

## Subparts O–Q [Reserved]

**Subpart R—Taking Marine Mammals Incidental to U.S. Navy Research, Development, Test, and Evaluation Activities in the Naval Sea System Command (NAVSEA) Naval Undersea Warfare Center (NUWC) Keyport Range Complex and the Associated Proposed Extensions Study Area**

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**Subpart A—Taking Marine Mammals Incidental to U.S. Navy Training in the Virginia Capes Range Complex (VACAPES Range Complex)****§218.1 Specified activity, 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 occurs within the VACAPES Range Complex Operation Area (OPAREA), which is located in the coastal and offshore waters of the western North Atlantic Ocean adjacent to Delaware, Maryland, Virginia, and North Carolina. The northernmost boundary of the VACAPES Range Complex OPAREA is located 37 nautical miles (nm) off the entrance to Delaware Bay at latitude 38°45' N, the farthest point of the eastern boundary is 184 nm east of Chesapeake Bay at longitude 72°41' W, and the southernmost point is 105 nm southeast of Cape Hatteras, North Carolina, at latitude of 34°19' N. The western boundary of the VACAPES Range Complex OPAREA lies 3 nm from the shoreline at the boundary separating state and Federal waters.

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

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

- (i) Underwater Explosives:  
 (A) AGM-114 (Hellfire missile)  
 (B) AGM-65 E/F (Maverick missile)  
 (C) MK-83/GBU-32 (1,000 lb High Explosive bomb)  
 (D) Airborne Mine Neutralization system (AMNS).  
 (E) 20 lb NEW charges  
 (F) AGM-88 (HARM)  
 (G) 5" Naval Gunfire

(ii) Training events (with approximated number of events)

(A) Mine Exercise (MINEX) (Mine Neutralization [AMNS])—up to 150 exercises over the course of 5 years (an average of 30 per year);

(B) Mine Exercise (MINEX) (Mine Neutralization [20 lb NEW charges])—up to 120 exercises over the course of 5 years (an average of 24 per year);

(C) Bombing Exercise (BOMBEX) (Air-to-Surface)—up to 100 exercises

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over the course of 5 years (an average of 20 per year);

(D) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 300 exercises over the course of 5 years (an average of 60 per year);

(E) Missile Exercise (MISSILEX) (Air-to-Surface; Maverick, HE)—up to 100 exercises over the course of 5 years (an average of 20 per year); and

(F) FIREX with IMPASS—up to 110 exercises over the course of 5 years (an average of 22 per year).

(2) [Reserved]

(d) Regulations are effective June 5, 2011, through June 4, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives or activities, listed in §218.1(c) should the amounts (e.g., number of exercises) vary from those estimated in §218.1(c), provided that the variation does not result in exceeding the amount of take indicated in §218.2(c).

[74 FR 28343, June 15, 2009, as amended at 76 FR 30554, May 26, 2011]

### §218.2 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §216.106 of this chapter and §218.7, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.1(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 §218.1(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 §218.1(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment:

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—10 (an average of 2 annually); and

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(B) Fin whale (*Balaenoptera physalus*)—10 (an average of 2 annually).

(ii) Odontocetes:

(A) Sperm whale (*Physeter macrocephalus*)—10 (an average of 2 annually);

(B) Pygmy or dwarf sperm whales (*Kogia* sp.)—15 (an average of 3 annually);

(C) Rough-toothed dolphin (*Steno bredanensis*)—5 (an average of 1 annually);

(D) Bottlenose dolphin (*Tursiops truncatus*)—145 (an average of 29 annually);

(E) Pantropical spotted dolphin (*Stenella attenuata*)—350 (an average of 70 annually);

(F) Striped dolphin (*S. coeruleoalba*)—340 (an average of 68 annually);

(G) Clymene dolphin (*S. clymene*)—165 (an average of 33 annually);

(H) Atlantic spotted dolphin (*S. frontalis*)—215 (an average of 43 annually);

(I) Common dolphin (*Delphinus delphis*)—10,965 (an average of 2,193 annually);

(J) Risso's dolphin (*Grampus griseus*)—80 (an average of 16 annually); and

(K) Pilot whales (*Globicephala* sp.)—50 (an average of 10 annually).

(2) Level A Harassment (injury):

(i) Atlantic spotted dolphin—5 (an average of 1 annually);

(ii) Common dolphin—100 (an average of 20 annually);

(iii) Pantropical spotted dolphin—5 (an average of 1 annually); and

(iv) Striped dolphin—15 (an average of 3 annually).

### §218.3 Prohibitions.

Notwithstanding takings contemplated in §218.2 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.7, no person in connection with the activities described in §218.1 may:

(a) Take any marine mammal not specified in §218.2(c);

(b) Take any marine mammal specified in §218.2(c) other than by incidental take as specified in §218.2(c)(1) and (2);

(c) Take a marine mammal specified in §218.2(c) if such taking results in more than a negligible impact on the