

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

[Docket No. 011011247-1247-01; I.D. 082701E]

RIN 0648-AP62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches from the Kodiak Launch Complex, Kodiak Island, AK

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

ACTION: Notice of receipt of a petition for regulations and an application for a small take exemption; request for comment and information.

SUMMARY: NMFS has received a request from the Alaska Aerospace Development Corporation (AADC) for a Letter of Authorization (LOA) to take small numbers of marine mammals incidental to rocket launches from the Kodiak Launch Complex (KLC), Kodiak Island, AK. In order to issue an LOA, regulations must first be established. As a result of that request, NMFS is considering whether to propose regulations that would authorize the incidental taking of a small number of marine mammals. In order to issue such regulations, NMFS must determine that these takings 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 marine mammal species or stocks for subsistence uses. NMFS invites comments and suggestions on the content of the regulations.

DATES: Comments and information must be received no later than December 5, 2001.

ADDRESSES: Comments 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 application 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 Brad Smith, (907) 271-3023.

SUPPLEMENTARY INFORMATION:**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct 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 either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review and comment.

Permission 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. 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." As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review.

Summary of Request

On July 26, 2001, NMFS received a request from AADC for an LOA to take, by harassment, small numbers of marine mammals, specifically Steller sea lions (*Eumetopias jubatus*), incidental to the launch of rockets from KLC on Kodiak Island, Alaska.

Specified Activities and Geographic Area

KLC is a commercial rocket launch complex owned and operated by the State of Alaska through AADC. It occupies 43 acres (174 kilometers, km²) within a 3,100 acre (12,545 km²) parcel of state-owned lands on the eastern side of Kodiak Island on the Narrow Cape peninsula. KLC was designed to accommodate a variety of small, solid rocket motors including such vehicles as the Minuteman II, Taurus, Conestoga, and Athena (Lockheed Martin Launch Vehicle). The largest vehicle that can be launched from KLC is the Athena-2 (Lockheed Martin Vehicle-2).

To date, three rockets have been launched from KLC. The first two launches (November 1998 and September 1999) were part of the U.S. Air Force (USAF) atmospheric interceptor technology (ait) program and the third (March 2001) was part of the USAF Quick Reaction Launch Vehicle (QRLV) program. All three launches were done in support of suborbital Department of Defense (DoD) missions and involved very small vehicles composed of motors from decommissioned USAF Minuteman I or II launch vehicles and a Castor IV motor.

The facility is licensed to launch up to nine rockets per year, and has two more scheduled launches in 2001. The first 2001 launch will be an orbital commercial space launch of an Athena I and the second 2001 launch will be a DoD Strategic Target System (STARS) launch under the auspices of the U.S. Army Space and Missile Defense Command. STARS vehicles will include first- and second-stage Polaris A3 boosters and a third-stage Orbus-1 booster. Three launches are anticipated in 2002, one in the USAF's QRLV program and two in the U.S. Army STARS program.

Launch operations at KLC are authorized under license from the Federal Aviation Administration, Office of Associate Administrator for Commercial Space Transportation (AST) in accordance with the facility's Environmental Assessment (EA) and stipulations in the EA's Finding of No Significant Impact (FONSI, 61 FR 32884, June 25, 1996). These stipulations included a requirement to develop a Natural Resource Management Plan to address monitoring and mitigation activities for protected species in the area. This plan was developed in coordination with NMFS utilizing comparison of anticipated sound pressure levels from rocket motors to be launched from KLC with documented marine mammal disturbance responses to such noise.

Anticipated Impacts on Marine Mammals and Their Habitat

Launch operations are a major source of noise. The operation of launch vehicle engines produces significant sound levels. Generally, four types of noise occur during a launch. They are: (1) combustion noise from launch vehicle chambers; (2) jet noise generated by the interaction of the exhaust jet and the atmosphere; (3) combustion noise from the post-burning of combustion products; and (4) sonic booms.

The Natural Resource Management Plan includes an Environmental

Monitoring Plan that requires monitoring of Steller sea lions be done at the seasonally occupied (during late June to early October only), non-breeding haul-out on Ugak Island. Specifically, the Monitoring Plan requires that AADC conduct pre- and post-launch aerial surveys, as well as real-time video monitoring and rocket motor noise measurements on the Ugak Island Steller sea lion haul-out. The Ugak haul-out is located approximately 2 miles (3.2 km) from Narrow Cape and about 3.5 miles (5.6 km) from the launch pad on a narrow sand spit on the north side of the Island facing the KLC. This is the only haul-out site within the Narrow Cape region that has the potential to be impacted by the sights and sounds of rocket launches from KLC.

Harbor seals (*Phoca vitulina*) haul out on the southeast side of Ugak Island, but this area is sheltered from direct sight of KLC by a 300 foot (9.1 meter, m) tall island cliff and receives heavy surf that creates a lot of background ambient noise. Because of the ambient noise levels at this site, the heavy surf often interferes with the ability of an animal to detect a sound even when that sound is above its absolute hearing threshold (Richardson et al., 1995). Therefore, it seems unlikely that harbor seals, because of the location of their haul-out, would hear noise associated with rocket launches from KLC.

During the September 1999 *ait* launch, Steller sea lions were observed on the Ugak Island haul-out pre-launch. Post-launch, the sea lions were observed in the water immediately offshore approximately 1 hour after the rocket was launched. Video documentation was made of the haul-out area pre-launch but failed during the launch, so no direct stimulus-response data tying sea lion behavior to rocket noise could be made. However, the pre-launch video showed a stampede off the haul-out approximately 4.5 hours before the launch that could not be correlated with any documented disturbance near the haul-out, and it is possible that the sea lions may have remained in the water until the post-launch survey.

AADC recognizes in their application that despite the lack of direct stimulus-response data tying sea lion behavior to rocket launches from KLC, the unusual, high-intensity stimuli resulting from launch-related sights and sounds means that evacuation of the Ugak haul-out site by sea lions could reasonably be expected.

Solid rocket boosters from KLC launches will fall into the ocean away from any known or potential haul-out sites and do not pose any threat to Ugak

Island. Therefore, the anticipated impacts on marine mammals would be infrequent and unintentional incidental harassment resulting from the sights and sounds generated by rocket launches. Launch noises may cause a startle response and flight to water for those Steller sea lions hauled-out on northern Ugak Island. Launch noise is expected to occur over the coastal habitats of Narrow Cape and Ugak Island during every launch, while sonic booms will occur approximately 40 nautical miles (74 km) downrange, beyond the outer continental shelf over open ocean and pose no threat to hauled-out pinnipeds.

Because the sights and sounds of rocket launches have the potential to result in harassment of pinnipeds, an MMPA authorization under section 101(a)(5)(A) or (D) is required in order to exempt the applicant from the penalties of the MMPA for taking by harassment.

Regulations, if issued, would authorize NMFS to issue a LOA for the taking of small numbers of Steller sea lions incidental to rocket launches associated with the ait, QRLV, STARS, and other commercial space launch programs from Kodiak Launch Complex on Kodiak Island, Alaska.

Dated: October 26, 2001.

William T. Hogarth,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 101901E]

Caribbean Fishery Management Council; Public Hearings

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

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement (DSEIS); request for comments; notice of public hearings.

SUMMARY: The Caribbean Fishery Management Council (Council) intends to prepare a DSEIS to assess the impacts on the natural and human environment of the management measure proposed in its draft Amendment 2 to the Fishery Management Plan for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (FMP). The purpose of

this document is to solicit public comments on the scope of the issues to be addressed in the DSEIS and to provide information on the Council's intended schedule for hearings for completing the DSEIS and submitting it to NMFS for filing with the Environmental Protection Agency for publication of a notice-of-availability for public comment.

DATES: The two public hearings will be held on Monday, November 26, 2001; see **SUPPLEMENTARY INFORMATION**. Written comments on the scope of issues to be addressed in the DSEIS will be accepted through November 26, 2001.

ADDRESSES: Written comments should be sent to Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-1920, telephone: 787-766-5926; fax: 787-766-6239; or you can send comments by e-mail to: Miguel.A.Rolon@noaa.gov or Graciela.Garcia-Moliner@noaa.gov. Copies of the draft Amendment 2 and the preliminary DSEIS may be obtained by contacting the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-2577, phone: 787-766-5926. Public hearings will meet at Puerto Rico, and St. Thomas, VI; for specific locations, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-2577, phone: 787-766-5926, or Dr. Peter J. Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, phone: 727-570-5305; fax: 727-570-5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FMP was prepared by the Council and approved and implemented by NMFS under procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMP's management measures for queen conch apply in the Exclusive Economic Zone (EEZ) in the U.S. Caribbean. For the purposes of the FMP and its implementing regulations, the U.S. Caribbean consists of the Federal waters beyond the 9 nautical mile boundary in Puerto Rico, and beyond the 3 nautical mile boundary in St. Thomas, St. John and St. Croix, U.S. Virgin Islands. The FMP currently establishes the following