

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648-XA832

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Missile Launch Operations From San Nicolas Island, CA**

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Notice of issuance of a Letter of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a letter of authorization (LOA) has been issued to the Naval Air Warfare Center Weapons Division, U.S. Navy (Navy), to take three species of seals and sea lions incidental to missile launch operations from San Nicolas Island (SNI), California, a military readiness activity.

**DATES:** Effective December 1, 2012, through November 30, 2013.

**ADDRESSES:** The LOA and supporting documentation are available for review on the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

**FOR FURTHER INFORMATION CONTACT:** Michelle Magliocca, Office of Protected Resources, NMFS, 301-427-8401, or Monica DeAngelis, NMFS, 562-980-3232.

**SUPPLEMENTARY INFORMATION:****Background**

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS 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 geographical region if certain findings are made and regulations are issued. However, for military readiness activities, the National Defense Authorization Act (Public Law 108-136) removed the “small numbers” and “specified geographical region” limitations. Under the MMPA, the term

“take” means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of northern elephant seals (*Mirounga angustirostris*), Pacific harbor seals (*Phoca vitulina richardsi*), and California sea lions (*Zalophus californianus*), by harassment, incidental to missile launch operations at SNI, were issued on June 2, 2009, and remain in effect until June 2, 2014 (74 FR 26580, June 3, 2009). For detailed information on this action, please refer to that document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during missile launches at SNI.

**Summary of Request**

On October 9, 2012, NMFS received a request for an LOA renewal pursuant to the aforementioned regulations that would authorize take of pinnipeds, by harassment, incidental to missile launch operations from SNI. The Navy requested an 18-month LOA to cover the remaining time under their current regulations. However, the regulations specify “annual” LOAs; therefore, NMFS can only issue an LOA not to exceed a one-year period.

**Summary of Activity Conducted During 2011–2012**

As described in the Navy’s annual monitoring report, the missile launch operations conducted by the Navy during this time period were within the scope and amounts authorized by the 2011–2012 LOA, and the levels of take remain within the scope and amounts contemplated by the final rule and detailed in the 2011–2012 LOA. A total of 11 launches took place using four missile types on seven different days.

**Planned Activities and Estimated Take for 2011–2012**

During 2012–2013, the Navy expects to conduct the same type and amount of launches identified in the 2011–2012 LOA. Therefore, NMFS is authorizing the same amount of take authorized in 2011.

**2011–2012 Monitoring**

The Navy conducted the monitoring required by the 2011–2012 LOA and described in the Monitoring Plan, which included acoustic monitoring of missile launches and visual monitoring of pinnipeds. The Navy submitted their 2011–2012 Monitoring Report, which is posted on NMFS’ Web site (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>), within the required timeframe. In summary, visual monitoring shows that pinnipeds startled and moved in response to launch sounds and most individuals returned to normal behavior within 5 minutes.

**Authorization**

The Navy complied with the requirements of the 2011–2012 LOA and NMFS has determined that there was no evidence of pinniped injuries or mortalities related to vehicle launches from SNI. The Navy’s activities fell within the scope of the activities analyzed in the 2009 rule, and the observed take did not exceed that authorized in the 2011–2012 LOA. NMFS has determined that this action continues to have a negligible impact on the affected species or stocks of marine mammals on SNI. Accordingly, NMFS has issued an LOA to the Navy authorizing the take of marine mammals, by harassment, incidental to missile launch activities from SNI. The provision requiring that the activities not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this action.

Dated: October 24, 2012.

**Helen M. Golde,**

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

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