

## §216.275

left the area (either of their own volition or herded).

(C) If the Navy finds an injured or dead marine mammal 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), the condition of the animal(s) including carcass condition if the animal(s) is/are dead, location, time of first discovery, observed behaviors (if alive), and photo or video (if available). Based on the information provided, NMFS shall determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(D) In the event, following a USE, that: (a) Qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or (b) 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/HFAS activities or explosive detonations, though farther than 14 nm from the distressed animal(s), is likely decreasing the likelihood that the animals return to the open water. If so, NMFS and the Navy shall further coordinate to determine what measures are necessary to further minimize that likelihood and implement those measures as appropriate.

(ii) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the SOCAL Range Complex Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using MFAS/HFAS, 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 hours, period prior to the event shall be provided as soon as it becomes available. The Navy shall provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

## 50 CFR Ch. II (10–1–12 Edition)

(iii) 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.

### §216.275 Requirements for monitoring and reporting.

(a) As outlined in the SOCAL Range Complex Stranding Communication Plan, the Navy must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §216.270(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 §216.272(c).

(b) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the SOCAL Range Complex Monitoring Plan.

(c) The Navy shall complete an Integrated Comprehensive Monitoring Plan (ICMP) in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan.

(5) A method for standardizing data collection across Range Complexes.

(d) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during

or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Navy shall consult the Stranding Response Plan to obtain more specific reporting requirements for specific circumstances.

(e) Annual SOCAL Range Complex Monitoring Plan Report—The Navy shall submit a report annually on October 1 describing the implementation and results (through August 1 of the same year) of the SOCAL Range Complex Monitoring Plan. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the marine mammal observers (MMOs) collecting marine mammal data pursuant to the SOCAL Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in §216.275(f)(1). The SOCAL Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from multiple Range Complexes.

(f) Annual SOCAL Range Complex Exercise Report—The Navy shall submit an Annual SOCAL Range Complex Exercise Report on October 1 of every year (covering data gathered through August 1 of the same year). This report shall contain information identified in §216.275(f)(1) through (5).

(1) MFAS/HFAS Major Training Exercises—This section shall contain the following information for Integrated, Coordinated, and Major Training Exercises (MTEs), which include Ship ASW Readiness and Evaluation Measuring (SHAREM), Sustainment Exercises, Integrated ASW Course Phase II (IAC2), Composite Training Unit Exercises (COMPTUEX), and Joint Task Force Exercises (JTFFEX) conducted in the SOCAL Range Complex:

- (i) Exercise Information (for each MTE):
  - (A) Exercise designator
  - (B) Date that exercise began and ended
  - (C) Location
  - (D) Number and types of active sources used in the exercise
  - (E) Number and types of passive acoustic sources used in exercise
  - (F) Number and types of vessels, aircraft, etc., participating in exercise
  - (G) Total hours of observation by watchstanders
  - (H) Total hours of all active sonar source operation
  - (I) Total hours of each active sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.)).
  - (J) Wave height (high, low, and average during exercise)
- (ii) Individual marine mammal sighting info (for each sighting in each MTE)
  - (A) Location of sighting
  - (B) Species (if not possible—indication of whale/dolphin/pinniped)
  - (C) Number of individuals
  - (D) Calves observed (y/n)
  - (E) Initial Detection Sensor
  - (F) Indication of specific type of platform observation made from (including, for example, what type of surface vessel, i.e., FFG, DDG, or CG)
  - (G) Length of time observers maintained visual contact with marine mammal
  - (H) Wave height (in feet)
  - (I) Visibility
  - (J) Sonar source in use (y/n).
  - (K) Indication of whether animal is < 200 yd, 200–500 yd, 500–1000 yd, 1000–2000 yd, or > 2000 yd from sonar source in paragraph (f)(1)(ii)(J) of this section.
  - (L) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was.
  - (M) If source in use (i.e., in paragraph (f)(1)(ii)(J) of this section) is hull-mounted, true bearing of animal from ship, true direction of ship's travel, and estimation of animal's

motion relative to ship (opening, closing, parallel)

- (N) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.)
- (iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to mid-frequency sonar. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.
- (2) ASW Summary—This section shall include the following information as summarized from both MTEs and non-major training exercises (unit-level exercises, such as TRACKEXs):
- (i) Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.))
- (ii) Cumulative Impact Report—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major (i.e., other than MTEs) training exercises utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across the SOCAL Range Complex. The Navy shall include (in the SOCAL Range Complex annual report) a brief annual progress update on the status of the development of an effective and unclassified method to report this information until an agreed-upon (with NMFS) method has been developed and implemented.
- (3) SINKEXs—This section shall include the following information for each SINKEX completed that year:
- (i) *Exercise information (gathered for each SINKEX):*
- (A) Location
- (B) Date and time exercise began and ended

- (C) Total hours of observation by watchstanders before, during, and after exercise
- (D) Total number and types of rounds expended / explosives detonated
- (E) Number and types of passive acoustic sources used in exercise
- (F) Total hours of passive acoustic search time
- (G) Number and types of vessels, aircraft, etc., participating in exercise
- (H) Wave height in feet (high, low and average during exercise)
- (I) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted
- (ii) *Individual marine mammal observation (by Navy lookouts) information (gathered for each marine mammal sighting)*
- (A) Location of sighting
- (B) Species (if not possible, indicate whale, dolphin or pinniped)
- (C) Number of individuals
- (D) Whether calves were observed
- (E) Initial detection sensor
- (F) Length of time observers maintained visual contact with marine mammal
- (G) Wave height
- (H) Visibility
- (I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after
- (J) Distance of marine mammal from actual detonations (or target spot if not yet detonated)—use four categories to define distance:
- (1) The modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (738 m for SINKEX in the SOCAL Range Complex);
- (2) The required exclusion zone (1 nm for SINKEX in the SOCAL Range Complex);
- (3) The required observation distance (if different than the exclusion zone (2 nm for SINKEX in the SOCAL Range Complex); and
- (4) Greater than the required observed distance. For example, in this case, the observer would indicate if < 738 m, from 738 m to 1 nm, from 1 nm to 2 nm, and > 2 nm.

- (K) Observed behavior—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction.
- (L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.
- (M) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.
- (4) IEER Summary—This section shall include an annual summary of the following IEER information:
- (i) Total number of IEER events conducted in the SOCAL Range Complex
  - (ii) Total expended/detonated rounds (buoys)
  - (iii) Total number of self-scuttled IEER rounds
- (5) Explosives Summary—To the extent practicable, the Navy will provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.
- (i) Total annual number of each type of explosive exercises (of those identified as part of the "specified activity" in this final rule) conducted in the SOCAL Range Complex.
  - (ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.
- (g) Sonar Exercise Notification—The Navy shall submit to the NMFS Office of Protected Resources (specific contact information to be provided in LOA) either an electronic (preferably) or verbal report within fifteen calendar days after the completion of any MTE (Sustainment, IAC2, SHAREM, COMPTUEX, or JTFEX) indicating:
- (1) Location of the exercise
  - (2) Beginning and end dates of the exercise
  - (3) Type of exercise (e.g., SHAREM, JTFEX, etc.)
- (h) SOCAL Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which annual reports are required (Annual SOCAL Range Complex Exercise Reports and SOCAL Range Complex Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2012), covering activities that have occurred through June 1, 2012
- (i) Comprehensive National ASW Report—By June, 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans for the SOCAL Range Complex, the Atlantic Fleet Active Sonar Training, the HRC, the Marianas Range Complex, the Northwest Training Range, the Gulf of Alaska, and the East Coast Undersea Warfare Training Range.
  - (j) The Navy shall respond to NMFS comments and requests for additional information or clarification on the SOCAL Range Complex Comprehensive Report, the Comprehensive National ASW report, the Annual SOCAL Range Complex Exercise Report, or the Annual SOCAL Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.
  - (k) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and

## §216.276

modifications to the Monitoring Plan shall be made, as appropriate.

### §216.276 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by §216.103) conducting the activity identified in §216.270(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §216.277 or a renewal under §216.278.

### §216.277 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in §216.278 and the modification conditions in §216.279.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

[74 FR 3909, Jan. 21, 2009, as amended at 77 FR 4922, Feb. 1, 2012]

### §216.278 Renewal of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under §§216.106 and 216.277 for the activity identified in §216.270(c) may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under §216.276 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

## 50 CFR Ch. II (10–1–12 Edition)

(2) Timely receipt (by the dates indicated in these regulations) of the monitoring reports required under §216.275(c) through (j); and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §216.274 and the Letter of Authorization issued under §§216.106 and 216.277, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 216.278 indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from the SOCAL Range Complex or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§216.275(1)).