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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC969

Draft Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing – Acoustic Threshold Levels for Onset of Permanent and Temporary Threshold Shifts

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

ACTION: Notice; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS), on behalf of NMFS and the National Ocean Service (referred collectively here as the National Oceanic and Atmospheric Administration (NOAA)), announces the availability of a document containing proposed changes to its Draft Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing. The Guidance provides updated received levels, or thresholds, at which individual marine mammals under NOAA's management authority are predicted to experience changes in their hearing sensitivity (either temporary or permanent) for all underwater anthropogenic sound sources. NOAA has re-evaluated and modified several parts of the Draft Guidance and is soliciting public comment on the proposed changes.

DATES: Comments must be received by *[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: The proposed changes to the Draft Guidance are available in electronic form via

the Internet at <http://www.nmfs.noaa.gov/pr/acoustics/>.

You may submit comments, which should be identified with NOAA-NMFS-2013-0177, by either of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

Mail: Send comments to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226, Attn: Acoustic Guidance.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

SUPPLEMENTARY INFORMATION:

NOAA has developed Draft Guidance for assessing the effects of anthropogenic sound on the hearing of marine mammal species under NOAA's jurisdiction (i.e., whales, dolphins, porpoises, seals and sea lions). Specifically, the Guidance, which is technical in nature, identifies the received levels, or thresholds, at which individual marine mammals are predicted to

experience changes in their hearing sensitivity (either temporary or permanent) for all underwater anthropogenic sound sources. This Guidance is intended to be used by NOAA 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 particular types of impacts to marine mammals via acoustic exposure. The document outlines NOAA's updated acoustic threshold levels, describes in detail how the thresholds were developed, and explains how we intend to update them in the future.

NOAA first published a **Federal Register** Notice on December 27, 2013, announcing the availability of the Draft Guidance and a 30-day public comment period (78 FR 78822), which was extended another 45 days based upon public request (79 FR 4672; January 29, 2014). While NOAA was in the process of evaluating and addressing public comments, the U.S. Navy updated its methodology for the development of marine mammal auditory weighting functions and acoustic threshold levels. NOAA evaluated the proposed methodology and determined that it reflected the best available science. As a result, NOAA incorporated the Navy's methodology into our Draft Guidance and conducted another 45-day public comment period (80 FR 45642; July 31, 2015). Please refer to these Federal Register Notices for additional background about the 2013 and 2015 Draft Guidance.

While NOAA was working to address public comments from the second public comment period and finalize the Guidance, NOAA and the Navy (SPAWAR Systems Center Pacific) further evaluated certain aspects of the U.S. Navy's methodology. As a result, several recommendations/modifications were suggested.

The recommendations include: an updated methodology for predicting a composite audiogram for LF cetaceans; modification of the methodology used to establish auditory threshold levels for LF cetaceans; movement of the white-beaked dolphin (*Lagenorhynchus albirostris*) from mid-frequency (MF) to high-frequency (HF) cetaceans; the inclusion of a newly published harbor porpoise (HF cetacean) audiogram (Kastelein et al. 2015); the exclusion of multiple data sets from the phocid pinniped weighting function; removal of peak sound pressure level (PK) acoustic threshold levels for non-impulsive sounds; and updated methodology for deriving PK acoustic threshold levels for functional hearing groups where no data are available.

After consideration of these recommendations, NOAA has updated the Draft Guidance to reflect the suggested changes and is soliciting public comment on those revisions, which have been placed in a stand-alone document, via a focused 14-day public comment period. As the Guidance is finalized, NOAA will address *all* substantive public comments on the Guidance (i.e., from the first and second public comment periods, as well as those from this focused third public comment period). Accordingly, there is no need to reiterate or resubmit comments made during the first and second public comment period on other sections of the Draft Guidance. NOAA encourages the public to focus comment on the document containing the proposed changes to the Guidance.

The Guidance is classified as a Highly Influential Scientific Assessment by the Office of Management and Budget. As such, independent peer review is required prior to broad public dissemination by the Federal Government. As part of this process, NOAA has conducted three independent peer reviews in association with the Guidance. Details of all peer reviews can be found within the Guidance and at the following website:

<http://www.nmfs.noaa.gov/pr/acoustics/>. Concurrent with this third public comment period, NOAA requested that the peer reviewers of the Navy's methodology review the document containing the proposed changes to the Draft Guidance and indicate whether the revisions would significantly alter any of the comments made during their original review.

Dated: March 10, 2016.

Donna S. Wieting,

Director,

Office of Protected Resources, National Marine Fisheries Service.

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