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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE071

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Notice; issuance of four Letters of Authorization.

SUMMARY: In accordance with regulations issued under the Marine Mammal Protection Act, as amended, we hereby give notification that we, the National Marine Fisheries Service (NMFS), have issued four 1-year Letters of Authorization (Authorizations) to the U.S. Navy (Navy) to take marine mammals by harassment incidental to their military readiness activities associated with the routine training, testing, and military operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar within the northwest Pacific Ocean and the north-central Pacific Ocean.

DATES: These Authorizations are effective from August 15, 2015, through August 14, 2016.

ADDRESSES: Electronic copies of the Navy's March 31, 2015, application letter and the Authorizations are available by writing to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning the contact listed here (See **FOR FURTHER INFORMATION CONTACT**), or online at:

<http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm#surtass>. The public may view the documents cited in this notice, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens if certain findings are made and regulations are issued. Under the MMPA, the term “take” means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals. We, NMFS, have been delegated the authority to issue such regulations and Authorizations.

With respect to military readiness activities, the MMPA defines harassment as “(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].”

Authorization may be granted for periods of 5 years or less if we find that the total taking will have a negligible impact on the affected species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for certain subsistence

uses. In addition, we must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for subsistence uses. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the Navy's routine training, testing, and military operations of SURTASS LFA sonar are in effect through August 15, 2017 (77 FR 50290, August 20, 2012) and are codified at 50 CFR part 218, subpart X. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system. For detailed information on this action, please refer to the August 20, 2012, **Federal Register** Notice and 50 CFR part 218, subpart X. Under those regulations, we must publish a notice of issuance of an Authorization or Authorization renewal in the **Federal Register** within 30 days of a determination.

Summary of Request

On March 31, 2015, we received an application from the Navy requesting a renewal of four Authorizations, originally issued on August 15, 2012 (77 FR 51969, August 28, 2012) for the taking of marine mammals incidental to routine training, testing, and military operations of SURTASS LFA sonar in the northwest Pacific Ocean and the north-central Pacific Ocean under the regulations issued on August 15, 2012 (77 FR 50290, August 20, 2012): one for the United States Naval Ship (USNS) VICTORIOUS (T-AGOS 19), one for the USNS ABLE (T-AGOS 20), one for the USNS EFFECTIVE (T-AGOS 21), and one for the USNS IMPECCABLE (T-AGOS 23). On June 30, 2015, the Navy submitted an addendum to the SURTASS LFA application for 2015-2016 to reflect consideration of the presence of individuals of the western

distinct population segment of spotted seal (*Phoca largha*) within one mission area in the Sea of Japan. NMFS considered the Navy's application as adequate and complete on July 6, 2015.

NMFS has renewed the first cohort of 2012 Authorizations on an annual basis in 2013 (78 FR 57368, September 18, 2013) and again in 2014 (79 FR 49501, August 21, 2014). The Navy's 2015 application for renewal requests that these four Authorizations become effective on August 15, 2015, for a period not to exceed one year.

Summary of Activity under the 2014 Authorizations

The Navy submitted quarterly mission reports for the periods of August 2014 through May 2015 within the required timeframes. These quarterly reports include the dates and times of the military readiness activities; location of each SURTASS LFA sonar vessel; mission operational area; marine mammal observations; and records of any delays or suspensions of sonar operations. The Navy must also report on the number of marine mammals detected by visual, passive, and active acoustic monitoring and the estimated percentage of each marine mammal stock taken by Level A and Level B harassment. The reports indicate the following:

- The Navy conducted a total of seven missions from August 15, 2014, through May 14, 2015, in the western North Pacific Ocean, which totaled 14.4 days and resulted in 35.8 hours of LFA sonar transmissions.
- The cumulative total days of SURTASS LFA sonar operations for the VICTORIOUS (T-AGOS 19), ABLE (T-AGOS 20), EFFECTIVE (T-AGOS 21), and IMPECCABLE (T-AGOS 23), were 99.8, 99.3, 94.9, and 100 percent below the annual levels contemplated in the Final Rule for each vessel respectively (*i.e.*, 240 days per vessel);
- The cumulative total hours of SURTASS LFA sonar transmissions for the VICTORIOUS, ABLE, EFFECTIVE, and IMPECCABLE were 99.7, 99.4, 92.6, and 100

percent below the levels contemplated in the Final Rule for each vessel respectively (*i.e.*, 432 hours per vessel);

- The total percentage of each marine mammal stock taken by Level B harassment has not exceeded the 12 percent cap. For each stock, the percentage of take was well below the levels authorized in the 2014 Authorizations.

- The total percentage of each marine mammal stock taken by Level A harassment has not exceeded the levels authorized in the 2014 Authorizations. In fact, the Navy reported no incidences of Level A harassment takes.

The operational tempo, number of active transmission hours, marine mammal detections, behavioral observations, and level of anticipated take of marine mammals fall within the scope and nature of those contemplated by the Final Rule and authorized in the 2014 Authorizations.

Monitoring Reports

The Navy has submitted the monitoring reports on time as required under 50 CFR 218.236 and the 2014 Authorizations. We have reviewed these reports and determined them to be acceptable. Based on these reports, the Navy has not exceeded the average annual estimated usage of the four SURTASS LFA sonar systems and remains well within the take authorized. In accordance with the current SURTASS LFA sonar regulations (50 CFR 218.230), the Navy must submit an annual report to us no later than 45 days after the 2014 Authorizations have expired. Upon receipt, we will post the annual report at:

<http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm#surtass>.

Level of Taking for 2015 Authorizations Period

For the 2015 to 2016 Authorization period, the Navy expects to conduct the same type and amount of routine training, testing, and military operations of SURTASS LFA sonar in the

northwest Pacific Ocean and the north-central Pacific Ocean that they requested under the 2012, 2013, and 2014 Authorizations. Similarly, the Navy expects to remain within the annual take estimates analyzed in the Final Rule. We determined that the level of taking by incidental harassment from the activities described in the Authorizations and supporting application is consistent with the findings made for the total taking allowable under the 2012 Final Rule.

Compliance with Mitigation, Monitoring, and Reporting Measures

Based on our review of the Navy's quarterly mission reports, the Navy complied with the required visual, passive, and acoustic monitoring measures in the Final Rule and 2014 Authorizations. The Navy also followed the required shutdown and other protocols for mitigating impacts to marine mammals while conducting operations.

The Navy is also complying with required measures under 50 CFR 218.236(d) to gain and share information on the species. The Navy reports that they are continuing to work on information transfer, declassification and archiving of ambient noise data from the Navy's Integrated Undersea Surveillance System to the public.

Based on the foregoing information and the Navy's application, we determined that the mitigation, monitoring, and reporting measures required under 50 CFR 218.234, .235, and .236 and NMFS' 2014-2015 Authorizations were undertaken and will be undertaken during the period of validity of the renewed 2015-2016 Authorizations.

Adaptive Management

The Final Rule and 2014 Authorizations include an adaptive management framework that allows us to consider new information and to determine (with input from the Navy regarding practicability) if modifications to mitigation and/or monitoring measures are appropriate and

practicable. This framework includes a requirement for an annual meeting between NMFS and the Navy, if either agency deems it necessary.

Section 218.241 of the Final Rule describes three scenarios that could contribute to the decision to modify the mitigation or monitoring measures, including: (a) results from the Navy's monitoring from the previous year's operation of SURTASS LFA sonar; (b) compiled results of Navy-funded research and development studies; (c) results from specific stranding investigations; (d) results from general marine mammal and sound research funded by the Navy or other sponsors; and (e) any information that reveals marine mammals may have been taken in a manner, extent or number not anticipated by these regulations or subsequent Authorizations. None of the information reviewed by NMFS or the Navy resulted in any modifications to the existing mitigation or monitoring measures at this time.

Consideration of Areas as Potential OBIA's

On December 4, 2014, April 16, 2015, and June 18, 2015, we and the Navy convened Adaptive Management meetings to review and discuss several topics, including: the Navy's mitigation monitoring results; the Navy's efforts in declassifying and transferring marine mammal monitoring data; consideration of possible additional Offshore Biologically Important Areas (OBIA's) under the criteria specified in the Final Rule; and consideration of new information that could potentially inform decisions regarding modifying existing mitigation and/or monitoring measures. Representatives from the U.S. Marine Mammal Commission were also in attendance and participated in December 2014 and April 2015 meetings.

NMFS and the Navy continue to evaluate information relating to areas for potential consideration as OBIA's. All of these areas fall outside the areas in which the Navy may operate under the 2015 Authorizations. None of these areas is located within the Navy's mission areas

for the 2015 Authorizations and the Navy will not operate SURTASS LFA sonar in these areas within the timeframes of the 2015-2016 Authorizations. Throughout the effective period of the Final Rule, we will continue consider and discuss with the Navy any relevant new information as it arises related to areas that may qualify as potential OBIAs or any other mitigation for SURTASS LFA sonar.

Authorization

We have issued four Authorizations to the Navy, authorizing the incidental harassment of marine mammals, incidental to operating the four SURTASS LFA sonar systems for routine training, testing and use during military operations. Issuance of these four Authorizations is based on findings, described in the preamble to the final rule (77 FR 50290, August 20, 2012) and supported by information contained in the Navy's required reports on SURTASS LFA sonar and their application, that the activities described under these four Authorizations will have a negligible impact on marine mammal species or stocks and will not have an unmitigable adverse impact on their availability for taking for subsistence uses.

These Authorizations remain valid through August 14, 2016, provided the Navy remains in conformance with the conditions of the regulations and the LOAs, and the mitigation, monitoring, and reporting requirements described in 50 CFR 218.230 through 218.241 (77 FR 50290, August 20, 2012) and in the Authorizations are undertaken.

Dated: August 6, 2015.

Donna S. Wieting,

Director,

Office of Protected Resources,

National Marine Fisheries Service.

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