

**Congress of the United States**  
**Washington, DC 20515**

March 13, 2014

Dr. Kathryn Sullivan, Interim Administrator  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce  
Herbert Hoover Building, Room 5221  
Washington, D.C. 20230

Dear Dr. Sullivan,

We submit this letter to support the National Oceanic and Atmospheric Administration's (NOAA) updated guidance for assessing the impacts of sound produced by human activity on marine mammals and to offer our comments. We believe these guidelines will serve as an essential tool for the public and private sector as they make decisions about marine resources and seek to fully comply with the Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and National Marine Sanctuaries Act. Though we have a number of concerns with the draft guidelines, we thank NOAA for its continued effort to seek comments, questions, and concerns from the public.

As NOAA is well aware, Congress passed the MMPA with the explicit aim of "protect[ing] essential habitats...for each species of marine mammal from the adverse effect of man's actions." Today there is little doubt that noise produced from human activity can have a devastating impact on marine mammal populations, causing temporary and permanent hearing loss, disruption of mating and feeding, abandonment of habitat, and even death. The powerful underwater sound sources employed in many of today's offshore research and training operations have the capacity to severely impact individual marine populations across large areas. Given NOAA's acknowledgement of the "inherent data limitations...when assessing acoustic effects on marine mammals," we believe it is particularly important that the guidelines carefully evaluate all available science and establish conservative and regularly updated standards for mammal protection. Also, we agree with NOAA that these standards should serve as only one of many tools for properly assessing proposed activities in U.S. waters.

While these draft guidelines are an important step forward, comprehensive assessments should require standards for Level B Harassment as defined under MMPA, the disturbance of a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns. It is our belief that these standards are necessary to evaluate the impact of the range of private and public activities along our coasts that disturb marine mammal migration, breeding, and feeding patterns. We look forward to the release of conservative guidelines that account for

the far-ranging impacts of powerful noise sources, and urge NOAA to expedite their development.

Data regarding the impact of noise on marine mammals, and consequently the significant potential for uncertainty in the formulation of both temporary (TTS) and permanent (PTS) hearing shift thresholds, are extremely limited. And since NOAA's guidelines on these issues will be taken as definitive in a number of regulatory contexts, we suggest that where a potential for uncertainty exists NOAA proceed cautiously and consider adjustments to threshold levels that are most protective of the animals. As Congress noted when it passed the MMPA: "they [marine mammals] should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management."

One example of where such deference may be appropriate is in the calculation of "takes" under MMPA and ESA. In the draft guidance, NOAA has made methodological decisions regarding TTS onset that we are concerned could result in underreporting the number of "takes," particularly in cases when data are limited. Integrating statistical analysis to ensure that limited data from just a few specimens are fairly extrapolated to represent the distribution of TTS onset for an entire species would likely provide a more accurate and conservative assessment. A comprehensive review of the draft guidelines by NOAA with this lens may bring to light other contexts where similar solutions would be appropriate.

We also request NOAA consider revising the section on cumulative impacts of sound on marine mammals. Powerful noise-generating activities such as pile-driving projects or long-term seismic surveys can continue for weeks and affect large areas, and there are a variety of reasons marine mammal populations may remain in a region despite continued harassment. We suggest that NOAA extend its 1-hour and 24-hour cumulative sound exposure windows or provide guidance as to circumstances when an extension may be appropriate.

In all, we strongly support NOAA's efforts to move forward with clear guidance regarding the physical and behavioral impacts of anthropogenic sound on marine mammals. In any circumstance where data are limited, however, we urge NOAA to proceed with caution and consider pursuing the most protective options. Once again, we thank NOAA for the opportunity to comment and look forward to learning how public feedback will be reflected in the final guidance.

Sincerely,



JARED HUFFMAN  
Member of Congress



SAM FARR  
Member of Congress



HENRY WAXMAN  
Member of Congress



PAUL TONKO  
Member of Congress



MIKE THOMPSON  
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