

conditions and the status and behavior of focal animal groups prior to and following each launch. Behavioral responses were similar to those observed during previously monitored launches. The authorized level of take was not exceeded, and no evidence of injury or mortality was observed during or immediately succeeding the launches for the monitored pinniped species.

Comments and Responses

A request for public comment on the revised monitoring plan and proposed authorization was published on September 24, 2010 (75 FR 58365), at the recommendation of the Commission. During the 30-day public comment period, NMFS received comments from the Commission and one private citizen. The comment from the private citizen opposed the issuance of an authorization without any specific substantiation for why such an authorization should not be issued. For the reasons set forth in this notice and the associated rulemaking (74 FR 26580, June 2, 2009), NMFS believes issuance of an authorization is appropriate. Following are the comments from the Commission and NMFS' responses:

Comment 1: The Commission recommends that NMFS initiate such a rulemaking or provide adequate justification to support a determination that rulemaking is not required to amend section 216.155 of the regulations to authorize the Navy to discontinue monitoring the potential effects of launches on Northern elephant seals.

Response: NMFS has determined that a rulemaking is not required to amend section 216.155 of the regulations to authorize the Navy to discontinue monitoring the potential effects of launches on Northern elephant seals. Part (b) of this section states that "The National Marine Fisheries Service must be informed immediately of any changes or deletions to any portions of the proposed monitoring plan submitted, in accordance with the Letter of Authorization." The Navy made NMFS aware of such changes. Furthermore, the regulatory text does not require monitoring of all species present at SNI. The visual land-based and acoustic monitoring requirements in 50 CFR 216.155 state that three haul-out sites will be observed using autonomous digital video cameras and acoustic equipment; this requirement remains in effect under the revised LOA. Visual land-based monitoring will actually be enhanced under this LOA through the use of FLIR thermal imaging cameras during nighttime launches.

Comment 2: The Commission recommends that NMFS clarify the intent of 50 CFR 216.158(a)(1) of its regulations and explain why it does not believe that the Navy should be held to the commitment that there would be no substantial modifications to the monitoring program to be carried out during the 12 months covered by the previous 2010 LOA.

Response: NMFS has determined that the Navy's modifications to their monitoring program for launch activities at SNI are not substantial. The Navy will continue to report on the same number of monitoring locations as have been authorized in previous LOAs. The Navy will no longer target Northern elephant seals; however, this species may still be observed if it overlaps with other pinnipeds at the designated monitoring locations. This implementation of adaptive management will allow the Navy to focus their monitoring and research on other more responsive pinniped species at SNI.

Comment 3: The Commission recommends that NMFS provide the information necessary to evaluate the conclusion that there has been no displacement of pinnipeds from rookeries and haul-out sites in the areas potentially affected by launch activities.

Response: Based on unpublished NMFS survey data from 2000 to 2005, there has been an overall 107 percent increase in Northern elephant seal pups in locations directly within or adjacent to the Navy's anticipated launch azimuths. The area with the highest increase of non-pups between 2000 and 2005 also took place in locations directly within or adjacent to the Navy's anticipated launch azimuths. In contrast, other areas of SNI's perimeter show an overall decrease in both Northern elephant seal pups and non-pups, with the greatest observed change being a decrease of 1,616 Northern elephant seals near the southeast region of the island.

Comment 4: The Commission recommends that NMFS develop and implement a monitoring strategy designed to determine whether there are gaps in the available information for assessing possible long-term effects and, if so, to what extent the cumulative effects of repeated launch activities might be displacing pinnipeds.

Response: NMFS has determined that the Navy's current monitoring strategy is sufficient to determine if there are any long-term effects to pinnipeds from launch activities at SNI. NMFS biologists have been monitoring pinnipeds on SNI since 2000 and will continue to do so under this LOA.

Authorization

The Navy complied with the requirements of the previous 2010 LOA and NMFS has determined that there was no evidence of pinniped injuries or fatalities related to the June and July 2010 vehicle launches from SNI. The Navy's activities fell within the scope of the activities analyzed in the 2009 rule, and the observed take did not exceed that authorized in the previous 2010 LOA. NMFS has determined that this action would continue to have a negligible impact on the affected species or stocks of marine mammals on SNI, and there are no subsistence uses of these three pinniped species in California waters. Accordingly, NMFS has issued a revised LOA to the Navy authorizing the take of three marine mammal species, by harassment, incidental to missile launch activities from SNI. The revised LOA will expire one year from the date of issuance and the Navy has agreed to operate under their annual authorized take numbers for the extended period of June 2010 through November 2011.

Dated: November 18, 2010.

James H. Lecky,

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

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CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, December 1, 2010; 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504-7923.

Dated: November 19, 2010.

Todd A. Stevenson,
Secretary.

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