



MARINE MAMMAL COMMISSION

13 August 2009

Mr. P. Michael Payne, Chief
Permits, Conservation, and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3226

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's proposed rule published in the 14 July 2009 *Federal Register* (74 Fed. Reg. 33960) proposing to issue regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act. The proposed regulations would authorize the U.S. Navy to take by Level A and Level B harassment small numbers of up to eight species of marine mammals incidental to military readiness training operations in the Navy's Gulf of Mexico Range Complex from 3 December 2009 through 2 December 2014. Activities covered by the authorization would include the use of explosive ordnance during air-to-surface bombing exercises and small-arms training.

RECOMMENDATION

The Marine Mammal Commission recommends that, if the National Marine Fisheries Service proceeds with a final rule to authorize the taking of marine mammals incidental to the proposed military training operations, the Service require the Navy to—

- conduct an external peer review of its marine mammal density estimates, the data upon which those estimates are based, and the manner in which those data were used for that purpose;
- develop and implement a plan to validate the effectiveness of monitoring and mitigation measures before beginning, or in conjunction with, the proposed military readiness training operations;
- describe the protocol for stranding network personnel to communicate with the Navy in the event of a stranding that is possibly associated with Navy activities; and
- suspend an activity if a marine mammal is seriously injured or killed and the injury or death could be associated with the Navy's activities. The injury or death should be investigated to determine the cause, assess the full impact of the activity or activities potentially implicated (e.g., the total number of animals involved), and determine how the activity should be modified to avoid future injuries or deaths.

RATIONALE

The planned training operations would expose numbers of eight cetacean species within the Gulf of Mexico Range Complex to pressures from underwater detonations and to taking incidental to the development, testing, and evaluation of weapons systems, vessels, and aircraft. The activities include air-to-surface bombing exercises at sea using MK-83 1,000-lb high-explosive bombs and small-arms training using MK3A2 explosive hand grenades (i.e., anti-swimmer concussion grenades). The Navy is requesting authorization to take annually by Level B harassment up to eight species of cetaceans (i.e., 19 bottlenose dolphins, 26 pantropical spotted dolphins, 6 Clymene dolphins, 2 Atlantic spotted dolphins, 27 spinner dolphins, 8 striped dolphins, 2 Risso's dolphins, and 2 melon-headed whales). The Navy also is requesting authorization to take annually by Level A harassment one pantropical spotted dolphin and one spinner dolphin.

Marine Mammal Density Estimation

In its past correspondence to the Service and the Navy regarding the proposed activity (see letters of 16 February 2009 and 28 May 2009, enclosed), the Commission noted that the Navy has not yet subjected to peer review the data and methods it uses to develop marine mammal density and distribution estimates. The Commission expressed concern that, absent such a review, the Navy's risk estimations may not be reliable. To ensure that the Navy's risk analyses and take estimates are accurate, the Marine Mammal Commission again recommends that the National Marine Fisheries Service require the Navy to conduct an external peer review of its marine mammal density estimates, the data upon which those estimates are based, and the manner in which those data were used for that purpose. Section 3.2 of the Navy's request for a letter of authorization (page 24) indicates that literature reviews were undertaken to supplement the 2006 Marine Resource Assessment; however, the source of supplemental material was not confined to peer-reviewed articles in scientific journals. The Navy's interpretation and use of the supplemental material in its environmental impact statement and application have not been, but should, be subjected to impartial external review.

Effectiveness of Monitoring and Mitigation

As noted in its 28 May 2009 letter on the proposed activities, the Commission continues to be concerned that the Navy has not assessed the performance of any of its proposed monitoring and mitigation measures, and that the actual performance of the proposed monitoring and mitigation measures may be lower than predicted or expected by the Navy. The absence of such information increases the risk of two undesirable outcomes. The first is that excessive takes will occur but go undetected. The second is that the Navy will expend excessive resources on measures that do not work. Assessing the performance of these monitoring and mitigation measures is not technically difficult, excessively costly, or time consuming. Furthermore, such performance validation is otherwise standard operation for the Navy. The Marine Mammal Commission therefore recommends that the National Marine Fisheries Service require the Navy to develop and implement a plan to validate the effectiveness of monitoring and mitigation measures before beginning, or in conjunction with, the proposed military readiness training operations.

P. Michael Payne
13 August 2009
Page 3

Stranding Network–Navy Communications

The proposed rulemaking and supporting application materials describe a process by which the Navy is to detect and report injured, dead, or stranded animals to initiate timely and effective response by the Service's stranding network and other relevant authorities. However, the rulemaking does not include a comparable process to be followed when stranding network personnel detect a stranding that could be attributed to Navy activities. The Service may have a procedure for determining if the stranding might be related to Navy activities, but that procedure is not described in the proposed rule or supporting documents. Quick and effective response to injured, dead, or stranded animals that might have a connection to Navy activities is just as important as quick and effective response by the Navy to alert the Service and the stranding teams to an incident. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service require the Navy to describe the protocol for stranding network personnel to communicate with the Navy in the event of a stranding that is possibly associated with Navy activities.

Lethal Taking and Serious Injury

The Navy is only requesting authorization to take two marine mammals by injury (i.e., 50 percent tympanic membrane rupture or slight lung injury) (Level A harassment). Considerable caution will be necessary to avoid exceeding that limit, as certain marine mammal stocks in this region may be particularly vulnerable to noise from Navy operations. The Marine Mammal Commission recommends that the rule, if issued, require suspension of the Navy's activities if a marine mammal is seriously injured or killed and the injury or death could be associated with those activities. The injury or death should be investigated to determine the cause, assess the full impact of the activity or activities (e.g., the total number of animals involved), and determine how activities should be modified to avoid future injuries or deaths. Full investigation of such incidents is essential to provide more complete information on the potential effects of sound on marine mammals.

Please contact me if you or your staff has questions about any of our comments or recommendations.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

Enclosures