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macrorynchus), Striped dolphin (*Stenella coeruleoalba*), and Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale, (*Mesoplodon densirostris*), Longman's beaked whale (*Indopacetus pacificus*).

§ 216.173 Prohibitions.

Notwithstanding takings contemplated in § 216.172 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.177, no person in connection with the activities described in § 216.170 may:

(a) Take any marine mammal not specified in § 216.172(c);

(b) Take any marine mammal specified in § 216.172(c) other than by incidental take as specified in § 216.172(c)(1) and (2);

(c) Take a marine mammal specified in § 216.172(c) 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 these regulations or a Letter of Authorization issued under §§ 216.106 and 216.177.

§ 216.174 Mitigation.

(a) When conducting training activities identified in § 216.170(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 of this chapter and 216.177 must be implemented. These mitigation measures include, but are not limited to:

(1) *Mitigation Measures for ASW training:* (i) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training (MSAT) material prior to use of mid-frequency active sonar.

(ii) All Commanding Officers, Executive Officers, and officers standing watch on the Bridge shall have reviewed the MSAT material prior to a training event employing the use of mid-frequency active sonar.

(iii) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA, 12968-D).

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(iv) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, Lookouts shall complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(v) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

(vi) On the bridge of surface ships, there shall be at least three people on watch whose duties include observing the water surface around the vessel.

(vii) All surface ships participating in ASW exercises shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as lookouts.

(viii) Personnel on lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(ix) On surface vessels equipped with mid-frequency active sonar, pedestal mounted "Big Eye" (20x110) binoculars shall be present and in good working order.

(x) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(xi) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

(xii) Personnel on lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck.

(xiii) CPF shall distribute the final mitigation measures contained in the LOA and BO to the Fleet.

(xiv) Commanding Officers shall make use of marine species detection

cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(xv) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(xvi) During mid-frequency active sonar training activities, personnel shall utilize all available sensor and optical systems (such as Night Vision Goggles) to aid in the detection of marine mammals.

(xvii) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine mammals as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(xviii) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yards (182 m) of the sonobuoy.

(xix) Marine mammal detections shall be reported immediately to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(xx) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that MFAS transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1000 yards (914 m) of the sonar dome (the bow).

(A) Ships and submarines shall continue to limit maximum MFAS transmission levels by this 6-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(B) The Navy shall ensure that MFAS transmissions will be limited to at least 10 dB below the equipment's normal operating level if any detected animals are within 500 yards (457 m) of the sonar dome. Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2000 yards (1828 m) beyond the location of the last detection.

(C) The Navy shall ensure that MFAS transmissions are ceased if any detected marine mammals are within 200 yards of the sonar dome. MFAS transmissions will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards beyond the location of the last detection.

(D) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the Officer of the Deck concludes that dolphins or porpoises are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(E) If the need for power-down should arise as detailed in "Safety Zones" in paragraph (a)(1)(xx) of this section, Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 dB sonar was being operated).

(xxi) Prior to start up or restart of active sonar, operators shall check that the Safety Zone radius around the sound source is clear of marine mammals.

(xxii) Sonar levels (generally)—Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(xxiii) Helicopters shall observe/survey the vicinity of an ASW Exercise for 10 minutes before the first deployment of active (dipping) sonar in the water.

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(xxiv) Helicopters shall not dip their sonar within 200 yards (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yards (183 m) after pinging has begun.

(xxv) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training activities involving active mid-frequency sonar.

(xxvi) Night vision goggles shall be available to all ships and air crews, for use as appropriate.

(xxvii) Humpback Whale Cautionary Area: An area extending 5km (2.7 nm) from a line drawn from Kaunakakai on the island of Molokai to Kaena Point on the Island of Lanai; and an area extending 5 km (2.7 nm) from a line drawn from Kaunolu on the Island of Lanai to the most Northeastern point on the Island of Kahoolawe; and within a line drawn from Kanapou Bay on the Island of Kahoolawe to Kanahena Point on the Island of Maui and a line drawn from Cape Halawa on the Island of Molokai to Lipo Point on the Island of Maui, excluding the existing submarine operating area.

(A) Should national security needs require MFAS training and testing in the cautionary area between 15 December and 15 April, it must be personally authorized by the Commander, U.S. Pacific Fleet based on his determination that training and testing in that specific area is required for national security purposes. This authorization shall be documented by the CPF in advance of transiting and training in the cautionary area, and the determination shall be based on the unique characteristics of the area from a military readiness perspective, taking into account the importance of the area for humpback whales and the need to minimize adverse impacts on humpback whales from MFAS whenever practicable. Further, Commander, U.S. Pacific Fleet will provide specific direction on required mitigation measures prior to operational units transiting to and training in the cautionary area.

(B) The Navy shall provide advance notification to NMFS of any such activities (listed in paragraph (a)(1)(xxvii)(A) of this section).

(C) The Navy shall include in its periodic reports for compliance with the MMPA whether or not activities occurred in the Humpback Whale Cautionary Area and any observed effects on humpback whales due to the conduct of these activities.

(xxviii) The Navy shall abide by the letter of the “Stranding Response Plan for Major Navy Training Exercises in the HRC” to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in §216.171(b)) occurs during a Major Training Exercise (MTE, including RIMPAC, USWEX, or Multi-Strike Group Exercise) in the HRC, the Navy shall implement the procedures described below.

(1) The Navy shall implement a Shutdown (as defined §216.171(b)) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the HRC Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy will maintain a dialogue, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(2) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(3) If the Navy finds an injured or dead animal floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), and the condition of the animal(s) including carcass condition if the animal(s) is/are dead), location, time of first discovery, observed behavior (if alive), and photo or video (if available). Based on the information provided, NMFS will determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(4) In the event, following a USE, that qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy shall coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of MFAS training activities or explosive detonations, though farther than 14 nm from the distressed animal(s), is likely contributing to the animals' refusal to return to the open water. If so, NMFS and the Navy will further coordinate to determine what measures are necessary to improve the probability that the animals will return to open water and implement those measures as appropriate.

(B) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the HRC Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using MFAS, and marine mammal sightings information associated with training activities occurring within 80 nm (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80 nm (148 km), 72 hour period prior to the event will be provided as soon as it becomes available. The Navy will provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(C) Memorandum of Agreement (MOA)—The Navy and NMFS shall develop a MOA, or other mechanism consistent with federal fiscal law requirements (and all other applicable laws), that will establish a framework whereby the Navy can (and provide the Navy examples of how they can best) assist NMFS with stranding investigations in certain circumstances.

(xxix) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a "safe speed" so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(xxx) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

(2) *Mitigation for IEER*—The following are protective measures for use with Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER) given an explosive source generates the acoustic wave used in this sonobuoy.

(i) Crews shall conduct aerial visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search should be conducted below 500 yards (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft training activities, crews are allowed to conduct coordinated area clearances.

(ii) Crews shall conduct a minimum of 30 minutes of visual and acoustic monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(iii) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 1,000 yards (914 m) of observed marine mammal activity, the Navy shall deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yards (914 m) of the intended post position, co-locate the explosive source sonobuoy (AN/SSQ-110A) (source) with the receiver.

(iv) When able, crews will conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of communication range of these sensors.

(v) *Aural Detection*: If the presence of marine mammals is detected aurally, then that shall cue the aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then

the crew may continue multi-static active search.

(vi) *Visual Detection:*

(A) If marine mammals are visually detected within 1,000 yards (914 m) of the explosive source sonobuoy (AN/SSQ-110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been resighted for 30 minutes, or are observed to have moved outside the 1,000 yards (914 m) safety buffer.

(B) Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000 yards (914 m) safety buffer.

(vii) Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the “Payload 1 Release” command followed by the “Payload 2 Release” command. Aircrews shall refrain from using the “Scuttle” command when two payloads remain at a given post. Aircrews will ensure that a 1,000 yard (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(viii) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(ix) The navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ-110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(x) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(3) *Mitigation for Demolitions (DEMOs) and Mine Countermeasure (MCM) Training (Up to 20 lb).*

(i) *Exclusion Zones*—Explosive charges shall not be detonated if a marine mammal is detected within 700 yards (640 m) of the detonation site.

(ii) *Pre-Exercise Surveys*—For MCM training activities, the Navy shall conduct a pre-exercise survey within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air. If a marine mammal is detected within the survey area, the exercise shall be suspended until the animal voluntarily leaves the area.

(iii) *Post-Exercise Surveys*—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

(iv) *Reporting*—Any evidence of a marine mammal that may have been injured or killed by the action shall be reported immediately to NMFS.

(v) *Mine Laying Training*—Though mine laying training operations involve aerial drops of inert training shapes on floating targets, measures 1, 2, and 3 for Demolitions and Mine countermeasures will apply to mine laying training. To the maximum extent feasible, the Navy shall retrieve inert mine shapes dropped during Mine Laying Training.

(4) *Mitigation for SINKEX, GUNEX, MISSILEX, and BOMBEX.* (i) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(ii) Extensive range clearance operations shall be conducted in the hours prior to commencement of the exercise.

(iii) An exclusion zone with a radius of 1.0 nm (1.85 km) shall be established around each target. An additional buffer of 0.5 nm (0.93 km) shall be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which extends out an additional 0.5 nm (0.93 km), shall be surveyed. Together, the zones extend out 2 nm (3.7 km) from the target.

(iv) A series of surveillance overflights shall be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol would be as follows:

(A) Overflights within the exclusion zone shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy’s

Search and Rescue (SAR) Tactical Aid (TACAID).

(B) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team shall have completed the Navy's marine mammal training program for lookouts.

(C) In addition to the overflights, the exclusion zone shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring shall be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals in the vicinity of the exercise. The sonobuoys shall be re-seeded as necessary throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The Officer Conducting the Exercise (OCE) shall be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

(D) On each day of the exercise, aerial surveillance of the exclusion and safety zones shall commence two hours prior to the first firing.

(E) The results of all visual, aerial, and acoustic searches shall be reported immediately to the OCE. No weapons launches or firing would commence until the OCE declares the safety and exclusion zones free of marine mammals.

(F) If a marine mammal observed within the exclusion zone is diving, firing shall be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes has elapsed.

(G) During breaks in the exercise of 30 minutes or more, the exclusion zone shall again be surveyed for any marine mammals. If marine mammals are sighted within the exclusion zone, the OCE would be notified, and the procedure described in paragraph (a)(4)(iv)(F) of this section would be followed.

(H) Upon sinking of the vessel, a final surveillance of the exclusion zone shall be monitored for two hours, or until sunset, to verify that no marine mammals were harmed.

(v) Aerial surveillance would be conducted using helicopters or other aircraft based on necessity and availability. These aircraft shall be capable of (and shall, to the extent practicable) flying at the slow safe speeds necessary to enable viewing of marine mammals with unobstructed, or minimally obstructed, downward and outward visibility. The Navy may cancel the exclusion and safety zone surveys in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

(vi) Where practicable, the Navy shall conduct the exercise in sea states that are ideal for marine mammal sighting, *i.e.*, Beaufort Sea State 3 or less. In the event of a Beaufort Sea State of 4 or above, the Navy shall utilize additional aircraft (conducting tight search patterns), if available, to increase survey efforts within the zones.

(vii) The exercise shall not be conducted unless the exclusion zone can be adequately monitored visually.

(viii) In the unlikely event that any marine mammals are observed to be harmed in the area, a detailed description of the animal shall be documented, the location noted, and if possible, photos taken. This information would be provided to NMFS.

(b) [Reserved]

§216.175 Requirements for monitoring and reporting.

(a) As outlined in the HRC Stranding Communication Plan, the Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §216.170(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in §216.172(c).

(b) The Holder of the Letter of Authorization must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the HRC Monitoring Plan.

(c) The Navy shall complete an Integrated Comprehensive Monitoring Plan (ICMP) in 2009. This planning and