

Subpart D—Taking Marine Mammals Incidental to U.S. Navy Training in the Gulf of Mexico Range Complex

SOURCE: 76 FR 9260, Feb. 17, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 9260, Feb. 17, 2011, subpart D was added, effective Feb. 17, 2011 to Feb. 17, 2016.

§218.30 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 occurs within the GOMEX Range Complex Operation Areas (OPAREAs), which is located along the Gulf of Mexico coast of the U.S. described in Figures 1 and 2 of the LOA application and consists of the BOMBEX Hotbox (surface and subsurface waters), located off the Alabama and Florida coast, south of NAS Pensacola, and underwater detonation (UNDET) Area E3 (surface and subsurface waters), located within the territorial waters off Padre Island, Texas, near Corpus Christi NAS.

(1) The northernmost boundary of the BOMBEX Hotbox is located 23 nm (42.6 km) from the coast of the Florida panhandle at latitude 30° N, the eastern boundary is approximately 200 nm (370.4 km) from the coast of the Florida peninsula at longitude 86°48' W.

(2) The UNDET Area E3 is a defined surface and subsurface area located in the waters south of Corpus Christi NAS and offshore of Padre Island, Texas. The westernmost boundary is located 7.5 nm (13.9 km) from the coast of Padre Island at 97°9'33" W and 27°24'26" N at the Westernmost corner. It lies entirely within the territorial waters (0 to 12 nm, or 0 to 22.2 km) of the U.S. and the majority of it lies within Texas state waters (0 to 9 nm, or 0 to 16.7 km). It is a very shallow water training area with depths ranging from 20 to 26 m.

(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) MK-83 (1,000 lb High Explosive bomb);

(B) MK3A2 anti-swimmer concussion grenades (0.5 lbs NEW).

(ii) Training Events:

(A) BOMBEX (Air-to-Surface)—up to 5 events over the course of 5 years (an average of 1 event per year, with 4 bombs in succession for each event);

(B) Small Arms Training with MK3A2 anti-swimmer concussion grenades—up to 30 events over the course of 5 years (an average of 6 events per year, with up to 10 live grenades authorized per event, but no more than 20 live grenades will be used per year).

(2) [Reserved]

(d) Regulations are effective February 1, 2012, through February 17, 2016.

(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 §218.30(c) should the amounts (e.g., number of exercises) vary from those estimated in §218.30(c), provided that the variation does not result in exceeding the amount of take indicated in §218.31(c).

[74 FR 28343, June 15, 2009, as amended at 77 FR 4924, Feb. 1, 2012]

§218.31 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 of this chapter and 218.36, the Holder of the Letter of Authorization may incidentally take marine mammals within the area described in §218.30(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 § 218.30(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 § 218.30(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment:

(i) Sperm whale (*Physeter macrocephalus*)—25 (an average of 5 annually);

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

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

(iv) Pantropical spotted dolphin (*Stenella attenuata*)—130 (an average of 26 annually);

(v) Clymene dolphin (*S. clymene*)—100 (an average of 20 annually);

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

(vii) Spinner dolphin (*S. longirostris*)—135 (an average of 27 annually);

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

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

(x) Melon-headed whales (*Peponocephala electra*)—100 (an average of 20 annually);

(xi) False killer whale (*Pseudorca crassidens*)—50 (an average of 10 annually);

(xii) Fraser's dolphin (*Lagenodelphis hosei*)—100 (an average of 20 annually);

(xiii) Pygmy or dwarf sperm whales (*Kogia* sp.)—100 (an average of 20 annually);

(xiv) Pygmy killer whale (*Ferresia attenuata*)—50 (an average of 10 annually);

(xv) Rough-toothed dolphin (*Steno bredanensis*)—100 (an average of 20 annually);

(xvi) Short-finned pilot whale (*Globicephala macrorhynchus*)—100 (an average of 20 annually).

(2) Level A Harassment (injury):

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

(ii) Spinner dolphin—5 (an average of 1 annually);

§ 218.32 Prohibitions.

Notwithstanding takings contemplated in § 218.31 and authorized by a Letter of Authorization issued under § 216.106 of this chapter and § 218.36, no person in connection with the activities described in § 218.30 may:

(a) Take any marine mammal not specified in § 218.31(c);

(b) Take any marine mammal specified in § 218.31(c) other than by incidental take as specified in § 218.31(c)(1) and (2);

(c) Take a marine mammal specified in § 218.31(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 § 218.36.

§ 218.33 Mitigation.

(a) When conducting training activities identified in § 218.30(c), the mitigation measures contained in the Letter of Authorization issued under § 216.106 of this chapter and § 218.36 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