

by contacting NMFS (see **ADDRESSES**) or on the Web at <http://biomitigation.org>.

Under the proposed IHA, coordination with NMFS will occur on a weekly basis. During periods with open-water pile driving activity, weekly monitoring reports will be made available to NMFS and the public at <http://biomitigation.org>. These weekly reports will include a summary of the previous week's monitoring activities and an estimate of the number of seals and sea lions that may have been disturbed as a result of pile driving activities.

In addition, CALTRANS proposes to provide NMFS' Southwest Regional Administrator with a draft final report within 90 days after completion of the westbound Skyway contract and 90 days after completion of the Suspension Span foundations contract. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If no comments are received from NMFS Southwest Regional Administrator within 30 days, the draft final report will be considered the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) for the take of marine mammals incidental to construction of the East Span of the SF-OBB and made a Finding of No Significant Impact (FONSI) on November 4, 2003. Due to the modification of part of the construction project and the mitigation measures, NMFS is reviewing additional information from CALTRANS regarding empirical measurements of pile driving noises for the smaller temporary piles, and will make a final NEPA determination before issuing a final IHA. A copy of the EA and FONSI is available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

On October 30, 2001, NMFS completed consultation under section 7 of the ESA with the Federal Highway Administration (FHWA) on the CALTRANS' construction of a replacement bridge for the East Span of the SF-OBB in California. Anadromous salmonids are the only listed species which may be affected by the project. The finding contained in the Biological Opinion was that the proposed action at the East Span of the SF-OBB is not likely to jeopardize the continued existence of listed anadromous

salmonids, or result in the destruction or adverse modification of designated critical habitat for these species. Listed marine mammals are not expected to be in the area of the action and thus would not be affected.

NMFS proposed issuance of an IHA to CALTRANS constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. The effects of the activities on listed salmonids were analyzed during consultation between the FHWA and NMFS, and the underlying action has not changed from that considered in the consultation. Therefore, the effects discussion contained in the Biological Opinion issued to the FHWA on October 30, 2001, pertains also to this action. NMFS has determined that issuance of an IHA for this activity does not lead to any effects on listed species apart from those that were considered in the consultation on FHWA's action.

Preliminary Determinations

For the reasons discussed in this document and in previously identified supporting documents, NMFS has preliminarily determined that the impact of pile driving and other activities associated with construction of the East Span Project should result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF-OBB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to preliminarily determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, harbor porpoises, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. The activity will not have an unmitigable adverse impact on subsistence uses of marine mammals described in MMPA section 101(a)(5)(D)(i)(II)

Proposed Authorization

NMFS proposes to issue an IHA to CALTRANS for the potential harassment of small numbers of harbor

seals, California sea lions, harbor porpoises, and gray whales incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals, California sea lions, harbor porpoises, and possibly gray whales and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**). Prior to submitting comments, NMFS recommends reviewers of this document read NMFS' November 14, 2003 (68 FR 64595) **Federal Register** notice on the SF-OBB construction project, especially responses to comments made previously, as NMFS does not intend to address these issues further without the submission of additional relevant scientific information.

Dated: June 27, 2008.

James H. Lecky,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XI50

Taking of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Navy Research, Development, Test, and Evaluation Activities Conducted within the Naval Surface Warfare Center Keyport Range Complex Extension

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

ACTION: Notice; receipt of applications for letters of authorization; request for comments and information.

SUMMARY: NMFS has received requests from the U.S. Navy (Navy) for authorizations for the take of marine mammals incidental to Navy research, development, test, and evaluation (RDT&E) activities within the Naval Sea Systems Command (NAVSEA) Naval Undersea Warfare Center (NUWC)

Keyport Range Complex and the associated proposed extensions in the State of Washington for the period beginning September 25, 2009 and ending September 24, 2014. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's requests for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's applications and requests.

DATES: Comments and information must be received no later than August 4, 2008.

ADDRESSES: Comments on the applications should be addressed to P. 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 *PR1.0648-XI50@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. Copies of the Navy's application may be obtained by writing to the address specified above (See **ADDRESSES**), telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713-2289, ext. 137.

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 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 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 if 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 May 15, 2008, NMFS received an application from the Navy requesting an authorization for the take of marine mammal species/stocks incidental to the proposed RDT&E activities within the NAVSEA NUWC Keyport Range Complex Extension over the course of 5 years. The Navy proposes to extend the Keyport Range Complex operating areas, which is composed of Keyport Range Site, Dabob Bay Range Complex (DBRC) Site, and Quinault Underwater Tracking Range (QUTR) Site, outside existing range boundaries. This proposed extension would allow the Navy to support existing and future range activities including evolving manned and unmanned vehicle program needs in multiple marine environments. With the proposed extension of the Keyport and QUTR range sites, the range sites could support more activities, which include increases in the numbers of tests and days of testing. No additional operational tempo is proposed for the DBRC Site. Existing and proposed additional range activities include testing, training, and evaluation of system capabilities such as guidance, control, and sensor accuracy of manned and unmanned vehicles in multiple marine environments (e.g., differing depths, salinity levels, temperatures, sea states, etc.).

Current activities within the Keyport Range Complex Extension are listed below:

Range Activities: Active Acoustic Devices

(1) General Range Tracking:

General range tracking on the instrumented ranges and portable range sites have active output in narrow

frequency bands. Operating frequencies are 10 to 100 kHz. At the Keyport Range Site, the sound pressure level (SPL) at the source (source level) is less than 195 dB re 1 microPa-m. At the DBRC and QUTR sites, the source level for general range tracking is less than 203 dB re 1 microPa-m. Range pingers are active acoustic devices that allow each of the in-water platforms on the range (e.g., ships, submarines, target simulators, and exercise torpedoes) to be tracked by the Keyport Range Complex Extension hydrophones. In addition to passively tracking the pinger signal from each range participant, the range transducer nodes also are capable of transmitting acoustic signals for a limited set of functions. These functions include submarine warning signals, acoustic commands to submarine target simulators (acoustic command link), and occasional voice or data communications (received by participating ships and submarines on range).

(2) UUV Tracking Systems

UUV tracking systems operate at frequencies of 10 to 100 kHz with source levels less than 195 dB re 1 microPa-m at all range sites.

(3) Torpedo Sonars

Toped sonars are used for several purposes including detection, classification, and location and vary in frequency from 10 to 100 kHz. The source level of a torpedo sonar is generally less than 233 dB re 1 microPa-m. Torpedoes are the primary weapon used by surface ships, aircraft, and submarines. The guidance systems of these weapons can be autonomous or electronically controlled from the launching platform through an attached wire. The autonomous guidance systems are acoustically based. They operate either passively, exploiting the emitted sound energy by the target, or actively, ensonifying the target and using the received echoes for guidance.

(4) Range Targets and Special Tests

Range targets and special test systems are within the 5 to 100 kHz frequency range at the Keyport Range Site with a source level of less than 195 dB re 1 microPa-m. At the DBRC and QUTR sites, the source level is less than 238 dB re microPa-m.

(5) Special Sonars

Special sonars can be carried as a payload on a UUV, suspended from a range craft, or set on or above the sea floor. These can vary widely from 100 kHz to a very high frequency of 2,500 kHz for very short range detection and

classification. The source level of these acoustic sources is less than 235 dB re 1 microPa-m.

(6) Sonobuoys and Helicopter Dipping Sonar

Aircraft sonar systems that would operate in the Keyport Range Complex Extension include sonobuoys and dipping sonar. Sonobuoys and helicopter dipping sonars are deployed from Fleet aircraft and operate at frequencies of 2 to 20 kHz with source levels of less than 225 dB re 1 microPa-m. Dipping sonars are active or passive devices that are lowered on cable by helicopters or surface vessels to detect or maintain contact with underwater targets. Sonobuoys may be deployed by maritime patrol aircraft or helicopters; dipping sonars are used by carrier-based helicopters. A sonobuoy is an expendable device used by aircraft for the detection of underwater acoustic energy and for conducting vertical water column temperature measurements. Most sonobuoys are passive, but some can generate active acoustic signals, as well as listen passively. During RDT&E, these systems active modes are only used briefly for localization of contacts and are not used in primary search capacity.

(7) Side Scan Sonar

Side scan sonar is used for mapping, detection, classification, and localization of items on the sea floor such as cabling, shipwrecks, and inert mine shapes. It is high frequency, typically 100 to 700 kHz, using multiple frequencies at one time with a very directional focus. Source levels are less than 235 dB re 1 microPa-m. Side-scan and multibeam sonar systems are towed or mounted on a test vehicle or ship.

(8) Other Acoustic Sources

Other acoustic sources include acoustic modems, targets, aids to navigation, subbottom profilers, engine noise, countermeasures, etc. which uses few pulses from 10 to 300 kHz at source levels less than 220 dB re 1 microPa-m. An acoustic modem is a communication device that transmits an acoustically encoded signal from a source to a receiver. Acoustic modems emit a few pulses from 10 to 300 kHz at source levels less than 210 dB re 1 microPa-m. Target simulators operate at frequencies of 100 Hz to 10 kHz at source levels of less than 170 dB re 1 microPa-m. Aids to navigation transmit location data from ship to shore and back to ship so the crew can have real-time detailed location information. This is typical of the range equipment used in support of testing. New aids to navigation can also

be deployed and tested using 70–80 kHz at source levels less than 210 dB re 1 microPa-m. Subbottom profilers are often commercial off-the-shelf sonars used to determine characteristics of the sea bottom and subbottom such as mud above bedrock or other rocky substrate. These operate at 2–7 kHz at source levels less than 210 dB re 1 microPa-m, and 35–45 kHz at less than 220 dB re 1 microPa-m. There are many sources of engine noise including but not limited to surface vessels, submarines, torpedoes, and other UUVs. The acoustic energy is usually from 50 Hz to 10 kHz at source levels less than 150–170 dB re 1 microPa-m. Targets, both mobile and stationary, may simulate engine noise at these same frequencies.

Range Activities: Non-Acoustic Activities

(1) Magnetic Sensors

A magnetic sensor may be used to sense the magnetic field of an object such as a surface vessel, a submarine, or a buried target. Magnetic sensors may be part of a UUV payload or they may be stationary on the sea floor.

(2) Biologic Sensors

Biologic sensors have been used historically to determine marine characteristics such as conductivity, temperature, and pressure of water to determine sound velocity in water. This provides information about how sound will travel through the water. These sensors can be deployed over the side from a surface craft, suspended in water, or carried on a UUV.

(3) LIDAR

Laser imaging detection and ranging (LIDAR) is used to measure distance, speed, rotation, and chemical composition and concentration of remote solid objects such as a ship, or diffuse objects such as a smoke plume or cloud. LIDAR uses the same principle as radar.

(4) Inert Mine Hunting & Inert Mine Clearing Exercises

Associated with testing, a series of inert mine shapes are set out in a uniform or random pattern to test the detection, classification and localization capability of the system under test. They are made from plastic, metal, and concrete and vary in shape. An inert mine shape can measure about 10 by 1.75 ft (3 by 0.5 m) and weigh about 800 lbs (362 kg). Inert mine shapes either sit on the bottom or are tethered by an anchor to the bottom at various depths. Inert mine shapes can be placed approximately 200–300 yards (183–274 m) apart using a support craft and

remain on the bottom until they need to be removed. All major components of all inert mine systems used as “targets” for inert mine hunting systems are removed within 2 years.

Increased Activities due to Range Expansion

The proposed range expansion would expend the existing activities for each of the following range sites. For detailed information regarding the platform/system use and projected annual days of use at each range site, please refer to Tables 1–4 and 2–1 of the LOA application.

(1) Keyport Range Site:

Range boundaries of the Keyport Range Site would be extended to the north, east and south, increasing the size of the range from 1.5 nm² to 1.7 nm² (5.1 km² to 5.9 km²). The average annual days of use of the Keyport Range Site would increase from the current 55 days to 60 days.

(2) DBRC Site:

The southern boundary of DBRC Site would be extended to the Hamma Hamma River and its northern boundary would be extended to 1 nm (2 km) south of the Hood Canal Bridge (Highway 104). This expansion would increase the size of the current operating area from approximately 32.7 nm² (112.1 km²) to approximately 45.7 nm² (150.8 km²) and would afford a straight run of approximately 27.5 nm (50.9 km). There would be no change in the number and types of activities from the existing range activities at DBRC Site, and no increase in average annual days of use due to the range expansion at this site.

(3) QUTR Site:

Range boundaries of QUTR Site would be extended to coincide with the overlying special use airspace of W-237A plus locate a 7.8 nm² (26.6 km²) surf zone at Pacific Beach. The total range area would increase from approximately 48.3 nm² (165.5 km²) to approximately 1,839.8 nm² (6,310.2 km²). The average annual number of days of use for offshore activities would increase from 14 days/year to 16 days/year in the offshore area. The average annual days of use for surf-zone activities would increase from 0 days/year to 30 days/year.

The Navy states that these range activities may cause various impacts to marine mammal species in the NAVSEA NUWC Keyport Range Complex Extension operation areas. Taking into account implementation of monitoring and mitigation measures described in the Navy's *Range Operating Policies*

and Procedures Manual (ROP), the Navy estimates that various numbers of harbor porpoise (*Phocoena phocoena*), northern fur seals (*Callorhinus ursinus*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), and harbor seals (*Phoca vitulina*) would be taken by Level B harassment, including temporary threshold shift (TTS) in hearing sensitivities of harbor seals.

Proposed Monitoring and Mitigation Measures

The NUWC Keyport Range Complex Extension proposed a list of monitoring and mitigation measures to reduce potential adverse impacts to marine mammals.

The Navy states that mitigating potential impacts to the environment during RDT&E activities in the Keyport Range Complex Extension would be accomplished through strict adherence to the ROP, which would be followed for all Keyport range activities. The ROP is designed to protect the health and safety of the public and Navy personnel and equipment as well as to protect the marine environment. The policies and procedures address issues such as safety, development of approved run plans, range operation personnel responsibility, deficiency reporting, all facets of range activities, and the establishment of "exclusion zones" to ensure that there are no marine mammals within a prescribed area prior to the commencement of each in-water exercise within the Keyport Range Complex Extension. All range operators are trained by NOAA in marine mammal identification, and active acoustic activities are suspended or delayed if whales, dolphins, or porpoises (cetaceans) are observed within range areas. Table 11-1 of the application provides a summary of selected ROP sections and other range procedures which apply to current Keyport Range Complex activities at the Keyport Range Site, DBRC Site, and QUTR Site, and also apply to proposed activities within the current and proposed range site boundaries. The policies and procedures outlined in the ROP are continually being updated as new environmental and health and safety information becomes available.

In particular, the following marine mammal protection measures are implemented per ROP for current activities, and these would also apply for the proposed activities within the Keyport Range Complex Extension:

(1) Range activities shall be conducted in such a way as to ensure marine mammals are not harassed or harmed by human-caused events.

(2) Marine mammal observers are on board ship during range activities. All range personnel shall be trained in marine mammal recognition. Marine mammal observer training is normally conducted by qualified organizations such as NOAA/National Marine Mammal Lab (NMML) on an as needed basis.

(3) Vessels on a range use safety lookouts during all hours of range activities. Lookout duties include looking for any and all objects in the water, including marine mammals. These lookouts are not necessarily looking only for marine mammals. They have other duties while aboard. All sightings are reported to the Range Officer in charge of overseeing the activity.

(4) Visual surveillance shall be accomplished just prior to all in-water exercises. This surveillance shall ensure that no marine mammals are visible within the boundaries of the area within which the test unit is expected to be operating. Surveillance shall include, as a minimum, monitoring from all participating surface craft and, where available, adjacent shore sites.

(5) The Navy shall postpone activities until cetaceans leave the project area. When cetaceans have been sighted in an area, all range participants increase vigilance and take reasonable and practicable actions to avoid collisions and activities that may result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

(6) An "exclusion zone" shall be established and surveillance will be conducted to ensure that there are no marine mammals within this exclusion zone prior to the commencement of each in-water exercise. For cetaceans, the exclusion zone must be at least as large as the entire area within which the test unit may operate, and must extend at least 1,000 yards (914.4 m) from the intended track of the test unit. For pinnipeds, the exclusion zone extends out 100 yards (91 m) from the intended track of the test unit.

(7) Vessels approach within 100 yards (91 m) of marine mammals shall be followed to the extent practicable considering human and vessel safety priorities. All Navy vessels and aircraft, including helicopters, are expected to comply with this directive. This includes marine mammals hauled-out on islands, rocks, and other areas such as buoys.

(8) In the event of a collision between a Navy vessel and a marine mammal, NUWC Keyport activities will notify the

Navy chain of Command, which would result in notification to NMFS.

(9) Passive acoustic monitoring shall be utilized to detect marine mammals in the area before and during activities, especially when visibility is reduced.

(10) Procedures for reporting marine mammal sightings on the Keyport Range Complex shall be promulgated, and sightings shall be entered into the Range Operating System and forwarded to NOAA/NMML Platforms of Opportunity Program.

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 request will be considered by NMFS in developing, if appropriate, regulations governing the incidental take of marine mammals and issuance of letters of authorization.

Dated: June 27, 2008.

James H. Lecky,

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

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CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Information Collection Requirements for Sound Levels of Toy Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The information collection requirements in a Commission Product Safety Commission (CPSC or Commission) toy cap rule have been approved by the Office of Management and Budget (OMB) under OMB control number 3041-0080. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission now requests comments on a proposed extension of approval of those information collection requirements for a period of three years from the date of approval by the OMB.

A regulation codified at 16 CFR 1500.18(a)(5) bans toy caps producing peak sound levels at or above 138 decibels (dB). Another regulation codified at 16 CFR 1500.86(a)(6) exempts toy caps producing sound levels between 138 and 158 dB from the banning rule if they bear a specified warning label and if firms intending to distribute such caps: (1) Notify the