



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XG331**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Air Force Launching of Space Launch Vehicles, Intercontinental Ballistic and Small Missiles, and Aircraft and Helicopter Operations at Vandenberg Air Force Base, California**

**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. Air Force (USAF) for authorization to take marine mammals incidental to launching space launch vehicles, intercontinental ballistic and small missiles, and aircraft and helicopter operations at Vandenberg Air Force Base (VAFB), California, from March 27, 2019 through March 26, 2024. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the USAF's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the USAF'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.Carduner@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:** Jordan Carduner, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the USAF'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 August 10, 2018, NMFS received an adequate and complete application from the USAF requesting a letter of authorization (LOA) for the take of six species of marine mammals (all pinnipeds), by Level B harassment only, incidental to launching space launch vehicles, intercontinental ballistic and small missiles, and aircraft and helicopter operations at VAFB. The USAF is requesting a 5-year LOA for these activities. These activities may result in the take of marine mammals as a result of noise or visual disturbance.

### **Description of the Specified Activity**

VAFB supports launch activities for the USAF, Department of Defense, National Aeronautics and Space Administration, and commercial entities. VAFB is the primary launch facility on the West Coast of the United States for placing commercial, government and military satellites into polar orbit on unmanned launch vehicles, and for the testing and evaluation of intercontinental ballistic missiles (ICBMs) and sub-orbital target and interceptor missiles. In addition to space vehicle and missile launch activities at VAFB, occasional helicopter and aircraft operations involve search-and-rescue, delivery of space vehicle components, launch mission support, security reconnaissance, and training flights.

There are currently six active facilities at VAFB used to launch satellites into polar orbit. These facilities support launch programs for the Atlas V, Delta II, Delta IV, Falcon 9 and Minotaur rockets. A variety of small missiles are also launched from various facilities at VAFB,

including Minuteman III, an ICBM which is launched from underground silos. In addition, several types of interceptor and target vehicles are launched for the Missile Defense Agency, which develops various systems and elements, including the Ballistic Missile Defense System.

The USAF anticipates that no more than 15 missile and 50 rocket launches would occur in any year, with total launch activities not exceeding 75 missile and 250 rocket launches over five years. All launch operations would occur at VAFB, potentially resulting in impacts to marine mammals at VAFB (as a result of launch noise and visual stimuli) and at the Northern Channel Islands (as a result of noise from sonic booms). A full description of the activities to be conducted by the USAF at VAFB, including descriptions of the space vehicles and missiles proposed for use, is provided in the USAF's application.

#### **Information Solicited**

Interested persons may submit information, suggestions, and comments concerning the USAF'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 USAF, if appropriate.

Dated: September 7, 2018.

**Donna S. Wieting,**

*Director,*

*Office of Protected Resources,*

*National Marine Fisheries Service.*

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