

within the Shatsky Rise area in the northwest Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this proposed action.

For reasons stated previously in this document, the specified activities associated with the proposed survey are not likely to cause TTS, PTS or other non-auditory injury, serious injury, or death to affected marine mammals because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The fact that cetaceans would have to be closer than 940 m (0.6 mi) in deep water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound believed to have even a minimal chance of causing PTS;

(3) The fact that marine mammals would have to be closer than 3,850 m (2.4 mi) in deep water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance at causing TTS; and

(4) The likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel.

As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed monitoring and mitigation measures.

While the number of marine mammals potentially incidentally harassed will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential Level B incidental harassment takings (*see* Table 3 above this section) is estimated to be small, less than two percent of any of the estimated population sizes based on the data disclosed in Table 2 of this notice, and has been mitigated to the lowest level practicable through incorporation of the monitoring and

mitigation measures mentioned previously in this document.

#### Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to L-DEO for conducting a marine geophysical survey at the Shatsky Rise area in the northwest Pacific Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

#### Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS' preliminary determination of issuing an IHA (*see* ADDRESSES). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 17, 2010.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XW03**

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

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a letter of authorization (LOA) has been issued to the Naval Air Warfare Center Weapons Division, U.S. Navy (Navy), to take three species of seals and sea lions incidental to missile launch operations from San Nicolas Island (SNI), California, a military readiness activity.

**DATES:** Effective June 4, 2010, through June 3, 2011.

**ADDRESSES:** The LOA and supporting documentation are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service (NMFS), 1315 East West Highway, Silver Spring, MD 20910-3225 or by telephoning one of the contacts listed below (**FOR FURTHER INFORMATION CONTACT**). Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

**FOR FURTHER INFORMATION CONTACT:** Michelle Magliocca, Office of Protected Resources, NMFS, 301-713-2289, or Monica DeAngelis, NMFS, 562-980-3232.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the National Marine Fisheries Service (NMFS) 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. However, for military readiness activities, the National Defense Authorization Act (Public Law 108-136) removed the "small numbers" and "specified geographical region" limitations. Under the MMPA, the term "take" means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of northern elephant seals (*Mirounga angustirostris*), Pacific harbor seals

(*Phoca vitulina richardsi*), and California sea lions (*Zalophus californianus*), by harassment, incidental to missile launch operations at SNI, were issued on June 2, 2009, and remain in effect until June 2, 2014 (74 FR 26580, June 3, 2009). For detailed information on this action, please refer to that document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during missile launches at SNI.

#### Summary of Request

On April 19, 2010, NMFS received a request for an LOA renewal pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of pinnipeds, by harassment, incidental to missile launch operations from San Nicolas Island, CA.

#### Summary of Activity and Monitoring Conducted During 2009 and 2010

The Navy's monitoring report for June 2009 through December 2009 describes three single launches from SNI on three different days. These launches occurred at night during the Airborne Laser (ABL) testing program. A single Terrier-Lynx was launched on each of two days, June 6 and 13, 2009, and a single Terrier-Black Brant was launched on August 10, 2009. Vehicles were launched from the 807 Launch Complex located close to shore on the western end of SNI, 11 m above sea level. The launch azimuths caused the vehicles to pass over or near various pinniped monitoring and acoustic measurement sites where Autonomous Terrestrial Acoustic Recorders (ATARs) and video systems had been deployed. The video data were supplemented by direct visual scans of the haul-out groups several hours prior to the launches and following one of the launches. For each launch, the number, proportion, and (where determinable) ages of the individual pinnipeds that responded in various ways were extracted from the video, along with comparable data for those that did not respond overtly. Approximately 750 California sea lions, 60 Pacific harbor seals, and no northern elephant seals are estimated to have been harassed by launches during the June-December 2009 monitoring report. The authorized level of take was not exceeded and no evidence of injury or mortality was observed during or immediately succeeding the launches for the monitored pinniped species.

#### Description of 2010 Activities

This LOA is effective from June 4, 2010, through June 3, 2011, and authorizes the incidental take of the

three pinniped species listed above that may result from the launching of up to 40 missiles from SNI per year. Up to 10 launches per year may occur at night. Nighttime launches will only occur when required by the test objectives, e.g., when testing the Airborne Laser system (ABL). Northern elephant seals, Pacific harbor seals, and California sea lions are found on various haul-out sites and rookeries on SNI.

Potential impacts of the planned missile launch operations from SNI on marine mammals involve both acoustic and non-acoustic effects. Acoustic effects relate to sound produced by the engines of all launch vehicles, and, in some cases, their booster rockets. Potential non-acoustic effects could result from the physical presence of personnel during placement of video and acoustical monitoring equipment. However, careful deployment of monitoring equipment is not expected to result in any disturbance to pinnipeds hauled out nearby. Any visual disturbance caused by passage of a vehicle overhead is likely to be minor and brief as the launch vehicles are relatively small and move at great speed. The noise generated by Navy activities may result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from missile launches may cause the animals to move towards or enter the water. This LOA authorizes the following numbers of pinnipeds to be incidentally taken by Level B harassment: 474 northern elephant seals; 467 Pacific harbor seals; and 1606 California sea lions.

Take of pinnipeds will be minimized through implementation of the following mitigation measures: (1) The Navy must avoid launch activities during harbor seal pupping season (February through April), unless constrained by factors including, but not limited to, human safety, national security, or for launch trajectory necessary to meet mission objectives; (2) the Navy must limit launch activities during other pinniped pupping seasons, unless constrained by factors including, but not limited to, human safety, national security, or for launch trajectory necessary to meet mission objectives; (3) the Navy must not launch missiles from the Alpha Complex at low elevation (less than 305 m [1,000 ft]) on launch azimuths that pass close to pinniped haul-out site(s) when occupied; (4) the Navy must avoid multiple vehicle launches in quick succession over haul-out sites when occupied, especially when young pups are present, except when required by

mission objectives; and (5) the Navy must limit launch activities during nighttime hours, except when required by mission objectives (e.g., up to 10 nighttime launches for ABL testing per year). Additionally, for 2 hours prior to, during, and approximately 30 minutes following each launch, personnel are not allowed near any of the pinniped haul-out beaches that are close to the flight track on the western end of SNI. Associated fixed-wing and rotary aircraft will maintain an altitude of at least 305 m (1,000 ft) when traveling near beaches on which pinnipeds are hauled out, except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting, adverse weather conditions), which may require approaching pinniped haul-outs and rookeries closer than 305 m (1,000 ft). Additionally, plain monitoring methods will be reviewed by NMFS if post-launch surveys determine that an injurious or lethal take of a marine mammal occurred. The Navy will also use monitoring surveys and time-lapse video to monitor the animals before, during, and after missile launches. Reports will be submitted to NMFS after each LOA expires, and a final comprehensive report, which will summarize all previous reports and assess cumulative impacts, will be submitted before the rule expires. This LOA will be renewed annually based on review of the annual monitoring report.

#### Authorization

The Navy complied with the requirements of the 2009 LOA and NMFS has determined that there was no evidence of pinniped injuries or fatalities related to vehicle launches from SNI. The Navy's activities fell within the scope of the activities analyzed in the 2009 rule and the observed take did not exceed that authorized in the 2009 LOA. NMFS has determined that this action continues to have a negligible impact on the affected species or stocks of marine mammals on SNI. Accordingly, NMFS has issued a LOA to the Navy authorizing the take of marine mammals, by harassment, incidental to missile launch activities from SNI. The provision requiring that the activities not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this action.

Dated: May 17, 2010.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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