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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF608

Taking Marine Mammals Incidental to the U.S. Air Force 86 Fighter Weapons Squadron

Conducting Long Range Strike Weapons System Evaluation Program

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notice is hereby given that a Letter of Authorization (LOA) has been issued to the U.S. Air Force (USAF) 86 Fighter Weapon Squadron (86 FWS) to take marine mammals incidental to Long Range Strike (LRS) Weapons System Evaluation Program (WSEP) exercises on the Barking Sands Underwater Range Expansion (BSURE) area of the Pacific Missile Range Facility (PMRF) off Kauai, Hawaii. These activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act of 2004 (NDAA).

DATES: This LOA is valid from August 21, 2017, through August 20, 2022.

ADDRESSES: The LOA and supporting documents may be obtained online at:

www.nmfs.noaa.gov/pr/permits/incidental/military.htm. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, 301-427-8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA directs the Secretary of Commerce 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. Under the MMPA, the term “take” means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals. NMFS has been delegated the authority to issue regulations and Letters of Authorizations allowing the take of marine mammals incidental to specified activities.

The NDAA (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above 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).”

An authorization for incidental taking 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 takings 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.”

Regulations governing the taking of individuals of 16 species of marine mammals, representing 16 stocks, by Level B harassment, and 4 of those same species by Level A harassment, incidental to 86 FWS LRS WSEP training activities are valid from August 21, 2017, through August 20, 2022 and are codified at 50 CFR part 218, subpart F. The regulations include mitigation, monitoring, and reporting requirements. Pursuant to those regulations, NMFS issued a five-year LOA for the incidental take of marine mammals during training activities on BSURE area of the PMRF on April 21, 2017. For detailed information on this action, please refer to the August 22, 2017 *Federal Register* notice (82 FR 39684) and 50 CFR part 218, subpart F.

Summary of Request

On December 21, 2016, NMFS received an adequate and complete application from the 86 FWS for regulations governing the taking of 16 species of marine mammals representing 16 stocks incidental to LRS WSEP activities in the BSURE of the PMRF off Kauai, Hawaii. On January 6, 2017, we published a notice of receipt of the 86 FWS’s application in the *Federal Register* (82 FR 1702) requesting public comment on the application and subsequently published a notice of proposed rulemaking in the *Federal Register* on May 5, 2017 (82 FR 21156) requesting public comment on the proposed rule. Since publishing the proposed rule, the 86 FWS clarified training would only occur four days per year, not five as presented in the

application and proposed rule. Moreover, the 86 FWS decreased the number of munitions it would deploy annually, by 40 to 92 percent depending on year. This decreases the number of anticipated and authorized takes for this activity compared to what was presented in the proposed rule. In addition, NMFS worked with the 86 FWS to develop a comprehensive marine mammal mitigation and monitoring plan designed to decrease potential impacts to marine mammals. To support issuance of the LOA, NMFS adopted the 86 FWS' *Final Environmental Assessment/Overseas Environmental Assessment (EA/OEA) for the Long Range Strike Weapon Systems Evaluation Program at Kauai, Hawaii*, and issued a Finding of No Significant Impact (FONSI) on August 11, 2017.

The final rule (82 FR 39684, August 22, 2017) and 86 FWS EA/OEA include a complete description of the 86 FWS's specified training activities incidental to which NMFS is authorizing take of marine mammals. Air-to-surface exercises involving surface and slightly subsurface live munition detonations are the stressors most likely to result in impacts on marine mammals that could rise to the level of harassment.

Authorization

We have issued a LOA to the 86 FWS authorizing the take of marine mammals, by harassment, incidental to LRS WSEP training activities on the BSURE area of the PMRF as described above. The level and type of take authorized by the LOA is the same as the level and type of take analyzed in the final rule (82 FR 39864, August 22, 2017). Take by mortality or serious injury is not anticipated or authorized. Take of marine mammals will be minimized through implementation of mitigation and monitoring measures, including: aerial surveys using sensor pods and range camera monitoring before, during, and after training; delaying exercises if a marine mammal is observed within an exclusion zone to avoid exposing marine mammals to

levels of explosives likely to result in injury or death; delaying exercises if marine mammals are observed within a designated harassment zone if take is exceeded or not authorized, and shifting target coordinates as far from an observed marine mammal as possible. The 86 FWS is required to also comply with monitoring and reporting measures under 50 CFR 218.55 which includes collecting data from the PMRF hydrophones to better understand impacts, if any, of LRS WSEP training activities on marine mammals. Additionally, the rule and LOA include an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. For full details on the mitigation, monitoring, and reporting requirements, please refer to the final rule (82 FR 39684; August 22 2017).

Issuance of the LOA is based on findings, described in the preamble to the final rule, that the total taking of marine mammals incidental to the 86 FWS's training activities on the PMRF will have a negligible impact on the affected marine mammal species or stocks and will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

The LOA will remain valid through August 20, 2022, provided the 86 FWS remains in conformance with the conditions of the regulations and the LOA, including the mitigation, monitoring, and reporting requirements described in 50 CFR part 218, subpart F and the LOA.

Dated: August 24, 2017.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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