

Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David A. O'Connor, Holland & Knight, LLP, 2099 Pennsylvania Avenue, NW., Suite 100, Washington, DC 20006 (Counsel for KSAX-TV, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-207, adopted August 30, 2001, and released September 5, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Minnesota is amended by removing DTV Channel 14 and adding DTV Channel 36 at Alexandria.

Federal Communications Commission.

Barbara A. Kreisman,
Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01-23055 Filed 9-13-01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 010823214-1214-01; I.D. 080801A]

RIN 0648-AP47

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches at Vandenberg Air Force Base, CA

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

ACTION: Proposed rule; request for comment; proposed modification to current regulation.

SUMMARY: NMFS has received a request from the 30th Space Wing, U.S. Air Force for a modification to the regulations that govern, and the annual Letter of Authorization (LOA) that authorizes the take of small numbers of marine mammals incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA (VAFB). The 30th Space Wing requests that the current monitoring requirements be reduced so that biological monitoring is required only during the Pacific harbor seal pupping season (March 1 to June 30). By this document, NMFS is proposing to amend the regulations governing the take of marine mammals incidental to rocket launches at VAFB. NMFS, in issuing the regulation to which a modification is sought previously determined that rocket launches at VAFB would have a negligible impact on the affected species and stocks of marine mammals. In order to make the requested amendment to the regulation, NMFS must determine that the monitoring program at VAFB and the resultant data from pre- and post-launch marine mammal observations have effectively shown that the effects of rocket launch activities are negligible. NMFS invites comments on this proposed modification to the regulations.

DATES: Comments and information must be received no later than October 15, 2001.

ADDRESSES: Comments on the proposed amendment should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. Comments will not be accepted if submitted via e-mail or Internet. A copy of the modification request and SRS Technology's technical reports referenced in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona P. Roberts, (301) 713-2322, ext 106 or Christina Fahy, (562) 980-4023.

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 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 governing the taking are issued. Effective January 26, 1996, by Department Delegation Order 10-15, the Secretary of Commerce (Secretary) delegated authority to perform the functions vested in the Secretary as prescribed by the MMPA to the Administrator of the National Oceanic and Atmospheric Administration. On December 17, 1990, under NOAA Administrative Order 205-11, 7.01, the Under Secretary for Oceans and Atmosphere delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Permission for a take may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. As new information is developed, through monitoring, reporting, or research, NMFS may modify the regulations governing the take, in whole or in part, after notice and opportunity for public review.

Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test

operations, and helicopter operations at VAFB were published on March 1, 1999 (64 FR 9925), and remain in effect until December 31, 2003.

Summary of Request

On May 17, 2001, NMFS received a request from the 30th Space Wing for modification to the monitoring requirements of the 5-year programmatic regulations governing the incidental take of marine mammals during rocket launch operations at VAFB (50 CFR 216.120-128). The requested modification would reduce the current requirement to perform biological monitoring during all space vehicle launches at VAFB to only those space vehicle launches at VAFB during the Pacific harbor seal (*Phoca vitulina richardsi*) pupping season (March 1 to June 30). This request is based on a scientific research program and the bioacoustic monitoring of space vehicle launches conducted from 1997 through 2001 at VAFB (SRS Technologies, 2001). During the pupping season, biological monitoring remains important in verifying that female harbor seals spend the necessary time on the haul-out establishing the female-neonate bond, including nursing of their pups. Although harbor seal numbers are highest during molting (May through July), NMFS is not proposing biological monitoring during the molting season because research and monitoring over the last 4 years has shown that molting Pacific harbor seals entering the water because of a disturbance are not adversely affected in their ability to molt and do not become subject to thermoregulatory stress.

Current Monitoring Requirements and Requested Change

According to 50 CFR 216.125, LOAs that authorize the take of marine mammals incidental to space vehicle and test flight activities must designate qualified on-site individuals to conduct the following monitoring activities: (1) Observation of harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haul-out, for at least 72 hours prior to any planned launch and continue for a period of time not less than 48 hours subsequent to launching; (2) monitoring haul-out sites on the Northern Channel Islands if it is determined during consultation with NMFS that a sonic boom could impact those areas; (3) investigation of the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction; (4)

supplemental observation on VAFB and on the Northern Channel Islands, if indicated, with video-recording of mother-pup seal responses for daylight launches during the pupping season; and (5) conducting acoustic measurements of those launch vehicles not having sound pressure level measurements made previously.

The 30th Space Wing's request is to modify the first monitoring activity, observation of harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform on VAFB, to only require observations during the March 1 through June 30 harbor seal pupping season at VAFB.

Potential Effect of Modification to Monitoring Requirements on Pacific Harbor Seals at VAFB

Since modification of regulations, in whole or in part, must account for new information that has been collected through monitoring, reporting, or research (see 50 CFR 216.105 (c)), this preamble outlines the 30th Space Wing's research and monitoring results to date. Based on the scientific research program and bioacoustic monitoring of space vehicle launches conducted from 1997 through 2001 at VAFB, the 30th Space Wing asserts that the proposed modification to the monitoring requirements would not alter the negligible impact determination made by NMFS during the rule making (64 FR 9925, March 1, 1999). Rather, results of the 30th Space Wing's monitoring and research programs verify that the impacts of rocket launches have had a negligible impact on the harbor seals at VAFB. To verify the negligible impact determination made by NMFS as a prerequisite issuance of the final rule, the monitoring and research programs for VAFB were designed to detect changes in population parameters that indicate the overall condition of the potentially affected populations.

Results from the monitoring and research program include an analysis of indicators of population health at the regional and site-specific level. These indicators include: trends in abundance, pup production and mortality, daily and seasonal haul-out behaviors, measured sound exposure levels from space launch vehicles, behavioral response of Pacific harbor seals to launch noise, and Pacific harbor seal auditory brainstem response (ABR) measurements. For a more detailed account of the 30th Space Wing's research and monitoring programs and analysis of results, see SRS Technologies (2001).

Pacific Harbor Seal Scientific Research Program at VAFB

Data from the scientific research program conducted from 1997 through 2001 shows that the harbor seal population (including pups) at VAFB is increasing and doing as well or better than other harbor seal populations in California. The Pacific harbor seal is the main pinniped species found along the coastline of VAFB; there are 3 main harbor seal haul-out sites on the Base.

Trends in Abundance

The most recent estimate of the Pacific harbor seal population in California is 30,293 seals (Forney *et al.*, 2000). From 1979 to 1995, the California population increased at an estimated annual rate of 5.6 percent. The total population of harbor seals at VAFB is estimated to be 1,040 (775 on south VAFB and 265 on north VAFB), where the telemetry data for seals was used to correct for seals that were at sea during the census (SRS Technologies 2001). The harbor seal population has been increasing since 1997 at an annual rate of 12.6 percent. During this period, 5 to 7 space vehicle launches were conducted per year. Recent information by several researchers suggests that harbor seals are only decreasing in areas (e.g., San Miguel Island, California) where they are in competition for haul-out space with California sea lions (*Zalophus californianus*) and northern elephant seals (*Mirounga angustirostris*). California sea lions and northern elephant seals rarely haul-out at VAFB; therefore, competition for haul-out space should not be a factor in growth of the harbor seal population at VAFB.

Pup Production and Mortality

Annual harbor seal pup production at VAFB has increased by 5.3 percent annually. The only decrease in pup production occurred during the 1998 El Niño season when there was a 13.6 percent decrease from the previous year. In contrast to VAFB haul-out sites, pup production at Point Conception, CA (control site for the VAFB research program located 25 km south of the south VAFB haul-out site) showed an annual increase of 2.9 percent. This smaller percentage in annual pup production may be due to the fact that Point Conception has a limited area where females and pups can haul-out without being harassed by other seals or exposed to high tides and swells. There are more haul-out areas for females with pups at VAFB; therefore, only El Niño type disturbance should affect pup production at VAFB.

There are no documented occurrences of premature pupping at VAFB. In addition, the rate of pup mortality is low (0.6 pups per year), with none of the mortalities associated with any of the launch activities. Because the rough terrain along the VAFB coastline makes seal captures difficult, only 15 seal pups have been tagged; it has been difficult to estimate the long-term survival and recruitment rate of these pups. Based on telemetry data from the 15 tagged individuals and the behavior of pups at other sites, the 30th Space Wing estimates that approximately 54 percent of pups continue to haul-out at VAFB after weaning. There have been no tag returns of dead pups from VAFB, but some pups have been sighted up to 25 km away from the natal haul-out site. This suggests that mortality is low for weaned pups and that up to 35 percent of pups born at VAFB may migrate to other haul-out sites.

Daily and Seasonal Haul-out Behavior

At south VAFB, the daily haul-out behavior of harbor seals is dependent on time of day rather than tide height. The highest number of seals haul-out at south VAFB between 1100 through 1700 hours. At north VAFB haul-out sites, tide has a greater influence on the daily haul-out behavior of seals. Part of the reason for the tidal influence at north VAFB is the coastline's topography, which consists of low lying rocky areas that are substantially covered during high tides. In addition, haul-out behavior at all sites may be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more

time on shore nursing pups. The population is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance by a space vehicle launch or another source would not be adversely affected in their ability to molt and would not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

Pacific Harbor Seal Bioacoustic Monitoring at VAFB

Data from the bioacoustic monitoring of space vehicle launches conducted from 1997 through 2001 shows that haul-out behavior appears to be unaffected by launch operations, and there has been no temporary or permanent threshold shifts evidenced as a result of launch noise.

The types of sounds discussed in this document are airborne and impulsive. For this reason, the document references both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa²-second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second). Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa. However, the conversion from air to water intensities is more

involved (Buck, 1995) and is beyond the scope of this document.

In order to obtain details on the launch noise reaching harbor seals on VAFB, acoustic measurements were collected via two independent systems. The first system was designed to measure the low frequency sound associated with rocket launches. The second system was designed to measure background noise levels, ambient noise levels, and sound events that exceed a pre-set minimum sound level.

Measured Sound Exposure Levels from Space Launch Vehicles

To study the effect of noise on wildlife, the sound under study is typically measured using an A-weighted filter. A-weighting is a standard filter used in acoustics that approximates human hearing. However, because most animals do not have hearing similar to humans, A-weighting does not accurately represent sounds as heard by non-human mammals (SRS Technologies, 2001). Several researchers (Mohl, 1968; Terhune, 1991; Terhune and Turnbull, 1995; Kastak and Schusterman, 1998) have measured the in-air hearing in harbor seals. At 2000 hertz (Hz), harbor seals were found to have hearing sensitivities averaging around 30 dB. In contrast, the quietest sound a human can hear at 2000 Hz registers at -1 dB (Sivian and White, 1933). At 2000 Hz, A-weighting adds 1.2 dB to the sound being analyzed; therefore, A-weighting does not accurately represent sounds as heard by harbor seals. To gain a better understanding of how launch noise is perceived by harbor seals, SRS Technologies created a frequency-weighting filter, similar to what A-weighting is for humans, based on the in-air hearing ability of harbor seals (SRS Technologies, 2001).

Acoustical measurements have been collected and analyzed for 21 space vehicle launches of 7 different types of vehicles using both A-weighted and harbor-seal weighted filters. The average measurements are shown in Table 1:

Table 1

Type	Distance from Haul-out (km/mi)	Average A-weighted Sound Exposure Level (dB)	Harbor seal-weighted Sound Exposure Level (dB)
Athena	2.8/1.7	107.5	68.3
Minotaur	2.3/1.4	106.2	67.3
Titan IV	8.5/5.3	100.2	58.9
Taurus	0.55/0.34	125.2	89.8
Delta II	2.0/1.2	114.9	78.6
Minuteman III	15.6/9.7	88.7	42.3
Atlas	11.0/6.8	86.1	47.3

Behavioral Response of Pacific Harbor Seals to Launch Noise

During the biological monitoring at VAFB, the response of harbor seals to rocket launch noise varied depending on the intensity of noise and the age of the seal. When launch noise was below an A-weighted sound exposure level of 100 decibels (dBA)(re 20 micro-Pa²-second), observations showed that not all seals fled the haul-out site and those that remained were exclusively adults. Given the high degree of site fidelity among adult harbor seals, it is likely that those seals that remained on the haul-out site during rocket launches had previously been exposed to launches. It is possible that adult seals have become acclimated to the launch noise and react differently than younger inexperienced seals. Of the 20 seals (adult and younger) tagged at VAFB, 8 (40 percent) were exposed to at least one launch disturbance and continued to return to the same haul-out site. Three of these tagged seals were exposed to 2 or more launch disturbances. Six (75 percent) of the tagged seals exposed to launch noise appeared to remain in the water adjacent to the haul-out site and then returned to shore within 2 to 22 minutes after the launch. The 2 tagged seals that left the haul-out site area after the launch had been on shore for at least 6 hours subsequent to the launch and returned to the haul-out site in 24 hours.

ABR Measurements

In order to further determine if harbor seals experience any change in their hearing sensitivity as a result of launch noise, the acoustic contractor conducted ABR testing on 10 harbor seals prior to and after the launches of 3 Titan IV rockets, a vehicle type with one of the loudest harbor seal-weighted SELs (see table above). Detailed analysis of the ABR measurements showed that there were no detectable changes in the seals' hearing sensitivity as a result of the launch noise. However, the 2 to 3.5 hour delay in ABR testing post-launch could mean that the seals had recovered from a temporary threshold shift (TTS) before the testing could begin. However, as there were no detectable changes in the hearing sensitivity of these animals when they were tested after the delay, the 30th Space Wing concludes, with confidence, that the animals did not have permanent hearing changes due to exposure to the launch noise from the Titan IV rockets.

Preliminary Conclusions

As outlined in this preamble, results of on-going, long-term monitoring efforts designed to track trends in haul-

out patterns and seal distribution at VAFB show that the harbor seal population at VAFB is increasing and doing as well or better than other harbor seal populations in California. Acoustic measurements in conjunction with biological monitoring of haul-out sites and tagged seals over these same 4 years, suggest that the haul-out behavior of harbor seals is unaffected by launch operations. This data also provides conclusive evidence that no permanent hearing damage has resulted from space vehicle launches at VAFB. This new information obtained through monitoring, reporting, and research verifies NMFS' previous negligible impact determination by showing that the level, manner, and effects of the marine mammal takes are so small in number that they are inconsequential to the abundance, distribution, and productivity of marine mammal populations in California (Swartz and Hofman, 1991). Therefore, NMFS has preliminarily concluded that the impact of amending the current regulations to require monitoring observations only during the harbor seal pupping season at VAFB is *conclusion Solicited* stent with NMFS' March 1, 1999 negligible impact determination (64 FR 9925).

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the proposed amendment to regulations. 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.

Classification

This action is not significant for purposes of Executive Order 12866. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration, when the original rule was proposed in 1998 (63 FR 39055, July 21, 1998), that, if adopted, the rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. The rule only affects the U.S. Air Force, large defense companies, and an undetermined number of contractors providing services related to the launches, including the monitoring of launch impacts on marine mammals. Some of the affected contractors may be small businesses. The economic impact on these small businesses depends on

the award of contracts for such services. The economic impact cannot be determined with certainty, but will either be beneficial or have no effect, directly or indirectly, on small businesses. Because of this classification, a regulatory flexibility analysis was neither required nor prepared. This action does not alter those conclusions.

National Environmental Policy Act (NEPA)

The U.S. Air Force prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact, as part of its request for a small take authorization in 1997. This EA contains information incorporated by reference in the application that is necessary for determining whether the activities proposed for receiving small take authorizations are having a negligible impact on affected marine mammal stocks. NMFS adopted the U.S. Air Force EA as its own as provided by 40 CFR 1506.3. In the final rule for this activity (64 FR 9925, March 1, 1999), NMFS found that the issuance of regulations and LOAs to the Air Force would not result in a significant environmental impact on the human environment and that it would be unnecessary to either prepare its own NEPA documentation, or to recirculate the Air Force EA for additional comments. This action is within the scope of the EA and does not alter its conclusions.

List of Subjects in 50 CFR Part 216

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

For the reasons discussed in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.125, paragraph (b) (1) is revised to read as follows:

§ 216.125 Requirements for monitoring and reporting.

* * * * *

(b) * * *

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another

nearby haulout, for at least 72 hours
prior to any planned launch occurring
during the harbor seal pupping season
(1 March through 30 June) and continue

for a period of time not less than 48
hours subsequent to launching.

* * * * *

Dated: September 7, 2001.

John Oliver,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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