

made on a case-by-case basis. Records responsive to a request will be furnished without charge or at below the established charge where Amtrak determines, based on all available information, that disclosure of the requested information is in the public interest because:

(i) It is likely to contribute significantly to public understanding of the operations or activities of Amtrak and

(ii) It is not primarily in the commercial interest of the requesting party.

(3) To determine whether fee waiver requirement in paragraph (k)(2)(i) of this section is met, Amtrak will consider the following factors:

(i) *The subject of the request—whether the subject of the requested records concerns the operations or activities of Amtrak.* The subject of the requested records must concern identifiable operations or activities of Amtrak with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed—whether the disclosure is likely to contribute to an understanding of Amtrak operations or activities.* The disclosable portions of the requested records must be meaningfully informative about Amtrak's operations or activities in order to be found to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure—whether disclosure of the requested information will contribute to public understanding.* The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject as opposed to the individual understanding of the requester. A requester's ability and expertise in the subject area as well as the requester's intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) *The significance of the contribution to public understanding—whether the disclosure is likely to contribute significantly to public understanding of Amtrak operations or activities.* The public's understanding of the subject in question, as compared to

the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(4) To determine whether the fee waiver requirement in paragraph (k)(2)(ii) of this section is met, Amtrak will consider the following factors:

(i) *The existence and magnitude of a commercial interest—whether the requesting party has a commercial interest that would be furthered by the requested disclosure.* Amtrak shall consider any commercial interest of the requesting party (with reference to the definition of "commercial use" in paragraph (c)(1) of this section), or any person on whose behalf the requesting party may be acting that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure—whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than any identified commercial interest in disclosure.

(5) Requests for a fee waiver will be considered on a case-by-case basis, based upon the merits of the information provided. Where it is difficult to determine whether the request is commercial in nature, Amtrak may draw inference from the requester's identity and the circumstances of the request.

(6) Requests for a waiver or reduction of fees must address the factors listed in paragraphs (k)(3) and (4) of this section. In all cases, the burden shall be on the requesting party to present evidence of information in support of a request for a waiver of fees.

(l) *Aggregating requests.* A requester may not file multiple requests at the same time in order to avoid payment of fees. Where Amtrak reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, Amtrak may aggregate those requests and charge accordingly. Amtrak may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, Amtrak may aggregate them only when there exists a solid basis for determining that

aggregation is warranted. Multiple requests involving unrelated matters may not be aggregated.

§ 701.12 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: November 6, 1997.

Sarah H. Duggin,

Vice President and General Counsel.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 971023253-7253-01; I.D. 093097E]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

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 30th Space Wing, U.S. Air Force for a small take of marine mammals incidental to missile and rocket launches, aircraft flight test operations and helicopter operations at Vandenberg Air Force Base, CA (Vandenberg). 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. NMFS invites comment on the application and suggestions on the content of the regulations.

DATES: Comments and information must be postmarked no later than December 15, 1997.

ADDRESSES: Comments should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. A copy of the application may be

obtained by writing to the above address, telephoning the person below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, or Irma Lagomarsino, Southwest Regional Office, NMFS, (310) 980-4016.

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 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 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, 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."

Description of Request

On September 30, 1997, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from the 30th Space Wing. Vandenberg to take marine mammals incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg.

Vandenberg is located on the south-central coast of California. The base covers approximately 98,000 acres in western Santa Barbara County. The Air Force's primary missions at Vandenberg are to launch and track satellites in space, test and evaluate the United State's intercontinental ballistic missile systems, and support aircraft operations. As a nonmilitary facet of operations, Vandenberg is also committed to promoting commercial space launch ventures.

Vandenberg anticipates a total of 10 launches annually for Minuteman and Peacekeeper missiles from North Vandenberg and a total of 20 launches annually for space launches (6 Delta II, 3 Taurus, 2 Atlas, 3 Titan IV, 2 Titan II and 4 Lockheed launch vehicles) from South Vandenberg.

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.

Noise disturbance from operations on Vandenberg may cause negligible short-term impacts to pinnipeds (seals and sea lions) hauled out on the Vandenberg coastline. The principal form of impacts would be infrequent and unintentional incidental harassment resulting from noise generated by aircraft and by missile and rocket launches. There is a potential for launch noises and sonic booms to cause a startle response and flight to water for those harbor seals, California sea lions and other pinnipeds that may haul out on the coastline of Vandenberg and on the Northern Channel Islands (NCI). Launch noise is expected to occur over the coastal habitats in the vicinity of the

Vandenberg launch site during every launch, while sonic booms may be heard on NCI, specifically San Miguel and Santa Rosa Islands, only during certain launches of certain rocket types (principally Titan IV). Because the noise may potentially result in disturbance of pinnipeds, an MMPA authorization is required in order to exempt the applicant from the penalties of the MMPA for taking by harassment that occurs in compliance with such authorization.

Regulations, if issued, would replace annual incidental harassment authorizations issued to Vandenberg for takings incidental to launches by Lockheed Martin launch vehicles (62 FR 40335, July 28, 1997), McDonnell Douglas Aerospace Delta II rocket launches (61 FR 59218, November 21, 1996), Taurus launches (62 FR 734, January 6, 1997) and Titan II and Titan IV launches (61 FR 64337, December 4, 1996). In addition, these regulations would authorize takings incidental to Minuteman and Peacekeeper missile launches, aircraft flight test operations and helicopter operations, which have not been authorized previously.

Information Sought

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations to allow the taking. NMFS will consider this information in developing proposed regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be given ample time and opportunity to comment.

Dated: November 6, 1997.

David L. Evans,

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

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