

**Subpart 970.52—Contract Clauses for Management and Operating Contracts**

■ 5. Section 970.5223–5 is added to read as follows:

**§ 970.5223–5 DOE motor vehicle fleet fuel efficiency.**

As prescribed in 48 CFR 970.2307–2, insert the following clause in contracts providing for Contractor management of the motor vehicle fleet.

**DOE MOTOR VEHICLE FLEET FUEL EFFICIENCY**

(Oct 2003)

When managing Government-owned vehicles for the Department of Energy, the Contractor will conduct operations relating to such vehicles in accordance with the goals and requirements of *Executive Order 13149, Greening the Government Through Federal Fleet and Transportation Efficiency*, and implementing guidance contained in the document entitled *U.S. Department of Energy Compliance Strategy for Executive Order 13149* (April 2001) and future revisions of this compliance strategy that are identified in writing by the Contracting Officer. Section 506 of Executive Order 13149 exempts military tactical, law enforcement, and emergency vehicles from the requirements of the order.

[FR Doc. 03–22301 Filed 8–29–03; 8:45 am]

BILLING CODE 6450–01–P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 216**

[Docket No. 030421095–3202–02; I.D. 111902C]

RIN 0648–AQ61

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS, upon application from the U.S. Navy, is issuing regulations to govern the unintentional takings of small numbers of marine mammals incidental to missile launch operations from San Nicolas Island, CA (SNI). Issuance of regulations, and Letters of Authorization under these regulations, governing the unintentional incidental takes of marine mammals in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of

Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the Navy's missile launch activities as such authorization is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with this activity and prescribe methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, and on the availability of the species for subsistence uses.

**DATES:** Effective from October 2, 2003 through October 2, 2008.

**ADDRESSES:** A copy of the Navy application which contains a list of the references used in this document may be obtained by writing to Kaja A. Brix, Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226 or by telephoning the contact listed here (*see FOR FURTHER INFORMATION CONTACT*). The NMFS' Administrative Record for this action is available for viewing, by appointment during regular business hours, at the above address. Copies of letters, and documents are available, at copy cost, from this address.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this final rule should be sent to the Acting Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead (301) 713–2322, ext. 128.

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

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) 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.

Permission may be granted for periods of 5 years or less if the Secretary finds that the total taking will have a

negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. 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.

Under section 18(A), the MMPA defines “harassment” as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

**Summary of Request**

On October 23, 2002, NMFS received an application from the Naval Air Weapons Station, China Lake (NAWS), under section 101(a)(5)(A) of the MMPA, requesting an authorization, effective from August 26, 2003 through August 25, 2008, for the harassment of small numbers of three species of marine mammals incidental to target missile launch operations conducted by the Naval Air Warfare Center Weapons Division (NAWCWD) on SNI, one of the Channel Islands in the Southern California Bight. These regulations, if implemented, would allow NMFS to issue annual LOAs to NAWS, which would replace the process of issuance of annual Incidental Harassment Authorizations (IHAs) under section 101(a)(5)(D) of the MMPA (*see* 66 FR 41843, August 9, 2001; 67 FR 56271, September 3, 2002). This action is being undertaken in part based upon recommendations made by the Marine Mammal Commission, under section 202(a)(4) of the MMPA. The current IHA expires on August 20, 2003.

According to the NAWS' application, these missile launch operations may occur at any time during the year depending on test and training requirements and meteorological and logistical limitations. On occasion, two or three launches may occur in quick succession on a single day. NAWS anticipates an average of 40 launches annually of Vandal (or similar sized)