



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XF434**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Space Vehicle and Missile Launch Operations**

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

**ACTION:** Notice of issuance of a Letter of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the Alaska Aerospace Corporation (AAC), for the take of marine mammals incidental to space vehicle and missile launch operations at the Pacific Spaceport Complex Alaska (PSCA) on Kodiak Island, Alaska.

**DATES:** Effective from May 11, 2017, to April 25, 2022.

**ADDRESSES:** The LOA and supporting documents may be obtained online at:

*www.nmfs.noaa.gov/pr/permits/incidental/research.htm*. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Stephanie Egger, Office of Protected Resources, NMFS, 301-427-8401.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

NMFS has defined “unmitigable adverse impact” in 50 CFR 216.103 as an impact resulting from the specified activity:

- 1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and

- 2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Regulations governing the taking of harbor seals (*Phoca vitulina richardii*), by Level B harassment, incidental to AAC's space vehicle and missile launch operations at the PSCA, were issued on March 24, 2017 (82 FR 14996) and remain in effect until April 25, 2022. For detailed information on the action, please refer to that document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during space vehicle and missile launch operations at the PSCA.

### **Summary of Request**

On April 25, 2016, NMFS received a request for regulations and subsequent LOA from AAC for the taking of small numbers of marine mammals incidental to space vehicle and missile launch operations at the PSCA. NMFS has previously issued regulations and subsequent LOAs to AAC authorizing the taking of marine mammals incidental to launches at PSCA (76 FR 16311; March 23, 2011 and 71 FR 4297; January 26, 2006). AAC has complied with the measures required in 50 CFR 217.70 - 75, as well as the associated LOAs, and submitted monitoring reports and other documentation required by the previous regulations and LOAs.

Orbital and suborbital launch vehicles (*i.e.*, rockets, missiles) are launched from PSCA as part of the aerospace industry. AAC estimates the total number of vehicles that may be launched over the course of the 5-year period covered by the regulations is 45, with a maximum of 9 launches per year. AAC's operations produce noise that may result in Level B harassment of harbor seals that are hauled out on Ugak Island, just south of the launch site. A maximum of 315 harbor seals annually could be taken by Level B harassment with 1,575 harbor seals taken over the 5-year effective period of the regulations. AAC expects to conduct the same type and amount of launches as in previous rules. Similarly, the authorized take will remain within the annual estimates analyzed in the final rule making.

### **Authorization**

We have issued an LOA to AAC authorizing the take of marine mammals incidental to space vehicle and missile launch operations, as described above. Take of marine mammals will be minimized through implementation of mitigation measures designed to reduce impacts on pinnipeds by not approaching haulouts within a certain horizontal and vertical distance during security overflights and also using the launch pad equipped with a concrete and water-filled flame trench to absorb light and noise at lift off for all Castor 120-equivalent launches (*i.e.*, the loudest rocket used by AAC). Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The AAC will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks

and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: June 9, 2017.

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Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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