

whenever a sonic boom over 1.0 psf is predicted (using the most current sonic boom modeling programs) to impact one of the Islands. Monitoring will be conducted at the haul-out site closest to the predicted sonic boom impact area. Monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals.

Monitoring will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch.

Monitoring will include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Due to the large numbers of pinnipeds found on some beaches of SMI, smaller focal groups should be monitored in detail rather than the entire beach population. A general estimate of the entire beach population should be made once a day and their reaction to the launch noise noted. Photography or video will be used during daylight launches to document the behavior of mother-pup pairs or dependent pups during launch activities. During the pupping season of any species affected by a launch, follow-up surveys will be made within two weeks of the launch to ensure that there were no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 120 days of the launch.

Reporting Requirements

A report containing the following information must be submitted to NMFS within 120 days after each launch: (1) Date(s) and time(s) of each launch, (2) date(s), location(s), and preliminary findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations, and (3) results of the monitoring programs, including but not necessarily limited to (a) numbers of pinnipeds present on the haul-out prior to commencement of the launch, (b) numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise, (c) the length of time(s) pinnipeds remained off the haul-out or rookery, (d) the numbers of pinniped adults or pups that may have been injured or killed as

a result of the launch, and (4) any behavioral modifications by pinnipeds that likely were the result of launch noise or the sonic boom.

An annual report must be submitted no NMFS at the time of renewal of the LOA described in §216.127, that describes any incidental takings under an LOA not reported in the 120-day launch reports, such as the aircraft test program and helicopter operations and any assessments made of their impacts on hauled-out pinnipeds.

A final report must be submitted to NMFS no later than 180 days prior to expiration of these regulations. This report must summarize the findings made in all previous reports and assess both the impacts at each of the major rookeries and the cumulative impact on pinnipeds and any other marine mammals from Vandenberg activities.

Determinations

Based on the evidence provided in the application and this document, NMFS has preliminarily determined the requirements for authorizing the taking, by Level B harassment, of small numbers of marine mammals incidental to rocket and missile launch operations and aircraft overflights at VAFB have been satisfied. The total taking of marine mammals by Level B harassment from launch operations at VAFB over the period of these regulations will have no more than a negligible impact on affected marine mammal stocks. NMFS is assured that the space and missile test launch operations and aircraft overflights from VAFB off California will result, at worst, in temporary modifications in behavior by the affected pinnipeds and possible TTS in hearing of any pinnipeds that are in close proximity to a launch pad during launch. No take by injury and/or death is anticipated, and the potential for permanent hearing impairment is unlikely. NMFS has preliminarily determined that the requirements of section 101(a)(5)(A) of the MMPA have been met and the LOAs can be issued.

National Environmental Policy Act (NEPA)

The U.S. Air Force prepared an EA and issued a Finding of No Significant Impact in 1997, as part of its application for an incidental take authorization. NMFS is reviewing this EA and will prepare its own NEPA document before making a determination on the issuance of these regulations. A copy of the USAF 1997 EA for this activity is available upon request (see ADDRESSES).

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. Consultation will be concluded prior to promulgation of a final rule.

Coastal Zone Management Act Consistency

According to the USAF, it has received concurrence from the California Coastal Commission that the VAFB activities described in this document are consistent to the maximum extent practicable with the enforceable policies of the California Coastal Act.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the 30th Space Wing, U.S. Air Force and would have no effect, directly or indirectly, on small businesses. It may affect a small number of contractors providing services on the base, some of which may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations governing the taking. Because this document contains only a summary of the information provided in the documents available to the public (see ADDRESSES), commenters are requested to review these documents before submitting comments.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.