



# MARINE MAMMAL COMMISSION

25 March 2014

Ms. Jolie Harrison, Supervisor  
Incidental Take Program  
Permits and Conservation Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910-3225

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's (NMFS) 7 March 2014 notice (79 Fed. Reg. 13022) and the letter of authorization application submitted by the U.S. Navy, Naval Air Warfare Center Weapons Division, seeking issuance of regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act. The regulations would authorize the taking of marine mammals incidental to missile launches from San Nicolas Island (SNI), California. The final rule would be valid from June 2014 to June 2019. The Commission previously has commented on similar proposed rules and proposed incidental harassment authorizations.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the final rule, provided that it—

- requires the Navy to estimate the number of sea lion takes based on the greatest mean number of takes that has been estimated in any previous monitoring year<sup>1</sup> multiplied by 40;
- and includes the proposed mitigation, monitoring, and reporting measures.

## RATIONALE

The Navy proposes to continue to conduct up to 40 missile launches per year at SNI. Up to 10 of those launches may occur at night. The Navy launches missiles from the Alpha and Building 807 Launch Complexes on the western side of SNI. The Navy also conducts aircraft and helicopter overflights between the Point Mugu airfield on the mainland, the airfield on SNI, and at-sea target sites.

NMFS preliminarily has determined that, at most, the proposed activities would result in the temporary modification of the behavior of harbor seals, California sea lions, northern elephant seals, Steller sea lions, and northern fur seals. It also anticipates that any impact on the affected species

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<sup>1</sup> The mean number of takes within any monitoring year should be based on the total number of takes and the number of days of launch activities, not the number of actual launches or sites observed.

and stocks would be negligible. NMFS does not anticipate any take of marine mammals by death or serious injury and believes that the potential for disturbance will be at the least practicable level because of the proposed mitigation and monitoring measures. Those measures include—

- (1) avoiding, whenever possible, missile launches during (a) the harbor seal pupping season of February to April and (b) pupping seasons of other pinniped species, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives;
- (2) restricting launch activities from the Alpha Launch Complex at elevations less than 305 m on launch azimuths that pass close to pinniped haul-out sites, when pinnipeds are present;
- (3) avoiding, when practicable, launching multiple target missiles in quick succession over haul-out sites, especially when young pups are present;
- (4) limiting launch activities during nighttime hours, except when required by the test objectives;
- (5) maintaining a minimum aircraft and helicopter flight path of 305 m from recognized pinniped haul-out sites and rookeries, except in emergencies or for real-time security incidents;
- (6) using three autonomous digital video cameras (including forward-looking infrared cameras) to monitor pinnipeds at least 2 hours prior to, during, and at least 1 hour after launch activities;
- (7) conducting calibrated in-situ sound measurements at three different locations for each launch activity;
- (8) reporting injured and dead marine mammals to NMFS within 48 hours if the animal could have been injured or killed by the proposed activities—the procedures and monitoring measures would be reviewed in cooperation with NMFS and the letter of authorization modified accordingly prior to conducting additional activities;
- (9) participating in an adaptive management process; and
- (10) submitting annual monitoring reports and a final comprehensive monitoring report to NMFS.

### **California sea lion takes**

The Navy estimated the number of sea lions that could be taken incidental to the missile launches based on the (1) maximum number of sea lions occurring within the areas near the launch sites and (2) assumption that only 10 percent would exhibit behavioral disturbance. That method yielded an estimate of 2,740 takes per year. However, it does not appear that the Navy compared the estimated number of sea lions that could be taken to the actual numbers taken during past missile launches. Past monitoring reports indicated a range of sea lion reactions from no response to fleeing into the water, in which a large number of sea lions were disturbed. For 2011–12 activities, an average of 129 sea lions (range from 0–313, total take of 902) was taken by Level B harassment during missile launches on seven different days (Table 4.1 in Ugoretz and Greene 2012). An average of 71 sea lions (range from 0–205, total take of 496) was taken by Level B harassment during missile launches on seven different days in 2012–13 (Table 4.1 in Ugoretz 2013). Although the Navy has never exceeded the number of sea lions authorized to be taken by Level B harassment, it has conducted only a small percentage (17.5 percent) of the activities authorized. The Commission is concerned that if the Navy does conduct more launch activities than have been conducted in the past (approximately seven per year), the Navy may exceed the number of sea lion takes authorized. Therefore, the Commission believes that the Navy should estimate, and NMFS should authorize,

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the number of sea lions that could be taken by Level B harassment based on data from past monitoring reports and the assumption that the Navy could conduct up to 40 missile launches per year. Specifically, the Commission recommends that NMFS require the Navy to estimate the number of sea lion takes based on the mean for the monitoring year<sup>2</sup> with the greatest mean number of takes multiplied by 40. Further, the Commission recommends that NMFS issue the final rule, provided that it includes the proposed mitigation, monitoring, and reporting measures.

The Commission appreciates the opportunity to provide comments on the Navy's application. Please contact me if you have questions concerning the Commission's recommendations.

Sincerely,



Rebecca J. Lent, Ph.D.  
Executive Director

## References

- Ugoretz, J. 2013. Pinniped monitoring during missile launches on San Nicolas Island, California, September 2012–September 2013. Naval Air Warfare Center Weapons Division, Point Mugu, California. 42 pages.
- Ugoretz, J., and C.R. Greene, Jr. 2012. Pinniped monitoring during missile launches on San Nicolas Island, California, September 2011–September 2012. Naval Air Warfare Center Weapons Division, Point Mugu, California. 65 pages.

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<sup>2</sup> The mean number of takes within any monitoring year should be based on the total number of takes and the number of days of launch activities, not the number of actual launches or sites observed.