

*Speed or Course Alteration* – If a marine mammal is detected outside the EZ but is likely to enter it based on relative movement of the vessel and the animal, then if safety and scientific objectives allow, the vessel speed and/or direct course will be adjusted to minimize the likelihood of the animal entering the EZ. Major course and speed adjustments are often impractical when towing long seismic streamers and large source arrays, but are possible in this case because only one GI gun and a short (300–m, 984–ft) streamer will be used. If the animal appears likely to enter the EZ, further mitigative actions will be taken, i.e. either further course alterations or shut down of the airgun.

*Shut-down Procedures* – If a marine mammal is within or about to enter the EZ for the single GI gun, it will be shut down immediately. Following a shut down, GI gun activity will not resume until the marine mammal is outside the EZ for the full array. The animal will be considered to have cleared the EZ if it: (1) visually observed to have left the EZ; (2) has not been seen within the EZ for 15 minutes in the case of small odontocetes and pinnipeds; or (3) has not been seen within the EZ for 30 minutes in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

*Minimize Approach to Slopes and Submarine Canyons* – Although sensitivity of beaked whales to airguns is not known, they appear to be sensitive to other sound sources (mid-frequency sonar; see section IV of SIO's application). Beaked whales tend to concentrate in continental slope areas and in areas where there are submarine canyons. Avoidance of airgun operations over or near submarine canyons has become a standard mitigation measure, but there are none within or near the study area. Four of the 16 OBS locations are on the continental slope, but the GI gun is low volume (45 in<sup>3</sup>), and it will operate only a short time (approximately 2 hours) at each location.

#### Reporting

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and the marine mammals that were detected near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, all marine mammal sightings (dates, times, locations,

activities, associated seismic survey activities), and estimates of the amount and nature of potential "take" of marine mammals by harassment or in other ways.

#### ESA

Under section 7 of the ESA, the NSF has begun informal consultation on this proposed seismic survey. NMFS will also consult informally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of the IHA.

#### National Environmental Policy Act (NEPA)

NSF prepared an Environmental Assessment of a Planned Low-Energy Marine Seismic Survey by the Scripps Institution of Oceanography in the Northeast Pacific Ocean, September 2007. NMFS will either adopt NSF's EA or conduct a separate NEPA analysis, as necessary, prior to making a determination on the issuance of the IHA.

#### Preliminary Determinations

NMFS has preliminarily determined that the impact of conducting the seismic survey in the northeast Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B Harassment) of small numbers of eight species of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this proposed action.

For reasons stated previously in this document, this determination is supported by: (1) the likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) the fact that marine mammals would have to be closer than either 35 m (115 ft) in intermediate depths or 23 m (75.5 ft) in deep water from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; and (3) the likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel. As a result, no take by injury or death is anticipated and the potential for temporary or permanent hearing impairment is very low and will be

avoided through the incorporation of the proposed mitigation measures.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small, less than a few percent of any of the estimated population sizes, and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

#### Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to SIO for conducting a low-energy seismic survey in the Pacific Ocean during September, 2007, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 26, 2007.

**James H. Lecky,**

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

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

[I.D. 050107N]

#### Taking and Importing Marine Mammals; Increasing Usage and Enhancing Capability of the U.S. Navy's Hawaii Range Complex

**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.

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**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) for authorization for the take of marine mammals incidental to the training events conducted within the Hawaii Range Complex (HRC) for the period of July 2008 through July 2013. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

**DATES:** Comments and information must be received no later than August 31, 2007.

**ADDRESSES:** Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is [PR1.050107N@noaa.gov](mailto:PR1.050107N@noaa.gov). NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

**FOR FURTHER INFORMATION CONTACT:** Jolie Harrison, Office of Protected Resources, NMFS, (301) 713-2289, ext. 166.

**SUPPLEMENTARY INFORMATION:**

**Availability**

A copy of the Navy's application may be obtained by writing to the address specified above

(See ADDRESSES), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. The Navy's Draft Environmental Impact Statement (DEIS) for the Hawaii Range Complex was made available to the public on July 27th, 2007, and may be viewed at <http://www.govsupport.us/hrc>. Because NMFS is participating as a cooperating agency in the development of the Navy's DEIS for the Hawaii Range Complex, NMFS staff will be present at the associated public meetings and prepared to discuss NMFS' participation in the development of the EIS as well as the MMPA process for the issuance of incidental take authorizations. The dates and times of the public meetings may be viewed at: <http://www.govsupport.us/hrc>.

**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 marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than 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, and that 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.

With respect to military readiness activities, the MMPA defines "harassment" as:

(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 June 25, 2007, NMFS received an application from the Navy requesting authorization for the take of 26 species of marine mammals incidental to upcoming Navy training activities to be conducted within the HRC, which covers 235,000 nm<sup>2</sup> around the Main Hawaiian Islands (see page 17 of the application), over the course of 5 years. These training activities are classified as military readiness activities. The Navy states that these training activities may expose some of the marine mammals present within the HRC to sound from hull-mounted mid-frequency active tactical sonar or to underwater detonations. The Navy requests authorization to take 26 species of marine mammals by Level B Harassment. Further, the Navy requests authorization to take 20 individual marine mammals per year by serious injury or mortality (2 each of the following: bottlenose dolphin, *Kogia* spp., melon-headed whale, pantropical spotted dolphin, pygmy killer whale, short-finned pilot whale, striped dolphin, and Cuvier's, Longman's, and Blainesville's beaked whale).

**Specified Activities**

The Navy has prepared a Draft Environmental Impact Statement analyzing the effects on the human environment of implementing their preferred alternative (among other alternatives), which includes conducting current and emerging training and research, development, test, and evaluation (RDT&E) operations in the HRC. The HRC complex consists of targets and instrumented areas, airspace, surface operational areas (OPAREAS), and land range facilities. The activities described in the EIS

include current and future proposed Navy training and RDT&E operations within Navy-controlled OPAREAs, airspace, and ranges, and Navy-funded range capabilities enhancements (including infrastructure improvement).

In the application submitted to NMFS, the Navy requests authorization for take of marine mammals incidental to conducting a subset of the activities analyzed in the EIS. Table 1-1 in the application lists the categories of Navy training operations and RDT&E operations and indicates those that the Navy believes: (1) could potentially result in harassment of marine mammals through exposure to underwater detonations; (2) could potentially result in harassment of marine mammals through exposure to tactical mid-frequency sonar; and, (3) do not have the potential to harass marine mammals. The Navy is requesting authorization for take incidental to the following categories of Navy training operations: (1) Naval Surface Fire Support Exercises, (2) Surface-to-Surface Gunnery Exercises, (3) Surface-to-Surface Missile Exercises, (4) Air-to-Surface Missile Exercises, (5) Bombing Exercises, (6) Sink Exercises, (7) Mine Neutralization, (8) Anti-submarine Warfare (ASW) Tracking Exercises, (9) ASW Torpedo Exercises, and (10) Major Integrated ASW Training Exercises (such as RIMPAC, USWEX, and Multiple Strike Group Exercises).

**Information Solicited**

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). All information, suggestions, and comments related to the Navy's HRC request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by the Navy in the HRC will be considered by NMFS in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization.

Dated: July 26, 2007.

**James H. Lecky,**

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National Marine Fisheries Service.*

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