

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: January 13, 2011.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XA147**

#### Endangered Species Permit No. 1578-01 and Permit No. 1595-04

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

**ACTION:** Notice; issuance of permit amendments.

**SUMMARY:** Notice is hereby given the following applicants have been issued a modification to research permits (Permit Nos. 1578 and 1595-03) to take shortnose sturgeon for purposes of scientific research:

Maine Department of Marine Resources (MDMR) (Gail S. Wippelhauser, Principal Investigator), 21 State House Station, Augusta, ME, 04333 (Permit No. 1578); and

Michael M. Hastings, University of Maine, 5717 Corbett Hall, Orono, ME 04469, (Permit No. 1595-03).

**ADDRESSES:** The permit amendments and related documents are available for review upon written request or by appointment in the following office(s):

- Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376; and
- Northeast Region, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281-9328; fax (978) 281-9394.

**FOR FURTHER INFORMATION CONTACT:** Malcolm Mohead or Colette Cairns, (301) 713-2289.

**SUPPLEMENTARY INFORMATION:** On September 24, 2010, notice was published in the *Federal Register* (75 FR 58350) that a request for an amendment to Permit No. 1578 and Permit No. 1595-03 to conduct research on shortnose sturgeon had been submitted by the above-named organizations. The requested permit modifications have been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16

U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

#### Permit Modification No. 1578-01

The existing permit authorized sampling of 500 shortnose sturgeon adults and sub-adults annually in the main stem of the Kennebec River between Augusta, ME and Lockwood Dam focusing on the location of spawning and foraging habitat, migratory pathways, and effects of river flow on migration and habitat use. The researcher is now authorized to document the use of other river systems by shortnose sturgeon in the Gulf of Maine (GOM) capturing up to 600 from (1) The Kennebec River mouth to Lockwood Dam; (2) the Androscoggin River mouth to Brunswick Dam; (3) the Sheepscot River mouth to Reversing Falls; (4) the Sasanoa River, the Back River, and Sagadahoc Bay; (5) Tottman Cove; and (6) the lower Saco River. New research methods include: use of Floy tags for external identification; endoscopic examination with borescopes to verify sex; blood sampling; gastric lavage for diet analysis; scute sampling for elemental analysis; and electro-narcosis for anesthetization. Researchers are also authorized an increase in the number of fish acoustically tagged (up to 60 annually); and an increase of early life stage sampling (up to 60 annually) in the Kennebec complex and Saco River.

#### Permit Modification No. 1595-03

The objectives of the original research remains the same as the modification, assessing the distribution, movements, abundance and spawning of shortnose sturgeon in the Penobscot River system; however, the number of shortnose sturgeon captured with gill and trammel nets is increased from 200 to 300 annually. Other new research activities include: (1) Lowering the minimum water temperature to 0°C in order to sample shortnose sturgeon adults and sub-adults; (2) using Floy tags for externally identifying; (3) using electro-narcosis for anesthetization; (4) using scute sampling for elemental analysis; (5) using gastric lavage for diet analysis; and (6) including September to December to sample early life stages.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 12, 2011.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XA100**

#### Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy's Mission Activities at the Naval Surface Warfare Center Panama City Division

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

**ACTION:** Notice; issuance of a Letter of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued a one-year Letter of Authorization (LOA) to take marine mammals by harassment incidental to the U.S. Navy's Research, Development, Test and Evaluation (RDT&E) mission activities at the Naval Surface Warfare Center Panama City Division (NSWC PCD) to the Commander, U.S. Naval Surface Warfare Center Panama City Division, 110 Vernon Avenue, Panama City, FL 32407-7001 and persons operating under his authority.

**DATES:** Effective from January 21, 2011, through January 20, 2012.

**ADDRESSES:** Copies of the Navy's September 2, 2010, LOA application, the LOA, the Navy's 2010 marine species monitoring report and the Navy's 2010 annual mission activities report are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contact listed here (*See FOR FURTHER INFORMATION CONTACT*), or online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS (301) 713-2289 x137.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's RDT&E activities at the NSWC PCD were published on January 21, 2010 (75 FR 3395), and remain in effect through January 21, 2015. They are codified at 50 CFR part 218 subpart S. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the Navy's RDT&E activities. For detailed information on these actions, please refer to the January 21, 2010 **Federal Register** notice and 50 CFR part 218 subpart S.

**Summary of LOA Request**

NMFS received an application from the U.S. Navy for an LOA covering the Navy's RDT&E activities at NSWC PCD off the U.S. Gulf of Mexico under the regulations issued on January 21, 2010 (75 FR 3395). The application requested authorization, for a period not to exceed one year, to take, by harassment, marine mammals incidental to proposed RDT&E activities that involve underwater explosive detonation, projectile firing, and sonar testing.

**Summary of Activity Under the 2010 LOA**

As described in the Navy's exercise report, which covered the period between January and August 2010, the RDT&E activities conducted by the Navy were within the scope and amounts contemplated by the final rule. None of the testing events exceeded the average

annual allotment except for the AN/AQS-20 in non-territorial waters, which exceeded the annual allotment by 9.3%, but was still within the five-year total allotment for this type of event. No test activities involving underwater explosive detonations and projectile firing were conducted between January and August 2010.

As shown in Tables 1 and 2, most of the mid-frequency active sonar (MFAS) and high-frequency active sonar (HFAS) testing events were far below the levels authorized in the annual LOA.

**TABLE 1—TOTAL ANNUAL NUMBER OF EACH TYPE OF MFAS AND HFAS LISTED AT 50 CFR 218.180 CONDUCTED IN THE NSWC PCD STUDY AREA IN TERRITORIAL WATERS (NUMBER AUTHORIZED VS. CONDUCTED).**

Sonar system	Number authorized (hrs)	Number conducted (hrs)
AN/SQS-53/56 Kingfisher .....	3	0
Sub-bottom profiler (2-9 kHz) .....	21	0
REMUS SAS-LF ..	12	12
REMUS Modem ...	25	25
Sub-bottom profiler (2-16 kHz) .....	24	24
AN/SQQ-32 .....	30	0
REMUS-SAS-LF ..	20	20
SAS-LF .....	35	35
AN/WLD-1RMS-ACL .....	33.5	26.3
BPAUV Sidescan ..	25	0
TVSS .....	15	0
F84Y .....	15	0
BPAUV Sidescan ..	25	0
REMUS-SAS-HF ..	10	0
SAS-HF .....	11.5	0
AN/AQS-20 * .....	545	27.3
AN/WLD-11 RMS Navigation .....	15	0
BPAUV Sidescan ..	30	0

\* In the 2010 LOA, this system was incorrectly listed as the AN/SQS-20.

**TABLE 2—TOTAL ANNUAL NUMBER OF EACH TYPE OF MFAS AND HFAS LISTED AT 50 CFR 218.180 CONDUCTED IN THE NSWC PCD STUDY AREA IN NON-TERRITORIAL WATERS (NUMBER AUTHORIZED VS. CONDUCTED).**

Sonar system	Number authorized (hrs)	Number conducted (hrs)
AN/SQS-53/56 Kingfisher .....	1	0
Sub-bottom profiler (2-9 kHz) .....	1	0
REMUS Modem ....	12	1.3

**TABLE 2—TOTAL ANNUAL NUMBER OF EACH TYPE OF MFAS AND HFAS LISTED AT 50 CFR 218.180 CONDUCTED IN THE NSWC PCD STUDY AREA IN NON-TERRITORIAL WATERS (NUMBER AUTHORIZED VS. CONDUCTED).—Continued**

Sonar system	Number authorized (hrs)	Number conducted (hrs)
Sub-bottom profiler (2-16 kHz) .....	1	0
AN/SQQ-32 .....	1	0
SAS-LF .....	1	0
AN/WLD-1RMS-ACL .....	5	0
BPAUV Sidescan ..	38	0
TVSS .....	16.5	0
F84Y .....	15	0
REMUS-SAS-HF ..	25	0
SAS-HF .....	15	0
AN/AQS-20 * .....	15	16.4
BPAUV Sidescan ..	25	0

\* In the 2010 LOA, this system was incorrectly listed as the AN/SQS-20.

**Planned Activities for 2010**

In 2010, the Navy expects to conduct the same type and amount of RDT&E activities identified in the final rules and 2010 LOA. No modification is proposed by the Navy for its planned 2010 activities.

**Estimated Take for 2010**

The estimated takes for the Navy's proposed 2010 RDT&E activities are the same as those in authorized in 2010. No change has been made in the estimated takes from the 2010 LOA.

**Summary of Monitoring, Reporting, and Other Requirements Under the 2009 LOA**

*Annual Mission Activities Report*

The Navy submitted their 2010 annual mission activities report covering the period from January through August 2010 within the required timeframes and it is posted on NMFS Web site: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. NMFS has reviewed the report and it contains the information required by the 2010 LOA. The report lists the amount of hours sonar testing was conducted between January and August 2010. During this time period, NSWC PCD conducted 187.3 hours of sonar testing, 169.6 hours in territorial waters (Table 1) and 17.7 hours in non-territorial waters (Table 2). No RDT&E activities associated with underwater detonations were conducted during this period.

### *Monitoring and Annual Monitoring Reports*

In the 2010 LOA to the Navy, it states that the Navy “shall visually survey a minimum of 2 HFAS/MFAS activities and 2 explosive events per year” as monitoring activities for the Navy’s NSWC PCD RDT&E activities. NMFS realized late that this was an error as this was inconsistent with what was agreed upon between NMFS and the Navy. The Navy stated, and NMFS agreed, that since the rule and the associated LOA was expected to be issued in late January 2010 (it was actually issued on January 21, 2010), it would not be feasible to conduct a monitoring activity within the remaining eight months of FY 2010 (between February and September 2010). Therefore, NMFS agreed with the Navy that no monitoring would be required for FY 2010. Nevertheless, the Navy will be required to monitor a minimum of 2 HFAS/MFAS activities and 2 explosive events per year for the remaining four years of the rule, given that an adequate number of RDT&E activities will be conducted during the period.

The Navy submitted a marine species monitoring report within the required timeframes and it is posted on NMFS Web site: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. The monitoring report covers the period between January and August 2010. From January to August 2010, there have been no monitoring opportunities available for explosive or projectile firing events in the NSWC PCD study area as none of these activities were conducted. No monitoring was conducted for sonar activities during this period as the Navy was working on awarding a monitoring contract and developing standard operating procedures. The Navy states that the NSWC PCD Environmental Office and Test and Evaluation Branch has since identified the appropriate contracting vehicle and worked with the consulting firm to develop annual budgetary, scheduling, and monitoring support requirements.

The Navy will conduct two monitoring activities for sonar activities and two for explosive events in FY2011.

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

The ICMP will be used both as: (1) A planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy’s monitoring and marine observer data, as

well as new information from other Navy programs (e.g., research and development), and other appropriate newly published information. The Navy updated its 2010 ICMP Plan and will comply with the Plan. The ICMP may be viewed at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

### *NOAA Workshops*

In a January 19, 2010, letter to the Council on Environmental Quality, NOAA identified the need for two interrelated workshops on marine mammals and sound in the ocean. To address this commitment, NOAA is convening two parallel, focused, relatively small, and product-driven working groups. One will identify and map cetacean “hot spots”, defined as areas of known, or reasonably predictable, biological importance (*i.e.*, for reproduction, feeding, migration) and/or high densities. The second working group will be directed toward developing a comprehensive data collection and analysis plan for describing and predicting underwater sound fields in different areas. The outcomes of these working groups will be integrated and analyzed in a broader follow-on symposium to include a larger audience of scientists, industries, federal agencies, conservation managers, and environmental NGOs. The final products and analyses will provide a more robust, comprehensive, and context-specific biological and acoustic basis by which to inform subsequent management decisions regarding human noise in our oceans. The steering committee has been convened and met for the first time in October 2010. The working group efforts should take about a year to complete, and we expect the final symposium to be held in early 2012. The results of these working groups will be analyzed by NMFS in an adaptive management context, as related to the Panama City final rule, and mitigation or monitoring measures may be modified, as appropriate.

### *Adaptive Management and 2010 Monitoring Plan*

NMFS and the Navy conducted an adaptive management meeting in October 2010 wherein we reviewed the Navy monitoring results through August 1, 2010, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. Since there was no monitoring conducted at PCD during the first seven months of 2010 (from January 21 to August 1, 2010) as discussed above, no modifications were made concerning

the monitoring plan for the NSWC PCD RDT&E activities.

Additionally, the monitoring conducted under the Atlantic Fleet Active Sonar Training (AFAST) regulations (which also cover the Gulf of Mexico), as well as under the Hawaii Range Complex and Southern California (SOCAL) Range Complex regulations, was also considered at the October adaptive management meeting. The Navy’s implementation of the monitoring plans under these other regulations successfully contributed to the following larger bodies of data: (1) A greater knowledge and understanding of the density and distribution of species within the AFAST study area; (2) the vocalizations of different species, which advances the development of automated classification software; (3) the movement patterns of individual (both vertically in the water column as well as horizontally for the duration of a DTAG deployment); and (4) observable behavioral patterns of marine mammals, before, during, and after exposure to Navy training activities. However, while the data collected by the Navy through monitoring and reporting builds upon the existing body of information in a valuable way, none of the new data contradict, or amend, the assumptions that underlie the findings in the 2010 PCD rule in a manner that would suggest changing the current mitigation or monitoring.

### **Authorization**

The Navy complied with the requirements of the 2010 LOA. Based on our review of the Navy’s annual mission activities report, which shows that the amount of sonar testing hours was far below the annual authorized levels and that no underwater detonation and projectile firing were conducted during FY 2010, NMFS has determined that the effects to marine mammals that resulted from the 2010 NSWC PCD RDT&E activities were likely lower than analyzed. Although no monitoring activities were conducted during the Navy’s first seven months’ of activity for FY 2010, the low level of activity supports a conclusion that the total number of marine mammals taken by the RDT&E activities at the NSWC PCD will have no more than a negligible impact on the affected species or stock of marine mammals. (There is no subsistence use of marine mammals that could potentially be impacted by the Navy’s activities at NSWC PCD.) Accordingly, NMFS has issued a one-year LOA for Navy RDT&E activities at the NSWC PCD from January 21, 2011, through January 20, 2012.

Dated: January 13, 2011.

**Helen Golde,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XA025**

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

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

**ACTION:** Notice of issuance of a Letter of Authorization; request for comments on Integrated Comprehensive Management Program Plan.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a Letter of Authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to training and research activities conducted within the Hawaii Range Complex (HRC) for the period of January 15, 2011, through January 14, 2012.

NMFS also provides notice that the Integrated Comprehensive Management Program (ICMP) Plan, which is intended for use as a planning tool to focus Navy monitoring priorities pursuant to the MMPA and Endangered Species Act (ESA), has been updated for 2010. NMFS encourages the public to review this document and provide comments, information, and suggestions on the ICMP Plan.

**DATES:** This Authorization is effective from January 15, 2011, through January 14, 2012. Comments and information on the ICMP Plan must be received no later than February 28, 2011.

**ADDRESSES:** The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here. The mailbox address for providing e-mail comments on the ICMP Plan is [ITP.Hopper@noaa.gov](mailto:ITP.Hopper@noaa.gov). Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

**FOR FURTHER INFORMATION CONTACT:** Michelle Magliocca, Office of Protected

Resources, NMFS, 301-713-2289, ext. 123.

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

Regulations governing the taking of marine mammals by the Navy incidental to training and research activities conducted within the Hawaii Range Complex (HRC) became effective on January 5, 2009 (74 FR 1484, January 12, 2009), and remain in effect until January 5, 2014. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

#### Summary of Request

On August 1, 2010, NMFS received a request from the Navy for a renewal of an LOA issued on January 8, 2009, for the taking of marine mammals incidental to training and research activities conducted within the HRC under regulations issued on January 5, 2009 (74 FR 1484, January 12, 2009). The Navy has complied with the measures required in 50 CFR 216.174 and 216.175, as well as the associated 2010 LOA, and submitted the reports and other documentation required in the final rule and the 2010 LOA.

#### Summary of Activity Under the 2010 LOA

As described in the Navy’s exercise reports (both classified and unclassified), in 2010, the training activities conducted by the Navy were within the scope and amounts authorized by the 2010 LOA and the levels of take remain within the scope and amounts contemplated by the final rule.

#### Planned Activities and Estimated Take for 2011

In 2011, the Navy expects to conduct the same type and amount of training identified in the 2010 LOA. Therefore, NMFS is authorizing the same amount of take authorized in 2010. Summary of Monitoring, Reporting, and other Requirements under the 2010 LOA

#### Annual Exercise Reports

The Navy submitted their classified and unclassified 2010 exercise reports within the required timeframes and the unclassified report is posted on NMFS Web site: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. NMFS has reviewed both reports and they contain the information required by the 2010 LOA. The reports indicate the amounts of different types of training that occurred from August 2, 2009, through August 1, 2010. The Navy conducted two Major Training Exercises (MTEs)—one Rim of the Pacific exercise (RIMPAC) and one Undersea Warfare Exercise (USWEX) (the rule authorizes one RIMPAC every other year and five USWEXs each year)—for a total of 30 days, and three Sinking Exercises (SINKEX) (the rule authorizes an average of six per year). No active sonar use occurred in the period from December 15, 2009, through April 15, 2010, either in the Humpback Cautionary Area or the larger dense humpback area generally shown on the Mobley map (73 FR 35520) plus a 5-km buffer but not including the Pacific Missile Range Facility.

The reports also list specific information gathered when marine mammals were detected by Navy watchstanders, such as how far an animal was from the vessel, whether sonar was in use, and whether it was powered or shut down. This information indicates that the Navy implemented the safety zone mitigation measures as required. No instances of obvious behavioral disturbance were reported by the Navy watchstanders in their 47 marine mammal sightings totaling 286 animals. Furthermore, there were zero marine mammal sightings reported at a range less than 1,000 yards during the MTEs, concurrent with use of MFAS. Ranges associated with NMFS criteria levels for permanent threshold shift (PTS) and temporary threshold shift (TTS) are much shorter than 200 yards.

#### 2010 Monitoring

The Navy conducted the monitoring required by the 2010 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of sonar and explosive exercises by dedicated MMOs, as well as ordering and purchasing acoustic recording devices to be used to gather data in subsequent years. The Navy submitted their 2010 Monitoring Report, which is posted on NMFS’ Web site (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>), within the required timeframe. The Navy included a summary of their 2010 monitoring