

FINDING OF NO SIGNIFICANT IMPACT

ISSUANCE OF AN INCIDENTAL TAKE AUTHORIZATION TO THE U.S. AIR FORCE 86 FIGHTER WEAPON SQUADRON FOR TAKE OF MARINE MAMMALS INCIDENTAL TO TRAINING ACTIVITIES CONDUCTED AT THE PACIFIC MISSILE RANGE FACILITY, KAUAI, HAWAII

Supported by:

U.S. Air Force Environmental Assessment/Oversees Environmental Assessment
Dated October 2016

National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Protected Resources
Silver Spring, Maryland

I. INTRODUCTION

In accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality Regulations (CEQ) and the National Oceanic and Atmospheric Administration's (NOAA) Administrative Order 216-6A, this document addresses NOAA's National Marine Fisheries Service's (NMFS) determination that the issuance of regulations and Letter of Authorization (LOA) to the U.S. Air Force (USAF) 86 Fighter Weapons Squadron (86 FWS), pursuant to Section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. §§ 1631 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 Code of Federal Regulations (CFR) Part 216), will not have a significant effect on the human environment.

NMFS considers the issuance of regulations and a LOA to the USAF 86 FWS a major federal action subject to NEPA. As such, NMFS is responsible for assessing the environmental effects associated with authorizing take of marine mammals incidental to USAF 86 FWS military readiness training missions. Therefore, NMFS prepared this Finding of No Significant Impact (FONSI) and is adopting the USAF Final Environmental Assessment (EA)/Oversees Environmental Assessment (OEA) pursuant to 40 CFR 1506.3 based on the determination that the EA/OEA contains all the required components for adoption, including an adequate evaluation of the direct, indirect and cumulative impacts on marine mammals and species listed as threatened or endangered.

The scope of the USAF's proposed action and alternatives involve activities with the potential to impact protected species under NOAA's jurisdiction¹. NMFS did not serve as a cooperating agency

¹NMFS has a statutory responsibility to protect, conserve and recover marine mammals and threatened and endangered species. This responsibility includes the authority to authorize incidental take of marine mammals, engage in consultations with other federal agencies, which can allow for take of threatened and endangered listed species, and enforce against unauthorized takes. NMFS executes these authorities pursuant to 16 U.S.C. §§ 1361 *et seq.* and 16 U.S.C. §§ 1531 *et seq.* NMFS has additional responsibilities to conserve and manage fishery resources of the United States, including actions that may adversely affect essential fish habitat, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act and the implementing regulations, 50 CFR Part 600.

but did participate in the development of the draft and final EA/OEA by providing the USAF 86 FWS with special expertise² regarding the analysis of impacts to protected species, identifying mitigation measures for marine mammals to be considered in their analysis and providing additional information necessary to support NMFS' proposed action were adequately addressed.

II. BACKGROUND

On December 21, 2016, NMFS received an application from the USAF's 86 FWS requesting an incidental take authorization (ITA) for the take of marine mammals incidental to conducting Long Range Strike (LRS) Weapons Systems Evaluation Program (WSEP) training activities proposed to be conducted from 2017 to 2022 at the Barking Sands Underwater Range Expansion (BSURE) area of the Pacific Missile Range Facility (PMRF), Kauai, Hawaii. The issuance of regulations and a LOA is considered NMFS' proposed action and is a direct outcome of USAF 86 FWS's request for an ITA. LRS WSEP training activities involve detonating live bombs and missiles in the open ocean. These explosions have the potential to result in Level A (injury) and Level B (temporary threshold shift (TTS), behavioral) harassment of marine mammals.

The MMPA prohibits the taking of marine mammals with certain exceptions. The MMPA allows NMFS to issue an ITA if the taking of marine mammals will have a negligible impact on the species or stock(s), and, where relevant, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. An ITA must also set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the monitoring and reporting of such takings.

The National Defense Authorization Act for Fiscal Year 2004 (Section 319, Pub. L. 108–136, November 24, 2003) (NDAA of 2004) removed the “small numbers” and “specified geographical region” limitations and amended the definition of harassment as it applies to military readiness activities as follows: “(Section 3(18)(B) of the MMPA, 16 U.S.C. 1362(18)(B)): “(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.” NMFS considers TTS another form of Level B harassment.

In accordance with the MMPA and its implementing regulations (summarized above) NMFS is issuing regulations and an LOA to USAF's 86 FWS. The regulations will be valid from August 23, 2017 through August 22, 2022 and prescribe the permissible methods of taking, the means of effecting the least practicable adverse impact on the marine mammal species or stock and their habitat and set forth requirements pertaining to monitoring and reporting of such taking for the specified activities. The USAF's 86 FWS will be authorized to take individuals of 16 species of marine mammals by Level B harassment and four of the sixteen species of marine mammals by Level A harassment. The final rule also establishes the framework in which incidental take can be authorized through issuance of a five-year LOA.

NOAA's Office of National Marine Sanctuaries has a statutory responsibility to protect and conserve National Marine Sanctuaries pursuant to the National Marine Sanctuaries Act (NMSA).

² “Special expertise” as defined by 40 CFR §1508.26, means statutory responsibility, agency mission or related program experience.

Prior to our consideration to issue regulations and a LOA, NMFS issued an Incidental Harassment Authorization (IHA) to the USAF 86 FWS for take of marine mammals incidental to conducting similar LRS WSEP training activities in the same location in 2016 (81 FR 67971; October 3, 2016). Although USAF's 86 FWS is proposing to conduct activities in the same manner within the same geographic areas analyzed in their 2016 Final EA/OEA and previously considered in NMFS IHA, there are a few minor changes NMFS considered for the issuance of this final rule and LOA: the number and type of munitions proposed to be released has decreased from 40 to 92 percent depending upon mission year and the 86 FWS has included enhanced survey techniques capable of detecting marine mammals than considered in the 2016 IHA.

III. ANALYSIS

In accordance with 40 CFR §1508.13, this section presents the reasons why NMFS issuance of regulations and LOA to USAF's 86 FWS will not have a significant effect on the human environment.

A. Summary of Proposed Actions and Alternatives

USAF, through the preparation of their Final EA/OEA and incorporation of analytical methods associated with the effects of surface and slightly subsurface explosions on marine mammals, assessed the direct, indirect and cumulative impacts on the environment associated with their proposed action and alternatives. This analysis specifically includes the assessment of impacts to marine mammals from explosives proposed for use during LRS WSEP training activities. A summary of the alternatives USAF analyzed is below and detailed descriptions are within Chapter 2 of the USAF Final EA/OEA.

No Action Alternative. Under this alternative, USAF 86 FWS would not conduct the LRS WSEP training activities and no live or inert releases of munitions related to the LRS WSEP would occur on the BSURE portion of the PMRF. Although this alternative would not meet USAF 86 FWS's purpose and need, the No Action Alternative was considered to provide a clear basis for choice among options by the decision maker and the public.

Alternative 1 (Preferred Alternative). Under this alternative, USAF 86 FWS would conduct operational evaluations of LRS WSEP missions in a location with adequate test capacity and instrumentation. This operational test program would utilize multiple types of aircraft and weapons systems, employing them under all possible fusing options and detonation scenarios. Weapon release parameters for 2017 – 2021 training missions would add evaluations of HARM, JDAM/LJDAM, and MALD/MALD-J, along with a B-1 bomber releasing one live JASSM/JASSM-ER and releasing live SDB I/II munitions as previously conducted in 2016. Up to four SDB I/II munitions could be released simultaneously, such that each ordnance would hit the water surface within a few seconds of each other. It is not known how many weapon releases or what combination of munitions would be released each day. However, aside from the SDB-I/II releases, all other weapons would be released separately, impacting the water surface at different times. Since development of the EA/OEA, the 86 FWS has identified a reduction in the number and type of live munitions expended during each exercise. In 2017, training would occur for only one day and include only eight small diameter bombs. In future years, the number of type of munitions are reduced by 40% with a maximum of four days of training occurring over a five day time period. This alternative covers the intended level of LRS WSEP training activities and meets the purpose and need.

Alternative 2. Under this alternative, the USAF 86 FWS would conduct the same number of munitions proposed under Alternative 1. However, fusing options would not include a 10-millisecond time delay for JDAMs, which would result in surface detonations as opposed to subsurface detonations. All munitions would be released and evaluated under the same scenarios and criteria identified under Alternative 1 and impacting within the same location on the water surface. Aircraft operations and range clearing activities would also be the same as described above. This alternative still meets operational requirements but would potentially generate less underwater sound and, thus, potentially reduce acoustic impacts to protected marine species.

Based on the USAF 86 FWS's application and the analysis in their Final EA/OEA, NMFS considered two alternatives, a no action alternative in which we deny USAF 86 FWS's application and an action alternative in which we grant the application and issue regulations and an LOA.

No Action Alternative. For NMFS, denial of an application for an ITA constitutes the No Action Alternative, which is consistent with our statutory obligation under the MMPA to grant or deny requests for take incidental to specified activities. The resulting environmental effects from not issuing an authorization is consistent with the USAF's No Action Alternative analysis.

Alternative 1. Under this alternative, NMFS would issue regulations to the USAF 86 FWS for a period of five-years authorizing take of marine mammals incidental to the LRS WSEP training activities as described under their Preferred Alternative, subject to the mandatory mitigation and monitoring measures and reporting requirements set forth in the final rule and LOA. The resulting environmental effects associated with issuing regulations is consistent with the USAF's Preferred Action alternative analysis.

B. Effects Evaluation

The evaluation of significant environmental effects is limited to the decision NMFS is responsible for, which is issuance of regulations and a LOA (NMFS' action) to the USAF's 86 FWS (applicant). While there may be environmental effects associated with the applicant's underlying action, potential effects of NMFS' action are those that would occur due to the authorization of incidental take of marine mammals. NMFS considers the applicant's specified activity (applicant's action) and the potential extent and magnitude of incidental takes of marine mammals associated with that activity along with criteria established by CEQ Regulations. Specifically, 40 CFR §1508.27 states that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to NMFS making a finding of no significant impact. Therefore, we considered each criterion individually, as well as in combination with others and analyzed the significance of our proposed action and alternatives based on CEQ's context and intensity criteria and incorporated the USAF Final EA/OEA by reference, where applicable.

1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans (FMP)?

Response: LRS WSEP training activities involve surface and slightly (five feet) subsurface detonations. The duration of USAF's 86 FWS LRS WSEP LRS training activities is short-term and temporary with one mission per year involving four days of bombing. The area encompassed by the

USAF 86 FWS's proposed action is within designated EFH for several species. The Western Pacific Regional Fishery Management Council (WPRFMC) recently shifted toward an ecosystem-based approach, focusing fishery management activities on geographic areas that support various habitats and their associated species complexes rather than on individual species. Accordingly, WPRFMC is in the process of replacing FMPs with Fishery Ecosystem Plans (FEPs). FEPs associated with resources in this area include the Hawaii Archipelago FEP and the Pacific Pelagic Fisheries FEP. The Hawaii Archipelago FEP does not establish new fishery management regulations but rather consolidates existing regulations contained in previous FMPs. The FEP identifies all demersal species (living on or near the seafloor) known to occur around the Hawaii Archipelago, designates them as one management unit, and incorporates all management provisions of the previous Bottomfish and Seamount Groundfish FMPs. The FEP also incorporates provisions of the previous Crustaceans, Precious Corals, and Coral Reef Ecosystems FMPs that are applicable to the area. EFH management units presently include bottomfish species (deep-slope and seamount species complexes consisting of snappers, groupers, jacks, pelagic armorhead, ratfish, and other similar taxa); crustaceans (spiny and slipper lobster species complex, deepwater shrimps, and Kona crab [*Ranina ranina*]); precious corals (non-reef-building corals occurring below the euphotic zone, historically important in the jewelry trade); and coral reef ecosystems (separate designations for currently harvested and potentially harvested coral taxa).

USAF's 86 FWS LRS WSEP training activities in the BSURE of the PMRF would have no impacts to benthic EFH because explosion impacts would not be felt on the seafloor but water quality impacts could occur through introduction of metals and chemical materials. Any explosion byproducts, petroleum products, and battery acid deposited in the water or on substrates could have temporary and localized effects but would be quickly dispersed and diluted by water currents. Metals, explosives associated with unexploded ordinance (UXO) and plastics could be present at the mission site for long time periods but effects to the water column would be limited to a small area around such items. Solid items could become corroded, encrusted, or covered with sediment, and constituents of unconsumed explosives would be subject to several physical, chemical, and biological processes that render the materials harmless or would otherwise dissipate them to undetectable levels. Physical disturbance of the water column would be temporary and would not alter the water in any measurable or lasting manner. In their analysis in the Final EA/OEA, USAF determined fish may be injured or killed by detonations but the number is expected to be small relative to the overall populations and any known hard bottom habitats and artificial reefs would be avoided.

Finally, the issuance of regulations and a LOA is only authorizes take of marine mammals, not the actual activity. Further, the mitigation and monitoring measures required by the regulations and LOA would not affect ocean and coastal habitats or EFH because they are limited to aerial based monitoring surveys and delaying activities should a marine mammal be observed within a specified exclusion zone. Therefore, NMFS determined authorizing take of marine mammals incidental to 86 FWS's LRS WSEP activities in the BUSRE would not have an adverse impact or result in substantial damage to the ocean and coastal habitats and/or EFH and an EFH consultation is not required.

2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: We do not expect our proposed action of issuing regulations and a LOA for the take of marine mammals incidental to LRS WSEP training activities to have a substantial impact on biodiversity or ecosystem function within the affected environment. Marine mammals may temporarily avoid the area being bombed; however, this would not disrupt them from performing ecosystem functions because activities for each training mission are limited to four hours a day for no more than four days over a five-day period. It is anticipated only one training mission would occur each calendar year. The taking of marine mammals would not impact benthic productivity because detonations are limited to the ocean surface to slightly subsurface in water depth of about 15,240 feet (ft) (4,645 meters (m)). Finally, USAF's 86 FWS LRS WSEP training activities may impact ecosystem function by temporarily creating elevated levels of underwater sound, thereby disturbing forage fish, changes to the water environment from the explosion on the surface of the water, and the release of fuel, debris, ordnance, and chemical materials into the water column. However, release of these materials is expected to be inconsequential since they will be in small amounts and would naturally degrade. Therefore, the impacts to the area would be minor and temporary in nature.

3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: NMFS does not expect the proposed action of issuing regulations and a LOA to have a substantial adverse impact on public health or safety because incidental take of marine mammals does not involve the public or expose the public directly or indirectly; prior analysis for similar activities demonstrates issuance of a given ITA only affects the animals that are the subject of authorization and has not been linked to adverse effects to the quality of the environment or well-being of humans. Furthermore, the proposed LRS WSEP training activities will take place approximately 44 nautical miles from shore and for activities with inherent safety risks, the military implements measures to control these risks to the public. Such measures include prohibiting access to and clearing the range prior to conducting LRS WSEP training activities involving missiles and bombs. Restricted access to the range means the area is temporarily closed to all recreational and commercial vessels. In addition, PMRF Range Safety officials have managed operational safety in this area for several years without incident. 33 CFR 165.23 "Regulated Navigation Area and Limited Access Areas" - Subpart C "Safety Zones" and 33 CFR 72 "Aids to Navigation" establish navigational restrictions for PMRF and authorize the U.S. Coast Guard to implement them for the safety of the public and nautical charts, issued by NOAA and used by commercial and recreational vessels, include these federally designated safety zones and areas.

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: NMFS determined the issuance of regulations and a LOA will result in negligible impacts to 16 species of marine mammals that could be present in proximity to BSURE and the overall PMRF area. The impacts of the LRS WSEP training activities on marine mammals are specifically related to shock waves and acoustic stimuli. Explosive detonations at the water surface send a shock wave and sound energy through the water and the potential effects to marine mammals

from these surface and subsurface detonations may include one or more of the following: Temporary or permanent hearing impairment (TTS; PTS), non-auditory physical or physiological effects, behavioral disturbance and masking. NMFS concluded the impacts of issuing regulations to the USAF 86 FWS for the incidental take, by Level B harassment, is expected to be no more than minor and short-term. Although Level A harassment of four species of marine mammals is authorized, NMFS and the USAF 86 FWS were very precautionous in this analysis and have included extensive monitoring and mitigation measures; therefore, we expect the potential for any permanent threshold shift impacts to be low. Refer to Chapter 3, Section 3.8 in the USAF Final EA/OEA and the Final Rule for the full explanation of impacts to marine mammals from USAF 86 FWS proposed action.

To eliminate potential for mortality and physiological injury (*e.g.*, lung injury) and to reduce the potential for acoustic injury and disturbance from LRS WSEP training activities, the USAF 86 FWS would implement monitoring and mitigation measures, which are outlined in the USAF Final EA/OEA and NMFS final rule. These include, but are not limited to, aerial monitoring with advanced targeting pods and range cameras before, during and after missions; delay or cessation of training should a marine mammal be observed within the designated exclusion zone; and limiting training exercises to daylight hours and the time of year when marine mammals are low in abundance. Taking these measures into consideration, we expect that the responses of marine mammals to be limited to PTS (Level A harassment), TTS, and temporary displacement from the area and/or short-term behavioral changes, falling within the MMPA definition of “Level B harassment.” We do not anticipate that take by serious injury or mortality would occur, nor have we authorized take by serious injury, or mortality. We expect that harassment takes would be at the lowest level practicable due to the incorporation of the proposed mitigation measures.

NMFS anticipates the LRS WSEP training activities could result in the take of one ESA-listed species of marine mammals- the sei whale. No other listed marine mammals are likely to be impacted by the specified activity due temporal restraints (mission would only occur in summer or fall, annually). Further, to issue an ITA, NMFS must find the specified activities does not affect annual rates of recruitment or survival. Critical habitat has not been designated within the BSURE and interactions with protected species in these areas, such as sea turtles or listed³ marine mammals are not expected to be significant because the final rule and Biological Opinion/Incidental Take Statement include mitigation measures to avoid or minimize effects to all protected species that may occur in these areas.

Endangered or threatened fish, turtle, and marine mammal species may occur in the general vicinity where the LRS WSEP training activities will occur but NMFS authorization of incidental take of marine mammals is not expected to have a significant adverse impact on endangered or threatened species. There are several marine mammal species under NMFS’ jurisdiction listed as endangered under the Endangered Species Act (ESA) in the waters of Hawaii. No incidental take of these species are authorized in the final rule or exempted under the ESA. Other marine mammals that may be affected by the LRS WSEP training activities are dwarf sperm whale (*Kogia sima*) and pygmy sperm whale (*Kogia breviceps*), which are protected under the MMPA. The regulations for the take of marine mammals and the required mitigation measures would not significantly affect physical habitat features, such as substrates and water quality because detonations would occur at the water’s surface or just below and the LRS WSEP training activities are short in duration and

³ Species listed as threatened or endangered under the Endangered Species Act

temporary (5 days per year), and the number of live munitions included in the training is too low to cause any lasting or significant water quality issues. Refer to Chapter 3, Section 1.7 in the USAF Final EA/OEA for the full explanation of impacts to water quality from USAF 86 FWS proposed action.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: NMFS expects the primary impacts to the natural and physical environment to be short-term and temporary in nature and not interrelated with significant social or economic impacts and determined the issuance of regulations and a LOA would not adversely affect low-income or a minority population, as our action only affects marine mammals. Further, there will be no impacts of the activity on the availability of the species or stocks of marine mammals for subsistence uses. The USAF acknowledges in their Final EA/OEA that periodic closure of portions of the Pacific Ocean may potentially impact the availability of some areas for commercial and recreational activities, including commercial and recreational fishing and vessel traffic, whale watching and scientific research. However, the PMRF Control Officer is responsible for submitting Notices to Airmen and Notices to Mariners that are published by the Federal Aviation Administration and the U.S. Coast Guard for one week prior to the commencement of military LRS WSEP training activities. These notices alert all aircraft and commercial ship operators, commercial fisherman, recreational boaters, and other users that the military will be operating in a specific area for a given timeframe and allows them to plan accordingly. Closed areas in the Pacific Ocean would not approach closer than 10 nautical miles from shore.

6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: The effects of issuing regulations and a LOA on the quality of the human environment are not likely to be highly controversial because: there is no substantial dispute regarding the size, nature, or effect of the proposed action, there is no known scientific controversy over the potential impacts of the proposed action, and all comments received during the public comment period were considered when crafting the final rule.

To allow other agencies and the public the opportunity to review and comment on the action, NMFS published a notice of the proposed rule in the *Federal Register* on May 5, 2016 (82 FR 21156). We received public comments from the Marine Mammal Commission, a scientific research organization, an environmental non-governmental organization and 18 citizens. The three former organizations submitted similar comments regarding concerns over effective monitoring and we improved monitoring requirements in the final rule. The Marine Mammal Commission also considered our range to effects analysis to be conservative, ensuring ample protection. Comments from citizens were generally opposed to the issuance of the regulations; however, most comments were directed at authorizing mortality of marine mammals which we are not doing here. In response to comments, the 86 FWS has decreased the amount of munitions used during training, will conduct a systematic aerial survey covering 8 miles (mi) (13 kilometers (km)) using military aircraft equipped with sensor pods (*e.g.*, Sniper advanced targeting pods) before, during and after each training day, and monitor for marine mammals within the weapon impact area using range cameras stationed on Makaha Ridge before, during and after each training day.

7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

Response: NMFS proposed action to issue regulations and a LOA cannot reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas because none of these resources are found in the BSURE/PMRF. The action area is a military range designated for military training exercises and based on the analysis within the USAF Final EA/OEA, no natural processes in the environment are expected to be impacted from the LRS WSEP training activities. There is no designated critical habitat in the action area.

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: NMFS proposed action to issue regulations to the USAF 86 FWS will not result in environmental effects that are uncertain, unique or unknown because the USAF has extensive experience with these types of LRS WSEP training activities and NMFS has been conservative in identifying the potential impacts to marine mammals. The distances to the impact thresholds for marine mammals in the BSURE are based the maximum amount of munitions used by the USAF 86 FWS. Military training activities are well understood and documented; prior authorizations for similar activities in the same location have demonstrated the issuance of ITAs only affects the marine mammals that are the subject of the authorization. For example, NMFS has issued multiple ITAs to the U.S. Navy for testing and training activities at PMRF, which involve similar types of marine mammal harassment and conducted NEPA analysis on these activities. In addition, NMFS issued an IHA to the USAF 86 FWS in 2016 for similar activities. To date, there have been no documented cases⁴ of impacts to marine mammals that exceeded NMFS' analysis under the MMPA and NEPA. The LRS WSEP training activities are well planned to minimize any impacts to the biological and physical environment of the BSURE via the implementation of mitigation and monitoring protocols that ensure the least practicable adverse impact on the affected species or stocks of marine mammals.

9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: The USAF determined impacts associated with the LRS WSEP training activities are not expected to result in cumulative significant impacts to the human environment when considered with past, present and reasonably foreseeable future activities. Regarding marine mammals and their habitat, USAF acknowledges in their Final EA/OEA, that cumulative impacts to biological resources may occur if the species or habitats impacted by their proposed action would also be affected by other military, industrial, commercial or recreational uses of BSURE and PMRF. Activities considered to be of primary concern include U.S. Navy testing and training conducted in the Hawaii Range Complex (HRC), which consist of active sonar use, impulsive acoustic sources and the introduction of debris and other materials into the water column and substrate. HRC is an area where many other military readiness activities occur, have occurred and will continue to occur. The U.S. Navy has an ITA from NMFS for take of marine mammals incidental to their military

⁴ As determined from monitoring and reporting by the Navy and USAF 86 FWS.

readiness activities but there have also been several military readiness activities NMFS issued ITAs for which have expired. NMFS has also received applications for new ITAs from the U.S. Navy for future military readiness activities. Since the U.S. Navy and other activities occur in this area, there is potential for cumulative effects to the marine mammals. However, because the USAF 86 FWS's missions do not include use of active sonars and they will only occur once per year for four days, USAF concludes this comparatively small addition of LRS WSEP training activities will not result in significant additional, cumulative effects. Further, LRS WSEP training activities will not occur simultaneously with other military training exercises.

Although USAF's 86 FWS proposed action will add another, activity in the waters of Hawaii, NMFS expects potential impacts to marine mammals and their habitats to be minimal and short-term based on the temporary duration and limited footprint of LRS WSEP training activities when compared to other anthropogenic activities and natural pressures from the past, present or reasonably foreseeable future and; therefore, do not expect the issuance of regulations and an LOA to USAF's 86 FWS to result in cumulative significant impacts to the identified marine mammal species or stocks.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: NMFS determined that our proposed action to issue regulations and an LOA will not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources either because such resources do not exist within the action area. The target area is located 44 miles from land and none of these resources exist at BSURE or other areas of PMRF.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: The issuance of regulations and a LOA cannot reasonably be expected to lead to the introduction or spread of any non-indigenous species into the environment because the LRS WSEP training activities primarily involve air-to-surface missile and bomb testing. In the event vessels are used in conjunction with these LRS WSEP training activities, sufficient precautionary measures will be implemented by the USAF 86 FWS to ensure that no introduction or spread of such species occurs.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or does it represent a decision in principle about a future consideration?

Response: NMFS actions under MMPA Section 101(a)(5)(A) and (D) are considered individually and is based on the best available scientific information, which is continuously evolving. Therefore, issuance of an ITA to a specific individual or organization for a given activity does not guarantee or imply that NMFS will authorize others to conduct similar activities. Subsequent requests for ITAs are evaluated upon their own merits relative to the criteria established in the MMPA and 50 CFR Part 216 on a case-by-case basis. In addition, USAF 86 FWS's proposed action has no unique aspects that would suggest it would be a precedent for any future actions. For

these reasons, the issuance of regulations and an LOA to USAF 86 FWS to conduct LRS WSEP training activities would not be precedent setting.

13) Can the proposed action reasonably be expected to threaten a violation of any Federal, State, or local law or requirements imposed for the protection of the environment?

Response: NMFS compliance with environmental laws, regulations and Executive Orders (EOs) is based on NMFS proposed action and the nature of the applicants proposed activities. NMFS consulted under Section 7 of the ESA to determine if the issuance of this rule and LOA would likely jeopardize the continued existence of listed species or result in an adverse modification of critical habitat. The consultation concluded that issuance regulations would not jeopardize any listed species or adversely modify critical habitat. There are no other environmental laws, regulations, EOs, consultations, federal permits or licenses applicable to NMFS for issuance of this authorization to USAF's 86 FWS. In addition, USAF fulfilled its responsibilities under the MMPA and the final rule specifies that the applicant is required to obtain any state and local permits necessary to carry out the action.

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: NMFS issuance of regulations and an LOA are associated with the taking of marine mammals incidental to USAF's 86 FWS conducting LRS WSEP training activities. There are no "target" species. The number of authorized takes of marine mammals and inclusion of appropriate mitigation and monitoring measures are specifically designed to have the least practicable adverse impact on marine mammals. Marine mammals are expected to recover from harassment resulting in behavioral changes or TTS. The specified activity is short-term and temporary in nature and interactions with other marine mammals not authorized to be taken is not expected due to the time of year these activities are scheduled to occur. Finally, impacts associated with similar military training activities conducted by the U.S. Navy have been fully reviewed by NMFS in Environmental Impact Statements where NMFS concluded any taking incidental to Navy training activities would be negligible, (refer to the response in Q9 above and Chapter 4 of the USAF Final EA/OEA). Therefore, NMFS does not anticipate the comparatively small addition of LRS WSEP training activities in the BSURE to result in significant cumulative effects or cumulative adverse effects that could have a substantial effect on target species or non-target species associated with other permitted activities in the PMRF.

IV. DETERMINATION

In view of the information presented in this document, the USAF 86 FWS's application, and the analysis contained in the Final EA/OEA, it is hereby determined the issuance of regulations and a LOA to the USAF 86 FWS would not significantly affect the quality of the human environment. In addition, NMFS has addressed all beneficial and adverse impacts of the action to reach the conclusion of no significant impacts. Accordingly, the preparation of an Environmental Impact Statement for this action is not necessary.

Donna S. Wieting
Director, Office of Protected Resources,
National Marine Fisheries Service

8/11/17

Date