



MARINE MAMMAL COMMISSION

17 October 2011

Mr. P. Michael Payne, Chief
Permits, Conservation, and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application submitted by Cape Wind Associates seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act to take small numbers of marine mammals by harassment. The taking would be incidental to geophysical and geotechnical surveys in Nantucket Sound off Massachusetts from fall 2011 through fall 2012. The Commission also has reviewed the National Marine Fisheries Service's 14 September 2011 *Federal Register* notice (76 Fed. Reg. 56735) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. The Commission offers the following recommendations and rationale.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service—

- require Cape Wind Associates to provide further justification for the use of 17 log R to calculate harassment zones for both shallow- and medium-penetration sub-bottom profilers;
- require Cape Wind Associates to recalculate the buffer zone for the shallow-penetration sub-bottom profiler based on the 120-dB re 1 μ Pa threshold and, if two or more survey vessels are used simultaneously, account for overlap of the ensonified areas in the calculation of the revised buffer zones;
- require Cape Wind Associates to specify the zone of exposure used to estimate the number of takes for each species and ensure that the zone is used consistently for all species;
- require Cape Wind Associates to re-estimate the number of the takes for each species (1) using the revised harassment zone for the shallow-penetration sub-bottom profiler, (2) accounting for the possibility that buffer zones from two or more vessels would overlap, and (3) re-calculating density estimates based on haul-out counts;
- require Cape Wind Associates to re-estimate the number of takes for each species from medium penetration sub-bottom profilers (1) accounting for the sound that would be generated from multiple survey vessels and (2) re-calculating density estimates based on haul-out counts;
- require Cape Wind Associates to monitor the presence and behavior of marine mammals during all proposed geophysical and geotechnical survey activities (i.e., operation of sub-bottom profilers, drilling, and vibracore sampling);

- require observers to gather the necessary data and work with Cape Wind Associates and other applicants to assess the effectiveness of soft-starts as a mitigation measure;
- require Cape Wind Associates to cease all operations when the exclusion zone is obscured by fog or poor lighting conditions;
- provide additional justification for its preliminary determination that the proposed monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified exclusion and buffer zones; and
- condition the incidental harassment authorization to require Cape Wind Associates to (1) report immediately all injured or dead marine mammals to the Service and local stranding network and (2) suspend the construction activities if a marine mammal is seriously injured or killed and the injury or death could have been caused by those activities (e.g., a fresh carcass)—if supplemental measures are not likely to reduce the risk of additional serious injuries or deaths to a very low level, the Service should require Cape Wind Associates to obtain the necessary authorization for such takings under section 101(a)(5)(A) of the Marine Mammal Protection Act before resuming its survey activities.

RATIONALE

Cape Wind Associates proposes to conduct geophysical and geotechnical surveys in preparation for the planned installation of 130 wind turbine generators in Nantucket Sound. The surveys would cover 110 km², would begin in the fall of 2011, and would continue for up to five months. However, the incidental harassment authorization being proposed by the Service would be issued for a full year to accommodate possible schedule changes because of weather and other factors. The surveys are to identify any submerged cultural resources and obtain geological data.

For the geophysical survey, Cape Wind Associates would collect high-resolution data along 4,292 km of track lines using a singlebeam depth sounder, multibeam depth sounder, side scan sonar, magnetometer, shallow-penetration sub-bottom profiler, and medium-penetration sub-bottom profiler. The shallow-penetration sub-bottom profiler (i.e., “chirp”) is a non-impulsive intermittent sound source that operates between 2 and 16 kHz at a source level of 201 dB re 1 μ Pa at 1 m. The medium-penetration sub-bottom profiler (i.e., “boomer”) is an impulsive sound source that operates between 0.5 and 20 kHz at a source level of 205 dB re 1 μ Pa at 1 m. Sounds emitted from the side scan sonar and the depth sounders are outside the range of marine mammal hearing.

For the geotechnical survey, Cape Wind Associates would acquire soil borings and/or conduct cone penetrometer tests using a truck-mounted drill rig and a pneumatic vibracorer or vibracore sampler. Soil borings and cone penetrometer tests would occur at multiple wind turbine generator locations. In addition, the applicant would collect one vibracore at the proposed locations of each wind turbine generator. The soil boring rig is considered a non-impulsive, continuous sound source that operates at 120 Hz at a source level of 118 to 145 dB re 1 μ Pa at 1 m. The applicant does not provide a frequency range or source level for the vibracorer, indicating only that the device produces non-impulsive, continuous sound comparable to the frequency of sound generated by the

soil boring rig. The surveys would involve multiple vessels that would operate during daylight hours only. The applicant estimates that survey activities would take approximately 137 days.

The Service preliminarily has determined that the proposed activities could result in a temporary modification in the behavior of small numbers of up to five species of marine mammals, but that any impact on the affected species would be negligible. The Service does not anticipate any take of marine mammals by death or serious injury. It believes that the potential for temporary or permanent hearing impairment will be at the least practicable level because of Cape Wind Associates' proposed mitigation and monitoring measures, which include—

- using Service-approved observers to monitor a 500-m exclusion zone for 60 minutes prior to, during, and for 60 minutes after geophysical surveys;
- shutting down or delaying the use of the sound source if a marine mammal is sighted within or approaching the exclusion zone, until the animal moves outside the exclusion zone or is not re-sighted for 60 minutes;
- using a “soft-start” technique at the beginning of each geophysical survey;
- conducting behavioral monitoring from the survey vessel at least twice a week to estimate the number of takes and evaluate behavioral impacts outside the 500-m exclusion zone; and
- submitting a final report to the Service.

Safety zones and takes

Exclusion zones are intended to protect marine mammals that are close enough to a sound source that they potentially could be injured (i.e., taken by Level A harassment) or killed by exposure to the sound. Buffer zones are used to delineate the area in which Level B harassment may occur and to estimate the number of marine mammals that have been taken. Both zones are established based on the generation and propagation of sound from the source and general assumptions about the responses of marine mammals to sounds at specific sound pressure levels, the latter being based on limited observations of marine mammal responses under known conditions. The Service has concluded, and the Commission agrees, that the proposed surveys have the potential to take marine mammals by Level B harassment.

In the *Federal Register* notice, the Service stated that the calculation of harassment zones for the sub-bottom profilers was based on a practical spreading model. Practical spreading models typically use 15 log R (i.e., dissipation rate of 4.5 dB per doubling of distance) to estimate the received sound levels at varying distances. However, the applicant actually used 17 log R to calculate the harassment zones for the sub-bottom profilers. The application states that the use of 17 log R was based on the Service's direction and discussion provided in the Cape Wind Noise Report. When reviewing that report, the Commission found that it did not discuss the use of 17 log R, and no further justification for its use was provided elsewhere. To better understand why the proposed model was used, the Marine Mammal Commission recommends that the National Marine Fisheries Service require Cape Wind Associates to provide further justification for the use of 17 log R to calculate harassment zones for both shallow- and medium-penetration sub-bottom profilers.

Cape Wind Associates proposed establishing Level A and Level B harassment zones based on the 180- and 160-dB re 1 μ Pa thresholds, respectively. However, the shallow-penetration sub-bottom profiler has a pulse repetition rate of 4 pulses per second, which the Service indicated is a “non-impulsive, intermittent sound source.” The Service recently clarified that for non-impulsive sound sources, whether continuous or intermittent, Level B harassment is presumed to begin at received levels of 120 dB re 1 μ Pa (76 Fed. Reg. 43639). Consistent with that guidance, the harassment zone should be calculated based on that threshold rather than 160 dB re 1 μ Pa.

Cape Wind Associates also notes that multiple survey vessels may be used for the high-resolution geophysical survey. If the sound generated by two or more of the survey vessels overlap, that overlap would change the received sound levels in at least some parts of the ensonified areas. The Service has indicated that if two survey vessels are used, they would work at least 24 km apart and the sound generated by them would not overlap. However, that assessment was based on the idea that the buffer zone for the shallow-penetration sub-bottom profiler was correctly calculated using a 160-dB re 1 μ Pa threshold rather than 120 dB re 1 μ Pa. Once the buffer zone around each survey vessel is recalculated to reflect the lower threshold, the ensonified areas would overlap.

To address these concerns, the Marine Mammal Commission recommends that the National Marine Fisheries Service require Cape Wind Associates to recalculate the buffer zone for the shallow-penetration sub-bottom profiler based on the 120-dB re 1 μ Pa threshold and, if two or more survey vessels are used simultaneously, account for overlap of the ensonified areas in the calculation of the revised buffer zones.

Cape Wind Associates has not specified in its application the actual ensonified area or zone of exposure that was used to estimate the number of takes that could occur incidental to the proposed surveys. If one attempts to determine this area through back-calculations using the information provided, the zone of exposure does not appear to be consistent from species to species. As noted above, the applicant stated that the zone of exposure was based on 160 dB re 1 μ Pa for both types of sub-bottom profilers, rather than 120 dB re 1 μ Pa for the shallow-penetration sub-bottom profiler. To enable the Service, the Commission, and others to evaluate the accuracy of the take estimates, the Marine Mammal Commission recommends that the National Marine Fisheries Service require Cape Wind Associates to specify the zone of exposure used to estimate the number of takes for each species and ensure that the zone is used consistently for all species.

Density estimates for pinnipeds (i.e., grey and harbor seals) in the project area were based on at-sea sightings from an aerial survey flown by Cape Wind Associates. Such surveys are known to be negatively biased. Cape Wind Associates noted that no harbor seals were sighted during those aerial surveys but haul-out counts were available for both pinniped species. It is not clear why the haul-out counts were not used in the density estimates because all pinnipeds at the haul-out sites have the potential to be in the survey area at some time. This is especially true if the buffer zone is recalculated at the 120-dB re 1 μ Pa threshold (e.g., approximately 58 km, based on 17 log R), as this would encompass areas adjacent to the haul-out sites.

Also, the fact that the surveyors did not detect any harbor seals in the area, despite the seals using haulout sites nearby, could be explained in several ways: (1) they do not use the waters where the project is proposed; (2) they were present in the survey area but were not observed by the surveyors, were misidentified as grey seals, or were considered “unidentified” seals; (3) the surveyors did not survey the entire area that will be ensonified at 120 dB re 1 μ Pa or greater; or (4) seals use the area, but only seasonally. One way to discriminate between these would be to check with the National Marine Fisheries Service or other organizations or scientists who may have conducted surveys in that area to determine if their surveys produced the same results. In any case, the prudent course of action would be to ensure that observers on board the survey vessels collect information on harbor seal sightings to provide a better basis for estimating the number of takes during the surveys.

To ensure a more accurate estimate of the number of takes that may occur, the Marine Mammal Commission recommends that the National Marine Fisheries Service require Cape Wind Associates to re-estimate the number of takes for each species (1) using the revised harassment zone for the shallow-penetration sub-bottom profiler, (2) accounting for the possibility that buffer zones from two or more vessels would overlap, and (3) re-calculating density estimates based on haul-out counts. If, however, the applicant intends to use multiple survey vessels but the buffer zones do not overlap (i.e., only medium penetration sub-bottom profilers would be used), the applicant still has underestimated the number of takes for all species because the model method accounted for only one survey vessel. Therefore, the Marine Mammal Commission further recommends that the National Marine Fisheries Service require Cape Wind Associates to re-estimate the number of takes for each species from medium penetration sub-bottom profilers (1) accounting for the sound that would be generated from multiple survey vessels and (2) re-calculating density estimates based on haul-out counts.

Mitigation and monitoring measures

Under the proposed incidental harassment authorization, Cape Wind Associates must designate at least one on-site, Service-approved observer to monitor the 500-m exclusion zone for marine mammals for 60 minutes before, during, and for 60 minutes after any geophysical survey activity. In addition, at least one Service-approved observer would conduct behavioral monitoring from the survey vessel at least twice a week to estimate the number of takes and evaluate behavioral impacts to marine mammals from geophysical survey activities beyond the 500-m exclusion zone. The Service does not indicate whether it would require observers during the geotechnical survey (i.e., drilling or vibracore sampling), although the applicant stated that a 500-m exclusion zone would be established around the drilling rig. By obtaining an incidental harassment authorization, the applicant would be required to report the number of marine mammals harassed incidental to all proposed activities.

The Commission believes it would be prudent to require monitoring of marine mammal behavior during all proposed activities, including drilling and vibracore sampling as well as geophysical surveys. The impacts of vibracore sampling are not well studied. Because marine mammals react to disturbance in a number of different ways, continuous monitoring is necessary to

ensure that unexpected reactions are detected, documented, and evaluated. In contrast, intermittent and infrequent observations may not provide the data needed to evaluate accurately the full impacts of the proposed activities. For example, if monitoring does not occur when marine mammals are most likely to be present, then the resulting observations may not be indicative of actual impacts and the number of takes may be under-reported. Finally, monitoring during all project activities is the only way for the applicant and the Service to be confident that they are causing the least practicable impact on marine mammal species and stocks. For all of these reasons, the Marine Mammal Commission recommends that the National Marine Fisheries Service require Cape Wind Associates to monitor the presence and behavior of marine mammals during all proposed geophysical and geotechnical survey activities (i.e., operation of sub-bottom profilers, drilling, and vibracore sampling).

The Commission has noted in previous correspondence that the effectiveness of soft-start as a mitigation measure has yet to be empirically verified. As with the ramp-up of airguns, the Service should not assume, absent empirical verification, that using soft-starts when conducting high-resolution geophysical surveys constitutes an effective mitigation method. Such verification may require not only collecting opportunistic data but also designing and conducting studies to test specific hypotheses regarding the utility of soft-starts and analysis of responses of the various species encountered. Because the surveys have the potential to harass marine mammals, and the efficacy of soft-starts has yet to be determined, the Marine Mammal Commission repeats its recommendation that the National Marine Fisheries Service require observers to gather the necessary data and work with Cape Wind Associates and other applicants to assess the effectiveness of soft-starts as a mitigation measure.

The Commission also has commented previously that visual monitoring is not effective during periods of bad weather. Although the application specifies that when the 500-m exclusion zone is being monitored it “may not be obscured by fog or poor lighting conditions,” the Service has not proposed prohibiting operations at times with poor lighting or reduced visibility and has not identified alternative mitigation and monitoring measures that would be effective under these conditions. The Marine Mammal Commission recommends that the National Marine Fisheries Service correct this oversight and require Cape Wind Associates to cease all operations when the exclusion zone is obscured by fog or poor lighting conditions.

In addition, it is not clear what criteria and process will be used to determine whether lighting or weather conditions are obscuring the exclusion zone to the degree that operations must cease. This is another concern that the Commission has raised previously. As such, the Marine Mammal Commission recommends that the National Marine Fisheries Service provide additional justification for its preliminary determination that the proposed monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified exclusion and buffer zones. At a minimum, such justification should (1) identify those species that it believes can be detected with a high degree of confidence using visual monitoring only, (2) describe detection probability as a function of distance from the vessel, and (3) describe changes in detection probability under various sea state and weather conditions and light levels. If such information is not available, the Service and the applicant should conduct the studies needed to

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describe the efficacy of existing monitoring methods and develop alternative or supplemental methods to address current shortcomings.

Level A harassment and mortality

Cape Wind Associates is not seeking authorization to take marine mammals by serious injury or mortality, but unanticipated injuries or deaths of marine mammals could occur. The *Federal Register* notice does not indicate if the applicant would be required to report any injured or dead marine mammals to the Service—a standard monitoring and reporting measure. The Marine Mammal Commission therefore recommends that the National Marine Fisheries Service condition the incidental harassment authorization to require Cape Wind Associates to (1) report immediately all injured or dead marine mammals to the Service and local stranding network and (2) suspend survey activities if a marine mammal is seriously injured or killed and the injury or death could have been caused by those activities (e.g., a fresh carcass). The Service should investigate the incident to assess the cause and full impact (e.g., the types of injuries, the number of animals involved) and to determine what modifications in survey activities may be needed to avoid additional injuries or deaths. Full investigation of such incidents is essential to provide information regarding the potential impact of geophysical and geotechnical surveys on marine mammals. If supplemental measures are not likely to reduce the risk of additional serious injuries or deaths to a very low level, the Service should require Cape Wind Associates to obtain the necessary authorization for such takings under section 101(a)(5)(A) of the Marine Mammal Protection Act before resuming its survey activities.

Please contact me if you have questions about the Commission's recommendations or rationale.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Ragen" followed by a flourish and the letters "for".

Timothy J. Ragen, Ph.D.
Executive Director

cc: Mary Colligan, National Marine Fisheries Service Northeast Regional Office



October 14, 2011

VIA FEDEX AND ELECTRONIC MAIL

P. Michael Payne
Chief, Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Mr. Payne:

The Alliance to Protect Nantucket Sound (Alliance) together with the Public Employees for Environmental Responsibility, Lower Laguna Madre Foundation, Cetacean Society International, Pegasus Foundation, Oceans Public Trust Initiative, and Barbara Durkin as a private citizen, submits these comments in response to the National Marine Fisheries Service (NMFS) notice on the incidental harassment authorization (IHA) application for *Cape Wind's High Resolution Survey in Nantucket Sound, MA*. 76 Fed. Reg. 56,735 (September 14, 2011) (*FR Notice*).

INTRODUCTION

The Alliance is a nonprofit environmental organization dedicated to the long-term preservation of Nantucket Sound, one of the most valuable marine ecosystems in the country and a significant habitat for a wide range of ecologically and economically important species, including marine mammals.

We have corresponded with NMFS and the National Oceanic and Atmospheric Administration (NOAA) in recent months regarding the incidental take of marine mammals for the proposed Cape Wind project under the Marine Mammal Protection Act (MMPA).¹ As discussed in our previous comments, the applicant is seeking, and NMFS has noticed, a legally-defective IHA by segmenting the singular, specified activity of the Cape Wind project into smaller pieces to avoid the issuance of Letter of Authorization (LOA) regulations.

As discussed in these comments, NMFS cannot issue an IHA for the proposed high resolution geophysical (HRG) survey. The HRG surveys are part of the overall Cape Wind project, and the

¹ Previous correspondence on this issue includes our letters of March 1, 2011, April 25, 2011, August 5, 2011 and October 5, 2011 and agency responses of April 1, 2011, May 16, 2011, August 26, 2011 and September 30, 2011, all of which are incorporated by reference in this letter.

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substantial number of takes that will occur over the period of many years involved in the project can only be authorized through LOA regulations under section 101(a)(5)(A)(i). 16 U.S.C. § 1371(a)(5)(A)(i). For this reason, NMFS must deny the IHA application.

The Cape Wind application also cannot be acted upon until NMFS releases an environmental assessment (EA) for public comment. Finally, there are a number of technical deficiencies with the Cape Wind application that must be remedied before final action can be taken.

DISCUSSION

I. Cape Wind Cannot Obtain an IHA on the Basis of its Application

A. MMPA Incidental Take Authority

The MMPA provides two ways to authorize the take of small numbers of marine mammals incidental to otherwise lawful activities that are not commercial fishing. Both sources of authority are limited to a “specified activity” that occurs within a “specified geographic area.” 16 U.S.C. § 1371(a)(5)(A), (D).

Activities that meet these criteria can be subject to either a one-year IHA, 50 C.F.R. § 216.107, or to five-year regulations under which LOAs would be issued. *Id.* § 216.106. An IHA may only be used for takes by harassment. *Id.* § 216.107(a). If the specified activity would only involve take by harassment, but last for longer than one year, LOA regulations must be developed. *Id.*

To obtain an IHA or an LOA under the regulations, the applicant for the specified activity must establish, and NMFS must find, that the authorized take will have a “negligible impact on such species or stock” 16 U.S.C. § 1371(a)(5)(A)(i)(I).

IHAs and LOA rules must also include requirements for monitoring and reporting the impacts of the specified activity on marine mammals. 50 C.F.R. §§ 216.105(b)(3), 216.108. In addition, they must state the (1) permissible methods of take, (2) means of effecting the least practicable adverse impact on the species and its habitat and availability for subsistence use, and (3) monitoring and reporting requirements. *Id.* §§ 216.105(b), 216.107(a).

The choice of incidental take authorization is very important. An IHA will consider only the takes that occur over the course of one year to determine whether the impacts of the “specified activity” on marine mammals are negligible. Of course, an activity like Cape Wind that will occur continuously over several years will have greater impacts when considered in its entirety than it will for just a component of the activity conducted during a single year. To determine if there is a “negligible impact,” it is therefore necessary to consider the entire activity, not just a subset of the activity defined by one-year increments.

In addition, an IHA is subject to an expedited procedure that provides for limited public

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involvement. An IHA allows only a 30-day comment period, 50 C.F.R. § 216.107(a), and is subject to an overall deadline of 120 days from the date of a complete application. *Id.* § 216.108(f)(1); 16 U.S.C. § 1371(5)(D)(iii). LOA regulations, by contrast, are not subject to a decision deadline and must go through notice and comment rulemaking, which invariably results in more detailed public review. 50 C.F.R. § 216.104. The method of take authorization used therefore has very important consequences for the protection provided to marine mammals and the level of public involvement.

The Alliance firmly believes that a segmented approach should not be used for offshore wind energy projects, such as the proposed Cape Wind energy plant. In these cases, the action agency, Bureau of Ocean Energy Management (BOEM), approves the project in its entirety, unlike offshore oil and gas exploration, where the project is approved in phases. Therefore, the “specified activity” under the MMPA is the entire offshore wind energy project, and NMFS must prescribe regulations looking at the entire project under section 101(a)(5)(A)(i).

B. The Entire Cape Wind Project is the “Specified Activity” for the Purposes of Obtaining MMPA Take Authorization

As noted above, MMPA incidental take authority applies to a “specified activity.” In this case, the specified activity is the entire Cape Wind project. That project has now been authorized *in its entirety* by the federal and state governments (except for MMPA incidental take authorization).² The Cape Wind developer has declared in federal court that it has been prepared to begin construction from *as early as last month*. Thus, from the perspective of the applicant, the *entire project* is ready to go into construction and, presumably, operation (if it is ever built).

Despite what the applicant describes as the ready-to-construct status of the project, Cape Wind is attempting to segment its development activity into small pieces for purposes of MMPA incidental take authorization. In addition to the current application for the HRG work, on April 14, 2011, Cape Wind submitted a draft application for *partial construction* of one component of the overall project – the so-called “electrical service platform” (ESP). (Exhibit 1). As that application indicates, Cape Wind appears to plan on piecemeal MMPA compliance, year after year, under multiple IHAs, until the project is built.

As the reviewing NMFS official, Michelle Magliocca, properly explained to Cape Wind, the ESP platform and the project, scheduled to be constructed over at least three years according to the application, could not be authorized under a one-year IHA (Exhibit 2). Ms. Magliocca correctly stated that construction over multiple years would be subject to LOA regulations, which are effective for five years. Ms. Magliocca incorrectly suggested, however, that marine mammal incidental take during the lengthy construction phase could be covered under successive one-year IHAs.

² The state and federal decisions in favor of the project are currently subject to 11 legal challenges in four different forums.

To the contrary, the specified activity of the Cape Wind project can be considered for MMPA purposes *only* under LOA regulations. The HRG surveys are part of that specified activity. Certainly, even if the survey work could on some basis be segregated from the rest of the project for MMPA purposes, *the construction phase can in no way be broken down into annual increments* so that Cape Wind can rely on the more simplistic, expedited IHA form of incidental take authorization. NMFS needs to advise Cape Wind of that determination *now*.

The legislative history of the MMPA, case law, and NMFS's own practice in issuing IHAs and LOAs all point to the need for Cape Wind to apply for a full LOA rule in this context.

When Congress created the MMPA, it developed two innovative legal features. First, it included a conservative presumption in favor of species protection; in cases of doubt or ambiguity, decisions would favor marine mammal species. Second, it assigned the burden of proof to the party seeking an authorization to take or import the species, such that activities that disturb, capture, injure, or kill marine mammals will be authorized only if the requesting party sufficiently demonstrates that its activities will not disadvantage the species, harm the marine ecosystem, or result in avoidable pain to the animal. H.R. Rep. No. 92-707, at 18, 24 (1971); 118 Cong. Rec. S. 15680 (daily ed. Oct 4, 1971) (statement of Sen. Packwood). The Act's mandate is "to proceed knowledgeably and cautiously." *Comm. For Humane Legislation v. Richardson*, 414 F. Supp. 297, 307 n.24 (D.D.C. 1976) (quoting a House Committee Report on H.R. 10420), *aff'd*, 540 F.2d 1141, 1148 (D.C. Cir. 1976).

According to the legislative history of the 1981 MMPA amendments, a "specified activity" occurs when "the anticipated effects" of all phases of the action under consideration are "substantially similar." H.R. Rep. No. 97-228, at 19 (1981), *reprinted in* 1981 U.S.C.C.A.N. at 1469. For example, "outer continental shelf oil and gas development" is too "broad and diverse" to be a specified activity. *Id.*

The legislative history acknowledges, however, that discrete projects subject to full authorization by the action agency, qualify as "specified activities." Using the offshore oil and gas context for an example, the legislative history indicates that "seismic exploration" or "core drilling" would be specified activities. *Id.* Each of those activities is a stand-alone action, independent of any other phases of oil and gas development approval, and the nature of the effects on marine mammals are substantially similar.

By contrast, the HRG surveys for Cape Wind are not independent actions subject to separate approval. They are part and parcel of the singular Cape Wind project. In addition, the "anticipated effects" are substantially similar, at least according to the applicant, involving the effects of noise on marine mammals and the potential for harassment caused by vessel activity.

This interpretation has been upheld in *Center for Biological Diversity v. Kempthorne*, 588 F.3d 701, 709 (9th Cir. 2009), where the court upheld the U.S. Fish and Wildlife Service LOA regulations for OCS oil and gas activities in the Beaufort Sea despite plaintiff's contention that the activities were too broad to constitute a "specified activity." The Ninth Circuit reached this conclusion because no showing had been made that any specific stage of development had a different impact than any other stage of development. *Id.* at 709. Cape Wind has the same

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problem. It has not shown any dividing lines or differences in effects exist between the action it now seeks MMPA authorization for – the survey work – and subsequent phases of construction. And, for sure, it has made no showing for its April 14 application for ESP construction, to distinguish that work, and its impacts, from subsequent phases of construction.

NMFS must administer the MMPA for the “benefit of the protected species rather than for the benefit of commercial exploitation.” *Committee for Humane Legislation v. Richardson*, 540 F. 2d 1141, 1148 (1976) (citing H.R. Rep. No. 92-707). And any decision “must be consistent with the MMPA ‘immediate goal’” of reducing incidental take or serious injury to marine mammals to “insignificant levels approaching zero mortality and serious injury rate.” *Kokechik Fishermen’s Ass’n. v. Sec’y of Commerce*, 839 F.2d 795, 801 (1988) (citing 16 U.S.C. § 1371(a)(2)). Congress’ intent was to “insist that the management of the animal populations be carried out with the interests of the animals as the prime consideration.” H.R. Rep. No. 92-707, at 18. Therefore, the Secretary of Commerce must first look at the “interest in maintaining healthy populations of marine mammals” when balancing competing interests. *Id.* at 802; *Committee for Humane Legislation, v. Richardson*, 540 F. 2d at 1151 n.39; see H.R. Rep. No. 92-707, at 24 (1971) (The House Merchant Marine and Fisheries Committee intended to “build such a conservative bias into the [MMPA]”); 118 Cong. Rec. S. 15680 (daily ed. Oct 4, 1971) (statement of Sen. Packwood) (“Scientists generally will state that our level of knowledge of marine mammals is very low. . . . Barring better and more information, it would therefore appear to be wise to adopt a cautious attitude toward the exploitation of marine mammals.”).

When these principles are applied, NMFS must adopt an interpretation of its section 101(a)(5) incidental take authority to treat the entire Cape Wind project as the “specified activity” and apply the LOA regulation requirement for all phases of survey and construction.³ Any other approach will fail to evaluate the full impact of the project and give insufficient protection to the many marine mammals that will be subjected to take in favor of expediting the development of the Cape Wind project.⁴ NMFS cannot allow for such a result and must deny the application.

³ By letter of August 26, 2011, NMFS Director Schwaab suggested that when only harassment is involved, an IHA is the appropriate incidental take mechanism. Section 101(a)(5) does not note such a distinction. In fact, NMFS practice shows that LOAs frequently have been used for takes by harassment only. Of the 56 LOAs NMFS has authorized since 1995, 45 LOAs covered only harassment. (Exhibit 3).

⁴ As Cape Wind has made clear, it is rushing its federal approvals to meet the deadlines for time-limited federal subsidies. For example, Cape Wind has expressed its desire to obtain the section 1603 cash grant tax credit payment. To do so, it must begin construction by the end of this calendar year. Of course, it cannot do so without MMPA incidental take authorization. If Cape Wind were to apply for LOA regulations, it could not meet this deadline. Hence, the choice of a segmented IHA approach appears deliberately calculated to meet a financial deadline, rather comply with the MMPA. As the MMPA legislative history makes clear, and as the courts have confirmed, the economic interests of those parties seeking take permission must take a backseat to the protection of marine mammals. *Committee for Humane Legislation v. Richardson*, 540 F. 2d at 1148 (citing H.R. Rep. No. 92-707).

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II. A Public Comment Period is Required for the EA

NMFS states that an EA considering the “direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from issuance of the [Cape Wind] one-year IHA” will be prepared. 76 Fed. Reg. 56,742. Unfortunately, the EA has not been made available before the close of the IHA comment period. The Alliance has been informed by NMFS that the EA will be based, in part, on comments received during the comment period on the IHA and that no comments will be allowed on the EA itself. Following this course of action will violate the National Environmental Policy Act (NEPA) and result in an inadequate record for a decision on the IHA. Due to the project’s substantial environmental controversy, which has attracted the attention of national and local environmental organizations for nearly ten years and is the subject of litigation, NMFS should solicit public input on the draft EA. 40 C.F.R. §§ 1506.6(c)(1), 1500.2(d).⁵

The purpose of making federal agencies use an EA or EIS is to ensure agencies are taking a “hard look” at the potential environmental impacts and alternatives “as part of the agency’s process of deciding whether to pursue a particular federal action.” *Baltimore Gas and Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 100 (1983). Unless the EA is released for public comment, this core principle of NEPA will be violated.

The Council on Environmental Quality (CEQ) NEPA regulations instruct agencies “to the fullest extent possible . . . [to] encourage and facilitate public involvement in decisions which affect the quality of the human environment.” 40 C.F.R. § 1506.6(d).

The regulations also direct agencies to “make diligent efforts to involve the public in preparing and implementing their NEPA procedures.” *Id.* § 1506.6(a). Additionally, CEQ instructs agencies “to the fullest extent possible . . . [to] encourage and facilitate public involvement in decisions which affect the quality of the human environment.” *Id.* § 1506.6(d). To “facilitate public involvement,” agencies “shall solicit appropriate information from the public” § 1506.6(d), by “[p]roviding public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.” *Id.* § 1506.6(b).

CEQ further instructs agencies preparing EAs to “involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessment” *Id.* § 1501.4. If the federal action impacts the local environment, then notice must be given to “potentially interested community organizations.” *Id.* § 1506(b)(3)(vi). CEQ provides further guidance regarding EAs stating, “[EAs] must be available to the public” because the objective of facilitating public involvement “is to notify all interested or affected parties Repeated failure to reach the

⁵ The agency’s decision to prepare an EA, instead of a full Environmental Impact Statement (EIS), is itself troubling. Given that Cape Wind’s application for a permit is the first for an offshore wind power facility under the MMPA, NMFS’s decision here will certainly “establish a precedent for future actions with significant effects,” and the agency should therefore prepare an Environmental Impact Statement. 40 C.F.R. § 1508.27(b)(6).

interested or affected public would be interpreted as a violation of the regulations.” 46 Fed. Reg. 18,026, 18,037 (Mar. 16, 1981).

Courts have held that, pursuant to CEQ regulations, agencies preparing EAs must, at a minimum, solicit and allow meaningful public involvement in the development of the EA. *See, e.g., Sierra Nevada Forest Prot. Campaign v. Weingardt*, 376 F. Supp. 2d 984, 991 (E.D. Cal. 2005) (explaining that the CEQ regulations “[r]equire that the public be given as much environmental information as is practicable, prior to completion of the EA, so that the public has a sufficient basis to address those subject areas that the agency must consider in preparing the EA . . . [and] so that a member of the public can weigh in on the significant decisions that the agency will make in preparing the EA.”)

Of course, the best way to achieve public involvement in an EA is to provide an opportunity to comment on the document itself. Several courts have ruled correctly that public involvement always requires comment on the EA. *See Anderson v. Evans*, 371 F.3d 475, 587 (9th Cir. 2004) (explaining that “[t]he public must be given an opportunity to comment on draft EAs”); *Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 341 F.3d. 961, 970 (9th Cir. 2003) (“It is evident, therefore, that a complete failure to involve or even inform the public about an agency’s preparation of an EA and a FONSI, as was the case here, violates these regulations. This wholesale neglect of the regulations’ mandatory inclusion of the public in the process results in a procedural injury. Moreover, it undermines the very purpose of NEPA. . .”); *W. Watersheds Project v. Bennett*, 392 F. Supp. 2d 1217 (D. Idaho 2005) (explaining that, “[b]ecause the [CEQ] regulations must mean something . . . an agency’s failure to obtain any public input on a draft EA violates these regulations” (internal quotations omitted)); *Fund for Animals v. Mainella*, 283 F. Supp. 2d 418, 434 (D. Mass. 2003) (finding unlawful the fact that the agency “has never issued a public EA or a FONSI as it is required to do under the NEPA regulations, [n]or has it involved the public by permitting comments on a draft EA.”).

In addition, it is not enough to provide a perfunctory comment period. When federal agencies acknowledge their duty to solicit comments from the public on draft EAs, the agency must ensure that the comment process is a “meaningful opportunity” for the public to participate in the process. *Fund for Animals v. Norton*, 281 F. Supp. 2d 209, 226 (D.D.C. 2003) (finding that the agency provided “insufficient time in which to comment on the Draft EA” by providing a two-week comment period, and that “the agency’s approach to public involvement and consideration of what public input it did receive did not support a finding that it took a ‘hard look’ at the problem and alternative means of addressing it.”); *Save our Ecosystems v. Clark*, 747 F.2d 1240, 1247 (D. Or. 1984) (holding five-day public comment period on a portion of an EA insufficient and remanding for further public comment).

Indeed, the approach now under consideration by NMFS has been rejected by the courts. *Fund for Animals v. Glickman*, Civ. No. 99-245, Tr. Hr’g Mot. for T.R.O. at 59-60 (D.D.C. Feb. 12, 1999) (holding that where an EA was prepared in six days and the public comment period was approximately eight working days, “those kinds of time frames do not allow for any meaningful input even though a couple of dedicated people may have managed”); *Town of Golden Beach v.*

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Dist Eng'r U.S. Army Corps of Engr's, Civ. No. 94-1816, 1994 Lexis 15832, at *11-12 (S.D. Fla. Sept. 22, 1994) (finding unlawful under NEPA the agency's decision not to solicit public comments on a draft EA and to instead rely on comments on an earlier scoping documents meaning that "[t]he EA was prepared without public participation"); *cf. Get Oil Out, Inc. v. Andrus*, 468 F. Supp. 82, 87 (C.D. Cal. 1979) (requiring that the public "be notified of the agency's determination [in an EA and FONSI] and given an opportunity to comment thereon by submitting relevant information bearing on that decision . . . in light of the seemingly intense local interest in the [project]."); *Friends of Walker Creek Wetlands, Inc. v. Bureau of Land Mgmt.*, 19 Env'tl. L. Rep. 20852, 20852 (D. Or. 1988) (holding that the agency failed to provide for any public participation in the EA process and ordering 45-day period for public comment on EA).

Courts have held the comment period on a draft EA is meaningless when it effectively excludes the involvement of the parties most interested in the project. *See Town of Golden Beach, Civ. No. 94-1816*, 1994 Lexis 15832, at *23-24 (holding the involvement of other parties throughout the NEPA process is not a "substitute for the participation of the one party most directly affected by and interest in a proposed project"); *cf. Colony Fed. Savings & Loan Ass'n v. Harris*, 482 F. Supp. 296, 304 (W.D. Pa. 1980) (finding that the agency violated NEPA when it failed to provide direct notice to "individual property owners most directly interest in, and affected by, the proposed project.").

In this case, the Alliance, a nonprofit environmental organization formed in response to Cape Wind's proposal with a goal of "protect[ing] Nantucket Sound in perpetuity through conservation, environmental action and opposition to inappropriate industrial or commercial development" and the other signatories to the letter and interested stakeholders have not been given the opportunity to participate in the draft EA. To our knowledge, none of the other affected stakeholders, local governments, tribal governments, or interest groups has been provided such an opportunity. Thus, as of the date of this comment letter, NMFS has not met its obligations under NEPA for the unique circumstances of this controversial project.

Finally, we note that in our previous litigation against Cape Wind's data tower, the Court of Appeals for the First Circuit noted the reasons why the NEPA approach now under consideration by NMFS does not suffice. *Alliance to Protect Nantucket Sound, Inc. v. U.S. Dep't of the Interior*, 398 F.3d 105, 115 (1st Cir. 2005). In that case, the Army Corps of Engineers failed to provide a comment period on the EA for Cape Wind's data tower. The First Circuit allowed the Corps to escape without doing so *only because* it had previously engaged in extensive pre-EA public involvement, including *a five-month comment period and two public hearings*. No such opportunity has been provided on the IHA beyond the comment period on the application itself, which does not present a NEPA-type analysis or solicit the kind of information required for an EA.⁶

⁶ NMFS cannot fall back on the BOEM/MMS NEPA record. In addition to being substantively deficient, BOEM and MMS also issued EAs without public comment. At the Construction and Operation Plan (COP) stage in February/March, for example, BOEMRE issued an EA on the 1,000-page COP application

NOAA has acknowledged its duty to involve the public in the NEPA process. *See* National Oceanic and Atmospheric Administration, NAO 216-6, § 5.02b.1 (1999). NOAA encourages the involvement of the public in reviewing EAs, recognizing that EAs “may not otherwise get adequate public input.” *Id.* In addition, it is NOAA’s policy that “[t]o the extent possible, EAs should be published or made available in conjunction with the proposed rules and plans subject to public review and comment.” *Id.* Given the controversial and environmentally harmful nature of this project, public comment on the EA is critical to ensuring compliance with all existing laws and regulations. NMFS must release the Cape Wind EA for public review and comment, or it will have failed to meet its obligations to involve the public in the NEPA process.

III. The IHA Application Contains Numerous Deficiencies

In addition to the significant legal problems discussed above, the Cape Wind IHA application contains numerous technical deficiencies that require the preparation of a new submission and a new Federal Register notice and public comment period.

A. The Biological Findings Are Based on the Wrong Project Description

The most significant failure of the application is the use of a one-year IHA for only the HRG activities. The failure of the application to cover the entire project means that all of the evaluations of impacts on marine mammals and habitat are grossly underestimated, and important direct, indirect and cumulative effects are ignored. The only recourse for Cape Wind is to submit a new application for the entire project and start the MMPA incidental take authorization process over again through LOA rulemaking.

B. Planned Activity

Of the five sound sources proposed for possible use, three are assumed to operate at frequencies of ≥ 200 kHz (single-beam or multi-beam echo sounder, and side-scan sonar). These three sources are treated as being inaudible to all marine mammals and as having no potential to take or otherwise affect marine mammals. The IHA application indicates (p. 2) that the actual sound sources to be used will be determined at a future date and will be essentially comparable to those listed in the application, but not necessarily the specific models listed there. It is necessary that

with *no* public comment period. It did so apparently in response to lobbying from Cape Wind urging no public comment on the COP EA to meet a financial deadline. Exhibit 4 (see also the timeline record submitted with this comment letter as Exhibit 5.) BOEMRE allowed only two weeks to review and comment on the COP itself *before* the EA, a period objected to by many parties and insufficient under the case law cited above. BOEM now takes the position that the COP is the most important stage in offshore wind development where an EIS typically will be used. In addition, the previous EA by MMS prior to the Salazar approval decision in April 2010 did not allow for public comment. With the NMFS EA, the last three NEPA documents by the federal government on this project (covering a 2 1/2-year period and numerous changes in the project and substantially different factual circumstances) will have been published without *a single day* of public comment.

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the actual units chosen operate at frequencies no lower than 200 kHz, and definitely not at frequencies of ≤ 180 kHz. The assumption of no potential effects from these three sources would be invalid if lower frequencies were emitted, given that the upper limit of functional hearing by high-frequency odontocetes such as the harbor porpoise is considered to be approximately 180 dB. Despite the importance of the threshold, nothing has been done to impose a kHz limit or require that activities cease if such a level is exceeded.

The application (p. 3) and *FR Notice* (p. 56,736, col. 3) assert that, given the slow speeds at which the survey vessel(s) would operate, increase of vessel collision risk to marine mammals would be negligible. While this might be true during survey operations at the planned 3 knots, it is not necessarily so at the transit speed of 15 knots. The survey vessel(s) are planned to transit to and from port every day, so that portion of the project activity may result in more-than-negligible increase in collision risk. In this respect, the application *underestimates* the effects.

The application also is defective because it fails to specify the port or ports that will be used for staying. This is important because the port and travel path used will determine which kind and how many marine mammals will be encountered.⁷ For example, use of Quonset could very well place vessels in the vicinity of migratory right whales. The application and *FR Notice* give no consideration to this possible impact.

C. Takes of Other Species Incidental to the Planned Activity

Cape Wind Associates' application for an IHA seeks only authorization to harass five species of marine mammals – even though the planned preconstruction surveys will harass several other species protected by the MMPA.

By way of example, consider the North Atlantic Right Whale, a gravely imperilled marine species that is protected by both the MMPA and the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 *et seq.* Several of our organizations repeatedly warned NMFS that the construction and operation of the Cape Wind power facility could jeopardize this species within the meaning of the ESA (Exhibits 6 – 9), and have in fact brought suit in federal court challenging this project for this and other reasons. See *PEER v. Bromwich*, Civ. No. 10-1067 (RMU) (D.D.C.).⁸

⁷ As the enclosed timeline confirms, Cape Wind has apparently made a decision to operate out of New Bedford. The MMS/BOEMRE record, however, uses Quonset as the staging area. Available evidence suggests that Cape Wind apparently does not want to acknowledge the change in the staging area because doing so would require reconsideration of previous decisions. An IHA application involving extensive operations and vessel activity as proposed in the Cape Wind application is incomplete if it does not identify the staging location. NMFS cannot process the application further until the staging port is identified and supplemental analysis conducted.

⁸ NMFS has addressed effects of the action on right whales in its biological opinion but, for the reasons set forth in the notice letters (Exhibits 6 – 9) and the amended complaint in *PEER v. Bromwich* (Exhibit 10), the biological opinion does not withstand scrutiny. Moreover, the MMPA has a different definition of take than the ESA does. The ESA prohibits activities that “harass, harm . . . wound, [or] kill” protected species, 16 U.S.C. § 1532(19), and defines harassment as “an intentional or negligent act or omission

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The North Atlantic Right Whale Sighting Survey (NARWSS) and Right Whale Sighting Advisory System (RWSAS) database and NMFS aerial survey results have revealed that right whales use the planned vessel route from Quonset, Rhode Island to Nantucket Sound, and, to a lesser extent, the vessel route from New Bedford, Massachusetts to Nantucket Sound. As explained above, vessels in transit will be traveling at 15 knots – a speed that is inappropriate in areas where right whales may be present, because of the risk of ship strike resulting in significant injury or death. *See* Exhibit 7 (January 28, 2011 letter). The planned activity is also likely to harass right whales by causing them to avoid vessel traffic and displacing them from areas where preconstruction surveys cause underwater noise.

Vessels traveling from Quonset to Nantucket Sound would need to traverse Rhode Island Sound, an area where right whales have been recorded on the following dates:

- February 9, 2006: right whale off Judith Point;
- March 8, 2006: right whale in Narragansett Sound;
- July 22, 2006: right whale off Judith Point;
- April 20, 2010: aggregation of 98 right whales, in or near Rhode Island Sound;
- April 7, 2011: 8 right whales in Rhode Island Sound; and
- April 22, 2011: 57 right whales in Rhode Island Sound.

Additionally, in April 1998, an aggregation of feeding right whales that persisted for about two weeks was seen in Rhode Island Sound, just east of Block Island. During that period, one right whale sighting was also reported at the entrance to Martha's Vineyard Sound.

If Cape Wind Associates were to use New Bedford as its port for preconstruction surveys, the vessels would travel through Buzzards Bay, where right whale sightings were reported in 2002, on March 18, 2008, and on February 9, 2009.

Further, as our organizations have previously described, every April for the past two years, right whales have occurred in Nantucket Sound itself. On April 6, 2010, a group of six right whales was reported in Nantucket Sound, and an additional two right whales were reported April 18 and 19, 2010. On April 25 and 27, 2011, there were occurrences of a group of 3 right whales and a single whale in Nantucket Sound. Vessels traveling at speeds of 10 knots or faster would present

which creates the *likelihood of injury* to wildlife by annoying it to such an extent as to *significantly* disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” 50 C.F.R. 17.3 (emphasis added). The threshold for the MMPA, on the other hand, is lower and therefore encompasses activities that would not rise to the level of “take” under the ESA. The MMPA prohibits “any act of pursuit, torment, or annoyance which . . . has the *potential to disturb* a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.” 16 U.S.C. § 1362(18)(A) No consideration has been provided to the different and more stringent standards under the MMPA. As required by section 17 of the ESA, the more stringent provisions of the MMPA control. Hence, Cape Wind cannot rely on the ESA for take authorization.

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a serious risk to right whales that may be present in the area, as will the noise generated by the planned activities. Further, because vessel traffic has the “potential” to disturb right whales by disrupting their normal behaviour patterns, 16 U.S.C. § 1362(18)(A), the very presence of ships in close proximity to right whales would constitute harassment under the MMPA.

For all of these reasons, NMFS acted unreasonably in accepting Cape Wind Associates’ IHA application as complete when it lacked *any analysis* whatsoever of the risk that the planned activity would harass or otherwise take right whales. The agency should deny the application and require the applicant to describe with specificity and accuracy all species that may occur within the area of the planned activity – including vessel routes – and seek authorization for any harassment or take that is likely to occur to those species due to the planned activity, including increased vessel traffic.

D. Estimates of “Take by Harassment”

Two points in the application’s footnote 5 (p. 11) are incorrect. The hearing threshold is not the minimum, perceptible sound signal “in a one-third octave”. Also, received levels, not hearing thresholds, can be expressed on a dB_{ht} basis.

The application assumes that a 17 log R spreading loss rate will apply to chirp and boomer sounds in this study area. However, given the direct relevance to impact radii and given the potentially lengthy duration of the operations, this assumption should be validated — at least through state-of-the-art acoustic modeling — prior to issuance of an IHA, and ideally also by direct acoustic measurements at the start of the field season.

The *FR Notice* (p. 56739, col. 2) states that there is no information on species-specific TTS thresholds for harbor porpoises. In fact, for impulse sound, such data were published by Lucke et al. (2009, *J. Acoust. Soc. Am.* 125[6]: 4060-4070). For non-impulse sound, such data have also been acquired recently; a brief summary was published by Kastelein et al. (2011, *J. Acoust. Soc. Am.* 129[4, Pt.2]: 2432). Both studies suggest that, for the harbor porpoise, TTS onset occurs at lower received energy levels than has been found in other odontocetes. That, in turn, suggests that existing impact criteria for cetaceans based on other species may *underestimate* effects on harbor porpoises.

The impact radii will also depend on the actual source level of the boomer, which is assumed to be 205 dB re 1 $\mu\text{Pa} \cdot \text{m}$ (but with the proviso that a different boomer might be used). If the source level of the chosen boomer exceeds 205 dB, the analysis in the application *underestimates* effects and take levels. If it exceeds 206 dB, the calculated 160-dB radius (based on 17 log R) would exceed the proposed monitoring and shutdown radius of 500 m.

The application and *FR Notice* specify a shutdown radius based on a 160-dB re 1 μPa criterion rather than the standard 180-dB criterion. The 180-dB criterion should be adopted.

The procedure used in the application to estimate number of potential exposures to levels ≥ 160

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dB re 1 μ Pa (p. 13) treats each day separately, and sums the daily estimates. Given the close spacing of survey lines, many of the same mammals are likely to be affected. Insufficient consideration has been given to the effects of multiple takes on the same animals, causing the overall take estimates to be too low and the evaluation of harm to individual animals inaccurate. The application does not state whether the density data used for cetaceans (p. 15) were derived with the inclusion of correction factors allowing for mammals missed during surveys, i.e., mammals below the surface (availability bias) and mammals at the surface but not seen (detection bias). This information must be made clear in the application. Without both correction factors, density estimates and thus take estimates are likely to be underestimates. For seals, the procedures described in the application (p. 16) are correct for availability bias but not for detection bias.

The application (p. 9) mentions that the number of seal observations within the planned project area during the three years of aerial surveys was only 17. This does not agree with Figure 2, which appears to show more than 17 seal sightings within that area in 2002 alone.

Concerning the minke whale, the application (p. 5) quotes a population estimate for an area that does not seem to include the study area. The *FR Notice* (p. 56737, col. 3) quotes a larger population estimate for a larger area that does include the study area. This is relevant because of the need to estimate the anticipated “take” as a percentage of the population size. The application quotes such percentages on p. 18 without explicitly re-stating the population estimates used as a basis for the calculation.

The application follows NMFS practice in assuming that marine mammals exposed to received levels of impulse sound ≥ 160 dB re 1 μ Pa are likely to be disturbed to the extent of being “taken by harassment” (Level B). There is some evidence that harbor porpoises may often be significantly disturbed at received levels below 160 dB re 1 μ Pa. Therefore, the application would *underestimate* numbers of porpoises potentially disturbed.

The application (p. 18) indicates that the anticipated impacts would be temporary behavioral change due to avoidance. Given that the project would continue for ~137 days, the application should have addressed the possibility that some animals would be excluded for an extended period from habitat that they would otherwise have occupied. Referring to this as a temporary behavioral change *understates* the potential impact.

The application (p. 18) anticipates no impact on marine mammal habitat from the proposed activities. However, the possibility that prolonged survey operations would affect prey availability (through displacement of fish) is not addressed, thus *understating* potential impact.

E. Monitoring and Mitigation Measures

The application (e.g., p. 20) and *FR Notice* are unclear regarding the minimum number of NMFS-approved observers that will be on the survey vessel at all times. There should be at least two qualified observers aboard at all times, with individual watches not to exceed 4 hours in

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duration, as per normal NMFS practice. It is not possible for a single observer to monitor effectively for a full day, if that is what is intended for some days. The application (p. 20) implies that a second observer might only be aboard for 2 days out of every 7 days. That would be *insufficient*.

The application and *FR Notice* tacitly assume that all marine mammals that would otherwise occur within the radius of potential injury would be detected before being that close to the sound source, or alternatively would move away of their own accord before entering the 180-dB zone. It is possible that marine mammals will “move into” the 180-dB zone without being seen, and in that case there is potential for *auditory impairment*.

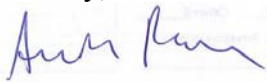
The application (p. 19, 21) proposes to submit a “90 day report” as normally required by IHAs. The *FR Notice* (p. 56741, col. 2) calls for a “120 day report”, i.e., 30 days later, which is insufficient and a departure from standard practice. More frequent reports should be required.

CONCLUSION

The IHA application continues to show the problems that have characterized the proposed Cape Wind project from the outset. The applicant has failed to provide a complete picture of its proposed activities and the impacts on the environment. These problems stem from Cape Wind’s refusal to work cooperatively with the stakeholders, including the Alliance, who have time and again, expressed the willingness to support alternative sites based on consensus management. The Alliance first raised the need to comply with the MMPA in 2002. The fact that Cape Wind has left the incidental take authorization until the last minute of its proposed schedule does not justify the use of an IHA, the failure to provide public comment on the EA or issue an EIS, or a decision based on a defective application.

The proposed IHA is legally defective and no authorization should be issued until LOA regulations are developed, supported by a full NEPA review that has been subjected to public comment. Numerous technical revisions must be made, including the identification of the port to be used for staging. Until these actions are taken, the Cape Wind application must be denied. Thank you again for considering our comments. Please contact me if you have any questions.

Sincerely,



Audra Parker
President & CEO
Alliance to Protect Nantucket Sound

Walt Kittelberger, Chairman
Lower Laguna Madre Foundation

William W. Rossiter, President

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Cetacean Society International

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Submitted via: *ITP.Magliocca@noaa.gov*

October 3, 2011

Dear Mike,

On behalf of The Humane Society of the United States (The HSUS) and its more than 11 million supporters, I am writing to raise concerns related to the proposed issuance of an Incidental Harassment Authorization (IHA) for marine mammals pursuant to pre-construction activities related to the Cape Wind offshore energy site [76 FR 56735, September 14, 2011].

The proposed IHA is intended to address “takes” of marine mammals as a result of site characterization work being done by Cape Wind, pursuant to authorization by the Bureau of Ocean Energy Management (BOEMRE). We wish to raise questions about the adequacy of the discussion of impacts on species and the appropriateness of issuing an IHA for this specific activity without considering that it is part of a larger project that should be considered as a whole, rather than piece-by-piece.

Impacts of Noise

As described in the Federal Register, the high resolution geophysical survey would cover approximately 110 square kilometers (km²) (42.5 square miles [mi²]). This area includes the future location of the wind turbine generators—an area about 8.4 km (5.2mi) from Point Gammon, 17.7 km (11 mi) from Nantucket Island, and 8.9 km (5.5 mi) from Martha’s Vineyard—and cables connecting the wind park to the mainland.

Devices referred to a “boomers” and “chirpers” would generate sound impulses that approach or exceed the levels determined by the National Marine Fisheries Service’s (NMFS) as having the potential to result in temporary or permanent hearing damage. The Federal Register states that “[u]nderwater sound levels from the chirp would dissipate to 180 dB (the Level A harassment threshold) at 17 m (56 ft) and to 160 dB

Comments of The HSUS on Cape Wind IHA

(the Level B harassment threshold) at 258 m (847 ft).” For the so-called “boomer,” “[t]he estimated sound pressure level at the source would be 205 dB re 1 μ Pa at 1 m with a short duration sound pulse of about 330 milliseconds. Underwater sound levels from the boomer would dissipate to 180 dB at 30 m (98 ft) and to 160 dB at 444 m (1,457ft).” That is, the sound level would not fall below levels of concern (160 dB) for approximately one quarter of a mile from the sound origin and could be heard—and potentially disrupt behavior—for many miles beyond that distance. Thus the impacts are not confined to the project footprint.

Impacts of the Propose Operation on Marine Mammals in Not Adequately Considered

Only three species of cetaceans are said to be likely to be “taken” in the course of these activities: minke whales, harbor porpoise and Atlantic white sided dolphins. We disagree. One species that must be considered here and was not is the North Atlantic right whale. The Federal Register notice states that “[r]ight whales (*Eubaelena glacialis*) are considered rare in Nantucket Sound and have not been sighted on Horseshoe Shoal. All of the right whales observed in Nantucket Sound during 2010 quickly transited the area and there is no evidence of any persistent aggregations around the proposed project area.” This does not consider several key pieces of information that contradict the statement that there have been no persistent aggregations around the proposed project area and/or imply that right whales are seldom observed and thus could suffer no behavioral disruption.

First, in several of the years of the NMFS Dynamic Area Management program for fisheries impacts to right whales, until the termination of the program in 2009; the NMFS instituted Dynamic Area Management to protect right whales in portions of, or within the entire project area (see attached figure 1). The NMFS determined that this dynamic management was necessary to protect aggregations of whales in areas in where 3 or more were sighted and believed likely to persist for at least a fifteen day period (see: 67 FR 1133., and Clapham and Pace, 2001). Several of these Dynamic Area Management actions took place within the area being surveyed and/or transited by project vessels.

Second, though systematic surveys were not flown every day, there were documented sightings in the general project area by NMFS in 2010 on multiple days including: April 6 when four right whales were sighted in one location and two in another, and April 19 when two right whales were sighted. In addition, three right whales were sighted on April 25, 2011 and on April 27, 2011 there was a single sighting (see: <http://www.nefsc.noaa.gov/psb/surveys/>). Even on those days when the whales were outside of the project footprint, they were in or near the area in which surveys would be conducted or transits to land will be made.

There is a claim in the Federal Register notice that the preconstruction surveys won't affect right whales and other species that do not occur regularly in Nantucket Sound; however, the pre-construction surveys are not confined to the footprint of the turbines but will also survey the submerged land where Cape Wind will install the transmission lines

Comments of The HSUS on Cape Wind IHA

that lead from the electrical service platform to land. Additionally, vessels will transit routes from shore to Horseshoe Shoals to conduct surveys. Neither BOEMRE nor NMFS, nor the developer itself, have provided any assurance that vessel speeds will be reduced to prevent collision with right whales along the transit route to land, particularly if the area or routes are outside of a seasonal restriction in the spring or if vessels are smaller than 65 feet in length. The NMFS must consider impacts from both vessel transits to and from the survey area and within the survey area. This consideration must include impacts that result from the intense sound created by “boomers” and “chirpers” used in the surveys as well as from vessel transits to and from the survey area. We feel they were inappropriately dismissed and should be part of a consultation under the Endangered Species Act.

Issuing a Letter of Authorization Is a More Appropriate Step than Issuing an IHA

Cape Wind and BOEMRE have asserted that the construction, operation, and decommissioning of the wind power facility are fully authorized. Thus the survey work is an integral part of the overall project; it is not a discrete and specific activity subject to its own authorization and independent of subsequent activities undertaken for the project. As a result, we believe that issuing a single IHA is inappropriate for the survey work. A single Marine Mammal Protection Act (MMPA) authorization should be required for the entire project. The activities being undertaken that are associated with surveying the project site are part of the overall project and cannot be separated, or separately evaluated, simply to enable the use of a less-cumbersome IHA process, as opposed to the more appropriate and comprehensive evaluation and authorization that would be in place for five years under the issuance of letters of authorization (LOA). The inter-connected nature of all activities for this single project, including the surveys, and eventually the platform construction, therefore should be subject to an LOA under 16 U.S.C. § 1371 (a)(5)(A)(i), rather than segmented IHAs under § 1371 (a)(5)(D)(i) that will result in an analysis that improperly considers only the effects of the individual IHAs, rather than the full impacts and overall takes that will occur throughout the accumulation of the necessary steps in development process. Such an approach not only deprives the public of the opportunity to participate in the rulemaking process required for the development of LOAs, but undermines the “primary objective” of the MMPA to maintain the “health and stability of the marine ecosystem” by “protect[ing]” marine mammals and “encourag[ing]” their development “to the greatest extent feasible. . .” 16 U.S.C. § 1361(6).

Conclusion

The NMFS must consider impacts of pre-construction surveys on right whales that were inappropriately dismissed from consideration. Further, the impact of project activities appears to be broader in geographic scope than indicated in the Federal Register. Finally,

Comments of The HSUS on Cape Wind IHA

the NMFS should more appropriately use an LOA process rather than an IHA, as this is part of a larger project with a predictable and inevitable sequence of steps and the impact of this particular step should not be considered as though independent of the larger project.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon B. Young". The signature is fluid and cursive, with the first name "Sharon" written in a larger, more prominent script than the last name "Young".

Sharon B. Young
Marine Issues Field Director
The Humane Society of the United States
syong@hsus.org

20 Black Brook Road
Aquinnah, MA 02535



Office: 508-645-9265
Fax: 508-645-3790

October 13, 2011

The Honorable Jane Lubchenco
Under Secretary of Commerce for Oceans and Atmosphere
Administrator of NOAA
1401 Constitution Avenue, NW
Room 5128
Washington, DC 20230

Re: Issuance of an Incidental Harassment Authorization (IHA) to Cape Wind for pre-construction surveys

Dear Administrator Lubchenco:

The Tribal Historic Preservation Department of the Wampanoag Tribe of Gay Head (Aquinnah) (WTGH(A)) is writing to express our concern over the path being followed by the Department of the Interior (DOI) for the development of offshore wind energy projects on the outer continental shelf (OCS). We are writing to you because of the significant role that NOAA plays in this process and the pending application for a Marine Mammal Protection Act (MMPA) incidental take authorization for the Cape Wind project.

First, the WTGH(A) is requesting that NMFS begins government-to-government consultation on the request from Cape Wind for their application for a Marine Mammal Protection Act incidental take authorization under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).

WTGH(A) wishes to affirm our strong support for the development of offshore renewable energy projects that have been properly sited and developed under a coordinated and comprehensive decision process. History has shown, however, that rushing to develop energy sources may cause problems if environmental laws are not complied with and we are concerned that this is what is happening with offshore wind. DOI is proceeding so aggressively that it is not conducting its review procedures in compliance with many environmental laws, especially the National Environmental Policy Act.

The Tribe is disheartened that minke whales, Atlantic white sided dolphins, harbor porpoises, grey seals and harbor seals will be allowed to be taken "by harassment incidental to pre-construction high resolution survey activities". However, we are alarmed that the endangered North Atlantic right whales are not mentioned at all. We are requesting NMFS provide documentation that the endangered North Atlantic right whale will not fall into this category and furthermore, will have additional protections. From Vineyard Sound through Nantucket Sound and south of the Islands, endangered North Atlantic right whales have been sighted. The loss of just one of these rare whales should never be considered incidental, when proper procedures, protocols and regulations should apply to protect them. For over forty years these magnificent mammals have been on the endangered list, and it is only in the last few years we have seen them return to our waters. And so quickly, we are ready to threaten their already fragile numbers by encroaching on their habitats.

President Obama has taken very significant steps to establish and implement a national ocean policy. He also has called for a new decision-making framework revolving around principles of coastal and marine spatial planning (CMSP). We commend and support the development and implementation of the policy and are actively engaging ourselves in the processes to ensure our input in these plans is included.

Unfortunately, as in previous actions, DOI has is ignoring the importance of these policies. Even though CMSP is still under development, DOI is plunging ahead with offshore wind by dividing the OCS into regions and proceeding with leasing of vast tracts of under water land based on the preparation of a mere Environmental Assessment (EA). The leasing and development within each OCS zone is proceeding in an ad hoc manner, and DOI apparently intends to evaluate the impacts and alternatives under NEPA only within each of the carved-out areas.

This approach flies in the face of CMSP and NEPA. DOI's unlawful and ill-advised segmentation of decision-making is giving rise to greater conflicts among user groups and defeating the CMSP concept before it can even get started. It also is resulting in segmented decision-making and significant environmental impacts. Serious problems also will arise for protected species and fisheries. Once again, the Tribe sees the linear thinking and myopic vision that is so contrary to how we view the environment as taught to us by watching the world we live in and our only place of survival. The thought that each of these regions and activities within them will not have an affect on another region is short-sighted at best; a recipe for disaster at worst. These developments should be fully vetted under the compliance of all environmental laws that may pertain. The health of our oceans and the multitude of life forms demand our most stringent regulations and oversight in their protection.

We ask you to use the authority of NOAA to bring DOI back to a common sense approach for offshore renewable energy development. NOAA should request that DOI defer further action on offshore wind leasing until CMSP is in place. We also ask that you go on the record calling for EISs, not mere EAs, for lease issuance.

Finally, with regard to NOAA decisions, we request that no action be taken on MMPA incidental take authorizations, or other approvals until the same conditions have been met. The development of offshore renewable energy will go much more quickly and effectively in the long run if these principles are adhered to.

The current Cape Wind incidental take authorization request under the MMPA is an excellent example of the wrong approach. Rather than seek authorization for the "specified activity" of the overall project, Cape Wind seeks to segment its project into small pieces to gain advantage in timing to qualify for federal subsidies and avoid more rigorous environmental review. Cape Wind has applied for a one-year incidental harassment authorization (IHA) for just one aspect of its approved project (now subject to multiple legal challenges) – pre-construction surveys. The MMPA clearly requires that an intact and single project like Cape Wind obtain approval as a single specified activity. In the case of a multi-year project like Cape Wind, doing so would require the more rigorous letter of authorization regulations for five years, not an IHA. Cape Wind also has given no indication as to how it will proceed with construction or operations for purposes of MMPA authorization. Using only an IHA will illegally segment the MMPA review and result in an insufficient analysis of whether the project has only negligible impacts, as required by section 101(a)(5).

We request that you direct that the Cape Wind IHA application be denied until the full project is subject to consultation and review. We also request that you deny Cape Wind to proceed with construction on any phase until LOA regulations are in place and a full EIS has been prepared.

In Balance, Harmony and Peace,

Bettina M. Washington

Bettina M. Washington
Tribal Historic Preservation Officer

**Gloucester Fishermen's Wives Association
Hyannis Yacht Club, Past Commodore
Institute for Fisheries Resources
Oceans Public Trust Initiative,
A Project of Earth Island Institute's International Marine Mammal Project
Pegasus Foundation
Save Our Sound/Alliance to Protect Nantucket Sound
Three Bays Preservation**

October 13, 2011

The Honorable Jane Lubchenco
Under Secretary of Commerce for Oceans and Atmosphere
Administrator of NOAA
1401 Constitution Avenue, NW
Room 5128
Washington, DC 20230

Dear Administrator Lubchenco:

We are writing to express our concern over the path being followed by the Department of the Interior (DOI) for the development of offshore wind energy projects on the outer continental shelf (OCS). We are writing to you because of the significant role that NOAA plays in this process and the pending application for a Marine Mammal Protection Act (MMPA) incidental take authorization for the Cape Wind project.

At the outset, we affirm our strong support for the development of offshore renewable energy projects that have been properly sited and developed under a coordinated and comprehensive decision process. It is essential that the federal government help develop renewable energy to reduce domestic reliance on sources of energy that rely on carbon-based resources and emit harmful greenhouse gases.

History has shown, however, that rushing to develop energy sources causes even greater problems if environmental laws are not complied with. That is what is happening with offshore wind. DOI is proceeding so aggressively that it is not conducting its review procedures in compliance with many environmental laws, especially the National Environmental Policy Act.

President Obama has taken very significant steps to establish and implement a national ocean policy. We commend and support those efforts. He also has called for a new decision-making framework revolving around principles of coastal and marine spatial planning (CMSP). Again, we commend and support the development and implementation of the policy.

Unfortunately, DOI has put the cart ahead of the horse. Even though CMSP is still under development, DOI is plunging ahead with offshore wind by dividing the OCS into regions and proceeding with leasing of vast tracts of land based on the preparation of a mere Environmental Assessment (EA). The leasing and development within each OCS zone is proceeding in an ad hoc manner, and DOI apparently intends to evaluate the impacts and alternatives under NEPA only within each of the carved-out areas.

Administrator Lubchenco
October 13, 2011
Page 2

This approach flies in the face of CMSP and NEPA. DOI's unlawful and ill-advised segmentation of decision-making is giving rise to greater conflicts among user groups and defeating the CMSP concept before it can even get started. It also is resulting in segmented decision-making and significant environmental impacts. Serious problems also will arise for protected species and fisheries.

We ask you to use the authority of NOAA to bring DOI back to a common sense approach for offshore renewable energy development. NOAA should request that DOI defer further action on offshore wind leasing until CMSP is in place. We also ask that you go on the record calling for EISs, not mere EAs, for lease issuance.

Finally, with regard to NOAA decisions, we request that no action be taken on MMPA incidental take authorizations, or other approvals until the same conditions have been met. The development of offshore renewable energy will go much more quickly and effectively in the long run if these principles are adhered to.

The current Cape Wind incidental take authorization request under the MMPA is an excellent example of the wrong approach. Rather than seek authorization for the "specified activity" of the overall project, Cape Wind seeks to segment its project into small pieces to gain advantage in timing to qualify for federal subsidies and avoid more rigorous environmental review.

Cape Wind has applied for a one-year incidental harassment authorization for just one aspect of its approved project (now subject to multiple legal challenges): pre-construction surveys. The MMPA clearly requires that an intact and single project like Cape Wind obtain approval as a single specified activity. In the case of a multi-year project like Cape Wind, doing so would require the more rigorous letter of authorization regulations for five years, not an IHA. Cape Wind also has given no indication as to how it will proceed with construction or operations for purposes of MMPA authorization. Using only an IHA will illegally segment the MMPA review and result in an insufficient analysis of whether the project has only negligible impacts, as required by section 101(a)(5).

We request that you direct that the Cape Wind IHA application be denied until the full project is subject to review. We also request that you advise Cape Wind that no construction on any phase can be undertaken until LOA regulations are in place and a full EIS has been prepared.

Thank you for considering these comments.

Sincerely,

Angela Sanfilippo
President
Gloucester Fishermen's Wives Association

Administrator Lubchenco
October 13, 2011
Page 3

Lincoln Baxter
Past Commodore
Hyannis Yacht Club

William “Zeke” Grader
Executive Director
Institute for Fisheries Resources

Cindy Lowry
Director
Oceans Public Trust Initiative,
a Project of Earth Island Institute’s International Marine Mammal Project

Barbara Birdsey
Executive Director
Pegasus Foundation

Audra Parker
President & CEO
Save Our Sound/Alliance to Protect Nantucket Sound

Lindsey Counsell
Executive Director
Three Bays Preservation



October 13, 2011

VIA ELECTRONIC MAIL

P. Michael Payne
Chief, Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Mr. Payne:

On behalf of the Oceans Public Trust Initiative (OPTI), a project of the Earth Island Institute's International Marine Mammal Project, please accept these comments on the proposed incidental harassment authorization (IHA) application for *Cape Wind's High Resolution Survey in Nantucket Sound, MA*. 76 Fed. Reg. 56735 (September 14, 2011). (*FR Notice*)

OPTI strongly supports the development of renewable energy throughout the United States, including offshore wind energy, and believes that such resources should be developed expeditiously in appropriate and well-vetted areas after the development of a comprehensive federally-led program that ensures adequate consideration and protection of the public trust resources of the outer continental shelf (OCS).

We have corresponded with DOI in recent months regarding the Federal governments obligation under the federal trust responsibility for the OCS and its resources to release Environmental Assessments (EA) for public comment when permitting offshore wind developments. NMFS states that an EA considering the "direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from issuance of the [Cape Wind] one-year IHA" will be prepared. 76 Fed. Reg. 56742. The EA has not been made available before the close of the comment period violating the federal trust obligations. The Cape Wind IHA application cannot be acted upon until NMFS releases the EA for public comment.

OPTI's concern over the effect of this project on marine mammals is very real. The entire project will expose very large numbers of marine mammals to take by harassment and possibly serious injury and mortality. To date, there is no adequate review of these impacts. This problem is particularly pronounced for the endangered right whales, which in recent years have been recorded in large numbers in the vicinity of the project and within the project area. NMFS also has done nothing to comply with ESA as it relates to the MMPA authorizations. These serious problems are confirmed by the FOIA documents released to OPTI, which show a segmented approach and confirm the lack of adequate public input. These problems call for a more careful review that involves full public comment and looks at the big picture of the entire project.

Furthermore, NMFS must adopt an interpretation of section 101(a)(5) incidental take authority that treats the entire Cape Wind project as the “specified activity” instead of allowing Cape Wind to take a piecemeal approach applying for multiple IHAs until the project is completed. The Cape Wind project will occur over the period of many years and the substantial number of takes for the overall project can only be authorized through LOA regulations under section 101(a)(5)(A)(i). 16 U.S.C. § 1371(a)(5)(A)(i).

The entire Cape Wind project must fall under LOA regulations in order to evaluate the full impact of the project on marine mammals. Failing to do so would insufficiently protect marine mammal populations while favoring “commercial exploitation” which is explicitly contrary to Congress’ intent.¹ NMFS cannot issue an IHA for the proposed high resolution geophysical (HRG) survey because doing so would segment the overall Cape Wind Project failing to consider the cumulative effects. For these reasons, NMFS must deny the IHA application. Thank you for considering our comments.

Sincerely,

A handwritten signature in cursive script that reads "Cindy Lowry".

Cindy Lowry
Director, Oceans Public Trust Initiative
139 William Street, #1
Portland, ME 04103

Enclosure

¹ H.R. Rep. No. 92-707.

I OPPOSE GRANTING THIS PERMIT. KILLING ALL OF THESE SPECIES
CANNNOT BE PERMITTED IN THE USA. THE CARELESSNESS AND NEGLIGENCE
OF CAUSING A WHALE TO HEMORRHAGE IN HIS BRAIN SO THAT IT KILLS
HIM IS INCREDIBLY ABUSIVE TO THE ANIMAL. THIS PERMITTEE NEEDS TO
NOT KILL ANY ANIMAL IN DOING ANY TESTS. WE CANNOT PERMIT THIS
EXTINCTION TO CONTINUE OF THE ANIMALS THAT MAKE LIVING ON EARTH
WORTHWHILE.

JEAN PUBLIC ADDRESS IF PERMITTED

To Whom This May Concern,

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Thank you for your time,

Peter Askew

Dear Sir:

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

If you could please ask Cape Wind to go away and pester somebody else for more than a decade and then rip them off with laughably expensive energy while they suck taxpayer subsidies out of the lifeless corpse that is the remains of the US economy and funnel the money back to whatever European rathole they came from leaving us to pay for the inevitable clean up, we would all be most grateful and would definitely think you were great guys.

Really, what next. Enough please.

Chris McLaughlin
4 Plumb Lane
Nantucket, MA 02554

I am a recreational fisherman, never violating length or number limits because of my respect for the rules, our environment and because I hope one day my grandchildren will have the joy of a sunrise at sea with whales at your boat side and tuna on top or striped bass in a feeding frenzy on Horseshoe Shoal.

If we begin granting harassment permits on an ad hoc, piece meal basis, we set a precedent that is both dangerous to the environment and to our marine life.

The folks at Cape Wind know darn well what their whole project entails (or we hope so after 9 years). So let's ask them to put the entire project on the table at one time so all can see what the total impact would be. To do otherwise is not responsible, at best a sleight of hand a rush to judgment? Maybe after 9 years a couple more months is not a big deal.

So let's give everyone who really knows our Sound a chance to comment. Please!

James H. Bodurtha
Cotuit, MA

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Cape Wind is trying to see if it can do in pieces what it fear is may not be able to do as a whole. Please do not allow Cape Wind to bypass the opportunity for the public to comment and for the various commissions and committees and the public to understand just what would likely happen to the various mammals and fish that would be impacted. The Environmental Assessment for the IHA for Cape Wind should not be allowed without the required comprehensive letter of authorization(LOA) for 5 years since Cape Wind is multi-year project.

Thank you for your attention.

Anne W. Baker
P.O. Box 157
Hyannis Port, MA 02647
tel/fax: 508 775-4028
Email: awilbaker@mac.com
Cell: 508 776-7287

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Why is Cape Wind permitted to "take" precious marine mammals when a marine factory in Nantucket Sound for any other purpose would clearly not be granted such latitude? There is no justification for this outrage for any industrial use located within such a rare national treasure as the Sound.

Douglas Gregory, PhD

President/CEO

Cardiovascular Clinical Science Foundation

75 Kneeland Street/Suit 702

Boston, MA 02111

617-423-7999x106

fax: 617-423-7034

www.ccstrials.com

I am writing to express my grave concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys; but the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Sincerely,
Gerard D. Desautels

West Yarmouth, MA

Dear Sir/Madam,

it's a bit estrange that Cape Wind has submitted an application for just a part of their big project thus avoiding a more comprehensive review. Cape Wind is not complying with the Marine Mammal Protection Act which requires a review of the project as a whole and not by pieces. I request that the National Marine Fisheries Services deny the Cape Wind IHA application until the full project is submitted for review and advice that no construction on any phase can be undertaken until the full LOA regulations are in place.

Sincerely,

E. Mendonca

ecmendonca@comcast.net

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Thank You

Francis C. Lowell, Jr
188 Sippewissett Rd.,
Falmouth, Mass 02540

I am writing to express my outrage regarding Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review.

Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Kathleen Chane

SAVE OUR SOUND

DON'T BUILD IN THE OCEAN NEAR CAPE COD. THE
LAND IS RUINED. AT LEAST SAVE THE OCEAN.

IF THE ARCTIC CAN BE PRESERVED, WHY NOT THE
OCEAN?

WHEN IT'S GONE
IT'S GONE FOREVER

GOT FISH?

GOT BEACHES?

GOT TOURISM?

WE DO.

WE NEED A BEAUTIFUL OCEAN NOT 135 WIND TURBINES.

As a resident of Cape Cod, I oppose the Cape Wind project. I would like to request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place.

Sincerely,

Joe McGinity

9 Little Neck Lane, Mashpee MA

I have read many articles from many sides regarding wind turbines. Above all of the factors regarding them, the loss of aviary life is extremely concerning. The entire balance of wild life could be affected and some species may even be destroyed forever. All over the US and Canada there are reports of thousands of birds and bats being killed because they cannot escape the vortex of these giant spinning towers. Birds and bats also eat insects, and mosquitoes. The entire food chain in the wild could be affected, and little consideration seems to be taken. I also read where there is a gag order on the industry's own liabilities. Also, most of these farms are owned and operated by foreign corporations and get their funding from loans supported by subsidies from the American taxpayer. We the People have the right to speak out and put a stop to this blatant disregard for our own concerns, and certainly have the obligation to stand up for the preservation of nature itself. This is an atrocity and should not be allowed by any decent person. Wind Power is not even efficient. It costs more in subsidies than it provides in energy savings. Once the subsidies run out, these projects will be abandoned. The data shows this to be within a twenty year span. So, in less than twenty years they will kill literally millions of birds and bats, cost the taxpayer billions, and leave us with a dead planet. For what? So that a few corporations and politicians can get richer. Not in my name.

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Sincerely,

Charles R. Williams, III
Marstons Mills, MA

National Marine Fisheries,

Please do not allow Cape Wind to circumvent your laws by segmenting its project. The law requires that the entire project must be considered requiring a comprehensive letter of appeal. Additionally, a period for public discussion is required.

Cape Wind is subject to the vagaries of a private for-profit developer. Please do not allow your regulations, laws to be compromised. Protect marine life.

Respectfully,
Teri Lilly
Natick, MA

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Regards,
Betsey Poe
Bainbridge Twp, OH

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Instead of applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. The Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts and I cannot imagine you would grant an IHA to this project in violation of that act. This multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Thank you.

Marlene Bartos
10 Mountain Place
Montclair, NJ 07043

31 Crowell Road
West Yarmouth, MA 02673

Sometimes I wonder what country we are living in. Have we lost all common sense? Killing mammals for the sake of a dubious energy proposal?

How is this different from other incidents which would become a subject of a documentary in other parts of the world. We have protection rights for mammals. It's the LAW. Oh, sorry, this administration circumvents ALL laws. Mr Chu has to go.

Jean Hamel
Fairport, NY

Dear Sirs:

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Sincerely yours,

Charles Orr

Centerville, MA 02632

Dear Sirs:

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA. This is simply another attempt by Cape Wind to avoid regulatory review and rush through this project without regard to the consequences.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Sincerely,

Gerald Ferguson

173 Main St., Vineyard Haven, MA 02568

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Talking Points:

- Express concern over Cape Wind's application for an incidental take authorization (IHA)
- Cape Wind is attempting to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review
- Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys
- The Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts
- The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA
- Request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place

- Also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law
- “Incidental” or not, the public will oppose Cape Wind being granted authority by the National Marine Fisheries Service (NMFS) for enabling the killing whales and porpoises
- The irony of the NMFS granting approval for Cape Wind to proceed with a “Hunting License” will galvanize increased movement against the project & could well lead to a public relations nightmare for both Cape Wind and your Agency

Thank you for your consideration.

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Sincerely,

James A. Rubel
Kinlin Grover Real Estate
476 Main St.(Rt.-28)
Harwich Port MA 02646

It is my firm belief that projects that can have a major impact on health, commerce, the environment, and life in general should have a *full* review and approval before implementation of *any* aspect of its overall plans is allowed, and I therefore request that Cape Wind's application for an incidental take authorization not be granted. A public comment period should be ensured on the Environmental Assessment for the IHA as required by law

By segmenting this project, Cape Winds seeks funds for a plan that may never materialize and could have an overall negative impact -- clever on their part, but with potential failure and wasteful of taxpayers' monies.

How long is the list of 'great ideas' that have been started or even fully implemented only to later be deemed huge mistakes with negative impact and even irreversable? A full review before *any* implementation should be mandatory and not to do so, in my opinion, is irresponsible. Current news about other environmental "solutions" is a case in point.

Wise and extensive review will prevent failure and even harmful effects and should be an absolute in the Cape Winds project.

Sincerely,
Sandra Siedsma

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA. I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Steve O'Keefe
43 Davenport Rd
West Dennis Ma.
On Cape Cod

I am strongly opposed to Cape Wind's intention to install wind turbines in Nantucket Sound as a whole or in fragments! The most appropriate place to install them would be on any dry land based property, like the semi-defunct Otis Air Base. At Otis Air Base the turbines would have ample clearance in a fall zone and not harm the public or the environment. Installing wind turbines on dry land property would then have less impact on the environment in general, plus the mammals, migratory birds, fishing industry, aeronautic industry and tourism. On dry land it would be financially prudent to investors and subscribers alike, less time to install on land, easier and cost effective maintenance.

I vote NO to Cape Wind because of the disruption of the Nantucket Sound ocean waters and the ecosystem to which we depend on. It is an absurd thought to allow them to go forward.

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Christine Bostek, Founder & President
The Sands of White Horse Beach Assoc.
P.O. Box 52
White Horse Beach, MA 02381-0052

to US National Marine Fisheries Service:

**Please hold Cape Wind to the proper LOA standard
as any review looked at only part by part will understate the potential harm a
whole picture will show.**

The Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain
approval as a single specified activity and not be broken up into smaller parts.

Please deny the Cape Wind IHA application until the full project is subject to review and
advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I
also request that you **ensure that a public comment period is provided** on the Environmental
Assessment for the IHA as required by law.

Thank you

Richard A Frazee
161 Landing Lane
North Chatham, MA 02650

I am a resident of Cape Cod. I have a great deal of trouble with people who have no “skin in the game”, are not residents, deciding what is good for us Cape Codders.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Joe & Judy Maguire

97 Green Pond Rd

East Falmouth, MA 02536

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Sincerely,
Steve Starosta
Falmouth, MA.

I can't believe that this project could get any worse over these 10 years in the making but it is. Now Cape Wind wants permission to destroy whales and other creatures of our sea. Shame on everyone involved with this. Pati Antonellis

Dear Sir or Madam,

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law. Sincerely,

Mrs. Linda Morales-Morceau

Woman Chief & Medicine Woman

of The Chappiquiddic Tribe of

Massachusetts

Please stop this end run of Cape Wind to avoid the Marine Mammal Protection Act as expressed below.

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

My thanks for your consideration of my request and concern about Cape Wind project. I spend every summer on the waters around the Cape Wind project and have done so for 75 years except for three summers of my life. I love the area and have seen so many changes over the years in the degradation of the area's natural life, but Cape Wind is potentially the worst man made disaster to befall my summer haunt that was also the home of all my family members that had lived on the Cape since 1630. Please help save my family's ancestral land and waters that I love so much.

Holliday T. Day
1207 Golden Hill Drive
Indianapolis, IN 46208
317-923-0439
bday@iquest.net

Comment Template:

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Talking Points:

- Express concern over Cape Wind's application for an incidental take authorization (IHA)
- Cape Wind is attempting to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review
- Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys
- The Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts
- The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA
- Request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place
- Also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law

Dear Mr. Payne,

I am concerned over Cape Wind's application for an incidental take - IHA. This offshore wind project is ONE, not several, as the power purchase agreement indicates.

This comprehensive five-year project, according to the Marine Mammal Protection Act, requires that an intact and single project like Cape Wind obtain a LOA.

Please deny this application for an IHA until the full project is subject to review. It is the full responsibility of the National Marine Fisheries Service to ensure that all applications are done according to the law. Protection of marine life is your job. Protection and advancement of greedy wind developers diminishes the credibility and viability of the NMFS.

I also request that a public comment period be provided on the Environmental Assessment for the IHA, as required by law.

Sincerely,
Jane Eggebeen

Good morning:

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA).

Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts.

The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place.

I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IA as required by law.

Thank you,

Peter

Oyster Harbors Marine

Visit us at www.oysterharborsmarine.com

To Whom it May Concern:

Please deny Cape Wind an expedited approval process through the IDA and mandate an LOA. They should be subject to the Marine Mammal Protection Act requirement that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts.

Thank you for this important consideration.

Cynthia Cole

Barnstable

Hello,

Thank you for your time.

Please, Please, Please keep all the wildlife, fish, bird mammals alone! Testing the waters or air population is not needed in Nantucket Sound. These precious "animals" are our gift. Please don't take them from their natural home.

Let's keep the waters of Nantucket Sound as beautiful for our younger generations to experience for years to come.

Thank you for being part of the protection not the destruction of these "animals" homes.

Peace to you,

Thank you for your care,

Susan Ertelt

PS. Let's grow our green energy by keeping our "animals" free and our minds open to energies that are free from taking a life in the process.

To the Members of The National Marine Fisheries Service,

I understand that you are looking for public input and comments on the recent action taken by Cape Wind. I am writing to ask you to please thoughtfully consider Cape Wind's motives for applying for an incidental take authorization (IHA.) If they are not taking the required route to their project, what are they attempting to accomplish by this action? Is it that they hope to get one small step passed so the damage they do won't appear so reprehensible down the road? Is it to get the proverbial foot in the door? Is it to say, "Well, we've already caused damage, so what is a bit more," when submitting for the other necessary applications? Is it to attempt not having to adhere to the Marine Mammal Protection Act?

I have read many articles on the Cape Wind project, and now I can't believe they continue to push their plan. Not only will it be detrimental to those people living on the Cape, but also to marine mammals (whales, porpoises, dolphins, seals). Justifying killing these animals for human greed is unacceptable.

I live in the Great Lakes region, and it was recently determined that wind turbines located in the lakes is not a cost effective project. I was originally supportive of that project, as long as the turbines were not located in migratory routes. I have never been in support of wind turbines in Nantucket Sound. The impact is too great.

When visiting Copenhagen a few years ago, I was quite impressed with the turbines set in the harbor. I imagine the companies there understood that locating technology in view of a city is much more welcoming. I also assume that Copenhagen was a cost effective project, unlike Cape Wind. The sea life off the coast of Copenhagen has dealt with ships and the shipyard for generations. Nantucket Sound is pristine. We owe it to ourselves, our ancestors, future generations, and marine mammals that depend on this environment to keep it as untouched as possible.

I am now asking that the National Marine Fisheries Service deny Cape Wind their IHA application. There are many reasons why the project should not advance forward, and this most recent move by Cape Wind concerns me. I am afraid that they will do anything to make money no matter the cost: human or sea life. I understand that civilization depends on energy, but we have to weigh the cost and develop the means to produce it justly. Please consider the path and the long terms affects of this project. Please deny Cape Wind.

Sincerely, Carolyn S. Brockler

To Whom It May Concern:

This letter is to urgently request that the Incidental Harassment Authorization not be issued.

For years Cape Wind has promised no harm to the Nantucket Sound ecosystem which includes marine animals. It's beyond comprehension that they or any company or individual request an "incidental taking" of the whales and others.

There is NO NEED to obtain our windpower through this special private interest in this location, which is wrong for many reasons but especially for the reason of nature. However, we have been held hostage by their lobby since the project was declared (read "declared" and not "proposed"), and, meanwhile, other focus could have begun by our state for worthier green energy solutions.

The Humane Society of the USA agrees with my position about the IHA. Please do not issue it! Save Nantucket Sound!

Sincerely,

Donna Orth
Hyannis, Mass.

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

As concerned citizens,

Sherry and Phil Jackson

These guys at Cape Wind don't seem to believe in playing by the rules. Their latest sneaky move serves only to confirm that. It augurs ill for their compliance with terms should they receive eventual approval of their project. It is easy to foresee an endless series of their stepping over the line and daring the authorities to push them back, a costly process leading to litigation and/or settlements allowing them more than is merited, neither likely to serve the public interest.

Specifically, I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Sincerely yours,

Ralph M. Krause

Dear Mr. Payne and Other To Whom It May Concern,

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys.

Please do not ignore the fact that: The Marine Mammal Protection Act ***requires*** that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. . The multi-year project that Cape Wind has proposed ***requires*** the more comprehensive letter of authorization (LOA) regulations for five years, ***not just an IHA.***

I hereby request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that ***no construction on any phase can be undertaken until the full LOA regulations are in place.***

I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA ***as required by law.***

Sincerely,

Lincoln Baxter

18 Pine Tree Drive

Centerville, MA 02632

508-778-4075

To whom it may concern:

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Thank you for your consideration,
Gary Mirando
PO Box 4136
Vineyard Haven, MA 02568
508 693-8380
g.mirando@verizon.net

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Sincerely,

David Robinson

Dear Mr. Payne,

I can't see any positive end to having a wind power plant in Nantucket Sound. I know many fishermen that are upset to be losing this vital fishing ground. I imagine that sea mammals will have difficulties maneuvering through the power plant and the noise, vibration and electromagnetic activity will no doubt effect them negatively.

I know everybody is in a mad rush to make a move to renewable energy but I don't think we need to ruin one resource to create another. It does not make sense to me to encroach further on our fragile fishing grounds to experiment with water based wind energy.

Sincerely,

Suzanna Nickerson

This letter requests your attention to the Cape Wind application for an incidental take authorization IHA. This should be DENIED. The FULL project should be subject to review. Construction should NOT be allowed to begin until all LOA regulations and oversight are in place. Cape Wind is once again attempting to circumvent the full clarification and disclosure of its policies and motives through this application for incidental take. We who live on the Cape and hold our wildlife and environment dear and close to our hearts and lives urge you to deny this application until the full project may be seen and reviewed in its entirety and scope. Piecemeal plans , creeping construction, going around the process, looking for loopholes..this is not straightforward and indicates an entity who does not have the best interests of the Cape at heart. We hope an believe that you do. Thank you. Nina Griggs

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA. I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Mary Jane Richardson

Mashpee MA

Gentlemen:

This e-mail is being written to express my concern that Cape Wind has made an application for a Incidental take Authorization (IHA) rather than apply for an overall project application. It is clear to me that Cape Wind is trying to divide up the project into small pieces so that it can move forward more quickly and to qualify for earlier Federal Subsidies and to avoid more reviews. Cape Wind has applied for a 1 year IHA for just part of the project. -- pre-construction surveys. However, the Marine Mammal Protection Act requires that an intact single project, like Cape Wind, must obtain a single over-all approval and that it not be broken up into smaller tasks. A large multi-year project like Cape Wind which is going to be done over some 5 years must have a single comprehensive letter of authorization (LOA) and not a series of IHA's.

I am requesting that the National Marine Fisheries Service deny Cape Wind's IHA application. Cape Wind's full project needs to be reviewed and no construction should be started until the full LOA regulations are in place and a public comment period is provided on the Environmental Assessment for the IHA, as required by law.

Your attention to this matter is critical.

Richard Weiner
102 Westover Pkwy
Norwood, MA 02062

richardw@norwoodlight.com

Dear Sir;

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Thank you for your consideration of this request as this matter is of utmost importance to those of us who love Cape Cod and our oceanic mammals.

Best regards,

Marie Fiedrich
Carlisle and Edgartown, Massachusetts

Wednesday, NStar and NE Utilities said MA regulators can't force them to buy Cape Wind's power in order to win approval for their merger, adding that such a requirement could be unconstitutional.

Thank you for all your emails, letters, and phone calls to NStar Chairman, Tom May.

Please don't forget this week's Call to Action. The deadline is tomorrow, Friday, October 14.

The National Marine Fisheries Service (NMFS) is requesting public comment on the issuance of an Incidental Harassment Authorization (IHA) to Cape Wind. It would give the authority "to take marine mammals, by harassment incidental to pre-construction high resolution survey activities".

Email your comments immediately to: ITP.Magliocca@noaa.gov

This would be an incredible injustice if Cape Wind would be allowed an issuance of an Incidental Harassment Authorization to destroy one of the most beautiful places on earth. Come on, even the title of this issuance conjures up horrible acts of inhuman behavior to animals that have no way of protesting. Why is it illegal to harass humans, and if reported, found guilty, you are punished by incarceration and fines, why do we not afford the same protection to the animals which Cape Wind is showing such blatant disregard.

Protect those who can not protest. At the least, deny Cape Wind this indecent request for an IHA. At best, punish Cape Wind for wanton disregard for life other than their own.

Sincerely,
Sherry Collins

Mr. Magliocca,

Cape Wind is a high priced source of wind energy proposed to be developed in Nantucket Sound. In construction it will disrupt, destroy and harm mammals in the sea and air.

Accordingly, in that it is not economic and will harm mammals, I urge you to deny the IHA for Cape Wind.

Thank you,

Craig Reynolds

23 Sea View Lane

Mashpee, MA 02649

To take give the authority "to take marine mammals, by harassment incidental to pre-construction, construction or post construction is among the worst of the ideas that Cape Wind or anyone else has come up with. Please do not allow such a regulation, bill or law. Thank you for your consideration.

Anne W. Baker
P.O. Box 157
Hyannis Port, MA 02647
tel/fax: 508 775-4028
Email: awilbaker@mac.com
Cell: 508 776-7287

I fish every summer and fall. Don,t allow them to build!!!!!!

To : National Marine Fisheries Service (NMFS)

NOAA, Senator Brown, Congressman Issa

From: Clifford Carroll

Post Office 8

West Barnstable, MA, 02668

October 13, 2011

RE: National Marine Fisheries Service (NMFS)

Cape Wind- PARTIAL Incidental Harassment Authorization Request

NOAA,

I am writing this letter in strong objection to your potential illegal approval of a parted out or incomplete (-Incidental Harassment Authorization) for the 25 square mile industrial plant identified as Cape Wind.

As the protective federal agency responsible for these waters, you have an obligation to deny the request of this private developer to part out the permits for the taking of federally protected species in Nantucket Sound until you have completed the true accumulated effect that the project in its entirety will cause.

Not only is this request by this private developer another outrageous effort to circumvent existing federal laws put in place to protect what is today ESF(Essential Fish Habitat). The issuance of such a partial kill permit is highly illegal.

It is bad enough that the criminal behavior of the DOE, DOI, MMS and the rest of the federal government and the dirty politics of so called clean power have ignored the rights of our Indians, airports and fisherman. But now the Obama administration and it's so called protective agencies have gone as far as to ignore the hard fact that Right Whales have been using the exact area of this wind plant as a feeding ground. NOAA's own website has Right Whale sightings plainly plotted inside Nantucket Sound. And your agency has intentionally chosen to omit these findings.

As you may or may not want to acknowledge, the Right Whale is one of the most endangered species on earth, and your agency has chosen to omit them in this process. Recent FOIA requests will certainly show the intentional omission of the Right Whales from this process.

As you also know, the decibel levels of the sound percussion systems known as sound cannons used to run the sonar testing for Cape Wind is considered harassment to the internal nervous systems of these rare creatures and far exceeds the limits set by federal law.

It is important to note that we have proof that NOAA is fully aware of the recent sound testing provided from the research done on the Gloucester Mass, LNG facility showing strong evidence that the noise levels from the bow thrusters of these large installation ships have been found to be more harmful than the pile driving sound levels previously found to exceed the allowed federal sound levels. With this being the case, there should be no IHA given to this project. There is no such thing as getting a little bit pregnant and there is no reason to issue a partial permit on a project that will never be built once NOAA does its complete study of the entire project.

To allow the potential harm which will be done by this sonar testing to be parceled out on a "Partial Kill" basis is not only detrimental to the endangered species of Nantucket Sound, it is illegal. It is this type of back room dealings that are currently the subject of judiciary hearings being conducted in Washington in reference to the Solyndra and the influence applied by the DOE via Mr. Chu and his subordinates.

Again, full FOIA requests are being made to document the chain of this decision.

If NOAA continues down the same path of federal violations committed in the name of politics instead of science, I believe that those responsible will also find themselves in front of the judiciary committee testifying that the DOE and administration insiders pressured the allowance of the violation of the ESA and IHA federal laws and your agencies responsibility to protect the endangered species of the (ESF) essential fish habitat known as Nantucket Sound.

Please be the first federal agency to do the right thing and deny the "partial kill permit" requested for the partial Incidental Harassment Authorization on the Cape Wind offshore industrial plant which in the end will never be built anyways.

Thank you,

Cliff Carroll

Cc: Senator Scott Brown

Congressman Darrell Issa

Please do not let this happen. *(IHA) to Cape Wind.*

Thank you,
Cheryl Nadler
Rich Nadler
chertgn@gmail.com

Dear Sirs:

I am writing to express my concern about Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces. This tactic will enable Cape Wind to effectively circumvent standard processes and consequently move forward more quickly to qualify for federal subsidies and thereby avoid more review.

Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years -- not just an IHA.

I hereby request that the National Marine Fisheries Service deny the Cape Wind IHA application, until the full project is subjected to full review and that NMFS advise Cape Wind that no construction on any phase whatsoever can be undertaken until the full LOA regulations are in place. I also request that you please ensure a sufficient public comment period is provided on the Environmental Assessment for the IHA as required by law.

Thank you very much for your consideration and understanding of my above requests.

Yours truly,

Ted Giletti
47 Centre Street
Nantucket, Mass 02554

I am very over Cape Wind's application for an incidental take authorization (IHA).

- I believe that Cape Wind is attempting to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. They have applied for a one-year IHA for just one part of its project: pre-construction surveys.
- The Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and **not be broken up into smaller parts**.
- The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.
- I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place.
- I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Sincerely,
Amy McGuire Kates
P.O. Box 1090
Cotuit, MA 02635
(508) 420-0223

I Have A problem with and an objection to I H A. LEAVE OUR MAMMALS ALONE; they are hurting no one, and have added for generations to the cycle of the living world in which we belong, in which we "swim." Be careful of not knowing what you are getting into. Beware the Creator!

This is tongue in cheek, but I think you get the overall message. I am very concerned on moving into worlds we do not yet understand.

Thank you for listening.

Joanne El-Fayoumy

Cape Cod, MA

Home of the National Seashore

It would be fully irresponsible for the National Marine Fisheries Service (NMFS) to give the authority “**to take marine mammals, by harassment** incidental to pre-construction high resolution survey activities”.

I urge you to strongly deny this request.

Sincerely,

David E Olsson

The Market Quota System and the Tripe system can dovetail together. Structures at sea are of great value to cod and mussels and everything else. So, we can design for this. Please read and forward the reports on www.environmentalfisherman.com to all NMFS and NOAH and cover these aspects of policy. www.environmentalfisherman.com

My e-mail to you is over the effects of the Cape Wind Farm which Big Business Men are trying to push through to make a profit on production of making the wind blades for the Wind Farm; it will cause rising prices in electric bills to Cape Cod residents and hurt the marine wild life!

Please do everything you can to help us fight the Cape Wind Farms!

Sincerely,

Gail Kasper

PS Senator Kennedy was against the Cape Wind Farm also!

Sent via BlackBerry from T-Mobile

Dear National Marine Fisheries Service,

I request that NMFS deny Cape Wind an IHA. I see this as an attempt to circumvent the real purpose of NMFS' goal to protect marine mammals and fishes and to move their project forward without proper safeguards and review. Cape Wind has repeatedly shown callousness to the interests of area citizens affected by their project, the safety of migrating birds, the concerns of civil and commercial aviation and Massachusetts rate payers. I see their request for an IHA as more of the same disregard.

Please ensure no construction on any phase be undertaken until the full LOA regulations are in place and that a robust public comment period be allowed for Environmental Assessment for the IHA, as required by law.

Thank you for your consideration.

best,

don

--

don schaefer
535 Albany Street
Boston, MA 02118
617 542-5352

To National Marine Fisheries:

Do not grant a permit to Cape Wind. The Cape Wind project will enrich its creator and cost taxpayers millions in unnecessary electric charges.

Moreover, it will destroy a large part of the wildlife in Nantucket Sound and disrupt fishing grounds and put in jeopardy the livelihoods of fishermen.

Windfarms should not be built in Nantucket Sound where wildlife is abundant. A better place would be in deeper water away from so many birds, mammals, and fish. Land-based wind farms produce electricity that is much cheaper and less disruptive than ocean-based wind farms.

Sincerely yours,

Marietta Delehant
Concord, MA

We have just learned that your agency would "give the authority to take marine mammals, by harassment incidental to pre-construction high resolution survey activities" for Cape Wind's proposed industrial wind complex. This is unacceptable. There are listed species that frequent the area around Horseshoe Shoals in the Nantucket Sound. The Northern Right Whale being one of THE most Endangered Species listed. As residents of Massachusetts we demand that wildlife in, on and above the waters of Nantucket Sound be respected and protected.

Don Ogden, producer
The Enviro Show
WXOJ-LP & WMCB

How shameful, that this is even under consideration. Humans should not play God, in our vast and beautiful ocean.

Thank You.

--Jo Brisbane

PLEASE do not issue an IHA to take marine animals of any kind. Our Cape wildlife deserves better than this. The whole Cape Wind project will do immeasurable harm and must be stopped if humanly possible. Destruction of so much for so little (expensive electric power) is NOT acceptable. Thank you. Nina Griggs, living on Cape Cod. P.S. We humans don't want to be taken by harassment either.

I am a proponent of alternative energy but am totally against your support of the Cape Wind project. I was initially inclined to support the project until I discovered at a meeting with Cape Wind that this was not a competitive bid process. This, I found to be totally shocking given the importance of this project being the first and, therefore, supposed example how subsequent projects should be processed. Non-competitive in cost, non-competitive in design, non-competitive in process. Non-competitive?!

Also being a supporter of several organizations that protect animals and natural resources, I am now dismayed to learn of the request for an Incidental Harassment Authority and would, respectfully, ask that you deny this request.

This project is turning out to be a boondoggle for its developers. Now even NStar is refusing to be intimidated into buying the expensive energy from Cape Wind. At the meeting I attended Cape Wind stated that the cost of the energy would be three times what it costs from traditional sources. Three times? When I asked what kind of transparency there would be regarding the ability of the public to review their profit figures, they said that as they are not a public company, there would be none. None?!

The more I hear, the more I am concerned. The need for alternative energy is great but this project is detrimental not only to the wildlife that would be "incidentally harassed" but to a transparent and competitive process and accountability.

PLEASE DO NOT GRANT THIS INCIDENTAL HARASSMENT AUTHORITY TO CAPE WIND!!!!

Ellen and Robert Ryan
29 Davis Avenue
West Newton, MA 02465

I am an avid fishermen and sailor in Nantucket Sound. In my view Cape Wind would destroy one of Americas most beautiful and vibrant marine areas. Please do not let this happen.

Stephen O'Keefe
43 Davenport Rd.
West Dennis Ma.
Cape Cod

I am writing to express my concerns on Cape Wind's application for an incidental take authorization (IHA). Rather than applying for the overall project, Cape Wind is trying to segment its project into small pieces to move forward more quickly in order to qualify for federal subsidies and avoid more review. Cape Wind has applied for a one-year IHA for just one part of its project: pre-construction surveys. But the Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

I request that the National Marine Fisheries Service deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. I also request that you ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Respectfully,

William Rypka
18 Buckingham Dr.
Sandwich, MA 02563

Michael Payne, Chief

Permits, Conservation & Education Division

Office of Protected Resources

National Marine Fisheries Service

1315 East-West Highway

Silver Spring, MD 20910-3225

October 14, 2011

Dear Mr. Payne,

This letter is with regard to the attempt by Cape Wind to circumvent the requirements of the federal Marine Mammal Protection Act in order to avoid being subject to normal and adequate public and governmental review.

Under the Act, an enterprise such as this must be applied for as a single, intact project. However, Cape Wind, is trying to divide its project into small segments. The company is applying for a one-year incidental take authorization (IHA) for just one aspect of the overall project, namely, its pre-construction surveys.

In fact, the scope and nature of the Cape Wind project requires the more comprehensive letter of authorization (LOA) regulations for five years, rather than a one-year IHA.

I respectfully urge the National Marine Fisheries Service to deny the Cape Wind IHA application until the entire Cape Wind project can be subject to review, and that Cape Wind be instructed that no surveys or construction on any phase can be undertaken until the full LOA regulations are in place.

In addition, I request that you ensure that, as required by law, a public comment period be provided on the Environmental Assessment for the IHA.

Thank you in advance for your kind and thorough attention to this matter.

Sincerely,

Dr. Christopher M. Ely

98 Pine Grove Road

West Chatham, MA 02669

I support your stand in opposing Cape Wind's again trying short cut in their app.
harrasment issue. Warren Nickerso & Sandy Nickerson

**I am very against the "taking of marine mammals"..this is so horrible..
this "wind farm" must be stopped..**

**Dana Greene
The Painted Dog
2085 Route 6
Eastham, Ma 02642**

I am another voice objecting to Cape Wind's application for an IHA instead of submitting the more comprehensive LOA for the whole project.
Please deny the Cape Wind IHA application until the entire project -- including its economic viability -- has been more extensively reviewed via the full LOA review.
Thank you

William J. Hayes
PO Box 804
Dover, MA 02080

I stand strongly against the harrassment of marine mammals to further the endeavors of Cape Wind.

Michael Payne, Chief

Permits, Conservation & Education Division, NMFS

Dear Michael Payne,

I am concerned that Cape Wind has applied for an incidental take authorization (IHA) rather than applying for the overall project. Cape Wind is attempting to segment its project into small pieces in order to move forward more quickly and qualify for federal subsidies and avoid more in-depth review. To date, Cape Wind has applied for a one-year IHA for pre-construction surveys. The Marine Mammal Protection Act requires that an intact and single project like Cape Wind obtain approval as a single specified activity and not be broken up into smaller parts. The multi-year project that Cape Wind has proposed requires the more comprehensive letter of authorization (LOA) regulations for five years, not just an IHA.

Please deny the Cape Wind IHA application until the full project is subject to review and advise Cape Wind that no construction on any phase can be undertaken until the full LOA regulations are in place. Please ensure that a public comment period is provided on the Environmental Assessment for the IHA as required by law.

Sincerely,

James E. Barrington

16 Sypher Rd.

Chester, Connecticut, 06412-1033

To whom it may concern:

The Cape wind project is an albatross:

For so many reasons of which you are aware.

Environmentally, Esthetically and practically this project comes up short.

The list of actual reasons is as wide as Nantucket sound where these windmills are proposed to reside.

Please do everything in your power to resist and deny this project.

Sincerely,

Scott Taylor

Hello,

I am writing to express my concern for the native mammalian sealife of Nantucket Sound. This "Cape Wind" project would be bad for Massachusetts, worse for Cape Cod and horrible for the marine mammals that do receive the consideration of "Incidental Harassment".

If huge rate increases, no-bid contracts and enormous federal subsidies just to get started are not enough to cause concern among Massachusetts residents. Hopefully the prospect for further destruction of the Nantucket Sound ecosystem will do it.

Sincerely,

James A. Rubel

Kinlin Grover Real Estate

476 Main St.(Rt.-28)

Harwich Port MA 02646

508-432-8800 ext.-19

DO NOT let Cape Wind have an IHA re: their project on Nantucket Sound. It is wrong for all the animals and completely uncalled for. Thank you. Susan Koller

I am opposed to Cape Wind building wind turbines in our beautiful Nantucket Sound. It would be an environmental and visual nightmare. The Grand Canyon has a lot of wind, maybe that should be the next wind farm. I don't think this project has anything to do with alternative energy and everything to do with certain people making money. Sincerely Elizabeth Digney

I don't understand this but I do not want any kind of harrassement to our Marine life.
It is wrong. This whole plan is wrong, wrong, WRONG.

Re: issuance of an Incidental Harassment Authorization (IHA) to Cape Wind.

Dear NOAA -

I am concerned that authorizing the take of any marine mammal by harassment incidental to the pre-construction high resolution survey activities for the Cape Wind off-shore wind energy project will have a detrimental impact on all protected species because it is setting the stage for similar authorizations as this project, and any off-shore wind energy project, moves from pre-construction to construction and operation.

My other concern pertains to your role in implementing and enforcing the Marine Mammal Protection Act (MMPA). As you and other scientists have stated, we do not have adequate data on our marine mammals. My second and related concern is that we know they go where the food is, and we can never be sure where their food will be. Many public comments on the impact of off-shore wind development on wildlife include the suggestion that more data and surveys are needed before we site these projects. Cape Wind got its site without having to consider alternative sites, and it basically has its permits, so how do we best employ the MMPA and the Endangered Species Act (ESA) so that the full intent behind these laws is upheld? We either take it slow and gather more scientific data, or we proceed very carefully based on the science we have. The time needed to gather appropriate data is not an option in this case, so with insufficient data combined with a complex and vast development project that is the first of its kind in the ocean, in this country, I have to conclude that allowing an incidental take is too risky, especially with respect to particular listed species.

Take - I mean look at -(the point is to avoid a take) the N. Atlantic right whale. In the case of this rarest of marine mammals, the petition to expand their critical habitat has been under NOAA's review for some time, and your findings so far suggest that the science employed by the petitioners is sound science. From what I have read, I believe that you will choose to expand their critical habitat to include the migratory corridor that extends along the Atlantic coast from Florida to Maine, out across the outer continental shelf to include Nantucket Shoals and beyond. Some permitting for Cape Wind may never be subject to this expansion, but I expect that NOAA, knowing the facts contained in the petition, will consider the benefits and detriments of allowing an IHA accordingly.

According to the Woods Hole Oceanographic Institute, with fewer than 300 left in the world and with no recovery during the past 60 years - the death of a single N. Atlantic right whale brings the entire species closer to extinction. To authorize a take in this case undermines the basis for protecting the species in the first place. ESA & MMPA decisions have a regulatory effect, and without detailing the myriad of marine mammals that could be killed during any phase of the Cape Wind project, I hope that when you exercise your authority under the Marine Mammal Protection Act - NOAA's power to protect the whales, dolphins, porpoises and seals that share our coastal waters- you will use your discretion and apply the regulations to meet the intent of the Act. Based on their small population, the risk of killing one N. Atlantic right whale cannot be mitigated, and the detriments outweigh the benefits. Allowing a take by issuing an IHA to Cape Wind would compromise NOAA and the MMPA.

In writing to you tonight, I am reminded that the right whale is named because it was the easy whale to kill back in the days before electricity and global warming. I am also reminded that Horse Shoe Shoals is a public resource, the center of a marine sanctuary. Cape Wind has been very controversial. Concerns about fairness, regulatory process and government interference in the process - along with concerns about how we best develop renewable energy to provide electricity and to off-set global warming makes for a pretty flashy backdrop for any topic one chooses to take the time to comment on or debate. NOAA has it a bit easier. You have the law, and the facts, and a very specific responsibility. If one N. Atlantic right whale is killed, stop the project, right? Wrong? Can you stop the project with an Incidental Harassment Authorization issued to Cape Wind? Would you? When our economy and energy were based on whales, making decisions was a simple process. Science was nascent. No blogs or twitter. It is not so easy now.

Thank you for the important work that you do, and for taking the time to consider my comments, and I look forward to learning what you choose to do in this complicated case.

Sincerely,

Megan Ottens-Sargent
BOEM Federal Task Force member, Aquinnah
508-645-2776
32 State Road
Aquinnah, MA 02535

To Whom It May Concern,

I do not believe it is appropriate to issue incidental harassment/take permits to wind energy companies whose systems kill birds, bats and marine life.

There is a marked difference between Nameplate Capacity and Energy Production figures for LWECS systems. When one actually digs out the production numbers, it becomes clear that wind energy produces less than 2% of the electricity consumed off of the energy grid. This is not because we do not have enough wind energy systems, but is because these systems are unreliable and inefficient. Increasing the number of turbines installed increases the Nameplate Capacity but it does not increase the actual production numbers.

It is clear that we are paying more for these systems and getting less before hidden costs associated with the loss of wildlife necessary to balance particular ecosystems are even considered in the equation. Common sense tells me that when WNS and barotrauma from LWECS finally take their toll on bats we will see frightening increases in vector born illnesses (\$\$\$ healthcare costs). Since LWECS burn up their bearings unless significant amounts of induced voltage are dumped into the ground we will eventually see ground dwelling creatures disappear where LWECS are installed. Where is this induced voltage dumped with LWECS sited in water?

I fail to see how destroying the planet with this expensive, unsightly, polluting, spinning junk will benefit anyone and so I am adamantly opposed to bending the rules to accommodate bad decisions. These things are not environmentally friendly and do absolutely nothing to reduce our carbon footprint. We mine for rare earth minerals to manufacture the magnets. We manufacture the pieces/parts and dump waste after the manufacturing process. We need to keep coal, hydro, nuclear and gas plants on line to stabilize the grid and produce the energy we need because wind and solar CANNOT ever replace those systems so we're polluting and wasting money while we waste land, turn control of land over to foreign corporations.... and kill wildlife.

Deny the permit.

Thank you,

Mary Hartman

Cape Wind is shaping up into The Big Dig II -- and The Big Dig, if you recall, was a financial disaster for the taxpayers of Massachusetts. This is not a project that makes ANY sense for the little guy, for the sound, for the marine life in the sound, nor for Cape Cod tourism.

There's only one sound, but there are several other viable alternatives for Cape Wind.

This project should be canceled or moved -- it's a travesty and should at the very least be caught up in the courts for years, because there will be no turning back from the MASSIVE DESTRUCTION that will be part of its construction.

Can you really risk supporting this highly destructive mess?

Thank you,

Lisa Ali
19 Seaside Village Road
South Yarmouth, MA 02664