



MARINE MAMMAL COMMISSION

26 January 2015

Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3226

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) 20 January 2015 notice (80 Fed. Reg. 2636) and the letter of authorization application submitted by the U.S. Department of the Navy seeking issuance of regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act (the MMPA). The regulations would authorize the taking of marine mammals incidental to Joint Logistics Over-the-Shore (JLOTS) training activities conducted in Virginia and North Carolina from June 2015 to June 2020. The Commission has commented¹ on other proposed regulations for training activities in other Navy training and testing study areas.

Background

The Navy proposes to conduct JLOTS training activities in nearshore waters at the Joint Expeditionary Base at Little Creek-Fort Story in Virginia and at Camp Lejeune in North Carolina. The activities involve the movement of cargo and personnel from ships to shore in areas that do not have existing fixed port facilities. Thus, the Navy would construct a temporary pier² using an impact hammer during pile installation and would dismantle the pier using a vibratory hammer during pile removal. Activities could occur for up to 30 days at each site during any given year. The Navy would implement its standard suite of mitigation and monitoring measures, including conducting visual monitoring of the mitigation zone for 30 minutes before the proposed activities, on a continuous basis during the proposed activities, and for 30 minutes after the proposed activities.

Monitoring plan

In 2009 the Navy, in collaboration with NMFS, developed its Integrated Comprehensive Monitoring Program (ICMP). The purpose of the ICMP was to coordinate monitoring efforts across all regions and allocate the most appropriate level and type of monitoring effort for each range complex based on a set of standardized objectives, regional expertise, and resource availability.

¹ See the 10 July 2012, 5 November 2012, 7 March 2013, 24 October 2013, 20 February 2014, 31 March 2014, and 15 September 2014 Commission letters.

² Or elevated causeway system.

Although the ICMP does not identify specific monitoring or field projects, it was designed to provide a flexible, scalable, and adaptable framework for such projects using adaptive management and strategic planning processes that periodically assess progress and reevaluate objectives.

The Navy and NMFS have been moving away from range-specific monitoring plans that establish range complex-specific monitoring requirements based on a set of effort-based metrics (e.g., 20 days of aerial survey) towards more hypothesis-driven, region-specific plans. That approach was based on an evaluation of the Navy's current monitoring approaches conducted by a scientific advisory group early in 2011. The advisory group provided recommendations to be used in developing a strategic plan. In late 2012, the Navy drafted that plan to (1) establish a more transparent framework for evaluating and implementing monitoring efforts across the Navy's range complexes and study areas and (2) serve as guidance for determining how to most efficiently and effectively invest resources for monitoring marine species to address the top-level goals of the ICMP and meet the monitoring requirements of the MMPA.

Because the strategic planning process described by the Navy is only a framework, it does not specify (1) timeframes during which various steps have occurred or would occur (i.e., identifying overarching objectives, developing monitoring project concepts, selecting the projects, and implementing them), (2) hypotheses to be tested or details regarding individual monitoring projects, or (3) project participants and responsibilities (it merely states that NMFS and Commission "may be involved" through the adaptive management process). The Commission fully supports a move toward more hypothesis-driven monitoring projects and a more transparent framework for designing and implementing those projects. However, NMFS's statement that the Navy would use the existing ICMP and its new "study-based" approach to satisfy monitoring requirements is insufficient. The Navy must provide adequate details to enable NMFS, the Commission, and the public to assess how it will meet the applicable monitoring requirements.

The Commission does not believe that the information provided either by the Navy in its application, or by NMFS in its proposed regulations, satisfies the statutory requirements under section 101(a)(5)(A) of the MMPA or implementing regulatory requirements at 50 C.F.R. 216.104 (a)(13) pertaining to monitoring. Although the framework provided by the ICMP is available and the strategic planning process is seemingly transparent, details regarding the monitoring activities for the proposed regulations are not available for the Commission and the public to provide informed comments. The Commission understands that future, unforeseen budget or other logistical issues could require a change in study design, scope, or direction of any project, and inclusion of those specific projects in the final regulations would not be recommended. But the proposed projects³ should have been included in the preamble to the proposed regulations as examples of projects that could occur. As such, the Commission recommends that NMFS require the Navy to submit a proposed monitoring plan in support of JLOTS training activities, which at the very least should include a brief synopsis of the projects⁴ the Navy plans to conduct, for public review and comment prior to issuance of the final regulations.

³ Which the Commission understands may include projects that would investigate the responses of marine mammals to vibratory pile driving and/or measure pile-driving sound at various east coast locations.

⁴ Barring any unforeseen budgetary or logistical constraints.

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The Commission hopes you find its comments helpful. Please contact me if you have questions concerning the Commission's recommendations or rationale.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style with a large initial "R" and a long horizontal flourish extending to the left.

Rebecca J. Lent, Ph.D.
Executive Director