



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF701

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Training and Testing Activities in the Hawaii-Southern California Training and Testing Study Area

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

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

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to training and testing activities conducted in the Hawaii-Southern California Training and Testing (HSTT) Study Area for a period of five years, from December 26, 2018 through December 25, 2023. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Navy'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. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Egger@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 received electronically, 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 the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/military.htm* without change. All personal identifying information (*e.g.*, name, address) 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: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the Navy's application 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 above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) 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 geographic region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings 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.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

The National Defense Authorization Act for Fiscal Year 2004 (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).

Summary of Request

On October 12, 2017, NMFS received an adequate and complete application from the Navy requesting authorization for take of marine mammals, by Level A and B harassment, incidental to training, testing, and routine military operations (all categorized as military readiness activities) from the use of sonar and other transducers, in-water detonations, airguns, and pile driving. In addition, the Navy is requesting authorization of three takes of large whales by serious injury or mortality resulting from vessel strikes. The requested regulations would be valid for five years, from 2018 through 2023.

This will be the third time NMFS has promulgated incidental take regulations pursuant to the MMPA relating to similar military readiness activities in HSTT, following those effective from January 5, 2009, through January 5, 2014, (74 FR 1456; January 12, 2009) and from December 24, 2013, through December 24, 2018 (78 FR 78106; December 24, 2013).

Description of the Specified Activity

The HSTT Study Area includes areas in the north-central Pacific Ocean, from Southern California west to Hawaii and the International Date Line, and including the Hawaii and Southern California (SOCAL) Range Complexes, as well as the Silver Strand Training Complex and overlaps a portion of the Point Mugu Sea Range. The Hawaii Range Complex encompasses ocean areas around the Hawaiian Islands, extending from 16 degrees north latitude to 43 degrees north latitude and from 150 degrees west longitude to the International Date Line. The SOCAL Range Complex is located approximately between Dana Point and San Diego, California, and extends southwest into the Pacific Ocean and also includes a small portion of the Point Mugu

Sea Range. The Silver Strand Training Complex is an integrated set of training areas located on and adjacent to the Silver Strand, a narrow, sandy isthmus separating the San Diego Bay from the Pacific Ocean. Please refer to Figure 1-1 of the application for a map of the HSTT Study Area, Figures 2-1 to 2-4 for the Hawaii Operating Area (where the majority of training and testing activities occur within the Hawaii Range Complex), Figures 2-5 to 2-7 for the SOCAL Range Complex, and Figure 2-8 for the Silver Strand Training Complex. The following types of training and testing, which are classified as military readiness activities pursuant to section 315(f) of Public Law 101-314 (16 USC 703), are included in the specified activity described in the Navy's application: amphibious warfare (in-water detonations), anti-submarine warfare (sonar and other transducers, in-water detonations), surface warfare (in-water detonations), mine warfare (sonar and other transducers, in-water detonations), and other (sonar and other transducers, pile driving, air guns).

The Navy's application includes proposed mitigation measures for marine mammals that would be implemented during training and testing activities in the HSTT Study Area. Proposed procedural mitigation measures generally include: (1) the use of one or more trained lookouts to diligently observe for specific biological resources within a mitigation zone, (2) requirements for lookouts to immediately communicate sightings of specific biological resources to the appropriate watch station for information dissemination, and (3) requirements for the watch station to implement mitigation (*e.g.*, halt an activity) until certain recommencement conditions have been met. Mitigation measures are also proposed for specific mitigation areas and consist of a variety of measures in those areas including, but not limited to: conducting a limited number of major training exercises per year, not planning or avoiding planning major training exercises, minimizing or not conducting active sonar, conducting a limited amount of hull-

mounted mid-frequency active sonar per year, and not expending explosive or non-explosive ordnance.

The Navy also proposes to undertake monitoring and reporting efforts to track compliance with incidental take authorizations and to help investigate the effectiveness of implemented mitigation measures in the HSTT Study Area. This can include Adaptive Management, the Integrated Comprehensive Monitoring Program, the Strategic Planning Process, and Annual Monitoring and Exercise and Testing Reports. As an example, under the Integrated Comprehensive Monitoring Program, the monitoring relating to the effects of Navy training and testing activities on protected marine species are designed to increase the understanding of the likely occurrence of marine mammals in the vicinity of the action (*i.e.*, presence, abundance, distribution, and density of species) and to increase the understanding of the nature, scope, or context of the likely exposure of marine mammals to any of the potential stressors associated with the action.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: October 16, 2017.

Cathryn E. Tortorici,
Acting Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2017-22733 Filed: 10/19/2017 8:45 am; Publication Date: 10/20/2017]