

Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This rule does not impose business process changes or require modifications to computer systems. Because this rule does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the requirements in this rule.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.5 [Amended]

2. In § 171.5, in paragraph (a)(3), the date "March 1, 1999" is revised to read July 1, 1999".

Issued in Washington, DC, on February 24, 1999, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 980629162–9033–02; I.D. 093097E]

RIN 0648–AK42

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS, upon application from the 30th Space Wing, U.S. Air Force, issues regulations to govern the unintentional take of a small number of marine mammals incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA (Vandenberg). Issuance of regulations governing unintentional incidental takes in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the Air Force's activity as such authorization is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses.

DATES: Effective March 1, 1999, until December 31, 2003.

ADDRESSES: A copy of the application and Environmental Assessment (EA) may be obtained by writing to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, or by telephoning one of the persons listed under **FOR FURTHER INFORMATION CONTACT** section.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to

the Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Kenneth R. Hollingshead, Office of Protected Resources, NMFS, telephone (301) 713–2055, or Irma Lagomarsino, Southwest Regional Office, NMFS, telephone (562) 980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of up to 5 years if the Secretary finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Description of Request

On September 30, 1997, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from the 30th Space Wing, Vandenberg, to take marine mammals incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg.

Vandenberg is located on the south-central coast of California. The base covers approximately 98,000 acres in western Santa Barbara County. The primary missions of the Air Force at Vandenberg are to launch and track satellites in space, test and evaluate the United State's intercontinental ballistic missile systems, and support aircraft operations. As a nonmilitary facet of operations, Vandenberg is also committed to promoting commercial space launch ventures.

Description of Activities

Vandenberg anticipates a total of 10 launches annually for Minuteman and

Peacekeeper missiles from North Vandenberg and a total of 20 launches annually for space launches (approximately 6 Delta II, 3 Taurus, 2 Atlas, 3 Titan IV, 2 Titan II, and 4 Lockheed Martin launch vehicles) primarily from South Vandenberg.

The noise from these launches may result in the unintentional disturbance of pinnipeds—considered to be unintentional, incidental takings under the MMPA. Such takings are prohibited by the MMPA unless authorized by NMFS.

These regulations replace annual incidental harassment authorizations issued to Vandenberg under section 101(a)(5)(D) of the MMPA. These authorizations have been issued for marine mammal takings incidental to launches by Lockheed-Martin launch vehicles (62 FR 40335, July 28, 1997), McDonnell Douglas Aerospace Delta II rocket launches (61 FR 59218, November 21, 1996), Taurus launches (62 FR 734, January 6, 1997) and Titan II and Titan IV launches (61 FR 64337, December 4, 1996). Incidental harassment authorizations for the latter three activities were reissued on December 19, 1997 (see 62 FR 67618, December 29, 1997), for an additional 1-year period or until these regulations become effective and Letters of Authorization (LOAs) are issued.

These regulations also authorize takings incidental to Minuteman and Peacekeeper missile launches, aircraft flight tests, and helicopter operations, none of which have had small take authorizations previously.

Aircraft test operations include the B-1 and B-2 bombers, the F-14, F-15, F-16, and F-22 fighters; and the KC-135 Stratotanker. The frequency for aircraft testing will be variable. The applicant anticipates an average of 10 flights per year, with 4 to 5 passes per flight. The maximum testing frequency could reach 3 flights per week.

Helicopter operations provide launch support, training, and base support. Only about 1 percent, or 13 hours, of the 1300 hours of helicopter operations scheduled per year would occur over the Vandenberg coastline.

Comments and Responses

On July 21, 1998 (63 FR 39055), NMFS published a notice of proposed rulemaking on the Air Force application and invited interested persons to submit comments, information, and suggestions concerning the application and proposed rule. During the 45-day comment period on that notice, one letter was received.

Comment 1: In addition to recommended changes to the rule text

(see Changes to the Proposed Rule), the Marine Mammal Commission (MMC) recommends that the rule be issued provided that (1) continuation of the research program being carried out under an MMPA section 104 scientific research permit (SRP) be made a condition of the rule and (2) the authorized activities be suspended, pending review, should there be any indications that the activities covered by the rule are causing mortality or injuries or are affecting the distribution, size, or productivity of the potentially affected populations.

Response: The 30th Space Wing, U.S. Air Force, was issued a 5-year SRP on June 26, 1997 (see 62 FR 36049, July 3, 1997). Unless renewed, that permit will terminate on June 30, 2002. However, the scope of work under that SRP may be completed as early as June 2000 (Air Force, 1997). LOAs will require the scientific results of the monitoring and research to be submitted to NMFS no later than 120 days after completion of research. While monitoring will continue after that date, continuation of research after 2000 will depend upon peer review findings on research results, identified research deficiencies, and whether additional research is practical or needed to support or refute a negligible impact determination. Because much of this research is considered part of the monitoring requirements under section 101(a)(5) of the MMPA, monitoring and research is either a requirement of these regulations (§ 216.125(b)) or of LOAs (§ 216.125(c)).

NMFS does not agree that the authorized activities should be suspended, pending review, if there are any indications that the activities covered by the rule are causing mortality or injuries or are affecting the distribution, size, or productivity of the potentially affected populations. First, these regulations do not authorize the activity (rocket and missile launches, and military jet and helicopter activities); such authorization is under the jurisdiction of the Department of the Air Force and is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat. Therefore, it is the suspension of an incidental take authorization (i.e., LOA) that would fall within NMFS purview rather than suspension of the activity itself. However, because taking a marine mammal by serious injury or mortality incidental to activities at Vandenberg is

not authorized by these regulations (see § 216.123 *Prohibitions*), the authorization to take marine mammals may be subject to suspension if a taking by serious injury or mortality were to occur.

Prior to suspension of an LOA, however, NMFS must satisfy the statutory notice and comment requirement of section 101(a)(5)(B) of the MMPA, unless the takings pose a significant risk to the well-being of the marine mammal stock. In those cases, under section 101(a)(5)(C) of the MMPA, the notice and comment requirements do not apply prior to suspending an LOA due to the emergency conditions. The level of risk would depend upon the level of taking, the status of the affected stock(s), and the likelihood of additional serious injury and mortality takings. Conditions for suspension or withdrawal of an LOA are described in § 216.106.

Comment 2: The MMC also recommended that the rule be issued provided NMFS is satisfied that the research being conducted under the SRP and the site-specific monitoring that will be required under LOAs issued in accordance with this rule are capable of detecting possible cumulative effects on the hearing of individual seals and on the distribution, size, and productivity of the potentially affected populations. In that regard, the MMC recommends NMFS consult with scientists familiar with the demography and dynamics of harbor seals in and around Vandenberg to ensure that the final rule includes provisions for research and monitoring capable of detecting possible cumulative impacts.

Response: In 1996 (see Stewart, 1996; U.S. Air Force, 1997), the U.S. Air Force designed a research program to address cumulative impact from rocket launches on marine mammals. This research has been initiated under SRP No. 859-1373, June 26, 1997 (see 62 FR 24422 (May 5, 1997) for a brief description of research). Prior to the issuance of this SRP, the research was reviewed by the MMC and its Committee of Scientific Advisors and NMFS scientists. As a result, NMFS believes that testing the hearing effects over a series of launches, along with foraging behavior and survival of animals exposed to the noise, will provide a solid framework for understanding what effects, including cumulative effects, rocket launches have on pinnipeds that reside near Vandenberg and on the Northern Channel Islands (NCI). Through reporting requirements under both the SRP and this authorization, NMFS scientists will review progress made on this research and will recommend

modifications to the research, if necessary (see Comment 1 response).

Comment 3: Conversely, the MMC questions whether it is necessary to continue to require the type of site-specific monitoring that has documented that rocket launches and aircraft overflights can cause seals to flee into the water in certain circumstances and that most, if not all, of the affected animals resume normal behavior within several hours following the disturbance.

Response: The site-specific monitoring of previous year authorizations is part of the long-term monitoring effort designed to track trends in haulout patterns and seal distribution. As a result, NMFS believes this monitoring retains a useful function. Whether monitoring continues to be necessary in the future will be determined during the next rulemaking on this activity's incidental take authorization.

Comment 4: The MMC expresses concern, first, that neither the proposed rule nor the EA indicate whether studies were done to determine if repeated exposure from launches could cause permanent threshold shift (PTS) injuries to seals and sea lions, and, second, why NMFS believes that repeated exposures are unlikely to cause PTS. The rule or EA should provide either a clearer indication as to why NMFS believes this to be true or the research and monitoring that will be required to verify that any effects on hearing are in fact temporary.

Response: Excluding noise from sonic booms, which, if focused, has the potential to cause PTS injury, the best scientific information available to NMFS indicates that neither the intensity and duration, nor the event frequency of launch noise is sufficient to cause more than a slight temporary threshold shift (TTS) injury. In order to assess if auditory damage occurs due to launch noise at Vandenberg, the Air Force will test the hearing of up to five rehabilitated (beached/stranded) harbor seals using auditory brainstem response (ABR) techniques. ABRs are electrical potentials generated by the brainstem when the ear is stimulated by sound (Hall, 1992). ABR testing allows scientists to quickly and accurately assess changes in hearing acuity following exposure to noise.

If seals rehabilitated from strandings are not available, the Air Force will capture up to five harbor seals in the vicinity of the Rocky Point haulout area before launching and test their hearing using ABR methods. After the launch, the hearing will be retested. If a threshold shift occurs, the seals will be

held until its hearing returns to normal or to a stable level. After completion of the experiment, the animal will be monitored until its reactions and behaviors return to normal. After post-launch ABR tests, the seals will be tagged and transported back to the point of capture and released when determined to be ready by the attending veterinarian. The next scheduled ABR test will be in 1999 in association with the launch of a Titan IV (Air Force, 1997).

In order to assess auditory damage by a sonic boom on NCI, the Air Force plans to capture up to five California sea lions, harbor seals, or elephant seals at selected sites (based upon predicted sonic boom footprint). These animals will also be tested by the ABR method. Because of its sensitivity to sound, harbor seals are the preferred species. Because tested animals will not be released until hearing returns to pre-exposure levels, NMFS believes that ABR testing will give a clearer indication of whether launch activities have the potential to result in PTS. If so, future research can be designed accordingly.

Comment 5: The MMC noted that neither the **Federal Register** nor the EA provided information on what would be done, or what would be required to investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding and other reproductive dysfunction mentioned in the preamble to the proposed rule. The MMC believes the final rule should provide a clearer indication of what LOA holders would be required to do to verify that their activities do not cause these effects.

Response: As stated in the preamble to the proposed rule, NMFS noted that there is some speculation that exposure to loud noise could cause certain physiological effects in pinnipeds, including those mentioned by the MMC. At this time there is no scientific evidence that these effects occur; there is only speculation. As a result, the Air Force has proposed to review, summarize, and evaluate the scientific, veterinary, and human medical literature to determine the physiological, pathological, and hormonal mechanisms involved in spontaneous abortion in mammals, to examine evidence for cause and effect, and to summarize the potential for spontaneous abortion in free-ranging pinnipeds exposed to loud or focused sonic booms.

The U.S. Air Force has also proposed to summarize and evaluate the scientific literature on the effects of separation of females and their newborn at various stages of maternal care on newborn

survival in seals and sea lions. They will also evaluate the potential for disruption of the integrity of parent-offspring bonds in seals and sea lions exposed to loud sonic booms and provide recommendations on the need and protocol for evaluating the consequences of separation in the NCI (Air Force, 1996). Because of the extent of research already underway (see response to Comment 2), NMFS does not intend to require the Air Force to initiate additional research at this time. Reports on these two issues will be required to be submitted in the final report due 180 days prior to the expiration of the 5-year authorization. Depending upon the findings of the reports, research may be required under a future authorization.

Comment 6: The MMC notes that the pupping season on the NCI for the three pinniped species is December-January and March-July. Because of this extended period, the MMC questions whether the Air Force could avoid launching Titan IVs during this period. The MMC recommends that, if one or more launches could occur during the pupping seasons, the monitoring requirements should be revised, as necessary, to verify that the effects on pupping, mother-pup bonds, nursing and breeding are in fact negligible.

Response: To mitigate impacts to the lowest level practicable, NMFS recommends the Air Force not launch Titan IVs, whenever possible, which predict a sonic boom on NCI during harbor seal, elephant seal, and California sea lion pupping seasons. This is a guideline, not a prohibition. Because modeling allows advance predictions of focused sonic boom locations, which vary due to climatological conditions, the Air Force is able to use this guidance in planning Titan IV flight scheduling. NMFS recognizes however, that launch windows can vary due to project and weather delays. Because Titan IV launches can occur during the pupping season, the Air Force is researching the effects of sonic booms on pinnipeds. As mentioned, additional monitoring and research may be identified and initiated at a later date.

In addition, NMFS has imposed a video monitoring requirement for all launches during pupping seasons in order to document short-term effects on young seals.

Comment 7: The MMC questioned both the rationale for an annual report being submitted since all information presumably would be contained in the 90-day report and why this information was provided only in summary.

Response: NMFS is requiring the submission of annual reports in addition to 90-day reports in order to obtain information on takings that are not done in association with rocket and missile launchings, such as aircraft and helicopter exercises. Upon review, NMFS has removed the requirement that this information be provided only in summary form.

Comment 8: The MMC recommends that NMFS advise the Air Force that, if it has not already done so, that it should consult with the U.S. Fish and Wildlife Service (USFWS) to ensure that missile and rocket launches and other activities at Vandenberg will not affect sea otters or critical components of their habitat in the area.

Response: Endangered Species Act (ESA), Section 7 consultations between the USFWS and the Air Force have been conducted for each launch vehicle and activity.

Description of Habitat and Marine Mammals Affected by Launch Activities

The Southern California Bight (SCB), including the Channel Islands, supports a diverse assemblage of 29 species of cetaceans (whales, dolphins, and porpoises) and 6 species of pinnipeds (seals and sea lions). Harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), and northern fur seals (*Callorhinus ursinus*) breed there, with the largest rookeries on San Miguel Island (SMI) and San Nicolas Island (SNI). Guadalupe fur seals (*Arctocephalus townsendi*) may also occasionally inhabit SCB waters. Until 1977, a small rookery of Steller sea lions (*Eumetopias jubatus*) existed on SMI. However, there has been no breeding there since 1981 and no sightings on SMI since 1984. A group of 50 Stellers were observed off the Vandenberg coast in October 1993 (Roest, 1995). Additional information on the occurrence of marine mammal species in areas potentially impacted by Vandenberg activities is provided in Barlow *et al.*, 1995 and 1997, Roest, 1995, the final EA on this proposed action (U.S. Air Force, 1997), and in **Federal Register** notices on previous authorizations (60 FR 24840, May 10, 1995 (Lockheed); 60 FR 43120, August 18, 1995 (Delta II); 61 FR 50276, September 25, 1996 (Taurus); and 61 FR 64337, December 4, 1996 (Titan)). For further information, please refer to these documents, which are available upon request (see ADDRESSES).

Summary of Potential Physical Impacts

The activities under consideration for small take authorizations under these

regulations create two types of noise: Continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles, and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from Vandenberg. The operation of launch vehicle engines produces significant sound levels. Generally, four types of noise occur during a launch: (1) Combustion noise from launch vehicle chambers, (2) jet noise generated by the interaction of the exhaust jet and the atmosphere, (3) combustion noise from the post-burning of combustion products, and (4) sonic booms. Launch noise levels are highly dependent upon the type of first-stage booster and the fuel used to propel the vehicle. Therefore, there is a great similarity in launch noise production within each size class.

Sonic booms are impulse noises, as opposed to continuous (but short-duration) noise such as that produced by aircraft and rocket launches. There is a significant potential for sonic booms (i.e., overpressures greater than 0.5 pound/ft² (psf)) to occur during launches of low earth orbit payloads. These sonic booms can vary from inconsequential to severe, depending on the physical aspects of the launch vehicle, the trajectory of the launch, and the weather conditions at the time of the launch. The initial shock wave propagates along a path that grazes the earth's surface due to the angle of the vehicle and the refraction of the lower atmosphere. As the launch vehicle pitches over, the direction of propagation of the shock wave becomes more perpendicular to the earth's surface. These direct and grazing shock waves can intersect to create a narrowly focused sonic boom, about 1 mile of intense focus, followed by a larger region of multiple sonic booms.

Aircraft and helicopter activities also produce noise in the coastal environment. Jet aircraft produce significant subsonic noise with widely varying sound levels depending upon aircraft type, phase of flight, and other factors. Blade-rate tones account for high frequency squealing in jet sounds while the low-frequency roar is the jet mixing noise from engine exhaust (Richardson *et al.* (1995). The high frequency tones are rapidly absorbed in the atmosphere (>4 dB/kilometer (km)). To provide an example of noise levels for a typical aircraft, an F-16 aircraft at intermediate power and 300 ft (96.4 m) above the ground is projected to have a peak noise level of 103 dBA re 20 μ Pa-m, lasting from 1 to 3 seconds (U.S. Air Force, 1986).

The sounds from helicopters contain many tones related to rotor or propeller blade rate, with most energy at frequencies below 500 Hz. Measurements of a Bell 212 helicopter at an altitude of 500 ft (152 m) indicated a peak, received level at the surface of 109 dB re 1 μ Pa-m. Duration of noise on the surface may last up to 4 minutes, but less than 38 seconds (sec.) at 9.8 ft (3 m) depth, and 11 sec. at 60 ft (18 m) (Greene, 1985a; Richardson *et al.*, 1995).

Marine Mammal Impact Assessment

Noise disturbance from operations at Vandenberg may cause negligible, short-term impacts to pinnipeds (seals and sea lions) hauled out on the Vandenberg coastline, and, if loud enough due to the proximity of the seals to the launch pad, may result in a TTS in hearing. Along the Vandenberg coast, launch noises are expected to impact principally harbor seals as other pinniped species (e.g., California sea lions and northern elephant seals) are known to haulout at these sites only infrequently and in significantly smaller numbers. The principal form of impacts would be the infrequent (approximately 30 launches per year; 50 aircraft flights per year) and unintentional incidental harassment resulting from noise generated by aircraft, helicopter, missile, and rocket launches and by the visual sighting of low-flying aircraft. Launch noises and sonic booms can be expected to cause a startle response and flight to water for those harbor seals, California sea lions and other pinnipeds that are hauled out on the coastline of Vandenberg and on the NCI. Launch noise is expected to occur over the coastal habitats in the vicinity of the Vandenberg launch sites during every launch, while sonic booms may be heard on NCI, principally SMI and Santa Rosa Island (SRI), only during certain launches of certain rocket types. A description of impacts from individual missile and rocket types on marine mammals can be found in the proposed rule (63 FR 39055, July 21, 1998) and are not repeated here.

Cumulative Impacts

Cumulative impacts that will occur to harbor seals, California sea lions, northern elephant seals, and northern fur seals have been discussed in the EA on this issue (U.S. Air Force, 1997), and need not be discussed further. However, the MMPA requires NMFS to determine that the total of such taking during the 5-year (or less) period will have a negligible impact on the species being taken. Using the information provided above, NMFS estimates that each rookery/haulout site along the

Vandenberg coastline will be impacted by sufficient noise at each launch to cause harbor seals to leave the rocks fewer than 30 times annually due to missile and rocket launches and associated helicopter safety patrols and 10 times annually due to aircraft operations. On the NCI, pinnipeds may potentially leave the beach only as a result of a sonic boom from Titan IV and Athena-3 launch passing over or in the vicinity of a haulout on one of the Islands. Such an event is unlikely to occur more than 3 to 5 times annually.

Long term effects, such as stress and emigration due to chronic exposure to noise, are not expected since all noise events will be transitory and limited in number and duration.

Mitigation

One mitigation measure of longstanding is the requirement that no vehicles launched from Vandenberg are allowed direct overflight of SRI, Santa Cruz Island, or Anacapa Island. Therefore, nominal flight azimuths from SLC-4, for example, must be west of SRI.

All aircraft and helicopter flight paths will maintain a minimum distance of 1,000 ft (305 m) from recognized seal haulouts and rookeries (e.g., Point Sal, Purisima Pt, Rocky Pt), except in emergencies or for real-time security incidents. Emergencies include search-and-rescue and fire-fighting, both of which may require approaching pinniped rookeries closer than 1,000 ft (305 m).

Unless constrained by other factors including, but not limited to, human safety, national security, or launch trajectories, NMFS will request the Air Force to avoid, whenever possible, all missile and rocket launches during the harbor seal pupping season of February through May, and those Titan IV launches that predict a sonic boom on NCI during seal and sea lion pupping seasons.

Additional mitigation measures would be developed, if necessary, cooperatively between NMFS and the Air Force based on the degree of impact documented during monitoring activities following specific launches, especially Titan IV rockets. Additional mitigation measures would be contained in annual LOAs.

Research

Between 1991 and 1996, under a U.S. Air Force contract, research was conducted on the behavioral, auditory, and population responses of pinnipeds on the NCI to loud and focused sonic booms and to launch noise from Titan IV rockets launched from Vandenberg.

The results of this research are provided in Stewart, 1996.

Under funding from the USAF and 30th Space Wing management, new research initiatives on the impacts of aerial noise on marine mammals have been undertaken. One study is to address the cumulative effects of rocket launch noise and sonic booms on pinnipeds at Vandenberg and on NCI. Studies include the following: (1) Hearing effects on seals from launch noise and the subsequent launch-generated sonic boom, (2) movements and haulout patterns of individual seals over the course of many rocket launches, (3) changes in seal demographic parameters over the 5-year study, and (4) foraging and diving behavior of seals exposed to launch noise. A scientific research permit has been issued for this research (see 62 FR 36049, July 3, 1997). A copy of the research plan is available upon request (see ADDRESSES).

There is some speculation that exposure to loud noise could cause other physiological effects in pinnipeds, including spontaneous abortion, disruption of effective female-neonate bonding, other reproductive dysfunction, detrimental health effects, and/or increased vulnerability to disease (Chappell *et al.*, 1980; Stewart *et al.*, 1996). While there has been little study of noise-induced stress in marine mammals (Richardson *et al.*, 1995), research initiatives have been identified (U.S. Air Force, 1996) and may be carried out in future years of this authorization.

Monitoring Measures

During the 5-year duration of this authorization, impacts of missile and space launches on marine mammals will be monitored to ensure that the taking is having no more than a negligible impact on California pinniped stocks. For each launch at Vandenberg, the pinniped rookery that could most likely be impacted by the launch monitoring will be monitored. For most launches, this would be Point Sal, Purisima Pt or Rocky Pt. Launch monitoring, as detailed in LOAs, will include: (1) designation of at least one biologically trained on-site observer (approved in advance by NMFS) to record the effects of launches on harbor seals and other pinnipeds; (2) observation of harbor seal activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch and continuing for at least 48 hours subsequent to launching; (3) observation

of haulout sites on NCI if it is determined that a sonic boom could impact those areas (this determination will be made in coordination with NMFS); (4) video-recording of mother-pup seal responses for daylight launches during the pupping season; and (5) sound pressure level measurements of those launch vehicles not having acoustic measurements previous.

Reporting Requirements

A report containing the following information must be submitted to NMFS within 90 days after each launch: (1) Date(s) and time(s) of each launch, (2) date(s), location(s), and preliminary findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations, and (3) results of the monitoring programs, including, but not necessarily limited to, (a) numbers of pinnipeds present on the haulout prior to commencement of the launch, (b) numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise, (c) the length of time(s) pinnipeds remained off the haulout or rookery, (d) the numbers of pinniped adults or pups that may have been injured or killed as a result of the launch, and (4) any behavioral modifications by pinnipeds that likely were the result of launch noise or the sonic boom.

An annual report must be submitted to NMFS that describes any incidental takings not reported in the 90-day launch report, such as the aircraft test program and helicopter operations and any assessments made of their impacts on hauled-out pinnipeds.

A final report must be submitted to NMFS no later than 180 days prior to expiration of these regulations. This report must summarize the findings made in all previous reports and assess both the impacts at each of the major rookeries and the cumulative impact on pinnipeds and on other marine mammals from Vandenberg activities.

Conclusions

The expected short-term impact of aircraft testing and helicopter operations at Vandenberg, the launching of missiles from North Vandenberg, and the launching of rockets from North and South Vandenberg, at worst, will be a temporary reduction in utilization of the haulout as seals or sea lions leave the beach for the safety of the water. At this time, there is no scientific evidence to indicate that either launch noises or sonic booms have more than a negligible impact on the species or stocks of

marine mammals in southern California waters. While the numbers of pinnipeds leaving the beach due to harassment by some launch noises or sonic booms may not be small in actual numbers, because these takings will have no more than a negligible impact on the species or stock of marine mammal, these takings can be considered by definition (see definition of "small numbers" in § 216.103) to be small.

Launchings are not expected to result in any reduction in the number of pinnipeds occupying a haulout. Shortly after a launch, the number of pinnipeds occupying the haulout before the launch should be the same. Additionally, there would not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on pinnipeds at Vandenberg and the NCI are unlikely.

National Environmental Policy Act (NEPA)

The U.S. Air Force prepared an EA and issued a Finding of No Significant Impact, as part of its request for a small take authorization. This EA contains information incorporated by reference in the application that is necessary for determining whether the activities proposed for receiving small take authorizations are having a negligible impact on affected marine mammal stocks. Based in part upon the comments received on this EA, NMFS hereby adopts the U.S. Air Force EA as its own as provided by 40 CFR 1506.3. NMFS finds that the issuance of regulations and LOAs to the Air Force will not result in a significant environmental impact on the human environment and that it is unnecessary to either prepare its own NEPA documentation, or to recirculate the Air Force EA for additional comments.

ESA

The Department of the Air Force consulted with NMFS, as required by section 7 of the ESA, on whether launches of Titan II and IV at SLC-4 would jeopardize the continued existence of species listed as threatened or endangered. NMFS issued a section 7 biological opinion on this activity to the Air Force on October 31, 1988, concluding that launchings of the Titan IV were not likely to jeopardize the continued existence of the Guadalupe fur seal. The Air Force reinitiated consultation with NMFS after the Steller sea lion was added to the list of threatened and endangered species (55 FR 49204, November 26, 1990). However, since Steller sea lions had not been sighted on the Channel Islands

between 1984 and the time of the consultation, it was determined that these launchings were not likely to affect Steller sea lions. Additionally, on September 18, 1991, NMFS concluded that the issuance of a small take authorization to the Air Force to incidentally take marine mammals during Titan IV launches was not likely to jeopardize the continued existence of Steller sea lions or Guadalupe fur seals. Because launches of rockets and missiles other than Titan IV are unlikely to produce sonic booms that will impact the NCI and because listed marine mammals are not expected to haulout either on the Vandenberg coast or on the NCI during the 5-year period for this proposed authorization, the issuance of these regulations are unlikely to adversely affect listed marine mammals. Additionally, incidental take authorizations for either of these two species under either the MMPA or the ESA are not warranted.

Changes From the Proposed Rule

NMFS has modified the final rule as follows:

- (1) Based on an MMC recommendation, NMFS has rewritten § 216.120 to clarify the activity level being authorized.
- (2) For clarification, § 216.125(f)(1) has been revised based on an MMC recommendation.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Until these regulations are effective, the 30th Space Wing, U.S. Air Force cannot be issued an LOA authorizing takings incidental to rocket, missile, aircraft, and helicopter operations. This places the 30th Space Wing in a position of potentially violating the MMPA should its activities result in the take of a marine mammal. Therefore, since these regulations relieve a restriction on the 30th Space Wing, under 5 U.S.C. 553(d)(1), they are not subject to a 30-day delay in effective date.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration, when this rule was proposed, that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. If implemented, this rule will affect only the U.S. Air Force, large defense companies, and an undetermined number of contractors providing services related to the launches, including the monitoring of launch

impacts on marine mammals. Some of the affected contractors may be small businesses. The economic impact on these small businesses depends on the award of contracts for such services. The economic impact cannot be determined with certainty, but will either be beneficial or have no effect, directly or indirectly, on small businesses. As such, a regulatory flexibility analysis is not required.

This rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act (PRA). This collection has been approved by OMB under control number 0648-0151. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The reporting burden for this collection is estimated to be approximately 3 hours per response for requesting an authorization (as described in 50 CFR 216.104) and 40 hours per response for submitting reports, including the time for gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspects of the collection of information requirements to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: February 22, 1999.

Andrew A. Rosenberg,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Subpart K is added to part 216 to read as follows:

Subpart K—Taking of Marine Mammals Incidental to Space Vehicle and Test Flight Activities

Sec.

- 216.120 Specified activity and specified geographical region.
- 216.121 Effective dates.
- 216.122 Permissible methods of taking.
- 216.123 Prohibitions.
- 216.124 Mitigation.
- 216.125 Requirements for monitoring and reporting.
- 216.126 Applications for Letters of Authorization.
- 216.127 Renewal of Letters of Authorization.
- 216.128 Modifications of Letters of Authorization.

Subpart K—Taking of Marine Mammals Incidental to Space Vehicle and Test Flight Activities

§ 216.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in:

- (1) Launching up to 10 Minuteman and Peacekeeper missiles each year from Vandenberg Air Force Base, for a total of up to 50 missiles over the 5-year authorization period,
- (2) Launching up to 20 rockets each year from Vandenberg Air Force Base, for a total of up to 100 rocket launches over the 5-year authorization period,
- (3) Aircraft flight test operations, and
- (4) Helicopter operations from Vandenberg Air Force Base.

(b) The incidental take of marine mammals on Vandenberg Air Force Base and in waters off southern California, under the activity identified in paragraph (a) of this section, is limited to the following species: Harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*), Guadalupe fur seals (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*).

§ 216.121 Effective dates.

Regulations in this subpart are effective from March 1, 1999, through December 31, 2003.

§ 216.122 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106, the 30th Space Wing, U.S. Air Force, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 216.120, provided all terms, conditions, and requirements of these regulations and such Letter(s) of Authorization are complied with.

(b) [Reserved]

§ 216.123 Prohibitions.

Notwithstanding takings authorized by § 216.120 and by a Letter of Authorization issued under § 216.106, no person in connection with the activities described in § 216.120 shall:

- (a) Take any marine mammal not specified in § 216.120(b);
- (b) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;
- (c) Take a marine mammal specified in § 216.120(b) if such take results in more than a negligible impact on the species or stocks of such marine mammal; or
- (d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under § 216.106.

§ 216.124 Mitigation.

(a) The activity identified in § 216.120(a) must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.120, the following mitigation measures must be utilized:

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haulouts and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require approaching pinniped rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, unless constrained by other factors including, but not limited to, human safety, national security or launch trajectories, in order to ensure minimum negligible impacts of launches on harbor seals and other pinnipeds, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of February through May.

(3) For Titan IV launches only, the holder of that Letter of Authorization must avoid launches, whenever possible, which predict a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons.

(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the

next launch under that Letter of Authorization.

(5) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 216.125 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to § 216.106 for activities described in § 216.120(a) are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, National Marine Fisheries Service, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to:

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch and continue for a period of time not less than 48 hours subsequent to launching,

(2) Monitor haulout sites on the Northern Channel Islands if it is determined that a sonic boom could impact those areas (this determination will be made in consultation with the National Marine Fisheries Service),

(3) As required under a Letter of Authorization, investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(4) Supplement observations on Vandenberg and on the Northern Channel Islands, if indicated, with video-recording of mother-pup seal responses for daylight launches during the pupping season, and

(5) Conduct acoustic measurements of those launch vehicles not having sound pressure level measurements made previously.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) The Holder of the Letter of Authorization must submit a report to the Southwest Administrator, National Marine Fisheries Service within 90 days

after each launch. This report must contain the following information:

- (1) Date(s) and time(s) of the launch,
- (2) Design of the monitoring program, and

(3) Results of the monitoring programs, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haulout prior to commencement of the launch,

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise,

(iii) The length of time(s) pinnipeds remained off the haulout or rookery,

(iv) The numbers of pinniped adults or pups that may have been injured or killed as a result of the launch, and

(v) Behavioral modifications by pinnipeds noted that were likely the result of launch noise or the sonic boom.

(e) An annual report must be submitted that describes any incidental takings not reported under paragraph (d) of this section.

(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported all previous reports,

(2) Assess the impacts at each of the major rookeries,

(3) Assess the cumulative impact on pinnipeds and other marine mammals from Vandenberg activities, and

(4) State the date(s) location(s) and findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations.

§ 216.126 Applications for Letters of Authorization.

(a) To incidentally take harbor seals and other marine mammals pursuant to these regulations, either the U.S. citizen (see definition at § 216.103) conducting the activity or the 30th Space Wing on behalf of the U.S. citizen conducting the activity, must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) The application must be submitted to the National Marine Fisheries Service at least 30 days before the activity is scheduled to begin.

(c) Applications for Letters of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of seals and sea lions.

§ 216.127 Renewal of Letters of Authorization.

A Letter of Authorization issued under § 216.126 for the activity identified in § 216.120(a) will be renewed annually upon:

(a) Timely receipt of the reports required under § 216.125(d), which have been reviewed by the Assistant Administrator and determined to be acceptable;

(b) A determination that the mitigation measures required under § 216.124 and the Letter of Authorization have been undertaken; and

(c) A notice of issuance of a Letter of Authorization or a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of issuance.

§ 216.128 Modifications of Letters of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.120(b) or that significantly and detrimentally alters the scheduling of launches, a Letter of Authorization issued pursuant to § 216.106 may be substantively modified without a prior notice and an opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333-8333-01; I.D. 121498A]

Magnuson-Stevens Act Provisions; Foreign Fishing; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Corrections to the 1999 specifications for the Pacific Coast groundfish fishery.

SUMMARY: This document contains corrections to the 1999 groundfish fishery specifications and management measures for the Pacific Coast groundfish fishery, which were published in the **Federal Register** on January 8, 1999.

DATES: Effective March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kate King or Yvonne deReynier, NMFS, 206-526-6140.

SUPPLEMENTARY INFORMATION:

Background

The 1999 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan, were published in the **Federal Register** on January 8, 1999 (64 FR 1316). The specifications contained errors that need to be corrected.

Corrections

In rule FR Doc. 98-34851 beginning on page 1316, in the issue of Friday, January 8, 1999 (64 FR 1316), make the following corrections:

1. On page 1319, in footnote h/, in line 4, the extra "by" is removed.
2. On the same page, in footnote l/, in lines 1 and 3, "1998" is corrected to read "1999"
3. On page 1320, in footnote t/, in line 2, insert "ABC" before "which".

The table as corrected appears below.

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