

or less than 3 nm (5.6 km), or the aircraft ceiling (i.e., vertical visibility) is equal to or less than 1,000 ft (305 m), detonation must not occur until conditions improve sufficiently for aerial surveillance to be undertaken.

(4) A detonation must not be conducted earlier than 3 hours after sunrise or later than 3 hours prior to sunset to ensure adequate daylight for conducting the pre-detonation and post-detonation monitoring requirements in §216.165;

(5) If post-detonation surveys determine that an injury or lethal take of a marine mammal has occurred,

(i) the Director, Office of Protected Resources, National Marine Fisheries Service must be notified within 24 hours of the taking determination,

(ii) the FSST procedures and monitoring methods must be reviewed in coordination with the National Marine Fisheries Service, and

(iii) appropriate changes to avoid future injury or mortality must be made prior to conducting the next detonation.

§216.164 Prohibitions.

No person in connection with the activities described in §216.161(a) shall:

(a) Take any marine mammal not specified in §216.161(b);

(b) Take any marine mammal specified in §216.161(b) other than by incidental, unintentional Level A or Level B harassment or mortality;

(c) Take a marine mammal specified in §216.161(b) if such taking results in more than a negligible impact on the species or stocks or marine mammals;

(d) Violate, or failure to comply with, the requirements of a Letter of Authorization issued under §216.106.

§216.165 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, or state or local agency with regulatory authority for monitoring the impacts of the activity on marine mammals. The holder must notify the Director, Office of Protected Resources, National Marine Fisheries Service at least 2 weeks prior to activities involving the deto-

nation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate at least 6 experienced on-site marine mammal observers (MMOs) onboard the USS MESA VERDE, 2 experienced MMOs onboard the survey aircraft and 2 experienced MMOs onboard the Navy support vessel each of whom has been approved in advance by NMFS, to monitor the Safety Range for presence of marine mammals and to record the effects of explosives detonation on marine mammals that inhabit the Navy's Jacksonville/Charleston Operating Area offshore of Mayport, Florida.

(c)(1) Prior to each detonation for the FSST, an area will be located which has been determined by an aerial survey to contain the lowest marine mammal abundance relative to other areas within the area off Mayport, FL.

(2) The test area must be monitored by aerial and shipboard monitoring for the following periods of time:

(i) 48–72 hours prior to a scheduled detonation (aircraft only),

(ii) on the day of detonation,

(iii) immediately after each detonation and continuing for at least 3 hours subsequent to each detonation (or until sighting conditions become unsuitable for visual observations),

(iv) for at least 2 days after each detonation, unless weather and/or sea conditions preclude surveillance, in which case post-test survey dates must be extended, and

(v) for a period of 7 days after the last detonation for a minimum of 3 hours per day at the detonation site and down-current from the site.

(3) Monitoring shall include, but is not limited to, aerial and vessel surveillance sufficient to ensure that no marine mammals are within the designated Safety Range prior to or at the time of detonation.

(d) Under the direction of an attending U.S.-licensed veterinarian (an attending U.S. licensed veterinarian is one who has graduated from a veterinary school accredited by the American Veterinary Medical Association Council on Education, has a certificate by the American Veterinary Graduates Association's Education Commission for Foreign Veterinary Graduates, or

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has received equivalent formal education, as determined by the NMFS Assistant Administrator), an examination and recovery of any dead or injured marine mammals will be conducted in accordance with protocols and best practices of the NOAA Health and Stranding Response Program. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea.

(e) Activities related to the monitoring described in paragraphs (c) and (d) of this section, including the retention of marine mammals, may be conducted without a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to Subpart D of this part.

(f) Subject to relevant Navy regulations, the National Marine Fisheries Service at its discretion may place an observer on any ship or aircraft involved in marine mammal monitoring either prior to, during, or after explosives detonation.

(g) A final report must be submitted to the Director, Office of Protected Resources, no later than 120 days after completion of the USS MESA VERDE (LPD 19) shock trial. This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A detailed description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammals.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and an estimate of the number, by species, of marine mammals in the Safety Range at the time of detonation based on post-test aerial monitoring and current density estimates.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

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§216.166 Modifications to the Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization issued pursuant to §216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(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 §216.151(b), the Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER subsequent to the action.

Subpart P—Taking Marine Mammals Incidental to U.S. Navy Training in the Hawaii Range Complex (HRC)

SOURCE: 74 FR 1484, Jan. 12, 2009, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 1484, Jan. 12, 2009, subpart P was added, effective Jan. 5, 2009 through Jan. 5, 2014.

§216.170 Specified activity and specified geographical region.

(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 occurs 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 Hawaii Operational Area, which extends from 16 to 43° N. lat. and from 150 to 179° degrees W. long.

(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 following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training activities (estimated amounts below):