

Federal holidays) between 9 am and 5 pm (Eastern time) to address telephonic inquiries from shippers, carriers, packaging manufacturers and other persons concerning requirements in the HMR for the safe transportation of hazardous materials. In 1999, the HMIC handled more than 28,000 calls. The toll-free number is 1-800-HMR-4922.

(2) *Internet Access.* Our site on the worldwide web (<http://hazmat.dot.gov>) provides information concerning hazardous materials rulemakings, exemptions, letters of clarification, international activities, incident data, the *2000 Emergency Response Guidebook* and much more.

(3) *Fax on Demand.* For persons who do not have access to the internet, we operate an automated fax-back system that allows callers access to more than 600 pages of informational materials, including letters of clarification and recently published rulemakings, through their own fax machines. A facsimile copy of the catalog of available documents may be obtained by accessing the fax-on-demand feature through our HMIC number 1-800-HMR-4922.

(4) *Training.* To promote compliance with the HMR, we distribute brochures, charts, publications, training materials, videotapes, and other safety-related information to hazmat employers and hazmat employees in the private and government sectors, as well as to the general public. Hazardous materials training is provided to Federal, State and local enforcement agencies, industry, and emergency response personnel. In addition, we provide personal computer based self-study programs through a CD-ROM modular training series.

(5) *Government-Industry Partnerships.* To the extent permitted through our limited resources, we participate in meetings, conferences, training workshops, and the like sponsored by public sector, industry, and international organizations having an interest in the safe transportation of hazardous materials.

Regulations and Administrative Procedures

On December 20, 1999, we published a notice of regulatory review (Docket No. RSPA-99-5143, 64 FR 71098) requesting comments on the economic impact of the regulations on small entities. This year we are analyzing rules in 49 CFR part 106, Rulemaking Procedures, Part 107, Hazardous Materials Program Procedures, and Part 171, General Information, Regulations, and Definitions. Meeting participants are invited to take this opportunity to

suggest whether specific rules in these parts should be revised or revoked to lessen the impact on small entities.

We are interested, also, in receiving comments on the quality of our processing of written requests for information, applications for exemption and approval, registration statements, and other administrative actions. Meeting participants are encouraged to provide suggestions on how we may improve our performance in processing these administrative actions.

We welcome all comments on ways to improve understanding and compliance with the HMR, including removal of obsolete requirements, revisions to conflicting or confusing requirements, and the use of plain language in regulations. We will address inquiries concerning new or proposed requirements recently published in rulemaking actions concerning RSPA's registration and fee assessment program (Docket No. RSPA-99-5137; 65 FR 7297, February 14, 2000); harmonization of requirements in the HMR pertaining to the transportation of radioactive materials with standards published by the International Atomic Energy Agency (Docket No. RSPA-99-6283; 64 FR 72633, December 28, 1999); and the permitted use, until October 1, 2001, of internationally recognized POISON and POISON GAS labels on packages intended for transportation in international commerce (Docket No. RSPA-99-6195, 64 FR 50260, September 16, 1999 and 64 FR 51719, September 24, 1999).

Representatives from the United States Coast Guard, Federal Aviation Administration, Federal Railroad Administration and Federal Motor Carrier Safety Administration will participate with RSPA in this public meeting and address modal-specific issues.

Conduct of the Meeting

This is an informal meeting intended to produce a dialogue between agency personnel and persons affected by the hazardous materials transportation safety program. The presiding official may find it necessary to limit the time available to each person to ensure that all participants have an opportunity to speak. Conversely, this meeting may conclude early if all persons wishing to participate have been heard. While there will be no transcript of the meeting, RSPA will prepare a written summary of the meeting and post it in this notice's docket (RSPA-99-5143). Persons interested in participating in this public meeting need not be registered for the Hazardous Materials Multimodal Training Seminar.

Issued in Washington, D.C. on February 25, 2000.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 000218048-0048-01; I.D. 013100A]

RIN 0648-AN59

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities

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

ACTION: Advance notice of proposed rulemaking; receipt of an application for a small take exemption; notice of public meetings and request for comment and information.

SUMMARY: NMFS has received a request from the U.S. Navy for a small take of marine mammals incidental to shock testing the USS WINSTON S. CHURCHILL (DDG-81) in the offshore waters of the Atlantic Ocean off either Mayport, FL, or Norfolk, VA or the offshore waters of the Gulf of Mexico off Pascagoula, MS. As a result of that request, NMFS is considering whether to propose regulations that would authorize the incidental taking of a small number of marine mammals. In order to issue regulations for this taking, NMFS must determine that this taking will have no more than a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and suggestions on the content of the regulations.

DATES: comments and information must be postmarked no later than April 3, 2000. Public meetings are scheduled as follows:

1. March 13, 2000, 7 PM, Norfolk, VA;
2. March 14, 2000, 7 PM, Pensacola, FL;
3. March 15, 2000, 7 PM, Neptune Beach, FL.

ADDRESSES: Comments should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-

West Highway, Silver Spring, MD 20910-3226. A copy of the application may be obtained by writing to this address, or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). A copy of the draft environmental impact statement (DEIS) may be obtained from Will Sloger, U.S. Navy, at (843) 820-5797.

The public meetings will be held at the following locations:

1. Norfolk—Granby High School Auditorium, 7101 Granby Street, Norfolk, VA;
2. Pensacola—Pensacola Junior College, Hagler Auditorium, 1000 College Blvd., Pensacola, FL;
3. Neptune Beach—Fletcher High School Auditorium, 700 Seagate Avenue, Neptune Beach, FL.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, (301) 713-2055, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce (Secretary) 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 regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have no more than 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, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On January 12, 2000, NMFS received an application for an incidental, small take authorization under section 101(a)(5)(A) of the MMPA from the U.S. Navy to take marine mammals incidental to shock testing the WINSTON S. CHURCHILL in the offshore waters of the Atlantic Ocean off either Mayport, FL, or Norfolk, VA or the offshore waters of the Gulf of Mexico off Pascagoula, MS. A final decision on the location for the shock trial will be made by the Navy, based, in part, on findings and determinations made under the National Environmental Policy Act (NEPA).

Section 2366, Title 10, United States Code (10 U.S.C. 2366) requires realistic

survivability testing of a covered weapon system to ensure the vulnerability of that system under combat conditions is known. (In this case, the covered weapon system is the WINSTON S. CHURCHILL.) Realistic survivability testing means testing for the vulnerability of the ship in combat by firing munitions likely to be encountered in combat with the ship configured for combat. This testing is commonly referred to as "Live Fire Test & Evaluation" (LFT&E). Realistic testing by firing live ammunition at the ship or detonating a real mine against the ship's hull, however, could result in the loss of a multi-million dollar Navy asset. Therefore, the Navy has established an approved LFT&E program to complete the vulnerability assessment of ships as required by 10 U.S.C. 2366. The LFT&E program includes three major areas that together provide for a complete and comprehensive evaluation of the survivability of ships in a near miss, underwater explosion environment. These areas are computer modeling and analysis, component testing, and an at-sea ship shock trial. While computer modeling and laboratory testing provide useful information, they cannot substitute for shock testing under realistic, offshore conditions as only the at-sea shock trial can provide the real-time data necessary to fully assess ship survivability.

A shock test is a series of underwater detonations that propagate a shock wave through a ship's hull under deliberate and controlled conditions. Shock tests simulate near misses from underwater explosions similar to those encountered in combat. Shock testing verifies the accuracy of design specifications for shock testing ships and systems, uncovers weaknesses in shock sensitive components that may compromise the performance of vital systems, and provides a basis for correcting deficiencies and upgrading ship and component design specifications. To minimize cost and risk to personnel, the first ship in each new class is shock tested and improvements are applied to later ships of the class.

The WINSTON S. CHURCHILL is the third ship in a new Flight of 23 ARLEIGH BURKE (DDG51) class guided missile destroyers being acquired by the Navy. (A Flight is a subset of a class of ships to which significant modifications/upgrades have been made.) These ships are referred to as the Flight IIA ships and they represent the largest single upgrade to the original DDG 51-class destroyer.

The USS JOHN PAUL JONES (DDG 53) was shock tested off the coast of California in June 1994 to assess the

survivability of the original DDG 51 class destroyer. Flight IIA ships are significantly different from the original DDG 51-class destroyers in their design. Major structural changes include the addition of a helicopter hangar, Vertical Launch System foundation changes, and raising the aft radar arrays. Major equipment changes include the addition of a ship-wide Fiber Optic Data Multiplexing System, a Zonal Electrical Power Distribution System involving the addition of switchboards and load centers throughout the ship, and the widespread use of commercial equipment in various mission critical systems to reduce the cost of the ships. Typically the lead ship of a new class or major upgrade is shock tested. The WINSTON S. CHURCHILL was selected as the shock trial ship because it has additional design changes that will not be included in the first two Flight IIA ships, and therefore, it is more representative of the Flight.

The Navy's proposed action is to conduct a shock trial of the WINSTON S. CHURCHILL at an offshore, deep-water location. The ship would be subjected to a series of three-four 4,536 kg (10,000 lb) explosive charge detonations sometime between 1 May and 30 September, 2001. Three detonations are needed to collect adequate data on survivability. A fourth detonation would be conducted by the Navy only if one of the planned three detonations fails to provide technically acceptable data (e.g., due to equipment failure or some other technical problem).

The ship and the explosive charge would be brought closer together with each successive detonation to increase the severity of the shock. This gradation in severity would ensure that the survivability of the ship and its systems is fully assessed and the point at which failure modes begin is accurately determined. It would also reduce the chance of significant damage at the highest severity detonation. The shock trial would be conducted at a rate of one detonation per week to allow time to perform detailed inspections of the ship's systems prior to the ship experiencing the next level of shock intensity.

Marine Mammals

A summary of the marine mammal species found in each of the 3 areas which may be selected by the Navy for shock testing is presented here. For more detail on marine mammal abundance, density and the methods used to obtain this information, reviewers are requested to refer to either

the Navy application or the Navy DEIS (see ADDRESSES).

Mayport, FL

Up to 29 marine mammal species may be present in the waters off Mayport, FL, including 7 mysticetes and 22 odontocetes. Mysticetes are unlikely to occur at Mayport during the May through September time period. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, 4 species of beaked whales, and 15 species of dolphins and porpoises.

Norfolk, VA

Up to 35 marine mammal species may be present in the waters off Norfolk, VA, including 7 mysticetes, 27 odontocetes, and 1 pinniped. The fin whale is the mysticete most likely to occur in the test area. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, 6 species of beaked whales, and 18 species of dolphins and porpoises.

Pascagoula, MS

Up to 29 marine mammal species may occur in the waters off Pascagoula, MS, including 7 mysticetes, 21 odontocetes, and 1 exotic pinniped. With the exception of Bryde's whale, mysticetes are considered unlikely to occur at Pascagoula. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, 4 species of beaked whales, and 14 species of dolphins and porpoises.

Potential Impacts

Potential impacts on several marine mammal species known to occur in these areas from shock testing include both lethal and non-lethal injury, as well as harassment. Death or injury may occur as a result of the explosive blast, and injury may occur as a result of non-

injurious physiological responses to the explosion-generated shockwave and its acoustic signature. The Navy believes it is very unlikely that injury will occur from exposure to the chemical by-products released into the surface waters, and no permanent alteration of marine mammal habitat would occur. While the Navy does not anticipate any lethal takes would result from these detonations, calculations indicate that the Mayport site has the potential to result in up to 4 mortalities, 6 non-serious injuries, and 2,885 takings by harassment. The Norfolk site has the potential to result in 7 mortalities, 12 non-serious injuries, and 14,640 takings by harassment. The Pascagoula site has the potential to result in up to 3 mortalities, 4 injuries, and 3,132 takings by harassment. Because of the potential impact to marine mammals, the Navy has requested a letter of authorization under section 101(a)(5)(A) of the MMPA that would authorize the incidental taking.

Mitigation

The Navy's proposed action includes mitigation that would minimize risk to marine mammals and sea turtles. The Navy would (1) through pre-detonation aerial surveys, select a test area within the chosen site location with the lowest possible number of marine mammals and sea turtles; (2) monitor the area visually (aerial and shipboard monitoring) and acoustically before each test and postpone detonation if any marine mammal or sea turtle is detected within a safety range of 3.7 kilometers (2 nautical miles); and (3) monitor the area after each test to find and treat any injured animals. If post-detonation monitoring shows that marine mammals or sea turtles were killed or injured as

a result of the test, testing would be halted until procedures for subsequent detonations could be reviewed and changed as necessary.

NEPA

The Navy has released a DEIS under NEPA that is presently available for public review and comment (see ADDRESSES). NMFS is a cooperating agency, as defined by the Council on Environmental Quality (40 CFR 1501.6), in the preparation of this DEIS.

Endangered Species Act (ESA)

NMFS will be consulting with the U.S. Navy under section 7 of the ESA on this action. In that regard, the Navy has submitted to NMFS a Biological Assessment under the ESA. This consultation will be concluded prior to a determination on issuance of a final rule and exemption.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations to allow the taking. NMFS requests that commenters review the DEIS and/or the Navy application and not submit comments based solely on this document. NMFS will consider information submitted in developing proposed regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be given ample time and opportunity to comment on the proposed rule.

Dated: February 28, 2000.

Andrew A. Rosenberg,

*Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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