



MARINE MAMMAL COMMISSION

18 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 23 July 2009 *Federal Register* (74 Fed. Reg. 33828) 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 B harassment small numbers of 26 species of marine mammals incidental to military readiness training operations in the Northwest Training Range Complex off the coasts of Washington, Oregon, and northern California from February 2010 through February 2015. Activities covered by the authorization would include the use of mid-frequency and high-frequency active sonars and underwater detonations.

RECOMMENDATION

The Marine Mammal Commission recommends that, if the National Marine Fisheries Service proceeds with publication of a final rule, the rule 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; 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 22 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

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disposal; and the use of ship-based and helicopter-based sonars and sonobuoys in antisubmarine warfare exercises.

Marine Mammal Density Estimation

The Navy's interpretation and use of the supplemental material in its environmental impact statement and application regarding marine mammal density and distribution estimates have not been, but should be, subjected to impartial external peer review. The Navy's efforts to contact "the original reference authors...to clarify particular points or gain additional insight into the data analysis" do not assure that the data presented in the environmental impact statement and the application are complete and interpreted correctly. Absent such a review, the reliability of the Navy's risk estimations may be questionable. The Commission has raised this issue in past correspondence, including in its 10 April 2009 letter (copy enclosed) regarding the Service's request for comments on whether to promulgate regulations to authorize and govern the requested taking. To ensure that the Navy's 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.

Effectiveness of Monitoring and Mitigation

In the proposed regulations that would govern the taking of marine mammals under the requested letter of authorization, the Service appears to have concurred with the Navy that the Navy's mitigation efforts will reduce Level A takes to zero and that the proposed monitoring efforts are sufficient. However, the Navy has not assessed the performance of any of its proposed monitoring and mitigation measures (e.g., probability of detection of small dolphins at 1,000 m) or cited studies that confirm or even support the conclusion that the proposed measures will have their intended effect. The absence of such information increases the risk of two undesirable outcomes. The first is that takes will occur but go undetected. The second is that the Navy will expend 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 procedure for the Navy. The Marine Mammal Commission therefore recommends that the 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.

Lethal Taking and Serious Injury

The Navy is not requesting authorization to take marine mammals by serious injury or death. However, 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. 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

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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. All interested parties must recognize that more information is required to understand the potential effects of sound on marine mammals, and full investigation of such incidents is essential for this purpose.

Specific Comment Regarding Take Table

The table on page 33882 of the proposed rule states that 12 marine mammal species would be exposed to explosive detonations at levels that could result in injury. However, the text on page 33887 of the proposed rule gives the number as 14. The discrepancy appears to result from a mathematical error in the table, which should be corrected.

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

Enclosure