

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

March 5, 2020

Dr. Neil Jacobs

Assistant Secretary of Commerce for Environmental Observation and Prediction
Acting Under Secretary of Commerce for Oceans and Atmosphere
National Oceanic and Atmospheric Administration
1401 Constitution Ave. NW, Rm. 5128
Washington, D.C. 20230

Dear Dr. Jacobs:

We are writing to express our deep concern with the National Oceanic and Atmospheric Administration's (NOAA) proposed rule to authorize the take of marine mammals incidental to seismic survey activities in Federal waters of the U.S. Gulf of Mexico.¹ This proposed rule would authorize the take of every population of marine mammal in the Gulf of Mexico, including the entire population of the endangered Gulf of Mexico Bryde's whale and endangered sperm whales, in favor of the oil and gas industry.

Marine mammal populations in the Gulf of Mexico were devastated by the *Deepwater Horizon* oil spill in 2010. In fact, seventeen percent of the entire population of the Bryde's whale was killed due to the spill.² In 2019, NOAA listed the species as endangered under the Endangered Species Act and determined that chronic noise from seismic survey activity in the species' habitat poses a risk to its survival and that the species appears to have no other available habitat in which to seek refuge.³ With this in mind, we are extremely concerned that NOAA's determination that seismic activity would have a negligible impact on the species was based on a year-round closure of seismic activity in the Bryde's whale habitat; however, NOAA didn't include a year-round closure in the proposed rule and instead decided to only include a seasonal closure in the proposed rule without any analysis. Anything less than a year-round closure in this area is irresponsible.

It is simply inconceivable that NOAA would propose incidental take regulations that would take over 85 Bryde's whales, or nearly 200 percent of the population annually, and 1,300 percent over five years, in addition to nearly 9,000 percent of the sperm whale population, and over 40,000 percent of the beaked whale population.

Finally, the proposed rule would have broader implications that would weaken the Marine Mammal Protection Act by reinterpreting the meaning of "small numbers" of marine mammals for which the agency may authorize incidental take. The new interpretation would allow the take

¹ 83 Fed. Reg. 29212

² Deepwater Horizon Marine Mammal Injury Quantification Team (2015)

³ 84 Fed. Reg. 15446

of up to a third of the population. This is on its face contrary to the plain meaning of that term and previous court interpretations.⁴

These logical contradictions once again call into question the potential for political influence over scientific integrity. To assist the Committee's oversight of this issue, please respond to the following questions and information requests as soon as possible, but no later than March 19, 2020:

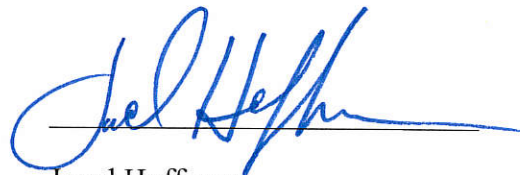
1. Did the Director of the Office of Protected Resources at NOAA approve the final draft of the proposed rule? If not, please describe how the clearance process for this proposed rule varies from the usual clearance process for other proposed rules issued from the Office of Protected Resources.
2. Please provide our office with all documents, communications, and records of communications referring or relating to approval of the proposed rule by the Director of the Office of Protected Resources at NOAA, the Deputy Assistant Administrator for Regulatory Programs at NOAA, the Assistant Administrator for Fisheries, and the NOAA Chief of Staff at the time this proposed rule was published.
3. Does NOAA intend to adopt a policy recommended by the Marine Mammal Commission interpreting the small numbers requirements of section 101(a)(5) of the Marine Mammal Protection Act?

In an email to one of your employees that was publicly released through a Freedom of Information Act request regarding NOAA's communications relating to Hurricane Dorian, you said, "You have no idea how hard I'm fighting to keep politics out of science." As the nominee to take on the role of the Administrator of NOAA, you now have a perfect opportunity to prove to the American people how far you are willing to take that fight by addressing this problematic and scientifically poor proposed rule.

Sincerely,



Raúl M. Grijalva
Chair
Committee on Natural Resources



Jared Huffman
Chair
Subcommittee on Water, Oceans,
and Wildlife

⁴ See, e.g., *NRDC v. Evans*, 279 F. Supp. 2d 1129, 1152 (N.D. Cal. 2003) and *NEC Corp. v. Intel Corp.*, No. C-84-20799-WPG, 1989 WL 67434, at *4 (N.D. Cal. Feb. 6, 1989).

Alan Lowenthal

Alan Lowenthal
Chair
Subcommittee on Energy and Mineral
Resources

Charlie Crist

Charlie Crist
Florida, 13th District