

filed by Sprint against Chesapeake, Virginia, and Chester County, Pennsylvania, as applications for review for purposes of resolving questions of law, and the Commission allowed the parties to file oppositions and replies as provided under the Commission's application for review procedures. Third, the Commission denied a petition for reconsideration that alleges that the Commission's *Public Notice* released on September 12, 2007, 72 FR 55208, September 28, 2007, to expedite the rebanding process imposed unreasonable new regulatory burdens on 800 MHz licensees. Finally, the Commission delegated authority to the Public Safety and Homeland Security Bureau (PSHSB or Bureau) to develop a rebanding plan for the U.S. Virgin Islands based on a proposal submitted by the TA.

#### Procedural Matters

##### A. Final Regulatory Flexibility Analysis

The Final Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in Appendix A of the *Fourth Memorandum Opinion and Order*.

##### B. Final Paperwork Reduction Act of 1995 Analysis

The *Fourth Memorandum Opinion and Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore it does not contain any new or modified "information burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

#### Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria

established by the Small Business Administration (SBA). Consistent with what we describe below, we certify that the actions in this *Fourth Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities.

Because the Commission's decision is limited to reporting requirements applicable to Sprint and the TA and affects no other entity, and because the Commission's decision concerning Sprint merely extends the status quo, the Commission certifies that its decision will not have a significant economic impact on a substantial number of small entities. All other issues do not raise regulatory flexibility issues because the Commission's actions deny petitions for reconsideration, defer action on certain petitions for de novo review and afford certain parties an opportunity to file oppositions and replies as provided under our application for review procedures, or internally delegate authority, and therefore do not raise any regulatory flexibility issues. The Commission will send a copy of the *Fourth Memorandum Opinion and Order*, including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 0808041027-9041-02]

RIN 0648-AX08

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Test Flight Activities from Vandenberg Air Force Base (VAFB), California

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

**ACTION:** Final rule.

**SUMMARY:** NMFS, upon application from the U.S. Air Force (USAF), is issuing regulations to govern the unintentional taking of marine mammals, by harassment, incidental to launching

space launch vehicles, intercontinental ballistic and small missiles, and aircraft and helicopter operations at VAFB for the period February 2009 through February 2014. The USAF's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act of 2004 (NDAA). These regulations, which allow for the issuance of "Letters of Authorization" (LOAs) for the incidental take of marine mammals during the described activities and specified time frames, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

**DATES:** Effective February 7, 2009, through February 7, 2014.

**ADDRESSES:** A copy of the USAF's application, which contains a list of references used in this document, and NMFS' Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resource, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Documents cited in this final rule may also be viewed, by appointment, during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Candace Nachman, Office of Protected Resources, NMFS, (301) 713-2289, ext. 156, or Monica DeAngelis, Southwest Regional Office, NMFS, (562) 980-3232.

#### 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 (Secretary) 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.

Authorization for incidental takings may be granted if NMFS 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 certain subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, 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.

The NDAA (Public Law 108–136) removed the “small numbers” and “specified geographical region” limitations and amended the definition of “harassment” as it applies to a “military readiness activity” to read as follows (Section 3(18)(B) of the MMPA):

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

#### Summary of Request

On March 21, 2008, NMFS received an application from the USAF requesting authorization for the take of four species of marine mammals incidental to space vehicle and test flight activities from VAFB, which would impact pinnipeds on VAFB and the Northern Channel Islands (NCI). These training activities are classified as military readiness activities. Marine mammals may be exposed to continuous noise due mostly to combustion effects of aircraft and launch vehicles and impulsive noise due to sonic boom effects. The USAF requested authorization to take four pinniped species by Level B Harassment.

#### Description of the Specified Activity

VAFB (see Figure 1 in the USAF application) is headquarters to the 30th Space Wing (SW), the Air Force Space Command unit that operates VAFB and the Western Range. VAFB operates as a missile test base and aerospace center, supporting west coast space launch activities for the USAF, Department of Defense, National Aeronautics and Space Administration, and commercial contractors. VAFB is the main west coast launch facility for placing commercial, government, and military satellites into polar orbit on expendable (unmanned) launch vehicles, and for testing and evaluation of

intercontinental ballistic missiles (ICBM) and sub-orbital target and interceptor missiles. In addition to space vehicle and missile launch activities at VAFB, there are helicopter and aircraft operations for purposes such as search-and-rescue, delivery of space vehicle components, launch mission support, and security reconnaissance. The USAF expects to launch a maximum of 30 rockets and missiles per year from VAFB.

There are currently six active space launch vehicle (SLV) facilities at VAFB (VAFB, 2007), used to launch satellites into polar orbit. These facilities support the launch programs for space vehicles including the Atlas V, Delta II, Delta IV, Falcon, Minotaur, and Taurus. The Falcon has yet to launch from VAFB and is scheduled for its first launch in August, 2009 (30 SW, 2008a). A detailed description of the activities to be conducted by the USAF, including vehicle types and the sound exposure levels produced by each missile or rocket and aircraft operations, was included in the proposed rule (73 FR 77577, December 19, 2008) and may also be found in the USAF’s application (see **ADDRESSES**).

#### Description of Marine Mammals Potentially Affected by the Activity and Habitat

The four species of marine mammals most likely to be present in the action area are: Pacific harbor seals (*Phoca vitulina richardii*); California sea lions (*Zalophus californianus*); northern elephant seals (*Mirounga angustirostris*); and northern fur seals (*Callorhinus ursinus*). Guadalupe fur seals (*Arctocephalus townsendi*) and Steller sea lions (*Eumetopias jubatus*) have been bred in the past on San Miguel Island, but sightings have been rare since the mid-1980’s.

The USAF has compiled information on the abundance, status, and distribution of the species on VAFB and the NCI from surveys that they have conducted over the last decade and from NMFS Stock Assessment Reports (SARs). This information may be viewed in the USAF’s application (see **ADDRESSES**). Additional information is available in the NMFS SARs, which are available at: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2007.pdf>.

The proposed rule (73 FR 77577, December 19, 2008) contained a detailed description of the distribution of these species on VAFB and the NCI, as well as a description of their habitat.

#### Comments and Responses

On July 25, 2008, NMFS published a notice of receipt of application for an

LOA in the **Federal Register** (73 FR 43410) and requested comments and information from the public for 30 days. During that comment period, NMFS received comments from the Marine Mammal Commission (Commission) and one private citizen. Responses to those comments are addressed in the proposed rule **Federal Register** notice (73 FR 77577, December 19, 2008). On December 19, 2008, NMFS published a notice of proposed rulemaking (73 FR 77577) on the USAF’s request to take marine mammals incidental to space vehicle and test flight activities from VAFB and requested comments, information, and suggestions concerning the request. During the 15-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 preamble, NMFS believes issuance of the authorization is appropriate. Following are the comments from the Commission and NMFS’ responses.

*Comment 1:* The Commission recommends that NMFS extend the public comment period on the proposed rule for at least an additional 15 days, or, alternatively, provide a post-promulgation comment period before the effective date of the rule.

*Response:* NMFS has been issuing MMPA authorizations to the USAF to conduct these activities from VAFB for more than 20 years, which has allowed NMFS to develop relatively standard mitigation and monitoring requirements for these activities, so rarely more than one or two public comments are received. The public was afforded a 30-day comment period to submit information and suggestions on the preparation of proposed regulations beginning on July 25, 2008 with the publication of the notice of receipt of application (73 FR 43410). NMFS received only two comment letters at that time. Similarly, the same two organizations or members of the public commented on the proposed rule. NMFS did not receive any other requests to extend the comment period.

The last time NMFS developed regulations for the USAF to conduct these same activities, NMFS published a notice of receipt of application (68 FR 54894, September 19, 2003), which allowed for a 30-day comment period and a notice of proposed rulemaking (68 FR 67629, December 3, 2003), which allowed for a 15-day comment period. With only slight changes to some of the launch vehicles or missiles to be used,

the activities to be authorized for the period of February 2009 to February 2014 and therefore the mitigation, monitoring, and reporting requirements are nearly identical to those required in the February 2004 to February 2009 regulations. In 2003, only the Commission submitted comments on the proposed rulemaking. There has not been a great deal of public interest in the MMPA authorization process for these activities currently or in the past. Therefore, NMFS does not believe it is necessary to extend the comment period for this action.

NMFS will not be able to provide a post-promulgation comment period. The current regulations are set to expire on February 6, 2009. The USAF currently has a launch planned for February 23, 2009. Since these launches are planned around certain meteorological, as well as other, conditions, it is not practical to have a post-promulgation comment period. These launches are important to national security.

*Comment 2:* The Commission recommends that NMFS issue the final rule as proposed, provided that the mitigation and monitoring activities described in the USAF application and the proposed rule **Federal Register** notice (73 FR 77577, December 19, 2008) are incorporated into the final rule.

*Response:* NMFS agrees with the Commission's recommendation. All measures contained in the proposed rulemaking **Federal Register** notice are included in the final rule.

*Comment 3:* The Commission also recommends that NMFS specify in the final rule that the authorized activities shall be suspended, pending review, if there is any indication that the activities covered by the rule are causing marine mammal mortalities or injuries or are affecting the distribution, size, or productivity of the potentially affected populations.

*Response:* The activities to be authorized are considered military readiness activities and are important to national security. The USAF launches several different types of vehicles and missiles from many different space launch complexes on VAFB, sometimes only a few days apart. Therefore, it would be impractical to suspend all activities. The proposed rule (73 FR 77577, December 19, 2008) contained a condition in the "Mitigation" section that, for the most part, addressed the Commission's recommendation. Language has been added to that condition to expand its coverage to include possible effects to distribution, size, and productivity of the potentially affected pinniped populations. Based on

the Commission's recommendation, NMFS has included the following condition in the final rule:

If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to an LOA, prior to conducting the next launch of the same vehicle under that LOA.

*Comment 4:* The Commission recommends that NMFS require additional acoustic and biological monitoring when new space vehicles or missiles are launched to verify that the actual sound levels and responses of animals are as predicted.

*Response:* Both the monitoring plan contained in the USAF's application and the "Monitoring" section in the proposed rule **Federal Register** notice (73 FR 77577, December 19, 2008) contained a requirement that acoustic and biological monitoring be conducted on new space and missile launch vehicles during at least the first launch, whether it occurs within the pupping season or not. This condition is included in the final rule.

*Comment 5:* Lastly, the Commission recommends that NMFS require additional public notice and opportunity for comment before authorizing the taking of marine mammals by any new space vehicles or missiles that produce sound levels or frequencies significantly different from those described in this authorization.

*Response:* As described in the USAF's application, the proposed rule, and NMFS' EA, the specific launch vehicles may change over the course of the five-year regulations (2009–2014) as NEPA analyses are completed. This **Federal Register** document and NMFS' EA evaluate the proposed level of activity and type of launches based on current and projected information. To the extent that specific launch vehicles may change, the USAF would be required to report such new vehicles to NMFS, and NMFS would evaluate a particular vehicle (e.g., missiles) to ensure that the vehicle fit within the parameters of the regulations. Thus, the transition of individual craft is not expected to change the impact assessment as set forth in NMFS' EA, and all activities would be required to fall within the general description of specified activities and estimates of marine mammal take described in this document and NMFS' EA. If it is determined that the new space vehicles or missiles will produce sound levels or

frequencies significantly different from those described in this authorization, then NMFS will make the information available to the public for comment.

#### Potential Effects of Specified Activities on Marine Mammals

The activities under these regulations create two types of noise: Continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles; and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from VAFB. The operation of launch vehicle engines produces significant sound levels. Generally, noise is generated from four sources during launches: (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. Launch noise levels are highly dependent on the type of first-stage booster and the fuel used to propel the vehicle. Therefore, there is a great similarity in launch noise production within each class size of launch vehicles.

The noise generated by VAFB activities will result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from SLV and missile launches and aircraft and helicopter operations may cause the animals to lift their heads, move towards the water, or enter the water. Information on marine mammal responses to launch noise that has been gathered under previous LOAs for these activities, as well as a scientific research permit issued to VAFB by NMFS for a research program (Permit No. 859–1680–01) to determine the short and long-term effects of SLV noise and sonic booms on affected marine mammals is contained in the USAF's application and the proposed rulemaking **Federal Register** notice (73 FR 77577, December 19, 2008). The potential effects described in the proposed rule are the same as those that would occur under the final rule.

NMFS does not anticipate a significant impact on any of the species or stocks of marine mammals from launches from VAFB. For even the largest launch vehicles, such as Delta IV, the launch noises and sonic booms can be expected to cause a startle response and flight to water for those harbor seals, California sea lions and other pinnipeds that are hauled out on the coastline of VAFB and on the NCI. The noise may cause temporary

threshold shift (TTS) in hearing depending on exposure levels, but no permanent threshold shift is anticipated. NMFS does not expect these activities to result in the mortality of any marine mammals.

#### **Numbers of Marine Mammals Estimated to be Taken by Harassment**

The marine mammal species NMFS believes likely to be taken by Level B harassment incidental to launch and aircraft and helicopter operations at VAFB are harbor seals, California sea lions, northern elephant seals, and northern fur seals. All of these species are protected under the MMPA, and none are listed under the Endangered Species Act (ESA). Numbers of animals that may be taken by Level B harassment are expected to vary due to factors such as type of SLV, location of the sonic boom, weather conditions (which can influence the size of the sonic boom), the time of day, and the time of year. For this reason, ranges are given for the harassment estimates of marine mammals. Aircraft operations will occur frequently but will avoid pinniped haul-out areas and are unlikely to disturb pinnipeds.

As noted earlier and in the proposed rule (73 FR 77577, December 19, 2008), sightings of Steller sea lions and Guadalupe fur seals have been extremely rare the last few decades or low at VAFB and on the NCI. Therefore, no takes by harassment are anticipated for either of these species incidental to the USAF's activities.

#### *Estimated Takes at VAFB*

*Harbor seals:* As many as 600 harbor seals per launch may be taken. Depending on the type of rocket being launched, the time of day, time of the year, weather conditions, tide and swell conditions, the number of seals that may be taken will range between 0 and 600. Launches and aircraft operations may occur at any time of the year so any age classes and gender may be taken.

*California sea lions:* As many as 200 sea lions per launch may be taken. Sea lions at VAFB are usually juveniles of both sexes and sub-adult males that haul out in the fall during the post breeding dispersal. Births generally do not occur at VAFB, but five pups were observed at VAFB in 2003, an El Nino year, although all were abandoned by their mothers and died within several days of birth. Sick or emaciated weaned pups may also haul out briefly. The number of sea lions that may be taken will range between 0 and 200.

*Northern elephant seals:* As many as 200 elephant seals per launch may be taken. Weaned elephant seal pups,

juveniles, or young adults of both sexes, may occasionally haul out at VAFB for several days to rest or as long as 30 days to molt. Injured or sick seals may also haul out briefly. The number of northern elephant seals that may be taken will range between 0 and 200.

*Northern fur seals:* There are no reports of northern fur seals at VAFB. Therefore, it is unlikely that any fur seals will be taken.

#### *Estimated Takes on the NCI*

Sonic booms created by SLVs may impact marine mammals on the NCI, particularly SMI. Missile launches utilize westward trajectories so do not cause sonic boom impacts to the NCI. The PCBoom sonic boom modeling program will continue to be used to predict the area of sonic boom impact and magnitude of the sonic boom on the NCI based on the launch vehicle, speed, trajectory, and meteorological conditions. Prior to each SLV launch, a predictive sonic boom map of the impact area and magnitude of the sonic boom will be generated. Based on previous monitoring of sonic booms created by SLVs on SMI (Thorson *et al.*, 1999a; 1999b), it is estimated that as much as approximately 25 percent of the marine mammals may be disturbed on SMI (Thorson *et al.*, 1999a; 1999b). Most sonic booms that reach SMI are small (<1 pound per square foot [psf]), although larger sonic booms are possible, but rarely occur. A conservative take estimate of as much as 25 percent of the animals present is used for each species per launch.

*Harbor seals:* As many as 200 harbor seals of all age classes and sexes may be taken per launch on the NCI. The number of harbor seals that may be taken will range between 0 and 200.

*California sea lions:* As many as 5,800 sea lion pups and 2,500 juvenile and adult sea lions of either sex may be taken on the NCI per launch. The number of sea lions that may be taken will range between 0 and 8,300.

*Northern elephant seals:* As many as 3,000 northern elephant seal pups and 10,000 northern elephant seals of all age classes and sexes may be taken per launch on the NCI. The number of elephant seals that may be taken will range between 0 and 13,000.

*Northern fur seals:* As many as 300 northern fur seal pups and 1,100 juvenile and adult northern fur seals of both sexes may be taken per launch at SMI. The number of fur seals that may be taken will range between 0 and 1,400.

With the incorporation of mitigation measures proposed later in this document, the USAF and NMFS expect

that only Level B incidental harassment may occur as a result of the proposed activities and that these events will result in no detectable impact on marine mammal species or stocks or on their habitats.

#### **Potential Effects of Specified Activities on Marine Mammal Habitat**

Impacts on marine mammal habitat are part of the consideration in making a finding of negligible impact on the species and stocks of marine mammals. Habitat includes, but is not necessarily limited to, rookeries, mating grounds, feeding areas, and areas of similar significance. Only short-term disturbance of marine mammals is expected as a result of the proposed activities. No impacts to marine mammal habitats are anticipated on VAFB or the NCI.

#### **Potential Effects of Specified Activities on Subsistence Needs**

NMFS has determined that the issuance of an LOA for USAF space vehicle and missile launches and aircraft and helicopter operations at VAFB would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use since there are no such uses for these pinniped species in California.

#### **Mitigation**

To minimize impacts on pinnipeds on beach haul-out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, the USAF has prepared the following mitigation measures, which NMFS has incorporated into its regulations.

All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require approaching pinniped haul-outs and rookeries closer than 1,000 ft (305 m). For missile and rocket launches, unless constrained by other factors including, but not limited to, human safety, national security concerns or launch trajectories, holders of LOAs must schedule launches to avoid, whenever possible, launches during the harbor seal pupping season of March through June. NMFS has expanded this requirement so that the USAF must avoid, whenever possible, launches which are predicted to produce a sonic boom on the NCI during harbor seal,

elephant seal, California sea lion, and northern fur seal pupping seasons.

If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to an LOA, prior to conducting the next launch of the same vehicle under that LOA.

### Monitoring

As part of its application, the USAF provided a monitoring plan, similar to that in the regulations (50 CFR 216.125) set to expire on February 6, 2009, for assessing impacts to marine mammals from rocket and missile launches at VAFB. This monitoring plan is described, in detail, in their application (30 SW, 2008c). The USAF will conduct the following monitoring under the regulations.

The monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals. Monitoring at the haul-out site closest to the launch facility will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch.

#### *Monitoring for VAFB*

Biological monitoring at VAFB will be conducted for all launches during the harbor seal pupping season, 1 March to 30 June. Acoustic and biological monitoring will be conducted on new space and missile launch vehicles during at least the first launch, whether it occurs within the pupping season or not. Also, the third Delta IV launch will be monitored, and Auditory Brainstem Response (ABR) testing of seals in close proximity to the launch is planned. The testing will be authorized under a scientific research permit issued under Section 104 of the MMPA. Such work was most recently conducted under Permit No. 859-1680-01, which expired on January 1, 2009. The USAF has submitted an application to NMFS for issuance of a new scientific research permit to continue the ABR tests on harbor seals, as well as other research projects. NMFS is currently reviewing this application. If appropriate, NMFS will issue a new scientific research permit to the USAF in early spring 2009. NMFS estimates that the tests would be conducted during years 2-5 of the regulations.

Monitoring will include multiple surveys each day that record, when possible, the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms, or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Time-lapse photography or video will be used during daylight launches to document the behavior of mother-pup pairs during launch activities. For launches during the harbor seal pupping season (March through June), follow-up surveys will be made within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 90 days of the launch.

#### *Monitoring for the NCI*

Monitoring will be conducted on the NCI (San Miguel, Santa Cruz, and Santa Rosa Islands) whenever a sonic boom over 1 psf is predicted (using the most current sonic boom modeling programs) to impact one of the Islands. Monitoring will be conducted at the haul-out site closest to the predicted sonic boom impact area. Monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals. Monitoring will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch.

Monitoring will include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms, or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Due to the large numbers of pinnipeds found on some beaches of SMI, smaller focal groups should be monitored in detail rather than the entire beach population. A general estimate of the entire beach population should be made once a day and their reaction to the launch noise noted. Photography or video will be used during daylight launches to document the behavior of mother-pup pairs or dependent pups during launch activities. During the pupping season of any species affected by a launch, follow-up surveys will be made within 2 weeks of the launch to ensure that there were

no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 90 days of the launch.

### Reporting

A report containing the following information must be submitted to NMFS within 90 days after each launch: (1) Date(s) and time(s) of each launch; (2) date(s), location(s), and preliminary findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations; and (3) results of the monitoring programs, including but not necessarily limited to (a) numbers of pinnipeds present on the haul-out prior to commencement of the launch, (b) numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise, (c) the length of time(s) pinnipeds remained off the haul-out or rookery, (d) the numbers of pinniped adults or pups that may have been injured or killed as a result of the launch; and (4) any behavioral modifications by pinnipeds that likely were the result of launch noise or the sonic boom.

If a freshly dead or seriously injured pinniped is found during post-launch monitoring, the incident must be reported within 48 hours to the NMFS Office of Protected Resources and the NMFS Southwest Regional Office.

An annual report must be submitted to NMFS at the time of renewal of the LOA described in § 216.127, that describes any incidental takings under an LOA not reported in the 90-day launch reports, such as the aircraft test program and helicopter operations and any assessments made of their impacts on hauled-out pinnipeds.

A final report must be submitted to NMFS no later than 180 days prior to expiration of these regulations. This report must summarize the findings made in all previous reports and assess both the impacts at each of the major rookeries and the cumulative impact on pinnipeds and any other marine mammals from Vandenberg activities.

### ESA

In December, 2003, NMFS determined that the USAF's activities and the promulgation of regulations and issuance of LOAs are not likely to adversely affect any species or their habitats that are listed as threatened or endangered under the ESA. The activities to be authorized under these

regulations are not substantially different from those described in the 2003 consultation. Therefore, there has not been a reinitiation of consultation under section 7 of the ESA since none of the reinitiation triggers have been met.

#### **NEPA**

The USAF prepared a Final EA and issued a FONSI in 1997 as part of its application for an incidental take authorization. On March 1, 1999 (64 FR 9925), NMFS adopted this EA as provided for by the Council on Environmental Quality regulations. In 2003, NMFS prepared its own EA and issued a FONSI for the final rule issued in February, 2004. NMFS prepared a Draft EA for issuance of regulations and annual LOAs to the USAF for the period 2009–2014 and made it available for public comment concurrently with the proposed rule. NMFS has finalized the EA and issued a FONSI for this action. Therefore, preparation of an Environmental Impact Statement is not necessary for this action. NMFS' EA and FONSI are available upon request (see **ADDRESSES**).

#### **Coastal Zone Management Act Consistency**

The USAF conducts separate consultations with the California Coastal Commission (CCC) for each launch activity, as each one is considered a separate Federal action. Past consultations between the USAF and the CCC have indicated that activities from VAFB similar to those described in this document are consistent to the maximum extent practicable with the enforceable policies of the California Coastal Act (CCA). The USAF is in consultation with the CCC for those launch activities that have not yet been found to be consistent with the CCA. Therefore, NMFS has determined that the activities described in this document are consistent to the maximum extent practicable with the enforceable policies of the CCA.

#### **National Marine Sanctuaries Act**

On December 8, 2008, NMFS contacted the National Ocean Service's Office of National Marine Sanctuaries (ONMS) regarding NMFS' action of promulgating regulations and issuing LOAs for the USAF activities described in the USAF's application and the proposed rule (73 FR 77577, December 19, 2008) to determine whether or not NMFS' action is likely to destroy, cause the loss of, or injure any national marine sanctuary resources. On December 12, 2008, the ONMS determined that no further consultation with NMFS was

required on its proposed action as this action is not likely to destroy, cause the loss of, or injure any national marine sanctuary resources.

#### **Determinations**

Based on the information provided in the USAF application, NMFS' EA, this document, the public comments submitted on the application and proposed rule, and the USAF's comprehensive reports of the activities through 2008, NMFS has determined that the launching of SLVs, ICBMs, and small missiles and aircraft and helicopter operations at VAFB, will result in no more than Level B harassment of harbor seals, California sea lions, northern elephant seals, and northern fur seals. The effects of these military readiness activities from VAFB will be limited to short term and localized changes in behavior, including temporarily vacating haul-outs, and possible TTS in the hearing of any pinnipeds that are in close proximity to a launch pad at the time of a launch. NMFS has also determined that any takes will have no more than a negligible impact on the affected species and stocks. No take by serious injury and/or death is anticipated, and the potential for permanent hearing impairment is unlikely. Harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. NMFS' regulations for these exercises prescribe the means of affecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking. Additionally, the launch activities and aircraft and helicopter operations will not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence use, as there are no subsistence uses of these four pinniped species in California waters.

#### **Classification**

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Good cause exists to waive the 30-day delay in effectiveness for this rule pursuant to 5 U.S.C. 553(d). The USAF has a Taurus (SLC 576–E) launch scheduled for February 23, 2009, which falls within 30 days of the publication of this final rule. A delay would cost up to hundreds of thousands of dollars per day, depending on various factors, including the cost of maintaining the vehicle and payload in ready condition and the number of personnel in the

launch crew. A launch delay would also lead to increased risk for personnel if there is increased handling time for hazardous materials or ordnance that has to be deactivated or offloaded, depending on the stage of launch preparations at the time of delay. In addition to the significant costs that would be borne by the government in the event of a delay to this mission, the mission requires a particular orbit for the payload, and getting into that orbit can be closely tied to the time of year and, in some instances, the time of day. Therefore, delaying this launch would mean that the USAF would certainly be impacted in its available launch opportunities. The costs of delaying this launch are greatly outweighed by the benefits of allowing it to go forward immediately. The mitigation and monitoring required by this final rule are for the benefit and protection of marine mammals, many of which will be more vulnerable after the 30 day period. Delaying this launch by a few weeks would cause it to occur during the harbor seal pupping season on VAFB. One of the mitigation requirements is to avoid, whenever possible, the launching of vehicles or missiles during the harbor seal pupping season. Additionally, the measures contained in this final rule are substantially similar to the measures contained in the 5-year rule that expires on February 6, 2009. The 30th SW, USAF is the only entity regulated by this rule. The USAF expressly requested that NMFS issue the rule and regulations and is both willing and able to comply with the requirements of NMFS' final regulations and LOA, as they were during the course of the previous rules and regulations issued to the USAF by NMFS to conduct these activities, within the 30-day window.

At the proposed rule stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the 30th SW, USAF, and would have no effect, directly or indirectly, on small businesses. Because of this certification, a regulatory flexibility analysis is not required, and none has been prepared.

#### **List of Subjects in 50 CFR Part 216**

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

Dated: February 2, 2009.

**James W. Balsiger,**

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

■ For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

**PART 216—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES**

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

**Authority:** 16 U.S.C. 1361 *et seq.*

■ 2. Subpart K is added to part 216 to read as follows:

**Subpart K—Taking Of Marine Mammals Incidental To Space Vehicle And Test Flight Activities**

Sec.

216.120 Specified activity and specified geographical region.

216.121 Effective dates.

216.122 Permissible methods of taking.

216.123 Prohibitions.

216.124 Mitigation.

216.125 Requirements for monitoring and reporting.

216.126 Applications for Letters of Authorization.

216.127 Letters of Authorization.

216.128 Renewal of Letters of Authorization.

216.129 Modifications of Letters of Authorization.

**Subpart K—Taking Of Marine Mammals Incidental To Space Vehicle And Test Flight Activities**

**§ 216.120 Specified activity and specified geographical region.**

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by the 30th Space Wing, United States Air Force, and those persons it authorizes to engage in:

(1) Launching up to 30 space and missiles vehicles each year from Vandenberg Air Force Base, for a total of up to 150 missiles and rockets over the 5-year period of the regulations in this subpart,

(2) Launching up to 20 rockets each year from Vandenberg Air Force Base, for a total of up to 100 rocket launches over the 5-year period of the regulations in this subpart,

(3) Aircraft flight test operations, and

(4) Helicopter operations from Vandenberg Air Force Base.

(b) The incidental take of marine mammals on Vandenberg Air Force Base and in waters off southern California, under the activity identified in paragraph (a) of this section, is limited to the following species: Harbor seals

(*Phoca vitulina*); California sea lions (*Zalophus californianus*); northern elephant seals (*Mirounga angustirostris*); and northern fur seals (*Callorhinus ursinus*).

**§ 216.121 Effective dates.**

Regulations in this subpart are effective from February 7, 2009, through February 6, 2014.

**§ 216.122 Permissible methods of taking.**

(a) Under Letters of Authorization issued pursuant to § 216.106 and 216.127, the 30th Space Wing, U.S. Air Force, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 216.120, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The taking of marine mammals is authorized for the species listed in § 216.120(b) and is limited to Level B Harassment.

**§ 216.123 Prohibitions.**

Notwithstanding takings specified in § 216.120 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.127, no person in connection with the activities described in § 216.120 may:

(a) Take any marine mammal not specified in § 216.120(b);

(b) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in § 216.120(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 216.127.

**§ 216.124 Mitigation.**

(a) The activity identified in § 216.120(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.120(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.127 must be implemented. These mitigation measures include (but are not limited to):

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky

Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting), which may require approaching pinniped haul-outs and rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) Vandenberg Air Force Base must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, California sea lion, and northern fur seal pupping seasons of March through June.

(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch of the same vehicle under that Letter of Authorization.

(5) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

**§ 216.125 Requirements for monitoring and reporting.**

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.127 for activities described in § 216.120(a) are required to cooperate with NMFS, and any other Federal, state or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, NMFS, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in § 216.120(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 216.120(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301-713-2289), within 48 hours of the discovery of the injured or dead animal.



(b) Holders of Letters of Authorization must designate qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization, to:

(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 haul-out, 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.

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals,

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf could occur in those areas (this determination will be made in consultation with NMFS),

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season,

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that surveys are required that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental conditions such as tide, wind speed, air temperature, and swell.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit a report to the Southwest Administrator, NMFS, within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch,

(2) Design of the monitoring program, and

(3) Results of the monitoring program, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haul-out prior to commencement of the launch,

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise,

(iii) The length of time pinnipeds remained off the haul-out or rookery,

(iv) Numbers of pinniped adults, juveniles or pups that may have been injured or killed as a result of the launch, and

(v) Behavioral modifications by pinnipeds that were likely the result of launch noise or the sonic boom.

(e) An annual report must be submitted at the time of renewal of the Letter of Authorization.

(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports,

(2) Assess the impacts at each of the major rookeries,

(3) Assess the cumulative impacts on pinnipeds and other marine mammals from Vandenberg activities, and

(4) State the date(s), location(s), and findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations.

#### **§ 216.126 Applications for Letters of Authorization.**

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 216.120(a) (30th Space Wing, U.S. Air Force) must apply for and obtain either an initial Letter of Authorization in accordance with § 216.127 or a renewal under § 216.128.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Applications for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of pinnipeds.

#### **§ 216.127 Letters of Authorization.**

(a) A Letter of Authorization, unless suspended or revoked, will be valid for

a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.128.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

#### **§ 216.128 Renewal of Letters of Authorization.**

(a) A Letter of Authorization issued under § 216.106 and § 216.127 for the activity identified in § 216.120(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.126 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 216.125(d) and (e), and the Letter of Authorization issued under § 216.127, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 216.124 and 216.125 and the Letter of Authorization issued under §§ 216.106 and 216.127, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.128 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained



in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

**§ 216.129 Modifications of Letters of Authorization.**

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.127 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.128, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.120(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.127 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 0808041043-9036-02]

RIN 0648-AX16

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This action implements 2009 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB), and modifies existing management measures. Specifically, this action maintains quotas for Atlantic mackerel (mackerel), *Illex* squid (*Illex*), and butterfish at the same levels as 2008, while increasing the quota for *Loligo* squid (*Loligo*). Additionally, this action increases the incidental possession limit for mackerel and allows for the possibility of an inseason adjustment to increase the mackerel quota, if landings approach harvest limits. These specifications and management measures promote the utilization and conservation of the MSB resource.

**DATES:** Effective March 9, 2009.

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930-2276, and are also available via the internet at <http://www.nero.nmfs.gov>.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy Analyst, 978-281-9272, fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

Regulations implementing the Fishery Management Plan for the Atlantic

Mackerel, Squid, and Butterfish Fisheries (FMP) appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. The regulations at §§ 648.21 and 600.516(c) require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a rule specifying the amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing (JVP) for the affected species managed under the FMP. In addition, these regulations allow specifications to be specified for up to 3 years, subject to annual review. The regulations found in § 648.21 also specify that IOY for squid is equal to the combination of research quota (RQ) and DAH, with no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified only if TALFF is specified for mackerel.

The Council adopted 2009 MSB specifications and management measures at its June 2008 meeting and submitted them to NMFS for review and approval. Initial submission was on August 1, 2008, and final submission was on September 18, 2008. A proposed rule for the 2009 MSB specifications and management measures was published on November 17, 2008 (73 FR 67829), and the public comment period for the proposed rule ended on December 17, 2008. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

**Final MSB Specifications and Management Measures for the 2009 Fishing Year**

This action implements the following MSB specifications and management measures for the 2009 fishing year, which are described in detail below.

TABLE 1. FINAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2009 FISHING YEAR.

Specifications	<i>Loligo</i>	<i>Illex</i>	Mackerel	Butterfish
Max OY	32,000	24,000	N/A	12,175
ABC	19,000	24,000	156,000	1,500
IOY	18,874 <sup>1</sup>	24,000	115,000 <sup>2</sup>	500
DAH	18,874	24,000	115,000 <sup>3</sup>	500
DAP	18,874	24,000	100,000	500
JVP	0	0	0	0