

Dated: January 13, 2011.

**Helen Golde,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA025

#### Taking and Importing Marine Mammals; U.S. Navy Training in the Hawaii Range Complex

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

**ACTION:** Notice of issuance of a Letter of Authorization; request for comments on Integrated Comprehensive Management Program Plan.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a Letter of Authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to training and research activities conducted within the Hawaii Range Complex (HRC) for the period of January 15, 2011, through January 14, 2012.

NMFS also provides notice that the Integrated Comprehensive Management Program (ICMP) Plan, which is intended for use as a planning tool to focus Navy monitoring priorities pursuant to the MMPA and Endangered Species Act (ESA), has been updated for 2010. NMFS encourages the public to review this document and provide comments, information, and suggestions on the ICMP Plan.

**DATES:** This Authorization is effective from January 15, 2011, through January 14, 2012. Comments and information on the ICMP Plan must be received no later than February 28, 2011.

**ADDRESSES:** The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here. The mailbox address for providing e-mail comments on the ICMP Plan is

[ITP.Hopper@noaa.gov](mailto:ITP.Hopper@noaa.gov). Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

**FOR FURTHER INFORMATION CONTACT:** Michelle Magliocca, Office of Protected

Resources, NMFS, 301-713-2289, ext. 123.

**SUPPLEMENTARY INFORMATION:** Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS 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.

Regulations governing the taking of marine mammals by the Navy incidental to training and research activities conducted within the Hawaii Range Complex (HRC) became effective on January 5, 2009 (74 FR 1484, January 12, 2009), and remain in effect until January 5, 2014. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

#### Summary of Request

On August 1, 2010, NMFS received a request from the Navy for a renewal of an LOA issued on January 8, 2009, for the taking of marine mammals incidental to training and research activities conducted within the HRC under regulations issued on January 5, 2009 (74 FR 1484, January 12, 2009). The Navy has complied with the measures required in 50 CFR 216.174 and 216.175, as well as the associated 2010 LOA, and submitted the reports and other documentation required in the final rule and the 2010 LOA.

#### Summary of Activity Under the 2010 LOA

As described in the Navy’s exercise reports (both classified and unclassified), in 2010, the training activities conducted by the Navy were within the scope and amounts authorized by the 2010 LOA and the levels of take remain within the scope and amounts contemplated by the final rule.

#### Planned Activities and Estimated Take for 2011

In 2011, the Navy expects to conduct the same type and amount of training identified in the 2010 LOA. Therefore, NMFS is authorizing the same amount of take authorized in 2010. Summary of Monitoring, Reporting, and other Requirements under the 2010 LOA

#### Annual Exercise Reports

The Navy submitted their classified and unclassified 2010 exercise reports within the required timeframes and the unclassified report is posted on NMFS Web site: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. NMFS has reviewed both reports and they contain the information required by the 2010 LOA. The reports indicate the amounts of different types of training that occurred from August 2, 2009, through August 1, 2010. The Navy conducted two Major Training Exercises (MTEs)—one Rim of the Pacific exercise (RIMPAC) and one Undersea Warfare Exercise (USWEX) (the rule authorizes one RIMPAC every other year and five USWEXs each year)—for a total of 30 days, and three Sinking Exercises (SINKEX) (the rule authorizes an average of six per year). No active sonar use occurred in the period from December 15, 2009, through April 15, 2010, either in the Humpback Cautionary Area or the larger dense humpback area generally shown on the Mobley map (73 FR 35520) plus a 5-km buffer but not including the Pacific Missile Range Facility.

The reports also list specific information gathered when marine mammals were detected by Navy watchstanders, such as how far an animal was from the vessel, whether sonar was in use, and whether it was powered or shut down. This information indicates that the Navy implemented the safety zone mitigation measures as required. No instances of obvious behavioral disturbance were reported by the Navy watchstanders in their 47 marine mammal sightings totaling 286 animals. Furthermore, there were zero marine mammal sightings reported at a range less than 1,000 yards during the MTEs, concurrent with use of MFAS. Ranges associated with NMFS criteria levels for permanent threshold shift (PTS) and temporary threshold shift (TTS) are much shorter than 200 yards.

#### 2010 Monitoring

The Navy conducted the monitoring required by the 2010 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of sonar and explosive exercises by dedicated MMOs, as well as ordering and purchasing acoustic recording devices to be used to gather data in subsequent years. The Navy submitted their 2010 Monitoring Report, which is posted on NMFS’ Web site (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>), within the required timeframe. The Navy included a summary of their 2010 monitoring

effort and results (beginning on page 7 of the monitoring report) and the specific reports for each individual effort are presented in the appendices. Because data is gathered through August 1 and the report is due in October, some of the data analysis will occur in the subsequent year's report. Navy-funded marine mammal monitoring accomplishments within the HRC from August 1, 2009 to August 1, 2010, include the following:

#### *Visual Surveys*

The Navy completed over 163 hours of visual surveys during three different types of military readiness events. During this time, there were no marine mammal sightings at ranges of 1,000 yards or less and no strandings were observed during coastline and pelagic surveys performed after training events. The aerial surveys proved successful in working with marine mammal observers (MMOs) on board vessels to coordinate sightings. This success also illustrated that marine mammal behavioral observations can be conducted safely and effectively with minimal interference with at-sea naval training involving multiple large vessels and aircraft. The collection of vessel-based survey data is anticipated to be a relatively long-term effort that will provide baseline information regarding marine mammal populations in the Navy exercise areas.

#### *Passive Acoustics*

Four Ecological Acoustic Recording (EAR) devices were deployed for Passive Acoustic Monitoring (PAM) in areas of the HRC where underwater detonations and ASW exercises may occur nearby. New EARs have been in the water for approximately 5 months and collaboration between the Navy and the Hawaii Institute of Marine Biology (HIMB) is underway to share acoustic data. Results from the February 2010 Pacific Missile Range Facility (PMRF) instrumented acoustic range training event were analyzed, showing passive acoustic evidence of beaked and minke whale presence both before and after the exercise. While there were differences detected in the number of beaked whale clicks pre- and post-exercise, a better understanding of normal variations in beaked whale clicks and dives is still needed. Successful use of the EAR devices suggests that these species are good candidates for PAM, especially considering the difficulty of visual observation.

#### *Marine Mammal Observations*

MMOs monitored for over 239 hours aboard Navy vessels to commence a

Lookout effectiveness study and gather sighting and behavioral information during ASW and/or explosive events. The study was initiated to determine the effectiveness of the Navy Lookout team in spotting marine mammals. Marine mammal monitoring during this study allowed for the successful implementation of three separate goals: (1) Collect data to determine the effectiveness of the Navy Lookouts; (2) Obtain data to characterize the possible exposure of marine species to MFAS; and (3) Achieve close coordination between the contracted aerial survey team, Navy aircraft, and the MMO team to facilitate maximizing survey time and project safety. Data collected from this study will be combined with future monitoring efforts in order to determine the effectiveness of Navy Lookouts as a whole, rather than specific to each vessel.

Between each shooting component of SINKEX events in July, MMOs also participated in a Battle Damage Assessment (BDA) to look for any live, injured, or dead marine mammals. These surveys, conducted via helicopter, were performed at low altitude combined with slow speeds and judged by the MMOs to provide excellent observer coverage and sightability of the mitigation radius surrounding the vessel's hulk. Due to the close range of the helicopter to the hulk, observational effort for marine mammals was possible on both sides of the aircraft. BDA began at approximately 300 ft, an altitude lower than the 800–1,000 ft typically used for aerial marine mammal surveys. Although no marine mammals were sighted during this assessment, details such as flying sea birds and floating surface debris were easily detectable.

#### *Tagging*

Eleven Hawaiian monk seals were tagged with "cell phone tags" and tagging efforts will continue into the coming year. At the time of submitting their monitoring report, the Navy was still receiving reports from tracking devices deployed as early as March 1, 2010. These devices are providing surface movements for Hawaiian monk seals, which preliminarily show both very localized and long-distance movement, as well as travel between Kauai and Oahu. The tags also illustrate dive movements during foraging.

In conclusion, the Navy's implementation of the monitoring plan accomplished several goals, primarily through contributions to larger bodies of data intended to better characterize the abundance, distribution, life history, and behaviors of the species in the HRC

area. The monitoring satisfied the objectives of the monitoring plan and specifically contributed to a greater knowledge and understanding of: the density and distribution of species within the HRC area; the vocalizations of different species, which contributes to the development of automated classification software and the future use of PAM for monitoring species which are difficult to observe visually; the movement patterns of individuals (both vertically in the water column on a daily basis, as well as horizontally over weeks and months); and the observable behavioral patterns of marine mammals, both with and without exposure to Navy training activities.

Except as described below in the Adaptive Management section, NMFS concludes that the results of these monitoring efforts, when taken together with the findings presented in the 2010 exercise report (*see* Annual Exercise Report section), do not warrant making changes to the current monitoring and mitigation requirements identified in the LOA. While the data collected by the Navy through monitoring and reporting builds on the existing body of information in a valuable way, none of the new data contradict, or amend, the assumptions that underlie the findings in the 2009 rule in a manner that would suggest that the mitigation or monitoring should change.

Included in the Navy's 2010 Monitoring Report were detailed descriptions of the monitoring conducted during different exercises and training events. Results help illustrate the effectiveness of the Navy's current monitoring plan.

#### **Adaptive Management**

NMFS and the Navy conducted an adaptive management meeting in October, 2010, which representatives from the Marine Mammal Commission participated in, wherein we reviewed the Navy monitoring results through August 1, 2010, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. Based on the implementation of the 2010 monitoring, the Navy proposed some slight modifications to their monitoring plan for 2011, which NMFS agreed were appropriate. Beyond those changes, none of the information discussed led NMFS to recommend any modifications to the existing mitigation or monitoring measures. The final modifications to the monitoring plan and justifications are described in Section 13 of the Navy's 2011 LOA Application, which may be

viewed at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

### Integrated Comprehensive Monitoring Report

The 2010 LOA required that the Navy update the ICMP Plan to reflect development in three areas, specifically: (1) Identifying more specific monitoring sub-goals under the major goals that have been identified; (2) Characterizing Navy Range Complexes and study areas within the context of the prioritization guidelines described in the ICMP Plan; and (3) Continuing to develop data management, organization, and access procedures. The Navy has updated the ICMP Plan as required. Because the ICMP is an evolving Program, we have posted the ICMP on NMFS Web site: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm> and are specifically requesting input, which the Navy and NMFS will consider and apply as appropriate.

Further, the Navy convened a monitoring meeting in October, 2010 to solicit input from NMFS and marine mammal and acoustic scientists regarding the comprehensive development and improvement of the more specific monitoring that should occur across the Navy's training areas. Subsequent to those discussions, the Navy has developed a scientific advisory group composed of individuals from the research community and academia that will develop a proposed Strategic Plan for Navy monitoring that better considers the biological, logistical, and resource-specific factors that are applicable in each training area (and which are summarized in the updated ICMP) to maximize the effectiveness of Navy monitoring within the context of the information that is most needed. Subsequently, NMFS and MMC representatives will review this proposed Strategic Plan for marine species monitoring, which may reflect monitoring differences in some Navy training areas from what is required in the 2010 LOA.

This Navy-wide Strategic Monitoring Plan will then be available for review and discussion at the required 2011 Navy Monitoring Meeting, which will take place in mid-2011. The Navy and NMFS will then modify the Navy-wide Strategic Plan for monitoring based on applicable input from the 2011 Monitoring Meeting and propose appropriate changes to the monitoring measures in specific LOAs for the different Range Complexes and training areas. For training areas with substantive monitoring modifications, NMFS will subsequently publish proposed LOAs, with the modifications,

in the **Federal Register** and solicit public input. After addressing public comments and making any necessary changes, NMFS would, as appropriate, issue new LOAs for the different training areas that reflect the updated ICMP and associated new Strategic Plan for Navy monitoring.

### NOAA Workshops

In a January 19, 2010 letter to the Council on Environmental Quality, NOAA identified the need for two interrelated workshops on marine mammals and sound in the ocean. To address this commitment, NOAA is convening two parallel, focused, relatively small, and product-driven working groups. One will identify and map cetacean "hot spots," defined as areas of known, or reasonably predictable, biological importance (*i.e.*, for reproduction, feeding, migration) and/or high densities. The second working group will be directed toward developing a comprehensive data collection and analysis plan for describing and predicting underwater sound fields in different areas. The outcomes of these working groups will be integrated and analyzed in a broader symposium to include a larger audience of scientists, industries, Federal agencies, conservation managers, and environmental NGOs. The final products and analyses will provide a more robust, comprehensive, and context-specific biological and acoustic basis by which to inform subsequent management decisions regarding human noise in our oceans. The steering committee has been convened and met for the first time in October, 2010. The working group efforts should take about a year to complete, and we expect the final symposium to be held in early 2012. The results of these working groups will be analyzed by NMFS in an adaptive management context, as related to the January 5, 2009 (74 FR 1484, January 12, 2009) HRC final rule, and mitigation or monitoring measures may be modified, as appropriate.

### Authorization

The Navy complied with the requirements of the 2010 LOA. Based on our review of the record, NMFS has determined that the marine mammal takes resulting from the 2010 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized. Further, the level of taking authorized in 2011 for the Navy's HRC training and research activities is consistent with our previous findings made for the total taking allowed under the HRC regulations. Finally, the record

supports NMFS' conclusion that the total number of marine mammals taken by the 2011 HRC activities will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses.

Accordingly, NMFS has issued a one-year LOA for Navy training exercises conducted in the HRC from January 15, 2011, through January 14, 2012.

Dated: January 13, 2011.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### U.S. Court of Appeals for the Armed Forces Code Committee Meeting

**AGENCY:** DoD.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** This notice announces the forthcoming public meeting of the Code Committee established by Article 146(a), Uniform Code of Military Justice, 10 U.S.C. 946(a), to be held at the Courthouse of the United States Court of Appeals for the Armed Forces, 450 E Street, NW., Washington, DC 20442-0001, at 11 a.m. on Tuesday, March 1, 2011. The agenda for this meeting will include consideration of proposed changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, and other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Forces.

### FOR FURTHER INFORMATION CONTACT:

William A. DeCicco, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442-0001, telephone (202) 761-1448.

Dated: January 11, 2011.

**Morgan F. Park,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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