

and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the specified activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The numbers of marine mammals that we authorize to be taken, for all species and stocks, would be considered small relative to the relevant stocks or populations (less than 11 percent of each species and stock). See Table 6. Based on the analysis contained herein of the proposed activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

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 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. 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, and sperm whale. The Biological Opinion can be found online at: www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable. Upon request from the NMFS Office of Protected Resources, the NMFS GARFO will issue an amended incidental take statement associated with this Biological Opinion to include the takes of the ESA-listed marine mammal species authorized through this IHA.

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 (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. Accordingly, NMFS prepared an Environmental Assessment (EA) and analyzed the potential impacts to marine mammals that would result from the project, as well as from a similar project proposed by Garden State Offshore Energy (a subsidiary of Deepwater Wind) off the coast of Delaware. A Finding of No Significant Impact (FONSI) was signed on June 13, 2018. A copy of the EA and FONSI is available online at: www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.

Authorization

NMFS has issued an IHA to Deepwater Wind New England, LLC for conducting marine site characterization surveys offshore of Rhode Island and Massachusetts and along potential submarine cable routes, for a period of one year, provided the previously

mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 15, 2018.

Donna S. Wieting,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC969

2018 Revision to Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing—Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts

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

ACTION: Notice.

SUMMARY: Per approval of the Secretary of Commerce, The National Marine Fisheries Service (NMFS) announces the availability of the 2018 Revision (NOAA Technical Memorandum NMFS-OPR-59) to its 2016 Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing—Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts (Technical Guidance or Guidance) based on comments received during the review of the Guidance pursuant to section 10 of Presidential Executive Order, Implementing an America-First Offshore Energy Strategy (April 28, 2017).

ADDRESSES: The 2018 Revision to the Technical Guidance (NOAA Technical Memorandum NMFS-OPR-59) is available in electronic form via the internet at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

FOR FURTHER INFORMATION CONTACT: Amy R. Scholik-Schlomer, Office of Protected Resources, 301-427-8449, Amy.Scholik@noaa.gov.

SUPPLEMENTARY INFORMATION:

Presidential Executive Order (E.O.) 13795, Implementing an America-First Offshore Energy Strategy (82 FR 20815; April 28, 2017), states in section 2 that “It shall be the policy of the United States to encourage energy exploration and production, including on the Outer Continental Shelf, in order to maintain

the Nation's position as a global energy leader and foster energy security and resilience for the benefit of the American people, while ensuring that any such activity is safe and environmentally responsible."

Among the requirements of E.O. 13795 is section 10, which called for a review of NMFS' Technical Guidance as follows: "The Secretary of Commerce shall review [NMFS' Technical Guidance] for consistency with the policy set forth in Section 2 of this order and, after consultation with the appropriate Federal agencies, take all steps permitted by law to rescind or revise that guidance, if appropriate."

The 2016 Technical Guidance referred to in E.O. 13795 is a technical document that compiles, interprets, and synthesizes scientific literature to produce updated received levels, or acoustic thresholds, above which individual marine mammals under NMFS' jurisdiction are predicted to experience changes in their hearing sensitivity (either temporary or permanent) for all underwater human-made sound sources. It is intended for use by NMFS analysts and managers and other relevant user groups and stakeholders, including other Federal agencies, when seeking to determine whether and how their activities are expected to result in hearing impacts to marine mammals via acoustic exposure. The Technical Guidance helps evaluate a proposed activity within a comprehensive effects analysis. It can inform decisions related to mitigation and monitoring requirements, but it does not mandate any specific mitigation. The Technical Guidance does not address or change NMFS' application of standards in the regulatory context, under applicable statutes, and does not create or confer any rights for or on any person, or operate to bind the public (*i.e.*, the use of the Technical Guidance is not mandatory).

The Office of Management and Budget previously classified the Technical Guidance as a Highly Influential Scientific Assessment (HISA). As such, the document underwent three independent peer reviews, at three different stages its development, including a follow-up to one of the peer reviews, prior to its dissemination by NMFS in 2016. Details of each peer review are included within the Technical Guidance (Appendix C), and specific peer reviewer comments and NMFS' responses are at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>. In addition to three independent peer

reviews, there were three public comment periods. The **Federal Register** Notice of Availability for the 2016 Guidance (81 FR 51694; August 4, 2016) summarizes substantive public comments and NMFS' responses.

Review Under E.O. 13795

To assist the Secretary of Commerce in the review of the Technical Guidance for consistency with the policy in section 2 of E.O. 13795, NMFS solicited public comment via a 45-day public comment period (82 FR 24950; May 31, 2017). Additionally, on September 25, 2017, NMFS hosted an Interagency Consultation meeting with representatives from the Bureau of Ocean Energy Management (BOEM), Department of State, Federal Highway Administration, Marine Mammal Commission, National Park Service, National Science Foundation, U.S. Air Force, U.S. Army Corps of Engineers, U.S. Geological Survey, and U.S. Navy.

During the public comment period, NMFS received 62 comments from Federal agencies (Bureau of Ocean Energy Management, U.S. Navy, and Marine Mammal Commission), oil and gas industry representatives, Members of Congress, subject matter experts, non-governmental organizations, and members of the public. Most of the comments (85%) recommended no changes to the Technical Guidance. No public commenter suggested rescinding the Technical Guidance. The U.S. Navy, Marine Mammal Commission, Members of Congress, and subject matter experts expressed support for the Technical Guidance's auditory injury thresholds as reflecting the best available science. The remaining comments (15%) focused on additional scientific publications for consideration or recommended revisions to improve implementation of the Technical Guidance.

At the Federal Interagency Consultation meeting, none of the Federal agencies recommended rescinding the Technical Guidance. They expressed support for the Technical Guidance's auditory injury thresholds and the science behind their derivation. Comments received at the meeting focused on improvements to implementation of the Technical Guidance.

During both the public comment period and the Interagency meeting, three key topic areas were raised: (1) The limited scientific data on the impacts of sound on baleen whale hearing; (2) the need to determine accurate sound exposure durations for all species of marine mammals; and (3) the need to improve the Technical Guidance's optional User Spreadsheet

tool. Commenters also encouraged the agency to establish working groups to address these data gaps and future needs.

2018 Revisions to Technical Guidance

In response to the feedback received during the public comment period and the Interagency meeting, NMFS has improved the Technical Guidance and updated User Spreadsheet tool in several ways. Since none of the public commenters or Federal agencies offered additional scientific data to modify the auditory injury thresholds, including those for baleen whales, no changes are warranted on that topic at this time. Nevertheless, NMFS plans to convene a working group later in 2018 to continue to examine and refine the auditory injury thresholds for baleen whales as more scientific data become available. Also, since none of the public commenters or Federal agencies offered additional scientific data to modify the sound exposure durations for all species of marine mammals, no specific changes are warranted on that topic at this time either. Nevertheless, NMFS plans to convene a working group later in 2018 to evaluate sound exposure durations to determine whether revisions are appropriate for future updates of the Technical Guidance based on any new information.

To help applicants implement the Technical Guidance and optional User Spreadsheet tool, NMFS has: (a) Drafted a new User Manual for the optional User Spreadsheet that provides more detailed instructions and examples on how to use it and plans to submit this User Manual for public comment later in 2018 to gain input from stakeholders and inform future versions of this manual; (b) modified the optional User Spreadsheet to provide additional capabilities to assess auditory injury thresholds; (c) modified the current optional User Spreadsheet tool to facilitate assessing auditory injury thresholds for commonly used sound source; (d) modified the Technical Guidance to be more reflective of an updated international standard specifically developed for underwater acoustics that became available after the documents finalization in 2016; (e) included a summary and preliminary analysis of relevant scientific literature published since the 2016 Technical Guidance's finalization; and (f) updated the Technical Guidance to include the Navy's finalized version of their 2016 Technical Report that was used to derive the Technical Guidance's auditory injury thresholds.

The 2018 Revision to the Technical Guidance (NOAA Technical

Memorandum NMFS–OPR–59) with the updated User Spreadsheet tool and the new companion User Manual is available in electronic form via the internet at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

Dated: June 18, 2018.

Elaine T. Saiz,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG132

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the South Basin Improvements Project at the San Francisco Ferry Terminal

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

ACTION: Notice; Issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the San Francisco Bay Area Water Emergency Transportation Authority (WETA) to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with the Downtown San Francisco Ferry Terminal Expansion Project, South Basin Improvements Project in San Francisco, California.

DATES: This Authorization is effective from June 1, 2018 through May 31, 2019.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the 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 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, 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 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).

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 action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality)

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. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Summary of Request

On January 22, 2018, NMFS received a request from WETA for an IHA to take marine mammals incidental to expansion and improvements at the downtown San Francisco ferry terminal. The application was determined to be adequate and complete on April 10, 2018. WETA’s request was for take of seven species of marine mammals by Level A and Level B harassment. This authorization is valid from June 1, 2018 to May 31, 2019. Neither WETA nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to WETA for similar work (82 FR 29521; June 29, 2017). WETA complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the “Estimated Take” section.

Description of Activity

WETA is planning to expand berthing capacity at the Downtown San Francisco Ferry Terminal, located at the San Francisco Ferry Building, to support existing and future planned water transit services operated on San Francisco Bay by WETA and WETA’s emergency operations. The Downtown San Francisco Ferry Terminal Expansion Project includes the construction of three new water transit gates and overwater berthing facilities, in addition to supportive landside improvements, such as additional passenger waiting and queuing areas, circulation improvements, and other water transit-related amenities. The new gates and other improvements would be designed to accommodate future planned water transit services between Downtown San Francisco and Antioch, Berkeley, Martinez, Hercules, Redwood City, Richmond, and Treasure Island, as well as emergency operation needs. The new gates will be constructed using 81 steel piles, ranging in diameter from 24 to 36 inches (in). All piles will be driven during the authorized in-water work window of June 1 to November 30, 2018.