



MARINE MAMMAL COMMISSION

30 September 2011

Mr. P. Michael Payne, Chief
Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service
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 National Marine Fisheries Service's 30 August 2011 *Federal Register* notice (76 Fed. Reg. 53884) and the application submitted by the U.S. Navy seeking issuance of regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act. The regulations would authorize the taking of marine mammals incidental to training, testing, and routine military operations using the Navy's Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar source. The authorization is being sought for a five-year period. The Service is considering whether to propose regulations to authorize such taking and is inviting public comment regarding the Navy's application. The Commission commented on two previous requests for incidental take authorizations for these activities in 1999 and 2006, agreeing that proposing regulations to govern the taking of marine mammals incidental to operation of SURTASS LFA sonar was appropriate. The current regulations, issued in August 2007, expire in August 2012.

RECOMMENDATIONS

The Marine Mammal Commission agrees that the National Marine Fisheries Service should propose regulations to govern the taking of marine mammals incidental to operation of SURTASS LFA sonar for another five-year period and recommends that the Service take appropriate steps to compel the Navy to amend its application and related DSEIS/SOEIS to (1) request authority to take marine mammals by Level A harassment and (2) specify the numbers of marine mammals that could be taken by Level A and B harassment incidental to operating SURTASS LFA sonar, rather than providing only the probabilities of such takes.

RATIONALE

The Navy proposes to use up to four SURTASS LFA sonar systems, including the Compact LFA sonar source, for military readiness activities including training, testing, and routine military operations from August 2012 through August 2017. Operations potentially could occur outside of polar areas in the Pacific, Atlantic, and Indian Oceans and in the Mediterranean Sea. At-sea missions for each vessel using SURTASS LFA sonar could last up to 294 days, with 240 days of active sonar transmissions and 54 days of transit time. The maximum number of transmission hours per vessel would not exceed 432 hours annually. The Navy proposes not to operate SURTASS LFA sonar in (1) Arctic and Antarctic waters, (2) waters within 22 km (12 nm) of land, and (3) offshore areas identified as biologically important for marine mammals. The current application identifies 21 offshore biologically important areas, 11 more than were included in the existing regulations. The

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Marine Mammal Commission agrees that the Service should publish proposed regulations to govern the taking of marine mammals incidental to operation of SURTASS LFA sonar for another five-year period.

Level A and B harassment

The *Federal Register* notice states that the Navy requested authority to take marine mammals by Level A harassment because, although very small (less than 0.001 percent), the probability of doing so is not zero. However, in the Navy's application and its Draft Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement (DSEIS/SOEIS) for SURTASS LFA Sonar, the Navy states that "no Level A harassment under the MMPA is expected." In addition, the Navy indicates that "based on the Navy's impact analysis results, no mortality nor injury (i.e., Level A [harassment]) of marine mammals is predicted to occur as a result of LFA sonar operations." The Service believes that the Navy's documents are confusing Level A harassment and mortality. To rectify this, the Service has sought to clarify that the Navy is requesting authority to take marine mammals by Level A harassment but not by mortality. The Service also has stated that, for transparency purposes, it would specify in its proposed rule the anticipated number of takes by both Level A and B harassment, rather than merely providing the probabilities associated with Level A and B harassment, as are presented in both of the Navy documents. To clarify exactly what authorization the Navy is requesting and to ensure consistency amongst the Navy's documents and the proposed rule, the Marine Mammal Commission recommends that the National Marine Fisheries Service take appropriate steps to compel the Navy to amend its application and related DSEIS/SOEIS to (1) request authority to take marine mammals by Level A harassment and (2) specify the numbers of marine mammals that could be taken by Level A and B harassment incidental to operating SURTASS LFA sonar, rather than providing only the probabilities of such takes.

Please contact me if you have questions concerning the Commission's recommendations or rationale.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a clear, legible font.

Timothy J. Ragen, Ph.D.
Executive Director