

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648-AW90

Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST)

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to Navy training, maintenance, and research, development, testing, and evaluation (RDT&E) activities to be conducted within the Atlantic Fleet Active Sonar Training (AFAST) Study Area, which extends east from the Atlantic Coast of the U.S. to 45° W. long. and south from the Atlantic and Gulf of Mexico Coasts to approximately 23° N. lat., but not encompassing the Bahamas (see Figure 1–1 in the Navy's Application), from January 22, 2010 through January 21, 2011.

DATES: This Authorization is effective from January 22, 2010, through January 21, 2011.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301)713-2289, ext. 166.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Regulations governing the taking of marine mammals by the Navy incidental to AFAST training, maintenance, and RDT&E became effective on January 22, 2009 (74 FR 4843, January 27, 2009),

and remain in effect through January 21, 2014. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

Summary of Request

On November 2 2009, NMFS received a request from the Navy for a renewal of an LOA issued on January 22, 2009, for the taking of marine mammals incidental to training and research activities conducted within the AFAST Study Area under regulations issued on January 22, 2009 (74 FR 4843, January 27, 2009). The Navy has complied with the measures required in 50 CFR 216.244 & 216.245, as well as the associated 2009 LOA, and submitted the reports and other documentation required in the final rule and the 2009 LOA.

Summary of Activity under the 2009 LOA

As described in the Navy's exercise reports (both classified and unclassified), in 2009, the training activities conducted by the Navy were within the scope and amounts contemplated by the final rule and authorized by the 2009 LOA. In fact, the number of some exercises were below the Navy's proposed 2009 operations (e.g., the Navy conducted only four of the seven major anti-submarine warfare strike group training exercises proposed for 2009 (4 of 5 COMPTUEX and 0 of 2 JTFEX).

Planned Activities for 2010

In 2010, the Navy expects to conduct the same type and amount of training identified in the final rule and 2009 LOA, with a few modifications, all of which are of little to no consequence to marine mammals (in fact, the annual take estimates are fewer in 2010 than 2009 as a result of these changes). Following are the modifications:

- The Navy anticipates an increase in the use of Extended Echo Ranging (EER)/Improved Extended Echo Ranging (IEER) SSQ-110A sonobuoys. Use will likely increase from 872 to 1725 sonobuoys annually.
- The Navy anticipates an increase in the use of Advanced Echo Ranging (AEER) SSQ-125 sonobuoys. Use will likely increase from 872 to 1550 sonobuoys annually.
- The Navy anticipates an increase in the use of the AN/SLQ-25 NIXIE towed countermeasure. Use will likely increase from 332 to 2500 hours annually.

- The Navy plans to cease the use of SQ-32 side mine hunting sonar in the AFAST Study area, which reduces use from 4474 hours annually to 0.

The modifications to Navy training and research activities proposed in 2010, will not effect marine mammals in a manner not previously considered or analyzed in NMFS' final rule and other associated documents.

Estimated Take for 2010

The Navy recalculated the estimated number of marine mammal takes (see page 14 in the Navy's 2010 LOA renewal application) and the result was an increase of between 1 and 236 takes annually for 13 species, and a reduction of between 1 and 5416 takes for 8 species. These changes are very small when compared to the total number of takes authorized annually, and NMFS does not anticipate a change in the nature of the anticipated impacts due to the training modifications. The rule contemplated a 10% buffer to allow for training shifts and NMFS is authorizing the same amount of take in 2010 as was authorized in 2009.

Summary of Monitoring, Reporting, and Other Requirements Under the 2009 LOA**Annual Exercise Reports**

The Navy submitted their classified and unclassified 2009 exercise reports within the required timeframes and the unclassified report is posted on NMFS website: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. NMFS has reviewed both reports and they contain the information required by the 2009 LOA. The reports indicate the amounts of different types of training that occurred from January 8, 2009, through August 1, 2009, and estimate the amounts of training occurring from August 2, 2009, through January 7, 2010. As mentioned above, the Navy only conducted 4 of the 7 major anti-submarine warfare strike group training exercises addressed in the rule.

The reports also list specific information gathered when marine mammals were detected by Navy watchstanders, such as how far an animal was from the vessel, whether sonar was in use, and whether it was powered or shut down. This information indicates that the Navy implemented the safety zone mitigation measures as required. No instances of obvious behavioral disturbance were reported by the Navy watchstanders in their 89 marine mammal sightings totaling 444 animals.

Monitoring and Annual Monitoring Reports

The Navy conducted the monitoring required by the 2009 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of sonar and exercises, as well as passive acoustic monitoring utilizing high frequency acoustic recording packages (HARPs) and pop-up buoys. The Navy submitted their 2009 Monitoring Report, which is posted on NMFS' website (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>), within the required timeframe. The Navy included a summary of their 2009 monitoring effort and results (beginning on page 8 of the monitoring report) and the specific reports for each individual effort are presented in the appendices. Because data is gathered through August 1 and the report is due in October, some of the data analysis will occur in the subsequent year's report.

Integrated Comprehensive Management Program (ICMP) Plan

The ICMP will be used both as: (1) a planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (e.g., R&D), and other appropriate newly published information. The Navy finalized a 2009 ICMP Plan outlining the program on December 22, 2009, as required by the 2009 LOA. The ICMP may be viewed at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

The ICMP is a program that will be in place for years and NMFS and Navy anticipate the ICMP may need to be updated yearly in order to keep pace with new advances in science and technology and the collection of new data. In the 2009 ICMP Plan, the Navy outlines three areas of targeted development for 2010, including:

- Identifying more specific monitoring sub-goals under the major goals that have been identified
- Characterizing Navy Range Complexes and Study Areas within the context of the prioritization guidelines described here
- Continuing to Develop Data Management, Organization and Access Procedures

Stranding Response Plan

NMFS and the Navy developed a Stranding Response Plan for AFAST and certain components of the Plan

were included as mitigation measures in the 2009 LOA. The Navy was required to work with NMFS to develop a communication plan to facilitate response and information exchange in the event of a marine mammal stranding event. The communication plan was completed and disseminated to the necessary NMFS and Navy staff, although it is not available to the public because it contains personal information.

The Navy was also required to work with NMFS to develop a Memorandum of Agreement (MOA), or other mechanism consistent with federal fiscal law requirements to establish a framework whereby the Navy can assist NMFS with stranding investigations in certain circumstances. NMFS and the Navy have developed a draft Memorandum of Understanding (MOU) that is currently under review at both agencies. The MOU includes agreement between the NMFS and the Navy to further develop regional stranding investigation assistance plans to identify regional assets, equipment, locations, or services that Navy may be able to provide and the process by which this will operate within a given geographic area.

Adaptive Management and 2010 Monitoring Plan

NMFS and the Navy conducted an adaptive management meeting in October, 2009 wherein we reviewed the Navy monitoring results through August 1, 2009, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. Because this is the first year of the regulation's period of effectiveness, the review only covered about 7 months of monitoring, which limited NMFS and the Navy's ability to undertake a robust review of the Navy's exercises and their effects on marine mammals. Based on the implementation of the 2009 monitoring, the Navy proposed some minor modifications to their monitoring plan for 2010, which NMFS agreed were appropriate. Beyond those changes, none of the information discussed led NMFS to recommend any modifications to the existing mitigation or monitoring measures. The final modifications to the monitoring plan and justifications are described in Section 13 of the Navy's 2010 LOA Application, which may be viewed at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. As additional data is obtained in subsequent years, NMFS and Navy will be better positioned to conduct more extensive reviews and modify existing

mitigation and monitoring measures, if appropriate.

Authorization

The Navy complied with the requirements of the 2009 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2009 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized, and was likely lower given the fact that Navy conducted fewer operations in 2009 than originally planned. Further, the level of taking authorized in 2010 for the Navy's AFAST activities is consistent with our previous findings made for the total taking allowed under the AFAST regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2010 AFAST activities will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a one-year LOA for Navy training exercises conducted in the AFAST Study Area from January 22, 2010, through January 21, 2011.

Dated: January 21, 2010.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XT66

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Test Flight Activities from Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a letter of authorization (LOA) has been issued to the 30th Space Wing, U.S. Air Force (USAF), to take four species of seals and