

MARINE MAMMAL COMMISSION  
4340 East-West Highway, Room 700  
Bethesda, MD 20814-4447

10 April 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 application submitted by the U.S. Navy under section 101(a)(5)(A) of the Marine Mammal Protection Act. The Navy is seeking a letter of authorization to take marine mammals incidental to military readiness training operations in the Northwest Training Range Complex off Washington, Oregon, and northern California over a five-year period. The Commission also has reviewed the National Marine Fisheries Service's 11 March 2009 *Federal Register* notice (74 Fed. Reg. 10557) inviting comments on whether to promulgate regulations to authorize and govern the requested taking. The Commission previously provided comments to the Navy on its Draft Environmental Impact Statement/Overseas Environmental Impact Statement (DEIS) evaluating the proposed activities, and we ask that the enclosed 17 February 2009 letter to the Navy be considered by the Service as it contemplates a proposed rule.

## RECOMMENDATION

The Marine Mammal Commission recommends that, if the National Marine Fisheries Service proceeds with publication of a proposed 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;
- provide additional details concerning its Integrated Comprehensive Monitoring Program, including an estimated time frame for its implementation;
- develop and implement a plan to evaluate the effectiveness of monitoring and mitigation measures before beginning or in conjunction with conducting operations covered by the proposed incidental take authorization;
- 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;
- submit annual reports providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks and the dates and locations of operations, marine mammal

- sightings, and estimates of the number and nature of potential takes of marine mammals by harassment or in other ways; and
- work with the National Marine Fisheries Service to develop a database for storing original records of marine mammal interactions, which will provide a basis for evaluating interaction records over long periods and large areas.

## **RATIONALE**

The planned training operations would expose numbers of 28 cetacean and 4 pinniped species within the Northwest Training 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 aircraft combat maneuvers; missile, bombing, and gunnery exercises; use of explosives in ship-sinking exercises; mine warfare; special warfare; explosive ordnance disposal; and the use of ship-based and helicopter-based sonars and sonobuoys in antisubmarine warfare exercises.

### Marine Mammal Density Estimation

The Marine Mammal Commission commends the Navy on its review of the existing literature on marine mammal density, distribution, behavior, and habitat use in this and similar documents. However, as noted in the Commission's comments on the Navy's Northwest Training Range Complex DEIS, the manner in which the literature is used to form conclusions about density, distribution, behavior, and habitat use has not been subjected to the normal scientific review process. Risk analyses and take estimates depend on the accuracy of the data in the Navy's underlying reports. To ensure that the risk analyses and take estimates are accurate, the Marine Mammal Commission again recommends that 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.

### Monitoring and Mitigation

The Commission notes that the Navy is developing an Integrated Comprehensive Monitoring Program plan to monitor, mitigate, and assess the effects of its activities over time. As noted in previous letters regarding the Navy's requests for authorization to take marine mammals incidental to other military readiness activities, the Commission supports this effort. However, the Commission has no basis for evaluating whether the program will be effective until the Navy describes this program and the manner in which it will be implemented. Thus, a more detailed description is needed. Therefore, the Marine Mammal Commission recommends that the Service require the Navy to provide additional details concerning its Integrated Comprehensive Monitoring Program, including an estimated time frame for its implementation.

At present, the Navy and Service's estimated performance for the proposed monitoring and mitigation measures may not be realistic (i.e., performance may be lower than assumed). The Navy

has not undertaken the measures needed to assess the performance of watchstanders or the effectiveness of other mitigation measures. Similarly, the Service appears to have chosen not to hold the Navy responsible for providing such information. The Commission has repeatedly expressed these concerns in its correspondence regarding other Navy training ranges. Once again, the Marine Mammal Commission recommends that the Service require the Navy to develop and implement a plan to evaluate the effectiveness of monitoring and mitigation measures before beginning or in conjunction with conducting operations covered by the proposed incidental take authorization.

#### Lethal Taking and Serious Injury

The Navy is not requesting authorization to take marine mammals by serious injury or mortality. Considerable caution will be necessary to avoid such effects, as certain marine mammal stocks in this region (e.g., southern resident killer whales) may be particularly vulnerable to noise from Navy operations. The 2003 incident involving the USS *Shoup*'s use of sonar in Puget Sound highlighted the potential for unanticipated adverse effects. With that in mind, 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. It should be clear to all interested parties that more information is required to understand the potential effects of sound on marine mammals, and full investigation of such incidents is essential to provide more complete information on potential effects.

#### Reporting and a Long-term Database

The collection, reporting, compiling, and storing of data on marine mammal interactions with Navy operations could provide a source of information that could greatly enhance our understanding of marine mammal ecology (e.g., abundance, distribution, movement patterns) and their vulnerability to various human activities. Further, if the Navy collected similar data during its operations in its other ranges, this information could invaluable information about marine mammals throughout U.S. waters. To the present, management agencies have been limited in their ability to collect such information. Given the presence of Navy infrastructure (e.g., vessels) and Navy's level of activity in U.S. waters, such information would be a significant contribution to our understanding of marine mammals and ecosystems. With that in mind, the Marine Mammal Commission recommends that the National Marine Fisheries Service require the Navy to submit annual reports providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks and the dates and locations of operations, marine mammal sightings, and estimates of the number and nature of potential takes of marine mammals by harassment or in other ways. The Marine Mammal Commission also recommends that the Service work with the Navy to develop a database for storing original records of marine mammal interactions, which will provide a basis for evaluating interaction records over long periods and large areas.

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Please contact me if you or your staff has questions about any of 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