

## § 218.18

the Navy (described below) or otherwise).

(6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

### § 218.18 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to § 216.106 of this chapter and § 218.16 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.17, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.11(b), a Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.16 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

### Subpart C—Taking Marine Mammals Incidental to U.S. Navy Training in the Cherry Point Range Complex

SOURCE: 74 FR 28385, June 15, 2009, unless otherwise noted.

### § 218.20 Specified activity and specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it oc-

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cur within the Cherry Point Range Complex Operation Area (OPAREA), which is located along the southern east coast of the U.S., as stated in the Navy's letter of authorization application. The coordinates of the Cherry Point Range Complex OPAREA are: 35°30' N, 75°25' W; 34°14' N, 73°57' W; 32°12' N, 76°49' W; 32°20' N, 77°20' W; 33°10' N, 77°31' W; and 34°23'30" N, 77°30' W; then along the 3 nm from and parallel to the shoreline.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training events indicated in paragraph (c)(1)(ii) of this section:

(i) Underwater Explosives:

(A) AGM-114 (Hellfire missile);

(B) Tube-launched Optically tracked Wire-guided (TOW) missile;

(C) Mine Neutralization (20 lb NEW charges); and

(D) 5" Naval Gunfire.

(ii) Training Exercises:

(A) Mine Neutralization (20 lb NEW charges)—up to 100 exercises over the course of 5 years (an average of 20 per year);

(B) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 40 exercises over the course of 5 years (an average of 8 per year);

(C) Missile Exercise (MISSILEX) (Air-to-Surface; TOW)—up to 40 exercises over the course of 5 years (an average of 8 per year); and

(D) FIREX with IMPASS—up to 10 exercises over the course of 5 years (an average of 2 per year).

(2) [Reserved]

(d) Regulations are effective [June 8, 2009] and are applicable to the Navy on June 5, 2009 through June 4, 2014.

### § 218.21 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 of this chapter and 218.26, the Holder of the

Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.20(b), provided the activity is in compliance with all terms, conditions, and requirements of this Subpart and the appropriate Letter of Authorization.

(b) The activities identified in §218.20(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §218.20(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment:

(i) Bottlenose dolphin (*Tursiops truncatus*)—150 (an average of 30 annually);

(ii) Pantropical spotted dolphin (*Stenella attenuata*)—100 (an average of 20 annually);

(iii) Clymene dolphin (*S. clymene*)—150 (an average of 30 annually);

(iv) Atlantic spotted dolphin (*S. frontalis*)—100 (an average of 20 annually);

(v) Striped dolphin (*S. coeruleoalba*)—100 (an average of 20 annually);

(vi) Spinner dolphin (*S. longirostris*)—15 (an average of 3 annually);

(vii) Risso's dolphin (*Grampus griseus*)—150 (an average of 30 annually);

(viii) Common dolphin (*Delphinus delphis*)—100 (an average of 20 annually);

(ix) Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—100 (an average of 20 annually);

(x) Pilot whales (*Globicephala* sp.)—100 (an average of 20 annually);

(xi) Dwarf or pygmy sperm whales (*Kogia* sp.)—15 (an average of 3 annually);

(xii) Beaked whales—100 (an average of 20 annually);

(xiii) Fraser's dolphin (*Lagenodelphis hosei*)—15 (an average of 3 annually);

(xiv) Melon-headed whale (*Peponocephala electra*)—15 (an average of 3 annually);

(xv) Pygmy killer whale (*Feresa attenuate*)—15 (an average of 3 annually);

(xvi) Killer whale (*Orcinus orca*)—15 (an average of 3 annually);

(xvii) Minke whales (*Balaenoptera acutorostrata*)—15 (an average of 3 annually).

(2) [Reserved]

#### § 218.22 Prohibitions.

Notwithstanding takings contemplated in §218.21 and authorized by a Letter of Authorization issued under §§216.106 of this chapter and 218.26, no person in connection with the activities described in §218.20 may:

(a) Take any marine mammal not specified in §218.21(c);

(b) Take any marine mammal specified in §218.21(c) other than by incidental take as specified in §218.21(b)(1) and (2);

(c) Take a marine mammal specified in §218.21(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 this Subpart or a Letter of Authorization issued under §§216.106 of this chapter and 218.26.

#### § 218.23 Mitigation.

(a) When conducting training activities identified in §218.20(c), the mitigation measures contained in the Letters of Authorization issued under §§216.106 of this chapter and 218.26 must be implemented. These mitigation measures include, but are not limited to:

(1) *General Maritime Measures*:

(i) *Personnel Training—Lookouts*:

(A) All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews shall complete Marine Species Awareness Training (MSAT).

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

(C) 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