 acoustic disturbance from high-resolution geophysical (HRG) survey activities. Bottom disturbance associated with the HRG survey activities may include grab sampling to validate the seabed classification obtained from the multibeam echosounder / sidescan sonar data. Impact on marine mammal habitat from these activities will be temporary, insignificant, and discountable.

NMFS does not anticipate that the proposed activities would result in any permanent effects on the habitats used by the marine mammals in the project area, including the food sources they use (*i.e.*, fish and invertebrates). 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. Project activities are planned to occur off the coast of New York. Human activities in this area are mostly limited to shipping, which will not be impacted by survey activities.

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 an MMPA authorization requires compliance with the ESA. Within the project area, the fin whale, sperm whale, and North Atlantic right whale are listed as endangered under the ESA. Under section 7 of the ESA, Bureau of Ocean Energy Management (BOEM) consulted with the NMFS Greater Atlantic Fisheries Office (GARFO) on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. NMFS GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the fin whale, sperm whale, or North Atlantic right whale. The Biological Opinion can be found online at: [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable). NMFS is also consulting internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Upon issuance of the IHA, the Biological Opinion will be amended to include an incidental take exemption for these marine mammal species, as appropriate.

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

- (1) Marine mammal exclusion zones;
- (2) Ramp-up procedures;
- (3) Shutdown procedures;
- (4) Visual and passive acoustic monitoring; and
- (5) Vessel strike avoidance measures.

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

NMFS does not anticipate that marine mammal take by injury, serious injury, or mortality would occur and expects that takes would be limited to behavioral harassment 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 all species or stocks. The impacts are expected to be temporary in nature, negligible, and would not result in substantial impact to marine mammals or to their roles 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 Statoil's activities will be limited to temporary behavioral harassment 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 (Statoil's activities). There will not be significant impacts to natural resources in the project area. During the public comment period on the proposed IHA, NMFS received comments from the Marine Mammal Commission and from a group of non-governmental organizations, 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 relatively short duration, public recreational uses that may occur in the action area will not be significantly affected. Traditional resources would not be impacted. Statoil's activities will occur only within the Project area, away from any structures, and will not significantly degrade the existing environment. The goal of Statoil's activities is to support the characterization of the existing seabed and subsurface geological conditions in the Project Area for an offshore wind farm. 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.

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

The issuance of this IHA to Statoil will not result in environmental effects on the human environment that are uncertain, unique or unknown because Statoil's activities are of limited duration, and in a small geographic location. In addition, the proposed activities are well-understood and documented; prior authorizations and analyses demonstrates the issuance of an incidental take authorization (ITA) for this type of activity only affects the marine mammals that are the subject of the authorization.

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

The incremental impact of an IHA issued for the proposed site characterization survey activities would not be expected to result in a significant cumulative impact to marine mammals, taking into account past, present, and reasonably foreseeable future activities. The potential impacts to marine mammals, their habitats, and the human environment in general are expected to be minimal, based on the limited and temporary footprint of the proposed project and the mitigation and monitoring requirements of the IHA. NMFS's issuance of an IHA is not related to other actions off the New York 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 Project Area. 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 may be taken by Statoil 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?*

The issuance of an IHA would not establish a precedent or represent a decision in principle about future actions. NMFS's actions under MMPA Section 101(a)(5)(D) are considered individually and are based on the best available scientific information, which is continuously evolving, and requests for IHAs are evaluated on their own merits relative to the criteria established in the MMPA and 50 CFR Part 216 on a case-by-case basis. Therefore, issuance of an IHA to a specific entity for a given activity does not guarantee or imply that NMFS will issue future authorizations upon request in relation to similar activities. For these reasons, the issuance of an IHA to Statoil would not set a precedent.

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?*

NMFS's compliance with environmental laws and regulations is based on NMFS's proposed action and the nature of the applicant's proposed activities. The issuance of this IHA would not violate any federal laws for environmental protection, as NMFS has engaged in consultation and

conducted analyses as necessary to ensure compliance with relevant environmental protection laws. NMFS's Office of Protected Resources initiated consultation under section 7 of the ESA with NMFS GARFO to consider the effects of issuance of the IHA to Statoil. In addition, BOEM consulted with NMFS GARFO under section 7 of the ESA for commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. NMFS GARFO issued a Biological Opinion to BOEM on April 10, 2013 concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of fin whale, sperm whale or North Atlantic right whale or adversely modify critical habitat. There are no other environmental laws, regulations, consultations, federal permits or licenses applicable to NMFS for issuance of this IHA to Statoil. However, it is Statoil's responsibility to secure any other necessary permits, licenses and approvals.

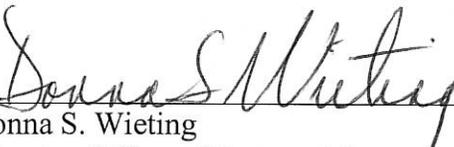
*14. Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?*

NMFS's issuance of an IHA is specifically designed to reduce the effects of Statoil's activities to the least practicable impact to marine mammals, through the inclusion of appropriate mitigation and monitoring measures. While the ESA-listed whale species in the project area have experienced substantial adverse cumulative impacts from a range of sources (as described in the EA for this action), the issuance of this IHA and Statoil's underlying activities, will not further contribute to these cumulative impacts when considered with all other past, present, and reasonably foreseeable projects. Statoil's proposed action is likely to result in no more than temporary changes to the 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' Environmental Assessment (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, Statoil's application and the analysis contained in the Final EA, it is hereby determined the issuance of an IHA to Statoil 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.

  
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Donna S. Wieting  
Director, Office of Protected Resources

APR 24 2018  
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Date