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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC023

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy's Research, Development, Test and Evaluation Activities at the NAVSEA Naval Undersea Warfare Center Keyport Range Complex

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

ACTION: Notice; 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 NMFS has issued a four-year Letter of Authorization (LOA) to the U.S. Navy (Navy) to take marine mammals by harassment incidental to its Research, Development, Test and Evaluation (RDT&E) activities at the NAVSEA Naval Undersea Warfare Center (NUWC) Keyport Range Complex.

DATES: Effective from May 17, 2012, through April 11, 2016.

ADDRESSES: Copies of the Navy's December 22, 2011, LOA application, and the LOA are available by writing to Tammy Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contact listed here (SEE FOR FURTHER INFORMATION CONTACT), or online at:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization may be granted for periods of 5 years or less if NMFS 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. In addition, NMFS must prescribe regulations that include permissible 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, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's training activities at the NAVSEA NUWC Keyport Range Complex were published on April 12, 2011 (76 FR 20257), and remain in effect through April 11, 2016. They are codified at 50 CFR part 218 subpart R. These regulations include mitigation, monitoring, and reporting

requirements for the incidental taking of marine mammals by the Navy's RDT&E activities. For detailed information on these actions, please refer to the April 12, 2011, Federal Register notice and 50 CFR part 218 subpart R. On February 1, 2012, NMFS published a final rule (77 FR 4917) that allows for the issuance of multi-year LOAs, as long as the regulations governing such LOAs are valid.

Summary of LOA Request

On December 23, 2011, NMFS received an application from the U.S. Navy for an LOA covering the Navy's RDT&E activities at the NAVSEA NUWC Keyport Range Complex off the coast and inland waters of Washington State under the regulations issued on April 12, 2012 (76 FR 20257). The application requested authorization, for a period of four years, to take, by harassment, marine mammals incidental to proposed training activities that involve the use of low-intensity sonar and other active acoustic devices.

Summary of Activity under the 2011 LOA

As described in the Navy's Annual Range Complex Exercise Report for the NAVSEA NUWC Keyport Range Complex, between April and September 2011, the RDT&E activities conducted by the Navy were within the scope and amounts contemplated by the final rule and identified by the 2011 LOA. In fact, the number of RDT&E activities was below the Navy's proposed 2011 operations. A detailed description of the Navy's 2011 RDT&E activities can be found in the exercise report posted on NMFS website:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Planned Activities for 2012 through 2016

In 2012 through April 2016, the Navy expects to conduct the same type and amount of RDT&E activities identified in the final rules and 2011 LOA. No modification is proposed by the Navy for its planned 2012 - 2016 activities under the 2011 rule.

Estimated Take for 2012 - 2016

The estimated takes for the Navy's proposed training activities are the same as those authorized in 2011. No change has been made in the estimated takes from the 2011 LOA.

Summary of Monitoring, Reporting, and other requirements under the 2011 LOA

Annual Exercise Report

The Navy submitted its 2011 exercise report within the required timeframes and it is posted on NMFS website: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. NMFS has reviewed the report and it contains the information required by the 2011 LOA. The report lists the amount of RDT&E activities conducted between April and September 2011. For sonar operations, there was no activity conducted at the Keyport Range site and the Quinault Underwater Tracking Range (QUTR) during the reporting period. The Navy conducted 2.5 hours (2.5% of total 100 allotted hours) operations on acoustic modem testing, 0.07 hour (1.2% of total 5.83 allotted hours) of S6 acoustic source torpedoes (both electric and thermal propulsion) operation, 0.112 hour (1.9% of total 5.83 allotted hours) of S7 acoustic source torpedoes (both electric and thermal propulsion) operation, and 0.014 hour (0.2% of total 5.83 allotted hours) of S8 acoustic source torpedoes (both electric and thermal propulsion) operation. For non-sonar activities, the Navy conducted 4 UUV operations (9% of the total 45 allotted) and 1 fleet diver activity (2% of the total 45 allotted) at the Keyport Range Site; 2 test vehicle (thermal) activities (2% of the total of 130 allotted), 7 test vehicle (electric/chemical) activities (5% of the total 140 allotted), 2 acoustic and non-acoustic (magnetic array, oxygen) testing

system activities (20% of the total 10 allotted), 3 fleet submarine activities (10% of the total 30 allotted), 7 surface launch craft activities (4% of the total 180 allotted), and 2 shore and pier deployment system activities (7% of the total 30 allotted) at Dobab Bay Range Complex (DBRC).

Monitoring and Annual Monitoring Report

The Navy submitted their 2011 annual marine mammal monitoring report covering the period from May through December 2011, and the reports are posted on NMFS website: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. The Navy conducted the monitoring required by the 2011 LOA and described in the Monitoring Report, which included a minimum of two special visual surveys per year to monitor high-frequency active sonar (HFAS) and mid-frequency active sonar (MFAS) activities, respectively, at the DBRC site. In addition, visual and passive acoustic monitoring is also required for certain activities.

For the high-frequency source event, the observers were used during a torpedo test event to demonstrate torpedo against mobile target. The active sonar levels and output were intermittent and could vary within the S6, S7, and S8 source parameters as outlined in the NMFS Final Rule (76 FR 20257).

For the mid-frequency source event, the observers were used while the Underwater Emergency Warning System (UWES) was being operated. It operates at the 700 Hz to 10.6 kHz at a source level of less than 170 dB re 1 μ Pa @ 1 m. The bandwidth is 18.75 Hz. This is similar to the modeled S4 source.

Vessel-based and shore-based marine mammal surveys were conducted the day before, during, and the day following the HFAS and MFAS event between November 6 and 8, 2011.

(1) Shore-based Survey

Shore-based surveys were conducted both from the DBRC site operations center at the Zelatched Point computer site on the bluff at the 75 foot elevation above the water using “Big-eye” binoculars, audible and LOFAR output from the bottom moored passive acoustic monitor and by walking along the beach and looking for hauled-out, distressed, injured, or stranded marine mammals. The beach surveys covered approximately 500 meters of shoreline along the eastern shore of Dabob Bay which is in addition to the shoreline surveyed via the vessel-based surveys. However, no marine mammals were seen using shore-based survey during the pre- and post-event surveys.

No marine mammals were seen using the beach survey during HFAS and MFAS testing events. No marine mammal vocalizations were evident using the passive acoustic monitoring (PAM) either audibly or visually from the spectrum display. The PAM was monitored continuously in real time throughout the day of the event by observers including NMMO, escort Navy observer, Range Officer and other range personnel.

Vessel-based Survey

For vessel-based surveys, the survey vessel left Naval Base Kitsap (NBK) Bangor in Hood Canal at approximately 0730 for both the pre and post surveys. The survey vessel was the NS-50 small range craft and it was used for pre- and post-event monitoring. The NS-50 vessel crew consisted of a Craft master, marine mammal lookout, and a Navy Marine Mammal Observer (NMMO). All three participated in looking for marine mammals. One observer was dedicated to the port side of the vessel and the other observer was responsible for the starboard side. The observers were also responsible for recording the global positioning system (GPS) coordinates of all sightings with a handheld GPS unit and logging the information onto datasheets. Marine mammal observations began immediately after departing NBK Bangor and

continued throughout the transit to and from Dabob Bay. Observers used naked eye and 7 x 50 magnification binoculars with reticles to scan the area from dead ahead to dead astern. The survey transects were run from the south to the north on the west side of Dabob Bay and the return was north to south on the east side of Dabob Bay. This route covered the perimeter of Dabob Bay including the area used in the November 7 testing. It is possible to see from shore to shore in the Dabob Bay instrumented range. In addition to surveying over-water, the vessel based monitors also scanned the shoreline for hauled-out, distressed, injured, or stranded marine mammals. Effort and environmental information was collected when the observers began effort each day and as significant weather changes occurred.

In total, 38 sightings of marine mammals totaling 84 individuals were recorded during the two days of pre- and post-event vessel-based surveys. At least 2 species were seen: harbor seals, California sea lions, and 2 unidentified marine mammals. A harbor seal haul-out with 16 to 26 individuals was identified on the west side of Dabob Bay just north of Pulali Point. This location has been previously identified in Jeffries et al. (2000) as location ID 256 and consists of intertidal rocks. According to Jeffries et al. (2000) this site has less than 100 individuals at any given time, but it is classified as a high use haul-out.

There were 25 sightings on the pre-survey day and 13 sightings on the post-survey day. When comparing the number of animals seen between the 2 days, the pre-survey day identified 45 individuals and the post-survey day identified 39 individuals. When looking at animals identified to species, four sea lions and 39 harbor seals were identified during the pre-survey. Two sea lions and 37 harbor seals were identified during the post-survey. No marine mammal active sounds were detected using the PAM.

There were two sightings approximately 2 hours prior to the HFAS event. One sighting was an unidentified sea lion seen feeding. The second sighting was one minute later in approximately the same location, but this sighting was identified as a harbor seal with 1 to 2 individuals possible. The sighting cues (flipper verses head) allowed the observer to distinguish the difference between the sea lion and the seal. They did not have an obvious direction of travel and mitigation measures were not needed because sonar sources were not active at the time. The sea state was somewhat choppy during the actual HFAS test event and potentially contributed to the lack of marine mammals seen despite the elevated observation platform of the larger vessels. No marine mammals were observed before, during, or after the MFAS event.

Adaptive Management

In general, adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) if monitoring efforts should be modified if new information suggests that such modifications are appropriate. All of the 5-year rules and LOAs issued to the Navy include an adaptive management component, which includes an annual meeting between NMFS and the Navy. NMFS and the Navy conducted an adaptive management meeting in October, 2011, which representatives from the Marine Mammal Commission participated in, wherein we reviewed the Navy monitoring results through August 1, 2011, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring.

For the 2012 – 2016 LOA, the Navy requested to make the following changes concerning marine mammal monitoring protocols. Specifically, the Navy requested to change the condition in 7(c)(i)(B) of the Monitoring and Reporting section of the LOA to address the Navy's activity

monitoring logistics and to ensure that visual monitoring is conducted in suitable conditions.

The language would be changed from

“For specified events, shore-based and vessel surveys shall be used 1 day prior to and 1-2 days post activity.”

to

“For specified events, shore-based and vessel surveys shall be used within 36 hours prior to and post activity during daylight hours.”

After reviewing the Navy’s request, NMFS agrees with the Navy that this minor modification should be implemented in the renewed LOA.

Authorization

Since there are no changes in the Navy’s proposed RDT&E activities at the NAVSEA NUWC Keyport Range Complex, NMFS’ determination that the Navy’s Keyport Range Complex RDT&E activities will have no more than a negligible impact on the affected species or stocks of marine mammals in the action area, as described in the original regulations, is still valid. There is no subsistence use of marine mammals that could potentially be impacted by the Navy’s RDT&E activities at Keyport Range Complex. Further, the level of taking authorized in May 2012 through April 2016 for the Navy’s Keyport Range Complex RDT&E activities is consistent with our previous findings made for the total taking allowed under the Keyport Range

Complex regulations. Accordingly, NMFS has issued a four-year LOA for Navy's RDT&E activities conducted at the NAVSEA NUWC Keyport Range Complex from May 17, 2012, through April 11, 2016.

Dated: May 14, 2012.

Helen Golde,
Acting Director, Office of Protected Resources,
National Marine Fisheries Service.

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