

## §218.21

## 50 CFR Ch. II (10–1–12 Edition)

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:

(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) 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 February 1, 2012, through June 4, 2014.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives and activities, listed in §218.20(c) should the amounts (e.g., number of exercises) vary from those estimated in §218.20(c), provided that the variation does not result in exceeding the amount of take indicated in §218.21(c).

[74 FR 28343, June 15, 2009, as amended at 77 FR 4923, Feb. 1, 2012]

## §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. coerulealba*)—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 Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

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

(E) Surface lookouts shall scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout shall always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses shall be lowered to allow the eyes to rest for a few seconds, and then the lookout shall search back across the sector with the naked eye.

(F) At night, lookouts shall scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they shall look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts shall also have night vision devices available for use.

(ii) *Operating Procedures and Collision Avoidance:*

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) Commanding Officers shall make use of marine species detection cues