




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Silver Spring, Maryland 20910

MAY 15 2001

MEMORANDUM FOR: Donna Wieting
Chief,
Marine Mammal Conservation Division,
Office of Protected Resources,
National Marine Fisheries Service

FROM: Daniel J. Basta 
Director,
Office of National Marine Sanctuaries
National Ocean Service

SUBJECT: ONMS Comments on the Proposed Rule Governing
the Take of Marine Mammals Incidental to the
Navy's Operation of SURTASS LFA Sonar and
Consultation Pursuant to Section 304(d) of
the NMSA

The Office of National Marine Sanctuaries (ONMS) has reviewed the proposed rule governing the take of marine mammals incidental to the US Navy's operation of Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) Sonar. Thank you for the opportunity to provide our input on this very important matter.

As you are aware, ONMS has been consulting with the US Navy for the conduct of this activity within and near the National Marine Sanctuary System (NMSS), pursuant to Section 304(d) of the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.; NMSA). As a Federal action agency in this matter, your office has been a part of this consultation with ONMS through its involvement in various meetings and through our comments on the Draft Environmental Impact Statement and Advance Notice of Proposed Rulemaking. The intent of this letter is to memorialize the consultation by NMFS required by the NMSA, prior to NMFS' issuance of a final rule on SURTASS LFA Sonar. As part of this coordinated consultation, ONMS requests that all of ONMS' requests to the Navy be made a part of NMFS' final rule and Letter of Authorization. To facilitate this, ONMS further requests that NMFS' rule not be made final until ONMS has completed its joint consultation with you and the Navy. Please refer to the attached suggested language for inclusion of these requests into NMFS' final rule. If any or all of these modifications to the project cannot be made part of the final



rule, the NMSA requires that NMFS submit, in writing, the reasons as to why this request cannot be satisfied.

ONMS also has the following technical and editorial comments on the proposed rule.

Technical/Editorial Comments

1. ONMS appreciates NMFS' effort to designate Penguin Bank (a portion of the Hawaiian Island Humpback Whale National Marine Sanctuary) as an OBIA. However, the response to comment 26 of the March 19, 2001 *Federal Register* notice incorrectly placed Penguin Bank off the coast of Kauai. Kauai should be changed to Molokai in the second sentence of that response to correct this error in the final rule. The section labeled "Mitigation for Marine Mammals" on page 15387 makes a similar error and should also be corrected before the final rule is published. In section 216.183(e) of the rule itself the approximate center point for Penguin Bank should be changed to 21 degrees north latitude and 157 degrees, 30 minutes west longitude to more accurately locate this area in the final rule.

2. In the "Mitigation for Marine Mammals" section (page 15387) the document incorrectly states that the 12 nautical mile (22 km) safety zone restriction includes almost all marine-related critical habitat and National Marine Sanctuaries. Only a few of the 13 National Marine Sanctuaries are completely within 12 nautical miles of shore whereas several extend well beyond this limit. ONMS requests either deleting "and National Marine Sanctuaries" from this sentence or rephrasing the sentence to read "...the 12 nm (22 km) safety zone restriction includes almost all marine-related critical habitat and portions of some National Marine Sanctuaries."

3. In § 216.191(g) the proposed rule references § 216.183(d) as where proposed OBIA's would be added to the rule if found to be appropriate by NMFS. This citation may be incorrect as it appears that § 216.183(e) is where the rule currently lists Penguin Bank and the other three OBIA in the chart.

Thank you for considering our views in this matter. ONMS would like to set up a meeting to discuss our requests and will contact your office soon to make arrangements. If you should have any questions or concerns about our request or our comments, please contact Helen Golde at (301) 563-1152 or John Armor at (301) 563-7117.

Enclosure

Cc:

Joe Johnson, SURTASS LFA Sonar OEIS/EIS Program manager

Ken Hollingshead, NMFS, Protected Resources

ONMS Sanctuary managers and superintendents

**SUGGESTED LANGUAGE FOR THE INCLUSION OF ONMS/NAVY AGREEMENTS
INTO NMFS' FINAL RULE**

In order to formalize agreements between the US Navy and the Office of National Marine Sanctuaries made during the consultation process, NMFS should amend §216.183 of the proposed rule published in the Federal Register on March 19, 2001 to include after number four (Penguin Bank) the following:

Name of Area	Location of Area	Months of Importance
(5) Florida Keys NMS	Boundary coordinates can be found at 15 CFR § 922.161	Year round
(6) Flower Garden Banks NMS	Boundary coordinates can be found at 15 CFR § 922.120	Year round
(7) Monterey Bay NMS	Boundary coordinates can be found at 15 CFR § 922.130	Year round
(8) Gulf of the Farallones NMS	Boundary coordinates can be found at 15 CFR § 922.80	Year round
(9) Cordell Bank NMS	Boundary coordinates can be found at 15 CFR § 922.110	Year round
(10) Olympic Coast NMS	Boundary coordinates can be found at 15 CFR § 922.150	Dec.-Jan, Mar, May-June

[NOTE: ONMS' requests related to Olympic Coast NMS did not include the entire Sanctuary. More precise location descriptions may be necessary following the conclusion of the consultation process with the Navy.]