

Dated: June 8, 2021.

**Delores Barber,**

*Director, Information Technology and Resources Management Division, Office of Program Support.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB160]

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the U.S. Navy Target and Missile Launch Activities on San Nicolas Island

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally harass, by Level B harassment only, marine mammals during target and missile launch activities on San Nicolas Island (SNI), California. The Navy's activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA).

**DATES:** This Authorization is effective from June 12, 2021 through June 11, 2022.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Egger, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

#### SUPPLEMENTARY INFORMATION:

##### Background

The MMPA prohibits the "take" of marine mammals, with certain

exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to 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 either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation"); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The NDAA (Pub. L. 108-136) removed the "small numbers" and "specified geographical region" limitations indicated above and amended the definition of "harassment" as it applies to a "military readiness activity." The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity.

##### History of Request

On March 1, 2021, NMFS received an adequate and complete application from the Navy, requesting the take of marine mammals incidental to target and missile launch activities on SNI. NMFS previously issued an IHA for this activity on June 12, 2019 (84 FR 28462; June 19, 2019) as well as a renewal IHA on June 19, 2020 (85 FR 38863; June 29, 2020). The activities for which incidental take is authorized are identical to those covered under the previous IHAs.

Navy complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous authorizations and information regarding their monitoring results may be found in the Potential Effects of Specified Activity on Marine Mammals

and their Habitat and Estimated Take section of the previous authorization (84 FR 28462; June 19, 2019) as well <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities#active-authorizations>. This IHA would cover 1 year of an on-going activity for which Navy obtained prior authorizations, specifically continuation of target and missile launches on SNI. Of note, the Navy also submitted a revised and complete application on August 28, 2020 for a 7-year rulemaking and Letter of Authorization (LOA) for the same target and missile launch activities on SNI, as well as other Navy testing and training activities in the same area. On September 4, 2020, NMFS published a notice of receipt of application in the **Federal Register** (85 FR 55257) requesting comments and information related to the Navy's request. However, NMFS is unable to make determinations regarding the requested LOA prior to the expiration of the currently active renewal IHA, which would leave a lapse in coverage for the Navy for target and missile launch activities on SNI after it expires on June 11, 2021. This IHA is intended to provide coverage during this period and is valid for one year from June 12, 2021 through June 11, 2022.

##### Description of the Planned Activity and Anticipated Impacts

The Navy plans to continue a target and missile launch program on SNI, located in Southern California and part of the Channel Islands, which is identical to the program covered under the previous authorizations. The Navy has been conducting this program since 2001, which supports testing and training activities associated with operations on the Point Mugu Sea Range (PMSR). The PMSR 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. Missiles vary from tactical and developmental weapons to target missiles used to test defensive strategies and other weapons systems. Some launch events involve a single missile, while others involve the launch of multiple missiles in quick succession and are launched from two launch sites on SNI. As before, the Navy proposes to conduct up to 40 missile launch events from SNI, but the total may be less than 40 depending on operational requirements. Launch timing will be determined by operational, meteorological, and logistical factors. Up to 10 of the 40 launches may occur

at night, but this is also dependent on operational requirements and only conducted when required by test objectives. The specified activities are expected to result in the take of three marine mammal species: California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) by Level B harassment only, primarily in the form of behavioral disturbance, as a result of the airborne noise produced during launch activities.

We refer the reader to the documents related to the previously issued IHAs (84 FR 28462; June 19, 2019 and 85 FR 38863; June 29, 2020) as a detailed description of the planned target and missile launch activities can be found in these documents. We also refer the reader to the Navy’s current and previous applications and monitoring reports which can be found at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities#active-authorizations>. The location, timing, and nature of the activities, including the types of missiles planned for use, are identical to

those described in the previous notifications.

*Comments and Responses*

A notice of NMFS’s proposal to issue an IHA to the Navy was published in the **Federal Register** on May 4, 2021 (86 FR 23690). That notice described the Navy’s activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. No comments were received during the public comment period.

*Description of Marine Mammals*

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to this IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the previous authorizations. NMFS has also reviewed the Navy’s monitoring reports and they support the current take estimates and our findings. Therefore, no change in the take estimates was warranted.

*Potential Effects on Marine Mammals and Their Habitat*

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the previous IHAs, which remains applicable to the issuance of this IHA. There is no new information on potential effects.

*Estimated Take*

A detailed description of the methods and inputs used to estimate authorized take is found in these previous documents. The methods of estimating take for this IHA are identical to those used in the previous IHAs. The source levels, number of launches, and the marine mammal abundance on SNI used to calculate take remain unchanged from the previously issued IHAs. The authorized stocks taken, types of take, and methods of taking remain unchanged from the previously issued IHAs. The same is true for the number of takes, which are indicated below in Table 1. As before, no serious injury or mortality is anticipated or authorized for the Navy’s activity.

TABLE 1—REQUESTED TAKE AMOUNT, PER SPECIES, RELATIVE TO POPULATION SIZE

Species	Authorized level B harassment	Stock abundance (percent taken by level B harassment)
California sea lion .....	11,000	257,606 (4.27 percent).
Harbor seal .....	480	30,968 (less than 2 percent).
Northern elephant seal .....	40	179,000 (less than 1 percent).

*Description of Mitigation, Monitoring and Reporting Measures*

The mitigation, monitoring, and reporting measures here are identical to those included in the previous IHAs. The discussion of the least practicable adverse impact included in that document remains accurate. All mitigation, monitoring, and reporting measures in the previous IHA are carried over to this IHA and summarized below:

- *Personnel Mitigation*—Personnel will not enter pinniped haulouts. Personnel will be adjacent to pinniped haulouts below the predicted missile path for two hours prior to a launch only for monitoring purposes.
- *Launch Mitigation*—Missiles will not cross over pinniped haulouts at elevations less than 305 m (1,000 ft). Launches at night will be limited. Launches will be avoided during harbor seal pupping season (February through April) unless constrained by mission

objectives. Launches will be limited during the pupping season for northern elephant seal (January through February) and California sea lion (June through July) unless constrained by mission objectives or certain other factors. It is vital that the Navy effectively executes readiness activities to ensure naval forces can effectively execute military operations.

- *Aircraft Operation Mitigation*—All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haulouts and rookeries, except in emergencies.
- *Non-authorized Take Prohibited*—If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, the Navy must consult with NMFS before the next launch event.
- *Visual and Video Camera Monitoring*—The Navy proposes to conduct marine mammal monitoring during launches from SNI, using visual

monitoring as well as simultaneous autonomous audio recording of launch sounds and video recording of pinniped behavior. Visual monitoring, before and after launches, is a scan of the haulout beaches to count pinnipeds over a wider field of view than can be captured by a stationary video camera. This is typically done over a 15–30 minute period. Visual monitoring is conducted while the equipment is being set up and broken down for video and acoustic monitoring. Video monitoring is conducted by recording continuously from a minimum of two hours before the event to approximately one hour after the event. These video and audio records will be used to document pinniped responses to the launches.

- *Acoustic Monitoring*—Acoustical recordings will be obtained during each monitored launch. These recordings will be suitable for quantitative analysis of the levels and characteristics of the received launch sounds.

▪ *Reporting*—A technical report will be submitted to the NMFS' Office of Protected Resources within 90 days from the date the IHA expires. This report will provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks for launches activities at SNI that are covered under this IHA.

#### **Determinations**

The Navy planned target and missile launch activities identical to those covered in the previous IHAs. The methods of taking and effects of the action resulting in Level B harassment only remains the same as what was previously analyzed. When issuing the previous IHAs, NMFS found the Navy's target and missile launch activities would have a negligible impact to species or stocks' rates of recruitment and survival. This IHA also carries over identical mitigation, monitoring, and reporting measures as required under the previous IHAs. NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the previous IHAs. Based on the analysis in the previous IHAs, the likely effects of the specified activity on marine mammals and their habitat, as well as the previous monitoring results at SNI, NMFS likewise finds that the total marine mammal take from this planned activity will have a negligible impact on all affected marine mammal species or stocks.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; and (3) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (4) appropriate monitoring and reporting requirements are included.

#### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical

exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

#### **Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, formal consultation under section 7 of the ESA was not required for this action.

#### **Authorization**

As a result of these determinations, NMFS authorizes an IHA to the Navy for conducting target and missile launches on SNI, effective from June 12, 2021 through June 11, 2022, with the previously mentioned mitigation, monitoring, and reporting requirements incorporated.

Dated: June 16, 2021.

**Catherine Marzin,**

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

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