



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA410]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Training and Testing Activities in the Point Mugu Sea Range Study Area

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

ACTION: Notice; receipt of application for a Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to training and testing activities conducted in the Point Mugu Sea Range (PMSR) Study Area for a period of seven years, from October, 2021 through October, 2028. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Comments on the application 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 to the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/military.htm* 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. An electronic copy of the Navy's application may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/military.htm*. In case of problems accessing these documents, please call the contact listed above.

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 (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region if certain findings

are made and either regulations are issued or, if the taking is limited to harassment, 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.”

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, 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).

The National Defense Authorization Act (NDAA) for Fiscal Year 2004 (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity” to read as follows (Section 3(18)(B) of the MMPA): (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). On August 13, 2018, the 2019 NDAA (Pub L. 115-232) amended the MMPA to allow incidental take regulations for military readiness activities to be issued for up to seven years.

Summary of Request

On March 9, 2020, NMFS received an adequate and complete application from the Navy requesting authorization for the take of marine mammals, by Level A and B harassment, incidental to training, testing, and routine military operations (all categorized as military readiness activities) from the use of at-surface or in-air detonations in the PMSR Study Area as well as missile launch events from San Nicolas Island (SNI). The requested regulations will be valid for seven years, from 2021 through 2028.

NMFS has promulgated incidental take regulations pursuant to the MMPA relating to missile launches from SNI, from June 3, 2014 through June 3, 2019 (79 FR 32678; June 6, 2014). The Navy has also been operating under IHAs in 2019 (84 FR 28462; June 19, 2019) and 2020 (85 FR 38863; June 29, 2020) for similar activities.

Description of the Specified Activity

The PMSR Study Area consists of 93,240 square km (36,000 square miles) and is located adjacent to Los Angeles, Ventura, Santa Barbara, and San Luis Obispo Counties along the Pacific Coast of Southern California (see Figure 1.1-1 of the application). The

two primary components of the PMSR are the Special Use Airspace and the ocean Operating Areas. The PMSR-controlled sea space parallels the California coast for approximately 225 nautical miles (nmi) and extends approximately 180 nmi seaward (see Figure 1-1 of the application).

The following types of training and testing, which are classified as military readiness activities pursuant to section 315(f) of Pub L. 101-314 (16 U.S.C 703), are included in the specified activity described in the Navy's application: air warfare (air-to-air, surface-to-air), electronic warfare (directed energy – lasers and high-powered microwave systems), and surface warfare (surface-to-surface, air-to-surface, and subsurface-to subsurface).

The Navy's application includes proposed mitigation measures for marine mammals that would be implemented during training and testing activities in the PMSR Study Area. Proposed procedural mitigation measures generally include: (1) the use of Lookouts to observe for biological resources and communicate the need for mitigation implementation; (2) delay of starts to avoid exposure of marine mammals to explosive blasts more likely to result in injury or more serious behavioral disruption; and (3) limiting the use of missile launches during biologically sensitive times (*i.e.*, during pupping season) to reduce the probability or severity of impacts when they are more likely to contribute to fitness impacts.

The Navy also proposes to undertake monitoring and reporting efforts to track compliance with incidental take authorizations and to help investigate the effectiveness of implemented mitigation measures in the PMSR Study Area. This can include Adaptive Management, the Integrated Comprehensive Monitoring Program, the Strategic Planning

Process, and annual reports. As an example, under the Integrated Comprehensive Monitoring Program, the monitoring relating to the effects of Navy training and testing activities on protected marine species are designed to increase the understanding of the likely occurrence of marine mammals in the vicinity of the action (*i.e.*, presence, abundance, distribution, and density of species) and to increase the understanding of the nature, scope, or context of the likely exposure of marine mammals to any of the potential stressors associated with the action.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate. NMFS is also soliciting comments on valuable pinniped research needs that could occur on SNI as part of the Navy's monitoring and reporting requirements.

Dated: September 1, 2020.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.