

Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

4 April 2008

Mr. P. Michael Payne
Chief, Permits Division
National Marine Fisheries Service
Office of Protected Resources
1315 East-West Highway, Room 13635
Silver Spring, MD 20910

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application from the U.S. Navy for authorization to take by Level A and Level B harassment and killing small numbers of several species of marine mammals incidental to Atlantic Fleet Active Sonar Training (AFAST) activities conducted off the U.S. Atlantic coast and in the Gulf of Mexico. Training would be carried out over a five-year period. The Commission also has reviewed the Service's 5 March 2008 *Federal Register* notice requesting comments on the application and on whether the Service should propose regulations to govern the requested taking.

RECOMMENDATION

The Marine Mammal Commission recommends that—

- issuance of a proposed rule to authorize incidental take be contingent upon the revision of the Draft Environmental Impact Statement (DEIS) for AFAST as recommended by the Commission in its 31 March 2008 letter to the Navy (copy enclosed). As a cooperating agency in the development of the DEIS, the Service should work with the Navy in making these revisions;
- incidental taking regulations, if issued, require the Navy to implement a plan to validate and verify its proposed monitoring and mitigation measures;
- incidental take regulations, if proposed, contain a clear discussion of why the Service believes that the Navy's proposed activities will have only a negligible impact on marine mammals, particularly on the North Atlantic right whale and particularly in areas designated as critical habitat for this species;
- incidental taking regulations, if issued, require that a 60-minute observation period be adopted for detecting whether a deep-diving marine mammal (e.g., sperm whale or beaked whale) is within or has left a safety zone before operations are initiated or resumed unless the animal is resighted at a safe range before that time; and
- publication of a proposed rule be contingent on the development of a more thorough discussion of potential cumulative effects of Navy and other activities in the area of the proposed operations, the measures that will be taken to avoid or minimize them, and the basis for concluding that those effects are negligible.

RATIONALE

As stated in our 31 March 2008 letter, the Commission commends the Navy's commitment to refining existing mitigation capabilities such as passive acoustic monitoring, developing new capabilities for future use, and establishing an Integrated Comprehensive Monitoring Plan process, among other actions. We note, however, that the Navy's DEIS and Letter of Authorization (LOA) request do not—but should—provide realistic estimates of the expected performance for proposed mitigation measures and a concrete plan to verify and validate the levels of performance of watchstanders or monitoring tools such as passive acoustics. Among other things, the Commission is concerned that during nighttime operations or periods of low visibility (such as high sea state or fog), monitoring will be insufficient to ensure that marine mammals are not within a zone where they could be taken in unanticipated ways or numbers. We note that the applicant's LOA request rules out reducing (e.g., by 6 dB) or shutting off power during low-visibility and night training as a mitigation measure because to do so would not provide the needed training realism. In light of these concerns, the Marine Mammal Commission recommends that the regulations, if issued, contain a plan to validate and verify the proposed monitoring and mitigation measures.

Before the Service can issue regulations to authorize the incidental taking of marine mammals under section 101(a)(5) of the Marine Mammal Protection Act, it must determine that the activities will have a negligible impact on the affected species and stocks. As such, the Marine Mammal Commission recommends that incidental take regulations, if proposed, contain a clear discussion of why the Service believes that the Navy's proposed activities will have only a negligible impact on marine mammals, particularly on the North Atlantic right whale and particularly in areas designated as critical habitat for this species.

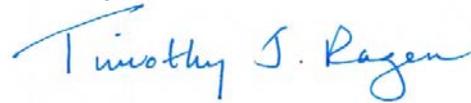
As a related matter, the Commission questions whether 30 minutes—the time frame proposed by the Navy for detecting whether a marine mammal is within or has left a safety zone area—is sufficient. Several species of cetaceans (e.g., sperm whales and beaked whales) commonly stay submerged for more than 30 minutes. The Marine Mammal Commission therefore recommends that the LOA, if issued, require that a criterion of 60 minutes be adopted for monitoring the presence of deep-diving marine mammals unless the animal is resighted at a safe range before that time.

Also, although the Navy is responsible only for its own activities, its analysis of likely impacts should take into account the effects of other anthropogenic activities (e.g., ship traffic, commercial fishing). From the information provided in the DEIS and the LOA request, it is not clear how those multiple activities can or will be coordinated to minimize potential cumulative effects on marine mammals. Because the Service cooperated with the Navy to prepare the environmental analyses required to initiate these activities, and because the Service is responsible for confirming that the potential cumulative effects do not exceed a negligible level, the Marine Mammal Commission recommends that the Service work with the Navy to prepare a more thorough discussion of potential cumulative effects, the measures that will be taken to avoid or minimize them, and the basis for concluding that those effects would be negligible.

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Please contact me if you have questions concerning our comments or recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a prominent initial 'T'.

Timothy J. Ragen, Ph.D.
Executive Director

Enclosure