

Commission should adopt rules establishing an approval mechanism for new content protection and recording technologies to be used with demodulator products. Consumer electronics manufacturers may be required to seek such approval prior to implementing content protection and recording technologies in demodulator products. We welcome comment on modifications of this proposal to lessen any potential impact on small entities, while still remaining consistent with our policy goals. The Further NPRM also seeks comment on whether cable operators should be allowed to encrypt the digital basic tier in order to be able to give effect to the ATSC flag through cable operators' conditional access system. While we do not believe that this rule change would have a potential impact on small entities because it would be voluntary in nature, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate.

38. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 031112277-3277-01; I.D. 080603B]

RIN 0648-AR70

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

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

ACTION: Proposed rule; request for comment.

SUMMARY: NMFS has received a request from the 30th Space Wing, U.S. Air Force (USAF) for the authorization for the harassment of small numbers of pinnipeds incidental to space vehicle and test flight activities from Vandenberg Air Force Base, CA (VAFB) between January 1, 2004, and December

31, 2008. By this document, NMFS is proposing regulations that govern that take. In order to issue a take authorization, NMFS must determine that the total taking will have a negligible impact on the affected species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. NMFS must also prescribe the means of effecting the least practicable adverse impact on such species or stock and their habitats. NMFS invites comment on the application and proposed regulations.

DATES: Comments must be postmarked no later than December 18, 2003.

Comments will not be accepted if submitted via e-mail or the Internet.

ADDRESSES: Comments may be sent to and copy of the application may be obtained by writing to the 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 will be maintained at this address. Copies of documents are available at this address.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, National Marine Fisheries Service, 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 total 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, other means of effecting the least practicable adverse impact on the affected species or stocks and their habitats, 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 requesting authorization under section 101(a)(5)(A) of the MMPA to harass small numbers of marine mammals incidental to space vehicle and test flight activities conducted by the USAF on Vandenberg. NMFS proposes regulations to govern these authorizations, to be effective from January 1, 2004, through December 31, 2008. These regulations, if implemented, would allow NMFS to issue annual Letters of Authorization (LOAs) to the USAF. The current regulations and LOA expire on December 31, 2003. A detailed description of the operations is contained in the USAF application (USAF, 2003) which is available upon request (see **ADDRESSES**).

Description of the Specified Activity

VAFB is the main west coast launch facility for placing commercial, government, and military satellites into polar orbit on expendable (i.e. not reusable) launch vehicles, and for testing and evaluation of intercontinental ballistic missiles (ICBM) and sub-orbital target and interceptor missiles. In addition to space vehicle and missile launches, there are security and search and rescue helicopter operations, as well as test and evaluation flights of fixed-wing aircraft. The USAF expects to launch a total of 30 rockets and missiles from VAFB.

Currently five space launch vehicle programs use VAFB to launch satellites into polar orbit: Atlas IIAS, Delta II, Minotaur, Taurus, and Titan (II and IV). Two new programs, the Evolved Expendable Launch Vehicle (EELV) and Space X, are scheduled to make their inaugural launches at VAFB in 2004. The EELV will use a Boeing Delta IV vehicle and a Lockheed-Martin Atlas V. Eventually, these vehicles will replace