



September 22, 2023

Richard W. Spinrad, Ph.D.
NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

Dear Dr. Spinrad:

We are writing in follow-up to our letter of September 8, 2023 wherein we presented urgent and credible information relating to offshore wind sonar activity and an apparent connection between this activity and the increase in whale deaths in the Atlantic. Specifically, we reported that:

- a. High decibel sonar levels emitted by an offshore wind survey vessel operating in BOEM lease #OCS-A 0538 exceeded the levels cited in the incidental harassment authorization (IHA) issued by NMFS;
- b. Vessel-only continuous noise when measured at $\frac{1}{2}$ nautical mile from the survey boat exceeded NMFS' Level B harassment threshold (120 dB,rms) for continuous noise. We also noted that NMFS no longer enforces its Level B harassment threshold for continuous noise during offshore wind energy sonar activities;
- c. A review of the currently active IHAs issued by NMFS for site characterization work in wind lease areas revealed that *all* the IHAs imposed mitigations based on proposed sonar sound levels that were significantly quieter than actual levels.

As you should be aware, mitigations relating to sonar sound levels defined in the IHA are predicated on the noise level emitted from the sonar when measured at the source i.e. at the point where the sonar explosion occurs. By applying sonar levels that are quieter than those actually emitted, the Level B threshold distances would be materially shorter. This results in the Protected Species Observers looking for marine mammals at distances that are much closer to the sonar than would be required had the correct sound level been applied. It also means that NMFS has understated the estimated instances of take authorized in the IHAs since these numbers are tied to the ocean area exposed to loud noise levels. Louder sonar devices create larger areas of noise impact.

Save Right Whales Coalition has not received a response to its letter from NMFS, however, we are aware that NMFS' spokesperson, Ms. Katie Wagner, provided comment to the [Staten Island Advance](#) newspaper stating "These predictive thresholds, which are available online, are not regulatory requirements but provide

important insight into the regulatory process as developers propose and NOAA Fisheries considers approving specific measures to ensure that the project has no more than a negligible impact on marine mammal population.”

Ms. Wagner’s casual referral to NMFS’ established recommendations for protecting marine mammals is belied by the extensive and highly detailed record NMFS has developed since 2016 with regard to underwater noise as well as specific guidance pertaining to sonar for the purposes of site characterization work.

Pursuant to the Marine Mammal Protection Act, NMFS has published acoustic thresholds intended to protect marine mammals from being exposed to “elevated sound levels that may lead to mortality, temporary or permanent hearing impairment (threshold shift), non-auditory physical or physiological effects, and behavioral disturbance.”¹ These thresholds are clearly articulated in technical guidance issued by NMFS in 2016 and revised in 2018.² Both the 2016 and 2018 guidance underwent extensive public comment. NMFS has also developed recommendations specific to offshore sonar activities for determining source sound levels,³ and methods for estimating the distance at which the sonar sound should dissipate down to the NMFS protective threshold level.⁴ Save Right Whales Coalition does not challenge NMFS’ guidance in our letter. In reading the IHA applications submitted to NMFS for offshore wind sonar, we see that the developers are well aware of the guidance and recommendations. Failure to comply with the thresholds would likely result in NMFS denying their IHA applications.

The issue we raise in our letter is that NMFS did not follow its own guidance regarding determining source sonar sound levels. In all cases, NMFS approved the IHAs based on sonar specifications that did not match the equipment in use or did not match the manufacturer’s specifications for source levels. Consequently, the protective distances adopted in the IHAs are not protective at all. Rather, marine mammals are likely getting much closer to the sonar than should be allowed. This finding is entirely ignored in Ms. Wagner’s comments.

We are also aware that Ms. Wagner complained to the Staten Island Advance that the Rand Acoustics, LLC data were not made available to NMFS. As you are aware, our letter of September 8 offered to send the information to you upon request. No such request was received. You are welcome to access the Rand study at this link - <https://randacoustics.com/papers>.

¹ NOAA Fisheries (2023). National Marine Fisheries Service: Summary of Marine Mammal Protection Act Acoustic Thresholds, https://www.fisheries.noaa.gov/s3/2023-02/MMAcousticThresholds_secureFEB2023_OPR1.pdf .

² NOAA Fisheries (n.b.). Marine Mammal Acoustic Technical Guidance. <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance> accessed September 22, 2023.

³ NOAA Fisheries. (2023). Recommendation for Sound Source Level and Propagation Analysis for High Resolution Geophysical (HRG) Sources. April 2, 2023. <https://www.fisheries.noaa.gov/s3/2023-05/RecommendationsforSoundHRGSourceandTLAnalysis-Final-508V4-OPR1.pdf>

⁴ NOAA Fisheries (n.b.). Associated Level B Harassment Isopleth Calculator. https://media.fisheries.noaa.gov/2022-06/HRG_LevelBCalc_Public_OPR1.xlsx accessed September 22, 2023.

This is a serious matter that deserves a serious response from NMFS. We look forward to your reply. Please contact us by email at info@saverightwhales.org or by phone at 603.838.6588.

Sincerely,



Lisa Linowes,

For The Save Right Whales Coalition

cc:

President Joe Biden

Michael S. Regan, Administrator, EPA

David Cash, Regional Administrator, Region 1, EPA

Lisa F. Garcia, Regional Administrator, Region 2, EPA

Radhika Fox, Assistant Administrator, Office of Water, EPA

Brian Frazer, Director, Assistant Administrator, Office of Wetlands, Oceans and Watersheds, EPA

Deb Haaland, Secretary, Department of the Interior

Liz Klein, Director, BOEM

Walter Cruickshank, Deputy Director, BOEM

William Yancey Brown, Environmental Program Chief, BOEM

Karen J. Baker, Chief of Renewable Energy, BOEM

Jainey Bavishi, Asst Sec. of Commerce for Oceans and Atmosphere/Deputy NOAA Admin, NOAA

Michael C. Morgan, Asst Sec. of Commerce for Environmental Observation and Prediction, NOAA

Nicole LeBoeuf, Assistant Administrator, National Ocean Service, NOAA

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Frances M.D. Gulland, Commission Chair, Marine Mammal Commission

Sue E. Moore, Commissioner, Marine Mammal Commission

Save Right Whales Coalition

<https://saverightwhales.org/>

Andy J. Read, Commissioner, Marine Mammal Commission
Peter Thomas, Executive Director, Marine Mammal Commission

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Ben Jealous, Executive Director, Sierra Club
Holly Bender, Chief Energy Officer, Sierra Club
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