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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080603B]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Test Flight Activities from Vandenberg Air Force Base (Vandenberg), CA

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

ACTION: Notice of receipt of application for an incidental take authorization; request for comments and information.

SUMMARY: NMFS has received a request from the 30th Space Wing, U.S. Air Force (USAF) for the harassment of small numbers of pinnipeds incidental to space vehicle and test flight activities from Vandenberg Air Force Base, CA (Vandenberg) between January 1, 2004, and December 31, 2008. As a result of that request, NMFS is considering whether to authorize the incidental taking of marine mammals under Letters of Authorization (LOAs) for this activity. In order to issue LOAs, NMFS must determine that the total taking will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application.

DATES: Comments and information must be postmarked no later than October 20, 2003.

ADDRESSES: Comments should be addressed to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. A copy of the application may be obtained by writing to this address, or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, NMFS, 301-713-2322, ext 163.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs 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) 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 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 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." 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 September 2, 2003, NMFS received an application from the USAF, under section 101(a)(5)(A) of the MMPA, requesting authorization, effective from January 1, 2004, through December 31, 2008, for the harassment of small numbers of six species of marine mammals incidental to space vehicle and test flight activities conducted by the USAF on Vandenberg. The current regulations and LOA for the same activity will expire on December 31, 2003. New regulations, if implemented, would allow NMFS to continue issuing annual LOAs to USAF at Vandenberg. For detailed information please refer to the previous rulemaking (64 FR 9925, March 1, 1999) and recent LOAs issued on October 8, 1999 (64 FR 54866), June 14, 2000 (65 FR 37361), June 1, 2001 (66 FR 29774), January 22, 2002 (67 FR 2820), and May 12, 2003 (68 FR 25347).

Description of Activities

Vandenberg is the main west coast launch facility for placing commercial, government, and military satellites into polar orbit in expendable (unmanned) launch vehicles, and for testing and evaluation of intercontinental ballistic missiles and sub-orbital target and interceptor missiles. In addition to space vehicle and missile launches, there are security, aerial photography, training, transport, and search and rescue helicopter operations, and test and evaluation flights of fixed-wing aircraft.

Currently five space launch vehicle programs use Vandenberg to launch satellites into polar orbit, including the Atlas II, Delta II, Minotaur, Taurus, and Titan (II and IV). Two new programs, Evolved Expendable Launch Vehicle (EELV) and Space X, are scheduled to make their inaugural launches at Vandenberg in 2004 with a Boeing Delta IV vehicle. The EELV program will eventually replace many of the other programs, but initially there will be an overlap in the launches of each program. The Space X is a commercial program which will launch small payloads into low earth orbit.

There are a variety of small missiles launched from Vandenberg, including the Peacekeeper, Minuteman III, and several types of interceptor and target vehicles for the National Missile Defense program. The missile launch facilities are spread throughout North Vandenberg and are within 0.65 to 3.9 km (0.40 to 2.4 mi) of the recently occupied Lion's Head haul-out site and approximately 11 to 16.5 km (6.8 to 10.3 mi) north of the Spur Road and Purisima Point harbor seal haul-out sites.

A detailed description of the operations is contained in the USAF application (USAF, 2003) and in the July, 1997 Environmental Assessment, which are available upon request (see **ADDRESSES**). For more information regarding the National Environmental Policy Act documents on launch vehicles at Vandenberg, please contact the 30th Space Wing, U.S. Air Force, 30 CES/CEV, 806 13th Street, Suite 116, Vandenberg AFB, California, 93437.

Information Solicited

This document is being published in conformance with NMFS regulations implementing the incidental take program (50 CFR 216.104(b)(1)(ii)). NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations to allow the taking. NMFS