

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 three species of marine mammals which are listed under the ESA: The North Atlantic right, fin, 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. NMFS GARFO issued a programmatic Biological Opinion in 2013 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 was later amended to include the Office of Protected Resources as an action agency. The Biological Opinion can be found online at: www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable. The programmatic consultation established a procedure for reviewing future actions to determine if they and their effects fell within the scope of the Biological Opinion, and noted that for future MMPA authorizations for such activities, the Biological Opinion's incidental take statement (ITS) could be amended to exempt the take of ESA listed marine mammals. In April 2018, NMFS GARFO amended the ITS to exempt the take of right, sperm and fin whales as a result of the site characterization surveys authorized via the previously issued IHA.

NMFS GARFO has determined that the 2013 Biological Opinion remains valid and that this MMPA authorization provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of the opinion. The Biological Opinion meets the requirements of section 7(a)(2) of the ESA and implementing regulations at 50

CFR 402 for our issuance of an IHA under the MMPA, and no further consultation is required.

Renewal

NMFS has issued an IHA Renewal to Equinor for conducting marine site characterization surveys off the coast of New York and coastal waters where cable route corridors will be established, from April 24, 2019 through April 23, 2020.

Dated: April 29, 2019.

Donna S. Wieting,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 190325274-9274-01]

RIN 0648-XG926

Revisions to NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions

AGENCY: Office of General Counsel (OGC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces the availability of draft revisions to NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy) for public review and comment. The revisions to the policy reflect new legislation enacted and regulations promulgated, the most recent adjustments to the maximum civil monetary penalties authorized under statutes administered and enforced by NOAA, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, and clarifications to improve enforcement consistency nationally, increase predictability in enforcement, improve transparency in enforcement, and more effectively protect natural resources.

DATES: The draft revisions to the Penalty Policy will remain available for public review until June 3, 2019. To ensure that comments will be considered, NOAA must receive written comments by June 3, 2019.

ADDRESSES: Interested persons may submit comments by any of the following methods:

- **Electronic Submissions:** Submit electronic public comments, identified by NOAA-HQ-2019-0029, at <http://www.regulations.gov>. The docket established for this rule-making can be found at: <http://www.regulations.gov/#!docketDetail;D=NOAA-HQ-2019-0029>. Click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Enforcement Section, Office of the General Counsel, National Oceanic and Atmospheric Administration, 1315 East-West Highway, SSMC-3 15424, Silver Spring, MD 20910, Attn: Megan Engelke-Ros.

The draft revisions to the Penalty Policy are available electronically at the following website: <https://www.gc.noaa.gov/enforce-office3.html>. Commenters may also request a hard copy of the draft revisions to the Penalty Policy by sending a self-addressed envelope (size 8.5 x 11 inches) to the street address provided above. Comments submitted in response to this notice are a matter of public record. Before including an address, phone number, email address, or other personal identifying information in a comment, please be aware that comments—including any personal identifying information—can and will be made publicly available. While a request can be made to withhold personal identifying information from public review, NOAA cannot ensure that it will be able to do so.

Comments submitted electronically will generally be posted to <http://www.regulations.gov> without change. For posted comments, all personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NOAA will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Megan Engelke-Ros at 301-427-2202.

SUPPLEMENTARY INFORMATION: On April 14, 2011, NOAA published its new NOAA Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (76 FR 20959). On July 1, 2014, NOAA issued a revised Penalty Policy. As explained more fully in the text of the revised Penalty Policy, the purpose of this Policy is to continue to ensure that: (1) Civil administrative penalties and permit sanctions are assessed in accordance with the laws that NOAA enforces in a fair and consistent manner; (2) penalties and permit sanctions are appropriate for the gravity of the violation; (3) penalties and

permit sanctions are sufficient to deter both individual violators and the regulated community as a whole from committing violations; (4) economic incentives for noncompliance are eliminated; and (5) compliance is expeditiously achieved and maintained to protect natural resources.

This revised Penalty Policy also reflects legislation passed and regulations promulgated since issuance of the 2014 Policy, in particular:

- The Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015, Public Law 114–81, which implemented the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing and amended the enforcement provisions of a number of statutes administered by NOAA; and
- The most recent adjustments to the maximum civil monetary penalties authorized under statutes administered and enforced by NOAA, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (see 84 FR 2445, February 7, 2019).

Under this revised Policy, NOAA will continue to promote consistency at a national level, provide greater predictability for the regulated community and the public, maintain transparency in enforcement, and more effectively protect natural resources. The major changes to the existing Penalty Policy made by this revision include:

- (1) Additional clarity on what would be considered “such other matters as justice may require” under the adjustment factors;
- (2) Clarification on our policy for when and how the newly adjusted statutory penalty maximums will apply;
- (3) Clarification of the policy on application of prior offenses to penalty assessments;
- (4) Updates to the penalty schedules to reflect new statutory authorities or regulations;
- (5) Adjustments to the penalty matrixes to reflect the most recent adjustments to the maximum civil monetary penalties.

Some of the statutory adjustments to the maximum civil monetary penalties were significant and required a rebalancing of our distribution of the penalty ranges in the penalty matrixes. In making these adjustments, there were two primary considerations that affected the revised penalty matrixes. First, for each matrix that was adjusted, a percentage increase was applied across the entire matrix and the percentage increase was, in all cases, less than the percentage increase to the statutory maximum (numbers were rounded).

This was done so as to take a conservative approach to the statutory penalty increases, which reflected a “catch-up” application of adjustments for inflation causing some significant penalty increases. Second, the matrixes were adjusted to ensure each individual matrix utilized the full penalty range in a balanced manner so that the penalty ranges increased gradually as the gravity level of the violations increased, rather than having an exponential increase in penalty ranges from one gravity level to the next.

The revised Penalty Policy will supersede the previous Penalty Policy regarding the assessment of penalties or permit sanctions, and previous penalty and permit sanction schedules issued by the NOAA Office of General Counsel. This Penalty Policy provides guidance for the NOAA General Counsel’s Office in assessing penalties but is not intended to create a right or benefit, substantive or procedural, enforceable at law or in equity, in any person or company. NOAA retains discretion to assess the full range of penalties authorized by statute in any particular case.

The full revised Penalty Policy, along with examples, matrixes, and schedules can be found at <https://www.gc.noaa.gov/enforce-office3.html>. More information about the NOAA General Counsel Enforcement Section can be found at <https://www.gc.noaa.gov/enforce-office.html>.

Dated: April 25, 2019.

Jeff Dillen,

Deputy General Counsel, National Oceanic and Atmospheric Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG818

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy Target and Missile Launch Activities on San Nicolas Island, California

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for

authorization to take marine mammals incidental to target and missile launch activities on San Nicolas Island (SNI), California for the Naval Air Warfare Center Weapons Division (NAWCWD), Point Mugu Sea Range (PMSR). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision. The Navy’s activity is considered a military readiness activity pursuant to MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA).

DATES: Comments and information must be received no later than June 3, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.Egger@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list