



MARINE MAMMAL COMMISSION

16 December 2013

Mr. P. Michael Payne, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, Room 13635
Silver Spring, MD 20910

Dear Mr. Payne:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's (NMFS) 9 December 2013 (78 Fed. Reg. 73794) notice and the letter of authorization application submitted by the U.S. Air Force seeking issuance of regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act. The regulations would authorize the taking of marine mammals incidental to rocket and missile launches, aircraft and helicopter operations, *Delta Mariner* operations, cargo unloading activities, and harbor maintenance dredging at Vandenberg Air Force Base (VAFB) in California. The final rule would be valid from February 2014 to February 2019. The Commission previously has commented on similar proposed rules and proposed incidental harassment authorizations.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the final rule, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

RATIONALE

The Air Force proposes to continue to conduct (1) rocket and missile launches and aircraft and helicopter operations at VAFB and (2) *Delta Mariner* operations, cargo unloading activities, and harbor maintenance dredging in support of the Delta IV/Evolved Expendable Launch Vehicle launch activity in the harbor at south VAFB. Those activities would be authorized for an additional five years.

NMFS preliminarily has determined that, at most, the proposed activities would result in the temporary modification of the behavior of harbor seals, California sea lions, northern elephant seals, Steller sea lions, and northern fur seals. It also anticipates that any impact on the affected species and stocks would be negligible. NMFS does not anticipate any take of marine mammals by death or serious injury and believes that the potential for disturbance will be at the least practicable level because of the proposed mitigation and monitoring measures. Those measures include—

- (1) maintaining a minimum aircraft and helicopter flight path of 305 m from recognized pinniped haul-out sites and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents;
- (2) avoiding, whenever possible, rocket and missile launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives;
- (3) avoiding, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands (NCI) during harbor seal, elephant seal, California sea lion, and northern fur seal pupping seasons of March through June;
- (4) initiating *Delta Mariner* operations, cargo unloading, and harbor maintenance dredging before dusk and if activities must occur at night, turning on the lighting equipment before dusk to avoid startling pinnipeds;
- (5) keeping construction noises at a constant level (i.e., not interrupted by periods of quiet in excess of 30 minutes) and initiating a gradual start-up of activities if they are stopped for longer than 30 minutes while pinnipeds are present;
- (6) limiting the arrival and departure of the *Delta Mariner* and the accompanying tugboat to high tides and daylight hours;
- (7) restricting vessel speed to 2.8–3.7 km/hr within 4.8 km of the harbor and 1.4 km/hr when approaching the wharf and moorings and approaching stern side first;
- (8) introducing quieter dredging techniques and equipment as alternate methods are explored;
- (9) conducting in-situ acoustic measurements of launch vehicles that have not been measured previously;
- (10) using qualified observers to monitor pinniped activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haul-out site (a) for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season, (b) for a period of time not less than 48 hours subsequent to the launch, and (c) within two weeks to ensure there were no adverse effects on any marine mammals;
- (11) using qualified observers to monitor haul-out sites closest to the predicted sonic boom impact area on NCI, if it is determined by modeling that a sonic boom of greater than (a) 1 psf is predicted to impact one of the Islands between March 1 and June 30, (b) 1.5 psf between July 1 and September 30, and (c) 2 psf between October 1 and February 28;
- (12) supplementing observations at VAFB and on NCI with video recordings of female-pup responses during daylight launches in the pupping season;
- (13) using qualified observers to monitor before, during, and after the proposed harbor activities at times when tides are less than or equal to 0.6 m and pinnipeds can haul out—if those activities occur at night, observers would use night-vision scopes;
- (14) reporting injured and dead marine mammals to NMFS within 48 hours if the animal could have been injured or killed by the proposed activities—the procedures and monitoring measures would be reviewed in cooperation with NMFS and the letter of authorization modified accordingly prior to conducting additional activities;
- (15) participating in an adaptive management process; and
- (16) submitting launch-specific monitoring reports, annual monitoring reports, and a final comprehensive monitoring report to NMFS.

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The Commission concurs with NMFS's preliminary finding and therefore recommends that NMFS issue the final rule, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

The Commission appreciates the opportunity to provide comments on the Air Force's application. Please contact me if you have questions concerning the Commission's recommendation.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style with a large initial "R".

Rebecca J. Lent, Ph.D.
Executive Director