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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF024

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Long Range Strike Weapons Systems Evaluations Program

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

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the United States Air Force (USAF), 86 Fighter Weapons Squadron (86 FWS) for authorization to take marine mammals incidental to conducting munitions testing for their Long Range Strike Weapons Systems Evaluation Program (LRS WSEP) over the course of five years, from September 1, 2017 through August 31, 2022. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the 86 FWS's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the 86 FWS's application and request.

DATES: Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National

Marine Fisheries Service. 1315 East-West Highway, Silver Spring, MD 20910-3225 and electronic comments should be sent *ITP.McCue@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments sent via e-mail, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/military.htm* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

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

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the 86 FWS's application may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/military.htm*. In case of problems accessing the document, please call the contact listed above.

Background

Sections 101(a)(5)(A) and (D) of the MMPA(16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, 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 either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings for marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. 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.”

The NDAA of 2004 (Public Law 108–136) removed the “small numbers” and “specified geographical region” limitations indicated earlier and amended the definition of harassment as it applies to a “military readiness activity” to read as follows (Section 3(18)(B) of the MMPA): (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment). 86 FWS has identified LRS WSEP missions as military readiness activities.

On September 27, 2016, NMFS issued an incidental harassment authorization (IHA), similar to this request, for takes of marine mammals incidental to Long Range Strike Weapons System Evaluation Program (LRS WSEP) activities in the BSURE area of the PMRF off Kauai, Hawaii. 86 FWS complied with all conditions of the IHA issued, including submission of final reports. Based on these reports, NMFS has determined that impacts to marine mammals were not beyond those anticipated.

Summary of Request

On December 21, 2016, NMFS received an adequate and complete application from the 86 FWS requesting authorization for the take of marine mammals incidental to LRS WSEP activities in the Barking Sands Underwater Range Expansion (BSURE) area of the Pacific Missile Range Facility (PMRF) off Kauai, Hawaii for a period of five years. LRS WSEP activities have the potential to result in take of marine mammals in the waters of the PMRF. Therefore, 86 FWS requests authorization to take 16 species of marine mammals that may occur in this area.

Specified Activities

86 FWS proposes actions that include LRS WSEP test missions that involve the use of multiple types of live and inert munitions (bombs and missiles) detonated above, at, or slightly below the water surface. The ordnance may be delivered by multiple types of aircraft, including bombers and fighter aircraft. The actions include air-to-surface test missions of the Joint Air-to-Surface Stand-off Missile/Joint Air-to-Surface Stand-off Missile-Extended Range (JASSM/JASSM-ER), Small Diameter Bomb-I/II (SDB-I/II), High-speed Anti-Radiation Missile (HARM), Joint Direct Attack Munition/Laser Joint Direct Attack Munition (JDAM/LJDAM), and Miniature Air-Launched Decoy (MALD).

Net explosive weight of the live munitions ranges from 23 to 300 pounds. 86 FWS anticipates the ability to test approximately 110 munitions per year.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning 86 FWS's request (see **ADDRESSES**). Comments should be supported by data or literature citations as appropriate. We will consider all relevant information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by 86 FWS, if appropriate.

Dated: December 27, 2016.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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