

Commerce's Final Results of Redetermination.⁷

Timken Notice

In its decision in *Timken*,⁸ as clarified by *Diamond Sawblades*,⁹ the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s June 25, 2020, judgment sustaining the Final Results of Redetermination constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Determination*, as modified by the *Amended Final Determination and Order*. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination

Because there is now a final court decision, Commerce is amending its *Final Determination* with respect to the countervailing duty rate calculated for Habas and the companies covered by the all-others rate. The revised rates are as follows:

Exporter or producer	Subsidy rate
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. ¹⁰	6.09
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. ¹¹	3.81
All Others	4.95

Cash Deposit Requirements

Because Habas does not have a superseding cash deposit rate, *i.e.*, there have been no final results published in a subsequent administrative review for the Habas, Commerce will issue revised cash deposit instructions to CBP. Commerce will instruct CBP to collect a cash deposit for estimated countervailing duties at *ad valorem* rates equal to the estimated weighted-average subsidy rates listed above for

Habas and all other producers and exporters of the subject merchandise, effective July 5, 2020.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1) and (e), and 777(i)(1) of the Act.

Dated: July 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA238]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore of Massachusetts, Rhode Island, Connecticut, and New York

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from Vineyard Wind, LLC (Vineyard Wind) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of 14 species of marine mammals, by Level B harassment, incidental to incidental to marine site characterization survey activities off the coast of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0501 and OCS–A 0522) and along potential submarine cable routes to a landfall location in Massachusetts, Rhode Island, Connecticut, and New York. The project has been delayed and none of the work covered in the initial IHA has been conducted. The initial IHA was effective from June 1, 2020 through May 31, 2021. Due to delays, Vineyard Wind has requested re-issuance with new effective dates of June 21, 2020 through June 20, 2021. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second

identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from June 21, 2020, through June 20, 2021.

ADDRESSES: An electronic copy of the final 2020 IHA previously issued to Vineyard Wind, Vineyard Wind’s application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting <https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-llc-marine-site-characterization-surveys>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine

⁷ See *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi AS, et al. v. United States*, Court No. 18–00144, Slip Op. 20–87 (CIT June 25, 2020).

⁸ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

⁹ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹⁰ See *Final Results of Redetermination*.

¹¹ The rate for Icdas did not change as a result of litigation. See *Carbon and Alloy Steel Wire Rod From the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, in Part, 83 FR 13239 (March 28, 2018); see also *Order*, 83 FR at 23421.

mammal or marine mammal stock in the wild (Level A harassment); or (ii) 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 (Level B harassment).

Summary of Request

On May 6, 2020 NMFS published final notice of our issuance of an IHA for the take of small numbers of marine mammals incidental to site characterization surveys with effective dates of June 1, 2020 through May 31, 2021 (85 FR26962). On May 27, 2020 Vineyard Wind requested that the effective dates of the IHA be revised to June 21, 2020 through June 20, 2021 due to operational delays. With up to 365 vessel days planned for survey activities, Vineyard Wind wants to be most efficient with the one-year duration of the IHA. The re-issued IHA would be identical to the previously issued IHA. Therefore, re-issuance of the IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

The purpose of Vineyard Wind's marine site characterization surveys is to obtain a baseline assessment of seabed/sub-surface soil conditions in the Lease Area and cable route corridors to support the siting of potential future offshore wind projects. Underwater sound resulting from Vineyard Wind's proposed site characterization surveys, including the use of high-resolution geophysical (HRG) equipment, are expected to produce sound in the marine environment that may result in the behavioral harassment of marine mammals. The location, timing, and nature of the activities, including the types of equipment planned for use, are within scope of those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Fourteen marine mammal species are expected to be taken by Level B harassment. A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical

to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2020 IHA for Vineyard Wind's site characterization survey work (85 FR 26962), Vineyard Wind's application, the **Federal Register** notice of the proposed IHA (85 FR 7952), and all associated references and documents.

Determinations

Vineyard Wind will conduct activities as analyzed in the initial 2020 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The re-issued 2020 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) Vineyard Wind's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in

CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources Permits and Conservation Division is authorizing the incidental take of four species of marine mammals which are listed under the ESA: The North Atlantic right, fin, sei and sperm whale. We requested initiation of consultation under Section 7 of the ESA with NMFS GARFO on February 12, 2020, for the issuance of this IHA. BOEM consulted with NMFS GARFO under section 7 of the ESA on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. The NMFS GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the North Atlantic right, fin, sei and sperm whale. Upon request from the NMFS Office of Protected Resources, NMFS GARFO issued an amended incidental take statement associated with this Biological Opinion to include the take of the ESA-listed marine mammal species authorized through this IHA in April, 2020.

Authorization

NMFS has issued an IHA to Vineyard Wind for marine site characterization surveys associated with the specified activity from June 21, 2020, through June 20, 2021. All previously described mitigation, monitoring, and reporting requirements from the initial 2020 IHA are incorporated.

Dated: July 8, 2020.

Donna S. Wieting,

Director, Office of Protected Resources,
National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA276]

Endangered Species; File No. 23148

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that NMFS has issued an Incidental Take Permit (ITP) (No. 23148) to Exelon Generating Company, LLC, pursuant to the Endangered Species Act (ESA) of 1973, as amended, for the incidental take of shortnose (*Acipenser brevirostrum*) and Atlantic (*Acipenser oxyrinchus*) sturgeon associated with the otherwise lawful operation of the Eddystone Generating Station in Eddystone, PA. The permit is issued for a duration of 10 years.

ADDRESSES: The incidental take permit, final environmental assessment, and other related documents are available on the NMFS Office of Protected Resources website at <https://www.fisheries.noaa.gov/action/incidental-take-permit-eddystone-generating-station>.

FOR FURTHER INFORMATION CONTACT:

Celeste Stout, phone: (301) 427-8436; email: Celeste.Stout@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibits the 'taking' of a species listed as endangered or threatened. The ESA defines "take" to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species when the takes are incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. The regulations for issuing incidental take permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

Exelon Generating Company, LLC, owns Eddystone Generating Station (the

facility), a natural gas/fuel oil-fired electric power generating facility that operates as a peaking plant, (*i.e.*, typically running at higher levels of generation capacity during the summer and winter periods). The facility is located at 1 Industrial Highway Eddystone, PA 19022. The facility presently consists of two natural gas/fuel oil-fired electric generating units that are steam-electric generators. Cooling water for each unit is withdrawn from the Delaware River through a cooling water intake structure (CWIS), which is located along the west shore of the River, directly in front of the facility. Exelon conducted entrainment sampling at the facility in 2005-2006, 2016, and 2017. One Atlantic sturgeon yolk-sac larva was collected in May 2017. Thus, Exelon determined it was necessary to apply for an ITP in accordance with the requirements under Section 10(a)(1)(B) of the ESA.

NMFS received a draft permit application from Exelon on June 28, 2018. Based on our review of the draft application, we requested further information and clarification. On December 21, 2018, Exelon submitted an application. Based on review of the updated application, NMFS and Exelon held further discussions regarding what needed to be incorporated in the Conservation Plan. On June 21, 2019, Exelon submitted a revised application and Conservation Plan. This application was considered complete and on July 16, 2019, NMFS published a notice of receipt of the Exelon application for the Eddystone facility in the **Federal Register** (84 FR 33924). The comment period ended on August 15, 2019. No comments were received. An additional notice was published in the **Federal Register** (84 FR 65970) and was published on December 2, 2019 to allow other agencies and the public the opportunity to review and comment on the draft Environmental Assessment (EA). The comment period closed on January 2, 2020. Two comments were received on the EA. One commenter was opposed to the killing of any sturgeon. This is not consistent with the ESA, which allows for the incidental take of listed species if certain criteria are met and a permit is issued by NMFS. The other commenter seemed confused regarding the requirements of the ITP and advised the Agency to select the no action alternative in the draft EA, so that Eddystone could continue to monitor interactions with sturgeon. However, it is the issuance of the ITP that will require Eddystone to monitor

interactions with sturgeon, not the no action alternative.

Conservation Plan

Section 10 of the ESA specifies that no permit may be issued unless an applicant submits an adequate conservation plan. The conservation plan prepared by Exelon Generation Company, LLC, describes measures to monitor, minimize and mitigate the impacts of incidental takes of ESA-listed shortnose and Atlantic sturgeon. To avoid and minimize take of sturgeon, Exelon will only operate Eddystone's circulating water pumps (CWPs): When the station is generating electricity; for incidental maintenance or testing (generally once per month) (referred to collectively as "Essential Station Operations"); or as required by a governmental agency or other entity with jurisdiction to require operations. Depending on station generation and ambient water temperatures, Exelon will also limit operations to one CWP per unit when possible. In addition, Exelon will rely on the river water pumps (RWPs), which intakes less water than Eddystone's other CWP, to provide cooling water for other critical station operations outside of Essential Station Operations. These measures will avoid and minimize the incidental take of sturgeon due to entrainment or impingement by eliminating or reducing water withdrawals at times when such withdrawals are not specifically required for Essential Station Operations or for governmental agency-mandated use. Additionally, Exelon will make all reasonable efforts to schedule fuel oil deliveries outside March 15-July 15. Continued monitoring related to the take of shortnose and Atlantic sturgeon will be ongoing and funding will be provided through the facility's annual operating budget.

Permit 23148

NMFS authorizes the following lethal incidental takes:

New York Bight DPS Atlantic Sturgeon

Vessel Strike: 1 sub-adult/adult over 10 years.

Entrainment: 27,000 larvae per year, which is equivalent to 2 age-1 equivalents per year.

Impingement: 5 young of the year (YOY)/sub-adults per year.

Total: 1 sub-adult/adult, 270,000 larvae, and 50 YOY/sub-adults over 10 years.

Shortnose Sturgeon

Impingement: 5 YOY/sub-adults per year.