

operational noise levels at the Port and develop an engineering report that identifies structural and operational noise reduction measures, if necessary, to minimize the baseline operational noise levels at the expanded port to the maximum extent practicable. The Port Sound Index will be combined with the beluga whale monitoring program to correlate construction and operationally generated noise exposures with beluga whale presence, absence, and any altered behavior observed during construction and operations (*i.e.*, a dose-response analysis). NMFS is considering requiring reports monthly the first year of construction (*i.e.*, the IHA period) to more closely examine behavioral reactions. An annual review of beluga observations and noise exposure data will also be provided to NMFS no later than 1 Feb. The annual review will also identify relevant technological advances in sound attenuation. The Port will employ practicable noise minimization measures identified in the annual reports for subsequent Port construction activities.

Reporting for 2008

For the 2008 IHA term, monthly reports will be required from the Port regarding mitigation implementation, acoustic propagation measurements, and beluga monitoring. The acoustic and beluga monitoring plans are available at www.nmfs.noaa.gov/pr. These plans may be refined by NMFS prior to issuance of the IHA. A final report will be submitted to NMFS no later than 90 days after construction activities cease for the season.

Endangered Species Act

A Section 7 consultation under the ESA is not required as no endangered or threatened species are expected to be within the Project area and therefore will not be affected by the proposed action. However, Cook Inlet beluga whales are a proposed species for listing under the ESA (72 FR 19854, April 20, 2007). A final decision on this listing is pending. The ESA provides some protection for species which are proposed, but not yet listed, to be threatened or endangered. Section 7(a)(4) requires an action agency to "confer" with NMFS when its actions are likely to jeopardize the continued existence of a species proposed for listing. Conference may result in the preparation of a conference report and opinion. The Port and the Corps have determined that the Project is not likely to jeopardize the Cook Inlet beluga, and that conference with NMFS pursuant to the ESA, was not necessary. NMFS

concurs with this decision and has not recommend conference on this action.

National Environmental Policy Act

The Port and the Maritime Administration prepared an Environmental Assessment (EA) in 2004, which analyzed the anticipated social, economic, and environmental effects of the Project. In 2007, the Corps prepared a similar document for its issuance of Permit POA-2003-502-N which authorizes the Port expansion project. However, NMFS has determined that additional NEPA analysis is necessary to adequately determine whether significant environmental impacts could result from issuance of the proposed IHA; therefore an EA will be prepared. The EA will be available on the NMFS website upon completion.

Preliminary Determinations

NMFS has preliminarily determined that the total taking by the proposed activity will have a negligible impact on the affected species and stocks of marine mammals and will not have an unmitigable adverse impact on availability of those species or stocks of marine mammals intended for subsistence uses. Proposed mitigation, monitoring, and reporting will ensure that Project related activities will result in the least practicable adverse impact on the affected species of marine mammals and their habitat. Furthermore, there will be no adverse impact on the availability of marine mammals for subsistence uses. The taking of marine mammals associated with Port construction is unlikely to cause injury (Level A harassment) or mortality due to proposed mitigation measures that will be in place such as the use of marine mammal observers, mandatory shut down zones, and tidally restricted pile driving. Takes are expected to be limited to Level B harassment. Expected reactions include behavioral changes such as decreased use of the action area, fleeing the area if present before construction activities begin, and altered diving, foraging, movement and vocalization patterns.

Request for Comments

NMFS requests comments on its proposal to issue a one-year IHA to allow the taking of marine mammals, specifically beluga whales, incidental to Project related pile driving activities for the 2008 construction season (April-October). NMFS also requests, in accordance with 50 CFR part 216 subpart I, interested persons to submit comments, suggestions, information, and suggestions concerning the request

and the possible structure and content of the regulations to govern the taking for a 5-year period of Project operations. NMFS specifically solicits comments addressing (but not limited to) the following topics: details regarding the habitat use of belugas near the Port; additional or alternative proposed mitigation measures; information addressing the potential effect of repeated exposure to loud noises or other stressful stimuli on both population health and mother/calf interactions; information regarding cetacean habituation to acoustic stimuli, and information on potential habitat impacts as it relates to marine mammals. Prior to submitting comments, NMFS recommends reviewing the Port's application as that document contains information necessary to respond appropriately to this action. If NMFS proposes regulations to allow this take, the public will also be provided with a comment period within which to submit comments on the proposed rule.

Dated: March 12, 2008.

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-XG03

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 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 an 11-month letter of authorization (LOA) has been issued to the 30th Space Wing, U.S. Air Force, to take four species of seals and sea lions incidental to rocket and missile launches on Vandenberg Air Force Base (VAFB), California.

DATES: Effective March 17, 2008, through February 6, 2009.

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: Jolie Harrison or Candace Nachman, 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. Under the MMPA, the term “taking” 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 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 Pacific harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), and northern fur seals (*Callorhinus ursinus*), by harassment, incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at VAFB, were issued on February 6, 2004 (69 FR 5720), and remain in effect until February 6, 2009. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during missile and rocket launches at VAFB.

This LOA is effective from March 17, 2008 through February 6, 2009, and authorizes the incidental take of the four marine mammal species listed above that may result from the launching of up to 30 space and missile vehicles and up to 20 rockets annually from VAFB, as well as from aircraft and helicopter operations. Harbor seals haul-out on several sites on VAFB, and harbor seals, California sea lions, elephant seals, and northern fur seals are found on various haul-out sites and rookeries on San Miguel Island (SMI). Currently, six space launch vehicle programs use VAFB to launch satellites into polar orbit: Delta II, Taurus, Atlas V, Delta IV, Falcon, and Minotaur. Also a variety of small missiles, several types of interceptor and target vehicles, and fixed-wing aircrafts are launched from VAFB.

The activities under these regulations create two types of noise: continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles, and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from VAFB. The operation of launch vehicle engines produces significant sound levels. The noise generated by VAFB activities will result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from space launch vehicle and missile launches and aircraft and

helicopter operations may cause the animals to move towards or enter the water. Take of pinnipeds will be minimized through implementation of the following mitigation measures: (1) all aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries; (2) missile and rocket launches must, whenever possible, not be conducted during the harbor seal pupping season of March through June; (3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons, March through June; and (4) monitoring methods will be reviewed by NMFS if post-launch surveys determine that an injurious or lethal take of a marine mammal occurred. VAFB will also use monitoring surveys, audio-recording equipment, and time-lapse video to monitor the animals before, during, and after rocket launches, and to measure sound levels generated by the 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.

Summary of Request

On January 29, 2008, NMFS received a request for a LOA pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals, by harassment, incidental to rocket and missile launches at VAFB.

Summary of Activity and Monitoring Under the Current LOA

In compliance with the 2007 LOA, VAFB submitted an annual report on the rocket launches at VAFB. A summary of that report (ManTech SRS Technologies, 2008) follows.

A total of three space vehicle launches and four launches of other vehicle types were conducted at VAFB between January 1, 2007, and December 31, 2007. The dates, locations, and monitoring required for the launches are summarized in Tables 1 and 2 below.

TABLE 1.—SUMMARY OF SPACE VEHICLE LAUNCHES AND MONITORING THAT OCCURRED AT VAFB IN 2007

| Vehicle | Date | Time | Launch Site | Monitoring Conducted |
|----------------------|---------|-------|-------------|----------------------|
| Delta II COSMO–1 | June 7 | 19:34 | SLC–2 | North VAFB |
| Delta II WorldView–1 | Sep. 18 | 11:35 | SLC–2 | SMI |
| Delta II COSMO–2 | Dec. 8 | 18:31 | SLC–2 | None |

TABLE 2. SUMMARY OF OTHER LAUNCHES AND MONITORING THAT OCCURRED AT VAFB IN 2007.

| Vehicle | Date | Time | Launch Site | Monitored |
|---------------------------------|---------|-------|-------------|-----------|
| Minuteman III GT 193-GM | Feb. 7 | 00:15 | LF-10 | No |
| Minuteman II FTX-02 | Mar. 20 | 21:27 | LF-06 | Yes |
| Minuteman II NFIRE-2A | Aug. 23 | 01:31 | LF-06 | No |
| Ground-based Interceptor FTG-03 | Sep. 28 | 13:16 | LF-23 | No |

The Delta II COSMO-2 launch occurred outside of the harbor seal pupping season, and a sonic boom of greater than 1 lb/ft² (psf) was not predicted to occur at SMI as a result of the launch; therefore, no biological or acoustical monitoring was required or conducted. Similarly, the Minuteman III GT 193-GM, Minuteman II NFIRE-2A, and the Ground-based Interceptor FTG-03 launches all occurred outside of the harbor seal pupping season; therefore, no biological or acoustical monitoring was required or conducted on VAFB.

In 2007, there were 12,793 tower operations and 299 range operations from the VAFB Airfield. Tower operations include all arrivals and departures from the airfield, while range operations include activities such as overflights, flight tests, etc. There were no observed impacts to pinnipeds from these activities. Also, no sea lion pups were born on VAFB in 2007.

Delta II COSMO-1

Although no sonic boom greater than 1 psf was predicted at SMI, the Delta II COSMO-1 vehicle was launched during the harbor seal pupping season; therefore, monitoring was required at VAFB. No acoustic monitoring was conducted at VAFB since the noise from this vehicle has been well quantified by measurements performed for previous launches of this vehicle. Monitoring surveys at the Spur Road haul-out site in the days surrounding the launch (June 4-9) revealed between zero and 15 adult and juvenile harbor seals, with daily maximums between one and 15 seals. No pups were seen during the monitoring period. Also, no pups were seen during the monthly census conducted on June 29. A video recording during the launch showed that only low numbers or no seals were generally present at the haul-out site in the morning, with numbers increasing in the early afternoon. No seals were present at the time of the launch. There was no evidence of injury, mortality, or abnormal behavior in any harbor seals at VAFB as a result of this launch.

Delta II WorldView-1

The Delta II WorldView-1 launch occurred outside of the harbor seal pupping season, so no monitoring was required or conducted on VAFB. However, a sonic boom of greater than 1 psf was predicted to reach SMI, so biological and acoustical monitoring were required at SMI. Monitoring at Point Bennett, specifically Northwest Cove, on SMI began on September 15 and included monitoring prior to, during, and immediately after the launch. Immediately prior to the launch, monitors were able to view 3,563 adult and pup California sea lions. The launch vehicle was not seen or heard during the launch window, and no sonic boom was heard or recorded. There were no visible movements outside of normal behaviors during or after the launch, and animals continued to haul out and persist in high numbers immediately after the launch. There was no evidence of injury, mortality, or abnormal behavior in any of the monitored pinnipeds on SMI as a result of this launch.

Minuteman II FTX-02

The Minuteman II FTX-02 was launched during harbor seal pupping season; therefore, monitoring was required at VAFB. Due to the westward launch trajectory, no sonic boom modeling or monitoring was required on SMI. Also, no acoustic recordings were required on VAFB, as noise from the Minuteman launch vehicle has been well quantified by measurements performed for previous Minutemen launches. Diurnal observations of harbor seals were conducted at the Lion's Head haul-out site between March 18 and March 23. Pre-launch counts (March 18-20) recorded between zero and six seals, and post-launch counts (March 21-23) fell within the pre-launch range, with a daily maximum of three to four seals. A follow-up survey on April 1 recorded six adult seals and one dependent pup. No pups were seen during the launch monitoring period. The highest number of seals (six) was seen on the day of the launch and prior

to it, while the second highest number of seals (four) was seen on the day following the launch. The launch occurred after dark, and it was not possible to observe the seals' reactions to the launch or make a video recording of the seals' response to the launch noise. As the launch occurred at night and during a tide of 1.28 m (4.2 ft), when the Lion's Head site is mostly to completely under water, it is likely that few or no seals would have been hauled out during the launch. There was likely little or no effect on the haul-out behavior of harbor seals at Lion's Head as a result of this Minuteman II launch. There was no evidence of injury or mortality to any harbor seals monitored on VAFB as a result of this launch.

Authorization

The U.S. Air Force complied with the requirements of the 2007 LOA, and NMFS has determined that the marine mammal take resulting from the 2007 launches is within that analyzed in and anticipated by the associated regulations. Accordingly, NMFS has issued a LOA to the 30th Space Wing, U.S. Air Force authorizing the take by harassment of marine mammals incidental to missile and rocket launches at VAFB. Issuance of this LOA is based on findings described in the preamble to the final rule (67 FR 5720, February 6, 2004) and supported by information contained in VAFB's 2007 annual report that the activities described under this LOA will result in the take of small numbers of marine mammals and will have a negligible impact on marine mammal stocks. The provision requiring that the activity 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: March 11, 2008.

James H. Lecky,

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

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