

**Subpart 970.52—Contract Clauses for Management and Operating Contracts**

■ 5. Section 970.5223–5 is added to read as follows:

**§ 970.5223–5 DOE motor vehicle fleet fuel efficiency.**

As prescribed in 48 CFR 970.2307–2, insert the following clause in contracts providing for Contractor management of the motor vehicle fleet.

**DOE MOTOR VEHICLE FLEET FUEL EFFICIENCY****(Oct 2003)**

When managing Government-owned vehicles for the Department of Energy, the Contractor will conduct operations relating to such vehicles in accordance with the goals and requirements of *Executive Order 13149, Greening the Government Through Federal Fleet and Transportation Efficiency*, and implementing guidance contained in the document entitled *U.S. Department of Energy Compliance Strategy for Executive Order 13149* (April 2001) and future revisions of this compliance strategy that are identified in writing by the Contracting Officer. Section 506 of Executive Order 13149 exempts military tactical, law enforcement, and emergency vehicles from the requirements of the order.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 216**

[Docket No. 030421095–3202–02; I.D. 111902C]

RIN 0648–AQ61

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS, upon application from the U.S. Navy, is issuing regulations to govern the unintentional takings of small numbers of marine mammals incidental to missile launch operations from San Nicolas Island, CA (SNI). Issuance of regulations, and Letters of Authorization under these regulations, governing the unintentional incidental takes of marine mammals in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of

Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the Navy's missile launch activities as such authorization is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with this activity and prescribe methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, and on the availability of the species for subsistence uses.

**DATES:** Effective from October 2, 2003 through October 2, 2008.

**ADDRESSES:** A copy of the Navy application which contains a list of the references used in this document may be obtained by writing to Kaja A. Brix, Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). The NMFS' Administrative Record for this action is available for viewing, by appointment during regular business hours, at the above address. Copies of letters, and documents are available, at copy cost, from this address.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this final rule should be sent to the Acting Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead (301) 713–2322, ext. 128.

**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 (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 total taking will have a

negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. 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.

Under section 18(A), 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].

**Summary of Request**

On October 23, 2002, NMFS received an application from the Naval Air Weapons Station, China Lake (NAWS), under section 101(a)(5)(A) of the MMPA, requesting an authorization, effective from August 26, 2003 through August 25, 2008, for the harassment of small numbers of three species of marine mammals incidental to target missile launch operations conducted by the Naval Air Warfare Center Weapons Division (NAWCWD) on SNI, one of the Channel Islands in the Southern California Bight. These regulations, if implemented, would allow NMFS to issue annual LOAs to NAWS, which would replace the process of issuance of annual Incidental Harassment Authorizations (IHAs) under section 101(a)(5)(D) of the MMPA (see 66 FR 41843, August 9, 2001; 67 FR 56271, September 3, 2002). This action is being undertaken in part based upon recommendations made by the Marine Mammal Commission, under section 202(a)(4) of the MMPA. The current IHA expires on August 20, 2003.

According to the NAWS' application, these missile launch operations may occur at any time during the year depending on test and training requirements and meteorological and logistical limitations. On occasion, two or three launches may occur in quick succession on a single day. NAWS anticipates an average of 40 launches annually of Vandal (or similar sized)

vehicles from SNI's Alpha Launch Complex (ALC) and smaller supersonic and subsonic missiles and targets from either ALC or the Building 807 Launch Site (Building 807). Launches at this annual level would be approximately double the recent activities at SNI. The NAWCWD conducted a total of 19 launches (including one dual launch) between August 15, 2001 and July 18, 2002 (14 Vandal launches and 5 other missiles and targets) under an IHA.

The purpose of these launches is to support activities associated with operations on the NAWCWD's Point Mugu Sea Range. The Sea Range is used by the U.S. and Allied military services to test and evaluate sea, land, and air weapon systems; to provide realistic training opportunities; and to maintain operational readiness of these forces. Some of the SNI launches are used for practicing defensive drills against the types of weapons simulated by these vehicles. Some launches may be conducted for the related purpose of testing new types of targets to verify that they are suitable for use as operational targets. While SNI is under the land management responsibility of NAWS, planned missile and other target launches are conducted by the NAWCWD. A detailed description of the operations is contained in the NAWS application (NAWS, 2002) which is available upon request (*see ADDRESSES*).

#### Measurement of Airborne Sound Levels

The following section is provided to facilitate understanding of airborne and impulsive noise characteristics. In its application, NAWS has referenced both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa<sup>2</sup>-second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second).

Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa. Also, airborne sounds are often expressed as broadband A-weighted (dBA) or C-weighted (dBC) sound levels. A-weighting refers to frequency-dependent weighting factors applied to sound in accordance with the sensitivity of the human ear to different frequencies. With A-weighting, sound energy at frequencies below 1 kHz and above 6 kHz is de-emphasized and approximates the human ear's response to sounds

below 55 dB. C-weighting corresponds to the relative response to the human ear to sound levels above 85 dB. C-weight scaling is useful for analyses of sounds having predominantly low-frequency sounds, such as sonic booms.

While it is unknown whether the pinniped ear responds similarly to the human ear, a study by C. Malme (pers. commun. to NMFS, March 5, 1998) found that for predicting noise effects, the Navy believes that A-weighting is better than unweighted pressure levels because the pinniped's highest in-air hearing sensitivity is at higher frequencies than that of humans. In this document, whenever possible sound levels have been provided with A-weighting.

#### Description of the Specified Activity

In general, launch vehicles are the Vandal and a variety of other supersonic and subsonic missiles and targets. Most other vehicles used would be similar in size and weight or slightly smaller and would have characteristics similar to the Vandal. NAWS has also requested that its incidental take authorization include coverage for up to three launches annually by vehicles that are larger than the Vandal (but under 50,000 lbs (23,000 kilograms (kg)) in weight). Potential impacts to pinnipeds by launch vehicles of that size are unanalyzed and must be assessed before NMFS can issue an authorization to take pinnipeds incidentally to that activity. Any proposed modification of these regulations to include these larger launch vehicle activities would be published in the **Federal Register** with opportunity for public comment.

#### Vandal Target Missiles

The Vandal (designated MQM-8G) target missile is a relatively large, air-breathing (ramjet) vehicle with no explosive warhead that is designed to provide a realistic simulation of the mid-course and terminal phase of a supersonic anti-ship cruise missile. These missiles are 7.7 m (25.2 ft) in length with a mass at launch of 3,674 kg (8,100 lbs) including the solid propellant booster. There are variants of the Vandal; they all have the same dimensions, but differ in their operational range. The Vandals are remotely controlled, non-recoverable missiles. At launch, the Vandal is accelerated for several seconds by a solid propellant rocket booster to a speed sufficient for the ram-jet engine to start. After several seconds of thrust, the booster is discarded, falls into the water of the Sea Range, and the Vandal continues along its flight path at supersonic speed under ramjet power.

The Vandal and most other targets are launched from the ALC on the west-central part of SNI, a land-based launch site. The ALC is 192 m (630 ft) above sea level and is approximately 2 kilometers (km)(1.25 miles (mi)) from the nearest pinniped haul-out site. Launch trajectories from ALC may vary from a near-vertical liftoff, crossing the west end of SNI at an altitude of approximately 3,962 m (13,000 ft) to a nearly horizontal liftoff, crossing the west end of SNI at an altitude of approximately 305 m (1,000 ft). However, to date, most Vandal launches during NAWS first IHA monitoring program had low angles (8 degrees) crossing the SNI beaches at an altitude of about 1,300 ft (396 m)(Lawson, 2002). Four Vandals however, had high angle (42 degrees) profiles, crossing SNI beaches at an altitude of about 9,600 ft (2,926 ft)(Lawson, 2002).

Vandal launches produce strong noise levels. Sound measurements collected during two Vandal launches in 1997 and 1999 indicated received A-weighted SPLs ranged from 123 dB (re 20 micro-Pa) (SEL of 126 dB re 20 micro-Pa<sup>2</sup>-sec) at 945 m (3,100 ft) to 136 dB (re  $\mu$ 20 Pa) (SEL of 131 dB re 20 micro-Pa<sup>2</sup>-sec) at 370 m (1,215 ft) (Burgess and Greene, 1998; Greene, 1999). The most intense sounds occurred during the first 0.4 to 4.1 seconds after launch (Greene, 1999; Greene and Malme, 2002). However, what is important for this action is not the noise level near the launch site but the noise level over the pinniped haulouts on the SNI beaches. This issue will be discussed later in this document.

#### Supersonic and Subsonic Targets and Other Missiles

The Navy also plans to launch other subsonic and supersonic vehicles to simulate various types of threat missiles and aircraft. These are small unmanned aircraft that are launched using jet-assisted take-off (JATO) rocket bottles. Once launched, they continue offshore where they are used in training exercises to simulate various types of subsonic threat missiles and aircraft. The larger target, BQM-34, is 7 m (23 ft) long and has a mass of approximately 1,134 kg (2,500 lbs) plus the JATO bottle. The smaller BQM-74, is 420 centimeters (cm) (165.5 inches (in)) long and has a mass of approximately 250 kg (550 lbs) plus the JATO bottle. Additional types of small vehicles that may be launched include the Exocet and Tomahawk missiles, and the Rolling Airframe Missile (RAM).

All of these smaller targets are launched from either the ALC or from Building 807. Building 807 is approximately 10 m (30 ft) above sea

level and accommodates several fixed and mobile launchers that range from 30 m (98 ft) to 150 m (492 ft) from the nearest shoreline. For these smaller vehicles, launch trajectories from Building 807 may range from 6 to 45 degrees and cross over the nearest beach at altitudes from 15 to 190 m (50 to 625 ft).

Sound measurements were collected from the launch of a BQM-34 at the Point Mugu Naval Air Station (NAS) in 1997. Burgess and Greene (1998) found that for this launch, the A-weighted SPL ranged from 92 dB (re 20 micro-Pa) (SEL of 102.2 dB re 20 micro-Pa<sup>2</sup>-sec) at 370 m (1,200 ft) to 145 dB (re 20 micro-Pa) (SEL of 142.2 dB re 20 micro-Pa<sup>2</sup>-sec) at 15 m (50 ft). These estimates are approximately 20 dB lower than that of a Vandal launch at similar distances (Greene, 1999). The measured Terrior Orion SPL ranged from 89 to 138 dB and the SEL from 93 to 138 dB, although the SPL/SEL of 138 dB appears to be anomalously high (Lawson, 2002). The SPL/SELs for the AGS launches ranged from 95 to 150 dB (93 to 137 dB SEL) and the RAM launch SPL was 126 dB (131 dB SEL). These measurements were all flat-weighted, meaning that A-weighted SPL/SELs values were several decibels lower.

#### General Launch Operations

Aircraft and helicopter flights between NAS on the mainland, the airfield on SNI and the target sites in the Sea Range will be a routine part of any planned launch operation. These operational flights do not pass at low level over the beaches where pinnipeds are expected to be hauled out. In addition, movements of personnel are restricted near the launch sites 2 hours prior to a launch, no personnel are allowed on the western end of SNI during Vandal and other vehicle launches, and various environmental protection restrictions exist near the island's beaches during other times of the year.

#### Comments and Responses

On May 9, 2003 (68 FR 24905), NMFS published a notice of proposed rulemaking on the Navy's application for an incidental take authorization and requested comments, information and suggestions concerning the request. During the 45-day public comment period, NMFS received comments from several members of the public and the Marine Mammal Commission (Commission). The letters from individuals did not raise significant issues on the proposed rule, and only expressed concern over missile launches based on an article in the

media, so a response is not necessary. The Commission supports NMFS' intent to implement incidental take regulations for the Navy's activities on SNI provided that the mitigation and monitoring activities described in the NAWS petition for regulations are incorporated into the proposal.

*Comment 1:* The Commission requests clarification in the final rule document regarding the statement that mitigation measures would be followed when "operationally practicable."

*Response:* The NAWS request noted that mitigation measures would be followed whenever operationally practicable, provided that doing so would not compromise operational safety requirements or mission goals. For example, the Navy will avoid night launches whenever the parameters of the test or training do not require a night launch. However, if a night launch is required by the parameters of the test, the Navy will need to launch at night. Last year, for example, the Navy raised the elevation on one launch from what was originally proposed and the objectives were still met. The problem is that the mitigation requirements cannot be unconditional; some tests may require night launching or launching in quick succession and some launches may require low azimuths, etc.

*Comment 2:* The Commission asks how the proposed mitigation measures satisfy the requirement of section 101(a)(5)(ii)(I) of the MMPA that the activity will result in the least practicable adverse impact on the subject species or stocks and their habitat.

*Response:* In order for NMFS to implement effective mitigation, it must determine that such measures would be practical. The practical mitigation measures identified by the NAWCD are provided later in this document (see Mitigation) and in more detail in the Final Environmental Assessment on the Navy Request for a Letter of Authorization (Final EA). These measures have been in place under previous and current IHAs for this activity. No comments were received during the public comment periods for this and previous authorizations that suggested additional practical mitigation measures, and NMFS is unaware of additional measures that could be imposed.

*Comment 3:* The Commission notes that NMFS is attempting to modify the statutory definition of Level B harassment to be only activities which pose "biologically significant disturbance" (i.e., "a disturbance of a behavior pattern that has the potential to have an effect on the reproduction or

survival of the animal or species"). As the Commission has pointed out in several previous letters, the Commission believes that the proposed NMFS modification is contrary to the existing statutory definition of harassment.

*Response:* NMFS addressed the Commission's concern most recently in the notice of issuance of an IHA for Vandal launches from SNI (67 FR 56271, September 3, 2002). In addition, the scientific basis for determining the appropriate isopleths (lines of equal pressure) for the onset of marine mammal harassment can be found in the preamble to the proposed rule (68 FR 24905, May 9, 2003) and this document. For this action, NMFS agrees with the applicant that California sea lions and northern elephant seals will sometimes be harassed by launch sounds with SEL's of 100 dBA (re 20 micro-Pa<sup>2</sup>-sec) or higher and Pacific harbor seals will sometimes be similarly harassed at an SEL of 90 dBA or higher. Pinnipeds inside those isopleths at the time of the missile launch are presumed to be harassed, whether or not an actual disturbance is noted. However, NMFS does not consider reactions such as a pinniped assuming an alert posture by raising its head or exhibiting other minor body movements to be level B harassment, because these kinds of behaviors are not disruptions of a biologically important behavior pattern. In contrast, sounds that cause some or all of the animals to move along the beach or leave a haul-out beach for the water would be harassment because there is a disruption of haul-out activities. This is consistent with the MMPA definition of Level B harassment. NMFS is interested in receiving any scientific information indicating that pinnipeds are harassed at lower noise levels.

#### Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Channel Islands/southern California Bight ecosystem and its associated marine mammals can be found in several documents (Le Boeuf and Brownell, 1980; Bonnell *et al.*, 1981; Lawson *et al.*, 1980; Stewart, 1985; Stewart and Yochem, 2000; Sydeman and Allen, 1999) and is not repeated here.

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds including: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern fur seals (*Callorhinus ursinus*), and Steller sea lions (*Eumetopias jubatus*). On SNI, three of these species, northern elephant

seals, harbor seals, and California sea lions, can be expected to occur on land in the area of the proposed activity regularly in large numbers during certain times of the year. Descriptions of the biology and distribution of these three species and others in the region can be found in NAWS (2002), Stewart and Yochem (2000, 1994), Sydeman and Allen (1999), Lowry *et al.* (1996), Schwartz (1994), Lowry (1999) and several other documents (Barlow *et al.*, 1997; NMFS, 2000; NMFS, 1992; Koski *et al.*, 1998; Gallo-Reynoso, 1994; Stewart *et al.*, 1987). General information on harbor seals and other marine mammal species found in Central California waters can be found in Caretta *et al.* (2001, 2002), which are available at the following URL: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/sars.html](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html). Please refer to those documents and the application for further information on these species.

#### **Potential Effects of Target Missile Launches and Associated Activities on Marine Mammals**

The effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the pinniped (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the pinniped; these can range from temporary alert responses to active avoidance reactions such as stampedes into the sea from terrestrial haulout sites;

(4) Upon repeated exposure, pinnipeds may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that the pinniped perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of pinnipeds to hear natural sounds at similar frequencies, including calls from conspecifics, and environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically

important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment.

Sounds generated by the launches of Vandal and similar target missiles and smaller subsonic targets and missiles (BQM-34 or BQM-74 type), as they depart sites on SNI towards operational areas in the Point Mugu Sea Range, have the potential to result in the incidental harassment of seals and sea lions. Taking by harassment will potentially result from these launches when pinnipeds on the beaches near the launch sites are exposed to the sounds produced by the rocket boosters and the high-speed passage of the missiles as they depart the island on their routes to the Sea Range. However, the extremely rapid departure of the Vandal and other targets means that pinnipeds would be exposed to increased sound levels for very short time intervals (i.e., a few seconds). In addition, because launches are conducted relatively infrequently (i.e., approximately 40 launch events over the course of a year), neither physiological stress nor hearing related injuries are likely for pinnipeds exposed to more than a single launch event.

Noise generated from aircraft and helicopter activities associated with the launches may provide a potential secondary source of incidental harassment of seals and sea lions. The physical presence of aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues. There are no anticipated effects from human presence on the beaches, since movements of personnel are restricted near the launch sites two hours prior to launches for safety reasons.

Reactions of pinnipeds on the western end of SNI to Vandal target launches have not been well-studied, but based on monitoring studies conducted under the IHAs for this activity on SNI in 2001 and 2002, and on other rocket launch activities and their effects on pinnipeds in the Channel Islands (Stewart *et al.*,

1993), anticipated impacts can be predicted. In general, studies have shown that responses of pinnipeds on beaches to acoustic disturbance arising from rocket and target missile launches are highly variable. This variability may be due to many factors, including species, age class, and time of year. Among species, northern elephant seals seem very tolerant of acoustic disturbances (Stewart, 1981), whereas harbor seals (particularly outside the breeding season) seem more easily disturbed. Research and monitoring at Vandenberg Air Force Base found that prolonged or repeated sonic booms, very strong sonic booms, or sonic booms accompanying a visual stimulus, such as a passing aircraft, are most likely to stimulate seals to leave the haul-out area and move into the water. During three launches of Vandal missiles from SNI, California sea lions near the launch track line were observed from video recordings to be disturbed and to flee (both up and down the beach) from their former resting positions. Launches of the smaller BQM-34 targets from NAS have not normally resulted in harbor seals leaving their haul-out area at the mouth of Mugu Lagoon, which is approximately 3.2 km (2 mi) from the launch site. An Exocet missile launched from the west end of SNI appeared to cause far less disturbance to hauled out California sea lions than Vandal launches.

Given the variability of pinniped responses to acoustic disturbance, as supported by recent IHA monitoring (Lawson *et al.*, 2002), the Navy (NAWS, 2002) assumes that Level B harassment, as evidenced by beach flushing, will sometimes occur upon exposure to launch sounds with SEL's of 100 dBA (re 20 micro-Pa<sup>2</sup>-sec) or higher for California sea lions and northern elephant seals and 90 dBA for Pacific harbor seals.

A conservative estimate of the SEL at which TTS may be elicited in harbor seals, California sea lions and northern elephant seals has been determined to be 145 dB (re 20 micro-Pa<sup>2</sup>-sec) and 165 dB (re 20 micro-Pa<sup>2</sup>-sec), respectively (Lawson *et al.*, 1998). The sound levels necessary to elicit mild TTS in captive California sea lions and harbor seals exposed to impulse noises, such as sonic booms, were tens of decibels higher (Bowles *et al.*, 1999) than sound levels measured during Vandal launches (Burgess and Greene, 1998; Greene, 1999). This evidence, in combination with the known sound levels produced by vehicles launched from SNI, suggests that no pinnipeds will be exposed to TTS-inducing SELs during planned launches.

Based on modeling of sound propagation in a free field situation, Burgess and Greene (1998) data were used by the Navy to predict that Vandal target launches from SNI could produce a 100-dBA acoustic contour that extends an estimated 4,263 m (13,986 ft) perpendicular to its launch track. In other words, Vandal target launch sounds are predicted to exceed the SEL (100 dBA) disturbance criteria for pinnipeds out to a distance of 4,263 m (13,986 ft) from the ALC. Northern elephant seals, harbor seals, and California sea lions haul out in areas within the perimeter of this 100-dBA contour for Vandal launches. For BQM-34 launches from ALC, the Navy assumes that the 100-dBA contour extends an estimated 1,372 m (4,500 ft), perpendicular to its launch track (C. Malme, Engineering and Scientific Services, Hingham, MA, unpublished data). Along the launch track and ahead of the BQM-34, the 100-dBA contour extends a shorter distance (549 m or 1,800 ft). For the smaller BQM-74 and Exocet missiles, the Navy predicts that the 100-dBA contours will be smaller still. The free field modeling scenario used to predict these acoustic contours does not account for transmission losses caused by wind, intervening topography, and variations in launch trajectory or azimuth. Therefore, the predicted 100-dBA contours may be smaller at certain beach locations and for different launch trajectories.

In general, the extremely rapid departure of the Vandal and smaller targets means that pinnipeds could be exposed to increased sound levels for very short time intervals (a few seconds) potentially leading to alert and startle responses from individuals on haul out sites in the vicinity of launches. Some animals may flee to the water. Since recorded observations of the responses of pinnipeds to Vandal launches along with post-launch surveys at the SNI haulouts have not shown injury, mortality, or extended biological disturbance, the Navy anticipates and NMFS concurs that the effects of the planned target launches will have no more than a negligible impact on pinniped populations.

Since the launches are relatively infrequent, and of brief duration, it is unlikely that the pinnipeds near the launch site will become habituated to launch sounds. Pinnipeds that haul out on beaches at the western end of SNI for extended periods, or that return to haul-out sites regularly over the course of the year, may be exposed to sounds of more than a single launch, and may be "harassed" more than once each year. However, given the infrequency and

brevity of these events, it is unlikely that much, if any, habituation to target missile launch activities will occur.

In addition, the infrequent and brief nature of these sounds will cause masking for not more than a very small fraction of the time (usually less than 2 seconds per launch) during any single day. These occasional and brief episodes of masking will have no significant effects on the abilities of pinnipeds to hear one another or to detect natural environmental sounds that may be relevant to the animals.

#### **Numbers of Marine Mammals Expected To Be Taken by Harassment**

NAWS provisionally estimates that the following numbers of pinnipeds may be subject to Level B harassment annually: 1,403 northern elephant seals, 457 harbor seals, and 1,637 California sea lions. To determine the number of takings by harassment annually, one would need to multiply those numbers by the number of launches conducted annually. The animals affected may be the same animals or may be different animals, depending upon the level of site fidelity of the species. Based on the results of recent monitoring of the haulouts, the estimated number of potential harassment takes would be significantly less than estimated under the two recent IHAs.

#### **Effects of Target Missile Launches and Associated Activities on Subsistence Needs**

There are no subsistence uses for these pinniped species in California waters, and, thus, there are no anticipated effects on subsistence needs.

#### **Effects of Target Missile Launches and Associated Activities on Marine Mammal Habitat on SNI**

Harbor seals, California sea lions, and northern elephant seals use various beaches around SNI as places to rest, molt, and breed. These beaches consist of sand (e.g., Red Eye Beach), rock ledges (e.g., Phoca Beach) and rocky cobble (e.g., Vizcaino Beach). Pinnipeds do not feed when hauled out on these beaches, and the airborne launch sounds will mostly reflect or refract from the water surface and, except for sounds within a diameter of approximately 30 degrees directly below the launch vehicle, will not penetrate into the water column. The sounds that do penetrate will not persist in the water for more than a few seconds. Therefore, the Navy does not expect that launch activities will have any impact on the food or feeding success of these animals. The solid rocket booster from the Vandal target and the JATO bottles

from the BMQs are jettisoned shortly after launch and fall into the sea west of SNI. While it is theoretically possible that one of these boosters might instead land on a beach, the probability of this occurring is very low. Fuel contained in the boosters and JATO bottles is consumed rapidly and completely, so there would be no risk of contamination even if a booster or bottle did land on the beach. Overall, the proposed target missile launches and associated activities are not expected to cause significant impacts on habitats or on food sources used by pinnipeds on SNI.

#### **Mitigation**

To avoid additional harassment to pinnipeds on beach haul out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, NAWCWD Point Mugu will limit its activities near the beaches in advance of launches. Existing safety protocols for Vandal launches provide a built-in mitigation measure. That is, personnel are normally not allowed near any of the pinniped beaches close to the flight track on the western end of SNI within 2 hours prior to a launch. Where practicable, NAWCWD Point Mugu will adopt the following additional mitigation measures when doing so will not compromise operational safety requirements or mission goals: (1) The Navy will attempt to limit launch activities during pinniped pupping seasons, particularly harbor seal pupping season; (2) the Navy will attempt not to launch vehicles at low elevation on launch azimuths that pass close to beach haul-out site(s); (3) the Navy will attempt to avoid multiple target launches in quick succession over haul-out sites, especially when young pups are present; and, (4) the Navy will attempt to limit launch activities during the night.

#### **Monitoring**

As part of its application, NAWS provided a monitoring plan, similar to that adopted for the 2001/2002 and 2002/2003 IHAs (*see* 66 FR 41834, August 9, 2001; 67 FR 56271, September 3, 2002), for assessing impacts to marine mammals from Vandal and smaller subsonic target and missile launch activities on SNI. This monitoring plan is described in their application (NAWS, 2002).

The Navy will conduct the following monitoring during the first year under an LOA and regulations.

### *Land-Based Monitoring*

In conjunction with a biological contractor, the Navy will continue its land-based monitoring program to assess effects on the three common pinniped species on SNI: northern elephant seals, harbor seals, and California sea lions. This monitoring will occur at three different sites of varying distance from the launch site before, during, and after each launch. The monitoring will be via autonomous video cameras.

During the day of each missile launch, the observer will place three digital video cameras overlooking chosen haul out sites. Each camera will be set to record a focal subgroup within the haul out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

Following each launch, all digital recordings will be transferred to DVDs for analysis. A DVD player/computer with high-resolution freeze-frame and jog shuttle will be used to facilitate distance estimation, event timing, and characterization of behavior. Details of analysis methods can be found in LGL Ltd. Environmental Research Associates et al. (LGL, 2002).

### *Acoustical Measurements*

During each launch, the Navy will obtain calibrated recordings of the levels and characteristics of the received launch sounds. Acoustic data will be acquired using three Autonomous Terrestrial Acoustic Recorders (ATAR) at three different sites of varying distances from the target's flight path. ATARs can record sounds for extended periods (dependent on sampling rate) without intervention by a technician, giving them the advantage over traditional digital audio tape (DAT) recorders should there be prolonged launch delays of as long as 10 hours. To the extent possible, acoustic recording locations will correspond with the sites where video monitoring is taking place. The collection of acoustic data will provide information on the magnitude, characteristics, and duration of sounds that pinnipeds may be exposed to during a launch. In addition, the acoustic data can be combined with the behavioral data collected via the land-based monitoring program to determine if there is a dose-response relationship between received sound levels and pinniped behavioral reactions. Once collected, sound files will be transferred onto compact discs (CDs) and sent to the acoustical contractor for sound analysis.

For further details regarding the installation and calibration of the

acoustic instruments and analysis methods refer to LGL (2002).

### **Reporting Requirements**

An interim technical report must be submitted to NMFS 60 days prior to the expiration of each annual LOA issued under these regulations, along with a request for a follow-on annual LOA. This interim technical report will provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks for launches during the period covered by the LOA. However, only preliminary information will be available to be included for any launches during the 60-day period immediately preceding submission of the interim report to NMFS. In the unanticipated event that any cases of pinniped mortality are judged to result from launch activities at any time during the period covered by these regulations, this event will be reported to NMFS immediately.

The proposed 2003–04 launch monitoring activities will constitute the third year of formal, concurrent pinniped and acoustical monitoring during launches from SNI. The impacts of launch activities on pinnipeds ashore were monitored under the 2001–2003 IHAs. Additional monitoring will take place under an LOA in 2003–2004. Following submission in 2004 of the interim report on the monitoring under that LOA, the Navy and NMFS will discuss the scope of future launch monitoring work on SNI. Some biological or acoustic parameters may be documented adequately prior to or during the first LOA (2003–2004), and it may not be necessary to continue all aspects of the monitoring work after the first year. Any modifications to the monitoring program will be documented through publication in the **Federal Register**.

In addition to annual LOA reports, NMFS is requiring NAWS to submit a draft comprehensive final technical report to NMFS 180 days prior to the expiration of these regulations. This technical report will provide full documentation of methods, results, and interpretation of all monitoring tasks for launches during the first four LOAs, plus preliminary information for launches during the first 6 months of the final LOA.

### **Determinations**

Based on the evidence provided in the application, the EA, and this document, and taking into consideration the comments submitted on the application and proposed regulations, NMFS has determined that it will authorize the taking, by Level B harassment, of small

numbers of marine mammals incidental to missile launch operations on SNI. The total taking of marine mammals by Level B harassment from vehicle launch operations on SNI over the period of these regulations will have no more than a negligible impact on affected marine mammal stocks. NMFS is assured that the short-term impact of conducting missile launch operations from SNI in the Channel Islands off southern California will result, at worst, in temporary modifications in behavior by three species of pinnipeds. No take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely. NMFS has determined that the requirements of section 101(a)(5)(A) of the MMPA have been met and the LOAs can be issued.

### **National Environmental Policy Act (NEPA)**

NMFS has prepared an EA and made a Finding of No Significant Impact (FONSI). Therefore, preparation of an environmental impact statement on this action is not required by section 102(2) of the NEPA or its implementing regulations. A copy of the EA and FONSI are available upon request (*see ADDRESSES*).

### **ESA**

No species listed under the ESA is expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required. It should be noted however that an experimental population of sea otters may be affected by this action. Under Public Law 99–625, this experimental population of sea otters is treated as a proposed species for purposes of section 7 when the action (as here) is defense related. Proposed species require an action agency to confer with NMFS or the U.S. Fish and Wildlife Service under section 7 when the action is likely to jeopardize the continued existence of the species. The information available does not indicate that sea otters are likely to be jeopardized by this action. Therefore, a conference is not required.

### **CZMA Consistency**

On February 14, 2001, by a unanimous vote, the California Coastal Commission concluded that, with the monitoring and mitigation commitments the Navy has incorporated into their various testing and training activities on the Point Mugu Sea Range, including activities on SNI, and including the commitment to enable continuing Commission staff review of finalized monitoring plans and ongoing

monitoring results, the activities are consistent with the marine resources, environmentally sensitive habitat and water quality policies (Sections 30230, 30240, and 30231) of the California Coastal Act.

#### National Marine Sanctuaries Act

According to the Navy, except for aircraft and vessel traffic transiting the area, none of the Navy's proposed activities would take place within the Channel Islands National Marine Sanctuary (CINMS). Also, all Navy Sea Range test and training activities are consistent with CINMS regulations (15 CFR 920.70).

#### Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

At the proposed rule stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the U.S. Navy and would have no effect, directly or indirectly, on small businesses. It may affect a small number of contractors providing services related to reporting the impact of the activity on marine mammals, some of whom may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This final rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648-0151, and include applications for LOAs, and reports.

The reporting burden for the approved collections-of-information is estimated to be approximately 120 hours for the annual applications for an LOA, and a total of 120 hours for the quarterly and annual reports. These estimates include the time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (*see ADDRESSES*).

#### List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: August 25, 2003.

Rebecca Lent.

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

#### PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Subpart N is added to read as follows:

#### Subpart N—Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

Sec.

- 216.151 Specified activity, geographical region, and incidental take levels.
- 216.152 Effective dates.
- 216.153 Permissible methods of taking; mitigation.
- 216.154 Prohibitions.
- 216.155 Requirements for monitoring and reporting.
- 216.156 Letter of Authorization.
- 216.157 Renewal of the Letter of Authorization.
- 216.158 Modifications to the Letter of Authorization.

#### Subpart N—Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

##### § 216.151 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in target missile launch activities at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified

in paragraph (a) of this section is limited to the following species: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Vandal (or similar sized) vehicles from Alpha Launch Complex and smaller missiles and targets from Building 807 on San Nicolas Island, California.

##### § 216.152 Effective dates.

Regulations in this subpart are effective from October 2, 2003 through October 2, 2008.

##### § 216.153 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take those marine mammal species specified in § 216.151(b) by Level B harassment, in the course of conducting target missile launch activities within the area described in § 216.151(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity specified in § 216.151 must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When conducting these activities, the following mitigation measures must be utilized:

(1) The holder of the Letter of Authorization must prohibit personnel from entering pinniped haul-out sites below the missile's predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid launch activities during harbor seal pupping season (February to April), when operationally practicable.

(3) The holder of this Authorization must limit launch activities during other pinniped pupping seasons, when operationally practicable.

(4) The holder of the Letter of Authorization must not launch Vandal target missiles from the Alpha Complex at low elevation (less than 1,000 feet (304.8 m) on launch azimuths that pass close to pinniped haul-out sites).

(5) The holder of the Letter of Authorization must avoid, where practicable, launching multiple target missiles in quick succession over haul-out sites, especially when young pups are present.

(6) The holder of the Letter of Authorization must limit launch

activities during nighttime hours when operationally practicable.

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (304.8 m) from pinniped haul-outs.

(8) If injurious or lethal take is discovered during monitoring conducted under § 216.155, the holder of the Letter of Authorization must contact the Regional Administrator, Southwest Region, National Marine Fisheries Service, or his/her designee, at (562) 980-4023 within 48 hours and, in cooperation with the National Marine Fisheries Service, launch procedure, mitigation measures, and monitoring methods must be reviewed and appropriate changes made prior to the next launch.

(9) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next missile launch.

#### § 216.154 Prohibitions.

Notwithstanding takings authorized by § 216.151(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

- (a) The taking of a marine mammal that is other than unintentional.
- (b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.
- (c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

#### § 216.155 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(b) The National Marine Fisheries Service must be notified immediately of any changes or deletions to any portions of the proposed monitoring plan submitted in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site observer(s), approved in advance by the National Marine Fisheries Service, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) *Visual Land-Based Monitoring.* (i) Prior to each missile launch, an

observer(s) will place 3 autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site. Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by observers described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to the estimated launch time and for at least 1 hour immediately following the launch of all launch vehicles.

(iii) Documentation, both via autonomous video camera and human observer, will consist of:

- (A) Numbers and sexes of each age class in focal subgroups;
- (B) Description and timing of launch activities or other disruptive event(s);
- (C) Movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;
- (D) Description of reactions;
- (E) Minimum distances between interacting and reacting pinnipeds;
- (F) Study location;
- (G) Local time;
- (H) Substratum type;
- (I) Substratum slope;
- (J) Weather condition;
- (K) Horizontal visibility; and
- (L) Tide state.

(2) *Acoustic Monitoring.* (i) During all target missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the target missile's flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video and human observer monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of target missiles in three dimensions.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each target missile.

(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each target missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report on the information required under

§ 216.155(d)(1)(iii) to the National Marine Fisheries Service, Southwest Regional Office, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

- (i) Timing and nature of launch operations;
- (ii) Summary of pinniped behavioral observations;
- (iii) Estimate of the amount and nature of all takes by harassment or by other means.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of these regulations and providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization, will be due 90 days after the end of the period of effectiveness of these regulations.

(5) Both the 60-day and draft comprehensive technical reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraph (d) of this section, or in the Letter of Authorization issued under § 216.106, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

#### § 216.156 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization but may not exceed the period of validity of this subpart.

(b) A Letter of Authorization with a period of validity less than the period of validity of this subpart may be renewed subject to renewal conditions in § 216.157.

(c) A Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Specified geographic area for taking;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(4) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(e) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

#### § 216.157 Renewal of a Letter of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.156 for the activity specified in § 216.151 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under § 216.156 will be undertaken and that there will not be a substantial modification to the described work, mitigation, or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under § 216.155, and acceptance by the National Marine Fisheries Service;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring, and reporting measures required under §§ 216.153 and 216.155 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity continues to be small and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

#### § 216.158 Modifications to the Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151(b), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 082203D]

#### Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

**ACTION:** Atlantic bluefin tuna retention limit adjustment.

**SUMMARY:** This action adjusts the Atlantic bluefin tuna (BFT) General category daily retention limit to allow for maximum utilization of the General category adjusted September time-period subquota. NMFS increases the daily retention limit to two large medium or giant BFT through September 30, 2003. This action is being taken to provide increased fishing opportunities in all areas without risking overharvest of the General category quota.

**DATES:** Effective September 1, 2003 through September 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, and General category effort controls (including time-period subquotas and restricted fishing days (RFDs)) are specified annually under 50 CFR 635.23(a) and 635.27(a). The 2003 BFT Quota Specifications and General category effort controls were proposed on July 10, 2003 (68 FR 41103).

#### Adjustment of Daily Retention Limit

Under § 635.23 (a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, available quota, and the availability of BFT on the fishing grounds, NMFS has determined that an increase of the daily retention limit for the September time-period is appropriate and necessary to maximize use of the full, adjusted September subquota. Based on current and historical General category landings rates in the June through August time-period, it is highly unlikely that the June through August subquota will be filled in the remaining fishing days. At current catch rates and a daily retention limit of one BFT per vessel, it is also unlikely that the adjusted September subquota will be attained in the September time-period. Therefore, NMFS adjusts the General category daily retention limit through September 30 to two large medium or giant BFT per vessel.

The intent of this adjustment is to allow for maximum utilization by General category participants of the subquota for the September time-period (specified under 50 CFR 635.27(a)), (which has been adjusted by the quota carryover from the June through August time-period subquota), to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Closures or subsequent adjustments to the daily retention limit, if any, will be published in the **Federal Register**. In addition, owners/operators may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9305 for updates