



MARINE MAMMAL COMMISSION

14 February 2017

Ms. Jolie Harrison, Chief
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) 19 January 2017 notice (82 Fed. Reg. 6456) and the application submitted by the Alaska Aerospace Corporation (AAC) seeking issuance of regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act. The taking would be incidental to launch activities at the Kodiak Launch Complex (the Complex) in Alaska during a five-year period.

Background

AAC proposes to continue conducting launches of space launch vehicles, long-range ballistic target missiles, and other smaller missile and rocket systems at the Complex. The loudest launch is not expected to exceed 90.8 dB re 20 μ Pa. The applicant proposes to conduct 45 launches during the five-year period, with no more than one launch per month. Launches may occur during day or night.

NMFS preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of harbor seals on Ugak Island. It also anticipates that any impact on the affected species 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 measures. The mitigation, monitoring, and reporting measures include—

- remaining at a minimum horizontal distance of 0.4 km and an altitude of 305 m when within 0.8 km of an occupied haul-out site during security aerial overflights, unless indications of human presence or activity warrant closer inspection for security purposes;
- conducting all Castor 120 equivalent launches at Launch Pad 1, which is equipped with a concrete and water-filled flame trench, to reduce the noise created during each launch;

- conducting one pre-launch aerial survey and one post-launch aerial survey for each launch to document pinniped presence¹;
- conducting quarterly aerial surveys, ideally during mid-day coinciding with low tide, to obtain baseline data and long-term trends in pinniped haul-out use;
- using time-lapse cameras to monitor the three harbor seal haul-out sites to gather baseline data and behavioral response data during launch activities—the time-lapse cameras would be relocated, in cooperation with NMFS, after five launches if they are not capturing accurately the entirety of each of the three haul-out sites;
- comparing aerial sightings data obtained after five launches to those collected with the time-lapse cameras to determine if conducting aerial surveys is necessary;
- revising launch procedures and monitoring measures, in cooperation with NMFS, prior to subsequent launches if a launch causes pinniped injury or death or if long-term trend counts from quarterly aerial surveys indicate that the distribution, size, or productivity of the population has been affected due to the launch activities; and
- submitting quarterly and annual reports and a final comprehensive report.

In addition, AAC would consult with the Alaska Native Harbor Seal Commission and the communities on Kodiak Island regarding the possible effects of launch activities on subsistence hunting. Based on the distance from each community to Ugak Island and the availability of hunting opportunities closer to each community, NMFS does not believe that the proposed launch activities would have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses.

Restrictions during the pupping season

Under the previous final rule, NMFS required AAC to avoid launches during the harbor seal pupping season of May 15 through June 30, except when launches were necessary for human safety or national security purposes, space vehicle launch trajectory needs to meet mission objectives, or other purposes related to missile or rocket launches (76 Fed. Reg. 16319). That requirement was omitted from this proposed rule, but similar requirements have been included in other final rules and incidental harassment authorizations for launch activities² that authorize taking only by Level B harassment (81 Fed. Reg. 62, 79 Fed. Reg. 32685, 79 Fed. Reg. 10026). The Commission understands that similar provisions in those other authorizations included the caveat of ‘whenever possible’³, which NMFS may interpret as rendering the provisions unenforceable. However, enforcement difficulties should not preclude NMFS from including such a requirement. Rather, NMFS should amend the requirement to include more enforceable language, especially given the requirement under section 101(a)(5)(A)(i)(II)(aa) of the MMPA for it to set forth the permissible methods of taking pursuant to such activity, and “other means of affecting the least adverse impact practicable on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking

¹ Given that quarterly aerial surveys would still be conducted if no launch activities occur, NMFS indicated that the condition to require AAC to conduct a minimum of one aerial survey annually if no launch activities occur that given year would be removed from the final rule.

² Similar provisions also have been included in incidental harassment authorizations for various research activities (82 Fed. Reg. 8, 81 Fed. Reg. 34981, 81 Fed. Reg. 105, 80 Fed. Reg. 3563).

³ They however did not include the phrase “or other purposes related to missile or rocket launches”.

for certain subsistence uses.” As currently proposed, NMFS has not fulfilled that requirement in the proposed rule.

In addition, NMFS indicated that its evaluation of potential mitigation measures considered (1) the manner and degree to which the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned, and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety and practicality of implementation (82 Fed. Reg. 6465). Given that NMFS has required mitigation measures to limit launch activities during the pupping season for numerous other rules and incidental harassment authorizations, it apparently believed that such measures are practical, can be implemented successfully, and are effective in minimizing potential adverse impacts to marine mammals. Moreover, NMFS believed that such mitigation was practicable and effective for previous AAC rules, even though AAC has consistently sought authorization for taking incidental to year-round activities and during both daytime and nighttime hours. As indicated in the current application, AAC plans to conduct nine launches per year separated by a minimum of four weeks between launches. A restriction to avoid conducting activities during the pupping season would still allow activities to occur during the 45 other weeks and would still accommodate nine launches. Further, AAC historically has conducted launches in other seasons, suggesting that there are no operational constraints for restricting activities during the pupping season. For these reasons, the Commission recommends that NMFS, as it has in previous final rules issued to AAC, require AAC to avoid conducting launches during the harbor seal pupping season from May 15 through June 30, except when launches are necessary for human safety or national security purposes or are necessary to achieve space vehicle launch trajectories to meet mission objectives.

Please contact me if you have questions regarding the Commission’s recommendation.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive, flowing style.

Rebecca J. Lent, Ph.D.
Executive Director