



# MARINE MAMMAL COMMISSION

12 December 2011

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 15 November 2011 *Federal Register* notice (76 Fed. Reg. 70695) proposing to amend regulations governing the taking of marine mammals incidental to U.S. Navy training and testing operations conducted in 12 range complexes issued under section 101(a)(5)(A) of the Marine Mammal Protection Act. The proposed rule also would amend regulations governing the taking of marine mammals incidental to U.S. Air Force space vehicle and test flight activities conducted at Vandenberg Air Force Base, California. The regulations authorize the taking of marine mammals by Level A harassment, Level B harassment, and/or by accidental mortality. All current regulations were issued between January 2009 and May 2011 and are effective for a five-year period.

## **RECOMMENDATION**

The Marine Mammal Commission recommends that the National Marine Fisheries Service amend the regulations, as requested.

## **RATIONALE**

The Navy is authorized to take marine mammals incidental to specific military training and testing operations at 12 range complexes, primarily within the territorial seas and exclusive economic zone of the United States. Those range complexes include the Hawaii Range Complex, the Southern California Range Complex, the Atlantic Fleet Active Sonar Training Study Area, the Jacksonville Range Complex, the Virginia Capes Range Complex, the Cherry Point Range Complex (CHPT), the Naval Surface Warfare Center Panama City Division (NSWC PCD), the Mariana Islands Range Complex (MIRC), the Northwest Training Range Complex (NWTRC), the Keyport Range Complex (KRC), the Gulf of Mexico Range Complex (GOMEX), and the Gulf of Alaska Temporary Maritime Activities Area (GOA TMAA). All takes occur incidental to training with and development, testing, and evaluation of weapons systems, sonar systems, underwater detonations, vessels, and/or aircraft. The activities covered by the regulations include the use of mid- and high-frequency sonar, explosive and non-explosive practice munitions, and/or high-explosive underwater detonations. In addition, the Air Force is authorized to take marine mammals incidental to space vehicle and test flight activities at Vandenberg Air Force Base in California. The activities covered by its regulations include the use of space vehicles, missiles, rockets, and other aircraft.

## **Letters of authorization and regulations**

The current regulations state that letters of authorization issued under the regulations must be renewed annually for 11 of the range complexes and biennially for the GOA TMAA. To alleviate some of the administrative burden associated with processing annual letters of authorization, the Navy and Service propose to amend all 12 regulations to allow for multi-year letters of authorization, not to exceed the time remaining on the respective five-year regulation. The period for each multi-year letter of authorization would depend on the degree of advanced planning for future operations and the amount of Navy activity and marine mammal occurrence documented in the monitoring and exercise reports from the previous year. The regulations would continue to require the Navy to submit those reports annually, and the Service and the Navy would continue to hold annual monitoring and adaptive management meetings. The subsequent letters of authorization could be revised at any time based on proposed changes by the Navy or the availability of new information regarding training and testing activities or the marine mammals impacted by those activities.

Current regulations prescribe the allowed number of training and testing activities and locations involving specific sound sources during each five-year period. Furthermore, current regulations limit marine mammal takes to those listed in a letter of authorization and incidental to the types and numbers of training and testing activities and sound sources and locations described therein. In addition, current regulations do not allow for deviation from the precise types and numbers of training and testing activities and sound sources, even if the total number of takes remains within the authorized limits.

Since issuance of the current regulations, the Navy has realized that their evolving training programs require greater flexibility in the types and numbers of training and testing activities and sound sources. To increase flexibility, the Service has modified the language in some of the Navy's regulations to allow for inter-annual variability in the types and numbers of training and testing activities and sound sources that can be authorized in each annual letter of authorization, provided that the changes do not result in taking that exceeds authorized limits or that result in more than a negligible impact on the affected species or stocks. Similar regulatory modifications are being sought for CHPT, MIRC, NSWC PCD, NWTRC, KRC, and GOMEX.

Finally, the regulations governing launch activities at Vandenberg Air Force Base authorize up to 30 missile and 20 rocket launches per year. The Air Force analyzed impacts from many different types of missiles and rockets, including the Atlas, Delta, Falcon, and intercontinental ballistic missiles in its proposed rule. When the regulations were issued, the Falcon rocket was not ready for use, but the Air Force expected to use it in 2009. However, the first launch has been delayed and now is expected in late 2012 or early 2013. Because of that delay, the Air Force is requesting that the authorized launches of 30 missiles and 20 rockets be revised to 15 missiles and 35 rockets per year. The total number of launches per year (i.e., 50) would not change. This adjustment is not expected to result in taking that exceeds authorized limits or result in more than a negligible impact on the affected species or stocks.

Mr. P. Michael Payne  
12 December 2011  
Page 3

Because the changes under consideration would not exceed the currently authorized number of takes or result in more than a negligible impact on the affected species or stocks, the Marine Mammal Commission recommends that the National Marine Fisheries Service amend the regulations, as requested.

The Commission appreciates the opportunity to comment on these proposed modifications to the 13 regulations before the Service issues its final rules.

Please contact me if you or your staff has questions about our recommendation.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Timothy J. Ragen, Ph.D.  
Executive Director