

### *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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**BILLING CODE 3510-22-S**

## **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

sea lions incidental to rocket and missile launches on Vandenberg Air Force Base (VAFB), California, a military readiness activity.

**DATES:** Effective February 7, 2010, through February 6, 2011.

**ADDRESSES:** The LOA and supporting documentation are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910-3225 or by telephoning one of the contacts listed below (FOR FURTHER INFORMATION CONTACT). Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

**FOR FURTHER INFORMATION CONTACT:** Candace Nachman, Office of Protected Resources, NMFS, (301) 713-2289 ext. 156, or Monica DeAngelis, NMFS, (562) 980-3232.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of small numbers 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. The National Defense Authorization Act (Public Law 108-136) removed the "small numbers" and "specified geographical region" limitations for a "military readiness activity." Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for

subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of Pacific harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), and northern fur seals (*Callorhinus ursinus*), by harassment, incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at VAFB, were issued on February 6, 2009 (74 FR 6236), and remain in effect until February 6, 2014. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during missile and rocket launches at VAFB.

This LOA is effective from February 7, 2010, through February 6, 2011, and authorizes the incidental take, by Level B harassment only, of the four marine mammal species listed above that may result from the launching of up to 30 space and missile vehicles and up to 20 rockets annually from VAFB, as well as from aircraft and helicopter operations. Harbor seals haul-out on several sites on VAFB, and harbor seals, California sea lions, elephant seals, and northern fur seals are found on various haul-out sites and rookeries on San Miguel Island (SMI). Currently, six space launch vehicle programs use VAFB to launch satellites into polar orbit: Delta II, Taurus, Atlas V, Delta IV, Falcon, and Minotaur. Also a variety of small missiles, several types of interceptor and target vehicles, and fixed-wing aircrafts are launched from VAFB.

The activities 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 VAFB. The operation of launch vehicle engines produces significant sound levels. The noise generated by VAFB activities will result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from space launch vehicle and missile launches and aircraft and helicopter operations may cause the

animals to move towards or enter the water. Take of pinnipeds will be minimized through implementation of the following mitigation measures: (1) all aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries; (2) missile and rocket launches must, whenever possible, not be conducted during the harbor seal pupping season of March through June; (3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during the primary pinniped pupping seasons of March through June; and (4) monitoring methods will be reviewed by NMFS if post-launch surveys determine that an injurious or lethal take of a marine mammal occurred. VAFB will also use monitoring surveys, audio-recording equipment, and time-lapse video to monitor the animals before, during, and after rocket launches, and to measure sound levels generated by the launches. Reports will be submitted to NMFS after each LOA expires, and a final comprehensive report, which will summarize all previous reports and assess cumulative impacts, will be submitted before the rule expires.

##### Summary of Request

On December 18, 2009, NMFS received a request for a LOA renewal pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals, by harassment, incidental to space vehicle and test flight activities at VAFB.

##### Summary of Activity and Monitoring Under the 2009 LOA

In compliance with the 2009 LOA, VAFB submitted an annual report on the activities at VAFB, covering the period of February 7 through November 30, 2009. The report also contained information on a February 6, 2009, launch that was covered under the 2008 LOA, as it was not described in any previous reports. A summary of that report (ManTech SRS Technologies, 2009) follows.

During the reporting period covered by the 2009 LOA, there were a total of six launches from VAFB: two missile launches and four space vehicle launches. The dates, locations, and monitoring required for the launches are summarized in Tables 1 and 2 below.

TABLE 1. SUMMARY OF SPACE VEHICLE LAUNCHES FROM VAFB AND MONITORING CONDUCTED IN 2009.

Vehicle	Date (2009)	Time	Launch Site	Monitoring Conducted
Delta II NOAA-N Prime	6-Feb	0222 PST	SLC-2W	SMI
Taurus OCO	24-Feb	0155 PST	576E	No
Delta II STSS ATRR	5-May	1324 PDT	SLC-2W	VAFB/SMI
Delta II Worldview-II	8-Oct	1151 PDT	SLC-2W	SMI
Atlas V DMSP-18	18-Oct	0912 PDT	SLC-3E	VAFB (Acoustics)

TABLE 2. SUMMARY OF ALL OTHER LAUNCHES FROM VAFB AND MONITORING CONDUCTED IN 2009.

Launch Vehicle	Date (2009)	Time	Launch Site	Monitored
Minuteman III GT-195 GM	29-Jun	0301 PDT	LF-04	Yes
Minuteman III GT-195 GM-2	23-Aug	0901 PDT	LF-09	No

The Taurus OCO launch occurred outside of the VAFB harbor seal pupping season, and a sonic boom of greater than 1 lb/ft<sup>2</sup> (psf) was not predicted to occur at SMI as a result of the launch; therefore, no biological or acoustical monitoring was required or conducted. Similarly, the Minuteman III GT-195 GM-2 launch occurred outside of the VAFB harbor seal pupping season; therefore, no biological or acoustical monitoring was required or performed on VAFB.

In 2009, there were 5,934 tower operations and 651 range operations from the VAFB Airfield. Tower operations include all arrivals and departures from the airfield, while range operations include activities such as overflights, flight tests, etc. Helicopter and fixed-wing operations occurred on both north and south VAFB. There were no observed impacts to pinnipeds from these activities.

#### *Delta II NOAA-N Prime*

Since this launch occurred outside of the harbor seal pupping season, no monitoring was required on VAFB. However, the modeling program, PCBoom3, predicted that a sonic boom greater than 1 psf could impact SMI, so biological and acoustical monitoring were required at SMI. Counts of northern elephant seals done between February 1 and 7, 2009 at East Adams Cove on the west side of SMI recorded from 225 to 249 seals. Post-launch counts fell within the pre-launch range. The number of elephant seal pups in the focal group over the course of the monitoring period ranged from 185 to 218 pups. Post-launch counts of pups exceeded pre-launch counts. No elephant seals exhibited a change in behavior or moved toward or into the

water; no vigilant or alert behaviors were observed. The four pups observed to be suckling prior to the launch remained suckling throughout the observation period (0200 to 0246 PST). Post-launch analysis of the digital audio tape (DAT) recording showed that no sonic boom had been recorded.

Between 18 and 22 dead pups were seen each day during the launch monitoring period, both before and after the launch occurred. On February 7, 2009, the second day after the launch, two of the dead pups were noted to be "freshly dead." These two fresh dead pups were thought to have been a result of high swell that was present on the monitored beach. High swells and tides are one of the major causes of mortality in dependent elephant seal pups (Le Boeuf and Laws, 1994).

A dead adult female elephant seal, with puncture marks in her back, was observed near the tide line on 6 February in the morning following the launch. Photographs revealed bite marks on the dead seal just below the neck, indicating that the female was likely killed by an aggressive male attempting to mate with her (Le Boeuf and Mesnick, 1990). In summary, based on post-launch analysis, there was no evidence of injury, mortality, or abnormal behavior in any of the monitored elephant seals on SMI as a result of this launch.

#### *Delta II STSS ATRR*

Since this launch occurred during the harbor seal pupping season and a sonic boom greater than 1 psf was predicted to occur at SMI, monitoring was required on both VAFB and SMI. Diurnal observations of harbor seals at the Spur Road haul-out on north VAFB were conducted from May 2-4 and 6-7, 2009. Between zero and 27 adult and

juvenile seals and between zero and one harbor seal pup were observed during the monitoring period. A time-lapse video recorder revealed that no seals were hauled out at the site during the launch due to the presence of a coyote that caused all the seals to flush into the water prior to the launch.

On SMI, observations of California sea lions and northern elephant seals were conducted from May 2-7, 2009 at West Judith Cove on the west side of SMI. There were between 262 and 684 sea lions observed each day. Only two pups were observed being whelped during the monitoring period, and both died soon after birth and prior to the launch. The number of elephant seals observed over the course of the monitoring period ranged from 97 to 339 seals. A sonic boom was heard. Monitors reported that the boom did not cause the sea lions, elephant seals, or gulls in the area to alert, and no animals raised their heads in response to the sound. In summary, there was no evidence of injury, mortality, or abnormal behavior in any of the monitored harbor seals at VAFB or the monitored sea lions or elephant seals on SMI as a result of the Delta II STSS ATRR launch.

#### *Delta II Worldview-II*

Since this launch occurred outside of the harbor seal pupping season, no monitoring was required on VAFB. However, the modeling program, PCBoom3, predicted that a sonic boom greater than 1 psf could impact SMI, so biological and acoustical monitoring were required at SMI. Immediately prior to the launch, monitors were able to view 938 adult and pup California sea lions, 282 adult and pup northern fur seals, and 48 subadult and female northern elephant seals. The launch

vehicle was not seen or heard during the launch window, and no sonic boom was heard or recorded. None of the monitored animals made any visible movements outside of normal behavior during or after the launch, and animals continued to haul out at the site and persist in high numbers immediately after the launch. In summary, there was no evidence of injury, mortality, or abnormal behavior of the monitored pinnipeds on SMI as a result of this launch.

#### *Atlas V DMSP-18*

This launch occurred outside of the harbor seal pupping season, and no sonic boom greater than 1 psf was predicted to impact SMI. Therefore, no biological or acoustical monitoring was required at VAFB or SMI. However, due to an equipment malfunction during the acoustic recording of the initial Atlas V launch in March 2008, only an incomplete acoustic profile was obtained. Therefore, acoustic monitoring of this second Atlas V launch was performed. The results are contained in the 2009 annual LOA report (ManTech SRS Technologies, 2009).

#### *Minuteman III GT-199 GM*

Due to the Minuteman's westward launch trajectory, no sonic boom modeling or launch monitoring was required on SMI for this launch. Additionally, no acoustic recordings were required as noise from the Minuteman launch vehicle has been well quantified by measurements performed for previous Minuteman launches. However, since this launch occurred during the harbor seal pupping season on VAFB, biological monitoring was required at VAFB. Diurnal observations of harbor seals were conducted at the Lion's Head haul-out site from June 26 through July 1, 2009. The number of harbor seals observed during the monitoring period ranged from three to 11 seals. Post-launch counts exceeded pre-launch counts. No pups were seen during the launch monitoring period. Additionally, no seals were present within the video recorder frame at the time of the launch. In summary, there was no evidence of injury, mortality, or abnormal behavior in any monitored harbor seals on VAFB resulting from this launch.

#### **Authorization**

The USAF complied with the requirements of the 2009 LOA, and NMFS has determined that the marine mammal take resulting from the 2009 launches is within that analyzed in and anticipated by the associated

regulations. Accordingly, NMFS has issued a LOA to the 30th Space Wing, USAF authorizing the take by harassment of marine mammals incidental to space vehicle and test flight activities at VAFB. Issuance of this LOA is based on findings described in the preamble to the final rule (74 FR 6236, February 6, 2009) and supported by information contained in VAFB's 2009 annual report that the activities described under this LOA will have a negligible impact on marine mammal stocks. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this action.

Dated: January 25, 2010.

**Helen M. Golde,**

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

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**BILLING CODE 3510-22-S**

## **COMMODITY FUTURES TRADING COMMISSION**

### **Sunshine Act Meetings**

#### **AGENCY HOLDING THE MEETING:**

Commodity Futures Trading Commission.

**TIME AND DATE:** 2 p.m., Monday February 8, 2010.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Rule Enforcement Review Meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202-418-5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2010-2189 Filed 1-28-10; 4:15 pm]

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## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **Reserve Forces Policy Board (RFPB)**

**AGENCY:** Office of the Secretary of Defense Reserve Forces Policy Board, DoD.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and

41 CFR 102-3.150, the Department of Defense announces that the Reserve Forces Policy Board (RFPB) will meet on March 30 and 31, 2010. Subject to the availability of space, this meeting is open to the public.

**DATES:** The meeting will be held on March 30 (from 8:30 a.m. to 4 p.m.) and on March 31 (from 8:30 a.m. to 2:30 p.m.), 2010.

**ADDRESSES:** The March 30 meeting will be held at the Fort Myer Officer's Club, Arlington, VA 22211. The March 31 meeting will be held at the Pentagon, Conference Room 3E863, Arlington, VA.

Written statements should be sent to: Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301-7300.

**FOR FURTHER INFORMATION CONTACT:** Col. Marjorie Davis, Designated Federal Officer, (703) 697-4486 (Voice), (703) 614-0504 (Facsimile), [marjorie.davis@osd.mil](mailto:marjorie.davis@osd.mil) or [RFPB@osd.mil](mailto:RFPB@osd.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **Agenda**

Consider health care for our reserve forces and the long range implications of a generation of young veterans.

##### **Meeting Accessibility**

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. To request a seat, contact the Designated Federal Officer not later than February 26, 2010, at 703-697-4486, or by e-mail, [RFPB@osd.mil](mailto:RFPB@osd.mil).

##### **Written Statements**

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations may submit written statements to the membership of the RFPB at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Board's Designated Federal Officer (see **ADDRESSES**). The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

Written statements that do not pertain to a scheduled meeting of the RFPB may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.