Finding of No Significant Impact for the Environmental Assessment on the Issuance of Regulations to Take Marine Mammals by Harassment Incidental to U.S. Navy Missile Launch Activities at San Nicolas Island, California

National Marine Fisheries Service

BACKGROUND

The National Marine Fisheries Service (NMFS) received an application from the U.S. Navy (Navy), Naval Air Warfare Center Weapons Division (NAWCWD), requesting that we, NMFS, issue new 5-year regulations and a Letter of Authorization (LOA) under the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1631 *et seq.*) to authorize the unintentional taking of marine mammals incidental to missile launches from San Nicolas Island (SNI), California, from June 2014 through June 2019. NMFS previously issued regulations governing these activities on June 2, 2009. The current rulemaking expires on June 2, 2014. The types of activities for which the Navy is seeking authorization in its application are similar to those authorized by the current regulations and LOAs. These activities are classified as military readiness activities.

Under the MMPA, we shall grant authorization if we find that the taking will have a negligible impact on the affected species or stocks of marine mammals, will not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses (where relevant), and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has analyzed those requirements for this authorization for the take of three species of marine mammals, by Level B harassment only, incidental to the preferred alternative for the Navy's missile launch activities at SNI, for the period of June 2014 to June 2019.

In accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations in 40 CFR §§ 1500-1508, and National Oceanographic and Atmospheric Administration (NOAA) Administrative Order (NAO) 216-6, we completed an Environmental Assessment (EA) titled, *Issuance of Regulations to Take Marine Mammals by Harassment Incidental to U.S. Navy Missile Launch Activities at San Nicolas Island, California*. We have prepared this Finding of No Significant Impact (FONSI) to evaluate the significance of the impacts of our selected alternative—Alternative 1 (Preferred Alternative) titled, "Issuance of Five-year Regulations and LOA to the Navy with Required Mitigation, Monitoring, and Reporting Requirements," and our conclusions regarding the impacts related to our proposed action. This EA and FONSI support the issuance of five-year regulations for Navy activities similar to those authorized for a five-year period during 2009 through 2014, which were covered in a 2009 EA and FONSI.

ANALYSIS

NAO 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, CEQ regulations at 40 CFR §1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below this section is relevant to making a finding of no significant impact. We have considered

each criterion individually, as well as in combination with the others. We analyzed the significance of this action based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act and identified in fishery management plans?

Response: NMFS does not anticipate the proposed activity would cause substantial damage to the ocean and coastal habitats. The proposed launch vehicles are launched on land, and the aircraft activities would occur above the water. The EA evaluates the affected environment and potential effects of the Navy action, indicating that the sounds produced by the launch vehicles and the aircraft operations only have the potential to affect pinnipeds hauled out on land. These temporary acoustic activities would not affect physical habitat features, such as substrates and water quality. With respect to the coastal locations that provide important pinniped habitat, the effects on pinnipeds themselves can result in flushing from haul-out sites and would be the same as caused by normal hauling out and entering into the water. Therefore, substantial damage to these coastal habitats would not occur.

2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: NMFS does not expect the proposed action to have a substantial impact on biodiversity or ecosystem function within the affected area. The impacts of the proposed action on marine mammals are specifically related to the sounds produced by the launch vehicles and aircraft, and these are expected to be temporary in nature, affect pinnipeds hauled out on land, and not result in substantial impacts to marine mammals or to their role in the ecosystem. The rulemaking anticipates, and will authorize, the Level B harassment only, in the form of temporary behavioral disturbance and temporary threshold shift (TTS), of three species of pinnipeds. However, neither serious injury nor mortality is anticipated or authorized, and the Level B harassment is not expected to affect biodiversity or ecosystem function. NMFS' evaluation indicates that any direct or indirect effects of the action would not result in a substantial impact on biodiversity or ecosystem function.

3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: NMFS does not expect this action to have a substantial adverse impact on public health or safety. Humans are excluded from launch areas for the hours immediately preceding, during, and just after the launches pursuant to Navy policy.

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: Since no species listed as either threatened or endangered under the Endangered Species Act (ESA) are expected to be affected by the specified activities, NMFS has determined that a Section 7 consultation is not required. There is no ESA critical habitat in the action area.

It should be noted, however, that SNI is the location to which southern sea otters have been translocated in an attempt to establish a population separate from that in central California. This experimental population may be affected by the target and missile launch activities at SNI. Sea otters are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). Under Public Law 99-625, this experimental population of sea otters is treated as a proposed species for purposes of Section 7 when the action (as here) is defense related. Proposed species require an action agency to confer with NMFS or the USFWS under Section 7 of the ESA when the action is likely to jeopardize the continued existence of the species. The information available for the Navy's proposed activities or for NMFS' proposed action of promulgating five-year regulations and the subsequent issuance of an LOA to the Navy for those activities does not indicate that sea otters are likely to be jeopardized. Therefore, a consultation is not required.

NMFS has determined that the missile launch activities may result in some Level B harassment (in the form of short-term changes in behavior, temporary displacement from haul-out sites, or TTS) of three (non-ESA-listed) pinniped species. No serious injury or mortality is anticipated or authorized. Taking into account the mitigation measures that are planned (e.g., minimum altitudes for aircraft flight paths, except for emergencies or for real-time security incidents, from recognized seal haul-out sites and rookeries and limiting launches during pinniped pupping seasons on SNI), effects on marine mammals from the preferred alternative are expected to be limited to short-term behavioral changes, temporary displacement from haul-out sites, and TTS, falling within the MMPA definition of "Level B harassment". The take is anticipated to have a negligible impact on the affected species or stock. This determination will be assessed in more detail in the final rule for this action.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: The primary impacts to the natural and physical environment are expected to be acoustic and temporary in nature (and not significant), and not interrelated with significant social or economic impacts. Additionally, this action will not have a significant social or economic impact as the action is confined to military personnel and contractors. Issuance of the regulation and subsequent LOA will authorize the unintentional harassment of marine mammals incidental to specified launch activities, and this authorization is considered necessary for these activities to be conducted in a manner that is compliant with the MMPA. Additionally, implementation of the launch program on SNI would result in a short-term, temporary increase of personnel on the island. This is consistent with staffing fluctuations that normally occur on SNI. In addition to direct and indirect beneficial impacts on regional economic activity, such personnel changes can affect the quality and availability of community services and utilities. Therefore, issuance of the regulations is considered to have an indirect beneficial economic impact related to the ability to continue these activities.

6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: The effects of this action on the quality of the human environment are not likely to be highly controversial. NMFS has been issuing MMPA authorizations to the Navy to conduct these activities from SNI since 2001, which has allowed NMFS to develop relatively standard mitigation and monitoring requirements for these activities and to assess the effects with data from comprehensive monitoring reports. Rarely more than one or two public comments are received. NMFS published a Notice of Receipt of the Navy's application in the *Federal Register* on November 26, 2013 (78 FR 70537), which allowed the public to submit comments for up to 30 days from the date of publication of the notice. No comment letters were received during this period.

The proposed rule *Federal Register* notice (79 FR 13022, March 7, 2014) allowed the public to submit comments for up to 45 days from the date of publication of the notice. The only comments received on the proposed rule were sent by the Marine Mammal Commission (Commission) and one private citizen. These comments and NMFS' responses will be published in the final rule *Federal Register* notice. In addition, NMFS has incorporated the Commission's comments into the EA.

7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

Response: NMFS' promulgation of regulations and subsequent issuance of an LOA to the Navy to conduct its missile launch activities is not expected to impact any unique areas as described here. The Navy does not expect substantial impacts to unique areas, nor does NMFS expect the authorization to have a significant effect on marine mammals that may be important resources in such areas. To the extent that marine mammals are important features of these resource areas, the potential impacts on marine mammals might result in short-term behavioral effects to and TTS of pinnipeds on SNI, but no long-term displacement or permanent threshold shift in the hearing sensitivities of marine mammals, endangered species, or their prey is expected as a result of the action or the MMPA authorization. SNI is located near the Channel Islands National Marine Sanctuary. NMFS has contacted the National Ocean Service's Office of National Marine Sanctuaries (ONMS) regarding NMFS' proposed action of promulgating regulations and subsequent issuance of an LOA for the Navy's activities. ONMS determined that no further consultation was required by NMFS on its proposed action as it is not likely to result in substantial impacts to the sanctuary.

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: The effects of the action on the human environment are not likely to be highly uncertain or involve unique or unknown risks. The exact mechanisms of how different sounds may affect certain marine organisms are not fully understood, but there is no substantial dispute about the size, nature, or effect of this particular action. The mitigation and monitoring requirements required of the Navy on SNI are designed to ensure the least practicable adverse

impact on the affected species or stocks of marine mammals and also to gather additional data. For military readiness activities (as described in the National Defense Authorization Act), a determination of least practicable adverse impacts on a species or stock includes consideration, in consultation with the Department of Defense, of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. The mitigation and monitoring measures described in the EA will help reduce highly uncertain and unique and unknown risks to human life while still effecting the least practicable adverse impact on the affected species or stocks in the proposed action area. Lastly, NMFS has been authorizing take for these activities since 2001, and monitoring reports received pursuant to the requirements of the authorizations have not indicated resulting effects that were not anticipated or authorized.

9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: There are other military activities in Southern California that may result in the harassment of marine mammals. However, these activities, which are described in the cumulative impacts analysis in the EA (e.g., missile launch operations by the U.S. Air Force from Vandenberg Air Force Base and the Northern Channel Islands and Navy testing and training in the Southern California Range Complex), are generally separated both geographically and temporally; most are infrequent in occurrence and short-term in nature. In addition, all currently use mitigation and monitoring procedures, and measures are taken to minimize impacts to the lowest level practicable. As a result, the missile launch activities by the Navy in the proposed action area are not likely to have a significant cumulative effect on the marine environment when considered with these other actions.

This area is known for heavy commercial marine traffic. While ship strikes are potential sources of serious injury or mortality to large whales, the occurrence of ship strikes of pinnipeds is rare. Effects to pinnipeds from large commercial vessels are believed to be limited to acoustical harassment. Additionally, marine mammal research, geophysical seismic surveys, and other scientific research activities occur within the Pacific Ocean along the California coast. Results from research studies conducted in the area indicate that the activities only have temporary, short-term impacts on the behavior of the animals. Monitoring reports from scientific research studies conducted near pinniped haul-out sites indicate that the most common responses of the pinnipeds observed to date include brief startle reactions as noted by lifting of the head or movement of less than one meter (three feet) and flushing into the water. None of these activities result in the injury or mortality of the animals. The activities noted here are subject to implementing mitigation and monitoring measures to reduce impacts to marine life to the greatest extent practicable. Therefore, NMFS believes that this action is not likely to result in cumulatively significant impacts to individual marine mammals or marine mammal populations in the area.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: No. The proposed action and associated missile launch activities on SNI would not take place in any areas listed or eligible for listing in the National Register of Historic Places and would not cause loss or destruction of any significant cultural or historic resources.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: No. The proposed action would not remove nor introduce any species out of or into the local area. Furthermore, the proposed Navy missile launch activities would not involve marine traffic moving into the local area in a way that would spread non-indigenous species. Therefore, the proposed action and associated missile launch activities would not result in the introduction or spread of non-indigenous species.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response: This action will not set a precedent for future actions with significant effects or represent a decision in principle. NMFS' actions under sections 101(a)(5)(A) and (D) of the MMPA must be based on the best available information, which is continuously evolving. Moreover, each action for which an incidental take authorization is sought must be considered in light of the specific circumstances surrounding the action. Mitigation and monitoring may vary depending on those circumstances. As mentioned above, NMFS has issued MMPA authorizations to the Navy to conduct these activities from SNI since 2001. The activities requested for authorization for the period of 2014-2019 have no unique aspects that would suggest it be a precedent for any future actions.

13) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: No. The proposed Navy missile launch activities and NMFS' promulgation of regulations and subsequent issuance of an LOA would not result in any violation of Federal, State, or local laws for environmental protection.

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: No. NMFS conducted an analysis for the potential of cumulative adverse effects as a result of the Navy's missile launch activities from SNI in the EA. The proposed action does not target any marine mammal species, and NMFS has determined that it is not expected to result in any significant cumulative adverse effects on the species incidentally taken by harassment due to the Navy's military readiness activities from SNI. NMFS has also determined that there is no significant cumulative adverse effect on marine mammals as a result of past, present, and reasonably foreseeable future military activities in the action area. Past monitoring reports for scientific research activities and research seismic activities in the Pacific Ocean along the California coast have concluded that no marine mammals were taken beyond authorized harassment levels nor were significantly affected by these activities. The regulations

and LOA would authorize only the Level B harassment of marine mammals. Any harassment of these marine mammal species that may potentially occur would be short-term and minimal. Moreover, because of the monitoring and mitigation measures that will be required in the authorization, no serious injury or mortality is expected of any marine mammals in the proposed action area. Therefore, no cumulative adverse effects that could have a substantial effect on any species would be expected.

DETERMINATION

In view of the information presented in this document and the analyses contained in the supporting EA titled, *Issuance of Regulations to Take Marine Mammals by Harassment Incidental to U.S. Navy Missile Launch Activities at San Nicolas Island, California*, prepared by NMFS, it is hereby determined that the issuance of regulations and LOA for the take, by harassment, of marine mammals incidental to missile launch activities from SNI in accordance with Alternative 1 in NMFS' 2014 EA will not significantly impact the quality of the human environment, as described above and supported by NMFS' EA. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

PERRY GAYALDO

for Donna S. Wieting
Director, Office of Protected Resources,
National Marine Fisheries Service

MAY 27 2014
Date