

the event of a marine mammal stranding event. The communication plan was completed and disseminated to the necessary NMFS and Navy staff, although it is not available to the public because it contains personal information.

The Navy was also required to work with NMFS to develop a Memorandum of Agreement (MOA), or other mechanism consistent with federal fiscal law requirements to establish a framework whereby the Navy can assist NMFS with stranding investigations in certain circumstances. NMFS and the Navy have developed a draft memorandum of understanding (MOU) that is currently under review at both agencies. The MOU includes agreement between the NMFS and the Navy to further develop regional stranding investigation assistance plans to identify regional assets, equipment, locations, or services that Navy may be able to provide and the process by which this will operate within a given geographic area.

#### *Adaptive Management and 2010 Monitoring Plan*

NMFS and the Navy conducted an adaptive management meeting in October, 2009 wherein we reviewed the Navy monitoring results through August 1, 2009, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. Because this is the first year of the regulation's period of effectiveness, the review only covered about 7 months of monitoring, which limited NMFS and the Navy's ability to undertake a robust review of the Navy's exercises and their effects on marine mammals. Based on the implementation of the 2009 monitoring, the Navy proposed some minor modifications to their monitoring plan for 2010, which NMFS agreed were appropriate. Beyond those changes, none of the information discussed led NMFS to recommend any modifications to the existing mitigation or monitoring measures. The final modifications to the monitoring plan and justifications are described in Section 13 of the Navy's 2010 LOA Application, which may be viewed at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. As additional data is obtained in subsequent years, NMFS and Navy will be better positioned to conduct more extensive reviews and modify existing mitigation and monitoring measures, if appropriate.

#### **Whale Strikes in 2009**

In their SOCAL Range Complex Environmental Impact Statement (EIS), the Navy, in consultation with NMFS as a cooperating agency, determined that take of marine mammals incidental to ship strike was unlikely. Therefore, the Navy did not request (nor did NMFS grant) MMPA authorization for take of marine mammals from ship strikes in the 2009 SOCAL Range Complex LOA, nor was that take contemplated in the final SOCAL Range Complex regulations.

Following the issuance of these regulations and the LOA, two incidents occurred in which a Navy vessel associated with the activities covered by the regulations collided with and injured or killed (one strike resulted in a confirmed death, the ultimate status of the other whale is unknown) a large whale, one of which was later identified as a fin whale. Of note, in both cases the Navy was in compliance with the mitigation and monitoring measures required by the rule and LOA and contacted NMFS in a timely manner and provided the specific information outlined in the SOCAL Stranding Response Plan for whale strikes, as well as additional information.

In light of this new information NMFS is developing a proposed rule to amend the 2009 SOCAL Range Complex regulations. NMFS' proposed regulations would establish a framework to authorize the incidental take of large whales by injury or mortality from the remainder of the five-year regulatory period.

#### **Authorization**

The Navy complied with the requirements of the 2009 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2009 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized, and was likely lower given the fact that Navy conducted fewer operations in 2009 than originally planned. Further, the level of taking authorized in 2010 for the Navy's SOCAL Range Complex activities is consistent with our previous findings made for the total taking allowed under the SOCAL Range Complex regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2010 activities in the SOCAL Range Complex will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the

availability of these species or stocks for taking for subsistence uses.

Accordingly, NMFS has issued a one-year LOA for Navy training exercises conducted in the SOCAL Range Complex from January 22, 2010, through January 21, 2011.

Dated: January 20, 2010

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

**RIN 0648-AW86**

##### **Taking and Importing Marine Mammals; U.S. Navy Training in the Hawaii Range Complex**

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

**ACTION:** Notice of issuance of a letter of authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to training and research activities conducted within the Hawaii Range Complex (HRC) for the period of January 15, 2010 through January 14, 2011.

**DATES:** This Authorization is effective from January 15, 2010, through January 14, 2011.

**ADDRESSES:** The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

**FOR FURTHER INFORMATION CONTACT:** Jolie Harrison, Office of Protected Resources, NMFS, (301)713-2289, ext. 166.

**SUPPLEMENTARY INFORMATION:** Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or

kill or to attempt to harass, hunt, capture, or kill marine mammals.

Regulations governing the taking of marine mammals by the Navy incidental to training and research activities conducted within the Hawaii Range Complex (HRC) became effective on January 5, 2009 (74 FR 1455, January 12, 2009), and remain in effect until January 5, 2014. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

### Summary of Request

On November 3, 2009, NMFS received a request from the Navy for a renewal of an LOA issued on January 8, 2009, for the taking of marine mammals incidental to training and research activities conducted within the HRC under regulations issued on January 5, 2009 (74 FR 1455, January 12, 2009). The Navy has complied with the measures required in 50 CFR 216.174 & 216.175, as well as the associated 2009 LOA, and submitted the reports and other documentation required in the final rule and the 2009 LOA.

### Summary of Activity under the 2009 LOA

As described in the Navy's exercise reports (both classified and unclassified), in 2009, the training activities conducted by the Navy were within the scope and amounts contemplated by the final rule and authorized by the 2009 LOA. In fact, the number and type of some exercises were well below the Navy's proposed 2009 operations (e.g., the Navy conducted only one of the five major anti-submarine warfare training exercises proposed for 2009; utilized only a small fraction of the original number of explosives planned for 2009; and conducted no Sinking Exercises in 2009).

### Planned Activities for 2010

In 2010, the Navy expects to conduct the same type and amount of training identified in the final rule and 2009 LOA, with a few clarifications and one modification, all of which are of little to no consequence to marine mammals. Following are the clarifications and modification:

- The rule identifies the AQS-22 as helicopter dipping sonar. To clarify, this source is representative of all helicopter dipping sonar, including the AQS-13, which has a lower source level. The higher level AQS-22 was used to model effects.

- The rule identifies the MK-48 as the torpedo. To clarify, this source is representative of all torpedoes, including the MK-46 and MK-54, which have lower source levels and lower net explosive weights. The higher level MK-48 was used to model effects.

- The rule identifies the BQQ-10 as submarine sonar. To clarify, this source is also representative of the BQQ-5 submarine sonar, which has similar sound source characteristics.

- The Navy is transitioning from the use of the Improved Extended Echo-ranging (IEER) system to the Advanced Extended Echo-ranging (AEER) system (described further below), i.e., they are adding the use of AEER and reducing use of IEER.

- Also, the Navy accidentally modeled a higher number of IEER sonobuoys (3600) than they intend to deploy (960), which resulted in a slight overestimate of the number of animals that would be taken.

### *Transition from the Use of IEER to AEER*

The Navy is developing the AEER system as a replacement to the IEER system. The proposed AEER system is operationally similar to the existing IEER system. As described in the rule, IEER is deployed by Marine Patrol Aircraft as a large array of paired sonobuoys wherein the active sonobuoy (AN/SSQ-110A) generates a small explosion and then the passive sonobuoy (AN/SSQ-101) records the reflected echos of the impulsive sound generated by the detonation. Similarly, AEER is also deployed by Marine Patrol Aircraft as a large array of paired sonobuoys wherein the passive sonobuoy (AN/SSQ-101) records the reflected echos of the sound generated by the active sonobuoy. However, instead of using an explosive AN/SSQ-110A as an impulsive source for the active acoustic wave, the AEER will use a battery powered tonal source, the new active AN/SSQ-125 sonobuoy. In summary, the AEER is physically deployed in the same manner as the IEER, which was described in the rule, and uses the same sort of tonal source that has been analyzed elsewhere in the rule, for example for the AN/SSQ-62 sonobuoy.

For the purposes of analysis, replacement of the IEER system by the AEER system will be assumed to occur at 25% per year as follows: 2010 — up to ~ 25% replacement; 2011- up to ~ 50% replacement; 2012 — up to ~ 75% replacement; and from 2013 to 2015 — up to ~ 100% replacement, with no further use of the IEER system after 2015. Navy modeling indicates that a

conversion factor of approximately 1.024 is necessary to convert the total number of estimated takes from IEER to AEER as a result of the difference in the active components in their systems. When this is applied to the amount of AEER usage planned for the HRC for 2010 (25% of 960 sonobuoys), no quantifiable change in the Navy's take estimates, or qualitative change in the nature of impacts, for IEER (now combined with AEER) usage occurs.

In sum, the clarifications and one modification to Navy training and research activities proposed in 2010, will have not effect marine mammals in a manner not previously considered or analyzed in NMFS' final rule and other associated documents.

### Estimated Take for 2010

As mentioned above, in 2009 the Navy accidentally modeled 3600 IEER sonobuoys instead of 960 which resulted in minor overestimates in take (on the order of a few or less individuals for most species). Otherwise, the only change in the Navy's training activities in the HRC for 2010 is the beginning of the transition from IEER to AEER (which does not affect the take estimates or effects on marine mammals), and, therefore, NMFS is authorizing the same amount of take authorized in 2009.

### Summary of Monitoring, Reporting, and other requirements under the 2009 LOA

#### *Annual Exercise Reports*

The Navy submitted their classified and unclassified 2009 exercise reports within the required timeframes and the unclassified report is posted on NMFS website: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. NMFS has reviewed both reports and they contain the information required by the 2009 LOA. The reports indicate the amounts of different types of training that occurred from January 8, 2009, through August 1, 2009, and estimate the amounts of training occurring from August 2, 2009, through January 7, 2010. As mentioned above, the Navy only conducted one of the 5 major anti-submarine warfare training exercises addressed in the rule and utilized only a small fraction of the explosives planned (no Sinking Exercises were conducted). No active sonar use occurred in the period from January 9, 2009, through April 15, 2009, either in the Humpback Cautionary Area or the larger dense humpback area generally shown on the Mobley map (73 FR 35510, page 35520) plus a 5-km buffer but not including the Pacific Missile Range Facility.

The reports also list specific information gathered when marine mammals were detected by Navy watchstanders, such as how far an animal was from the vessel, whether sonar was in use, and whether it was powered or shut down. This information indicates that the Navy implemented the safety zone mitigation measures as required. No instances of obvious behavioral disturbance were reported by the Navy watchstanders in their 24 marine mammal sightings totaling 135 animals.

#### *Monitoring and Annual Monitoring Reports*

The Navy conducted the monitoring required by the 2009 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of sonar and explosive exercises, as well as ordering and purchasing acoustic recording devices to be used to gather data in subsequent years. The Navy submitted their 2009 Monitoring Report, which is posted on NMFS' website (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>), within the required timeframe. The Navy included a summary of their 2009 monitoring effort and results (beginning on page 9 of the monitoring report) and the specific reports for each individual effort are presented in the appendices. Because data is gathered through August 1 and the report is due in October, some of the data analysis will occur in the subsequent year's report.

#### *Integrated Comprehensive Management Program (ICMP) Plan*

The ICMP will be used both as: (1) a planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (e.g., R&D), and other appropriate newly published information. The Navy finalized a 2009 ICMP Plan outlining the program on December 22, 2009, as required by the 2009 LOA. The ICMP may be viewed at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

The ICMP is a program that will be in place for years and NMFS and Navy anticipate the ICMP may need to be updated yearly in order to keep pace with new advances in science and technology and the collection of new data. In the 2009 ICMP Plan, the Navy outlines three areas of targeted development for 2010, including:

- Identifying more specific monitoring sub-goals under the major goals that have been identified
- Characterizing Navy Range Complexes and Study Areas within the context of the prioritization guidelines described here
- Continuing to Develop Data Management, Organization and Access Procedures

#### *Stranding Response Plan*

NMFS and the Navy developed a Stranding Response Plan for the HRC and certain components of the Plan were included as mitigation measures in the 2009 LOA. The Navy was required to work with NMFS to develop a communication plan to facilitate response and information exchange in the event of a marine mammal stranding event. The communication plan was completed and disseminated to the necessary NMFS and Navy staff, although it is not available to the public because it contains personal information.

The Navy was also required to work with NMFS to develop a Memorandum of Agreement (MOA), or other mechanism consistent with federal fiscal law requirements to establish a framework whereby the Navy can assist NMFS with stranding investigations in certain circumstances. NMFS and the Navy have developed a draft memorandum of understanding (MOU) that is currently under review at both agencies. The MOU includes agreement between the NMFS and the Navy to further develop regional stranding investigation assistance plans to identify regional assets, equipment, locations, or services that Navy may be able to provide and the process by which this will operate within a given geographic area.

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plan for 2010, which NMFS agreed were appropriate. Beyond those changes, none of the information discussed led NMFS to recommend any modifications to the existing mitigation or monitoring measures. The final modifications to the monitoring plan and justifications are described in Section 13 of the Navy's 2010 LOA Application, which may be viewed at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. As additional data is obtained in subsequent years, NMFS and Navy will be better positioned to conduct more extensive reviews and modify existing mitigation and monitoring measures, if appropriate.

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The Navy complied with the requirements of the 2009 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2009 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized, and was likely lower given the fact that Navy conducted fewer operations in 2009 than originally planned. Further, the level of taking authorized in 2010 for the Navy's HRC training and research activities is consistent with our previous findings made for the total taking allowed under the HRC regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2010 HRC activities will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a one-year LOA for Navy training exercises conducted in the HRC from January 15, 2010 through January 14, 2011.

Dated: January 20, 2010.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **Defense Health Board; DoD Task Force on the Prevention of Suicide by Members of the Armed Forces; Meeting**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of meeting.

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