(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 (Feresa 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);

(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;

(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).
   - (ii) Panthera spotted dolphin—5 (an average of 1 annually);
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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 & 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 and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts shall watch for and report to the OOD the presence of marine mammals.

(D) Personnel on lookout shall employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(E) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(F) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a “safe speed” (the minimum speed at which mission goals or safety will not be compromised) so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(G) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Such measures shall include changing speed and/or course direction and would be dictated by environmental and other conditions (e.g., safety or weather).

(H) Naval vessels shall maneuver to keep at least 500 yds (460 m) away from any observed whale and avoid approaching whales head-on. This requirement does not apply if a vessel’s safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Vessels shall take reasonable steps to alert other vessels in the vicinity of the whale.

(I) Where feasible and consistent with mission and safety, vessels shall avoid
closing to within 200-yd (183 m) of marine mammals other than whales (whales addressed above).

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records shall be kept for a period of 30 days following completion of a major training exercise.

(2) Coordination and Reporting Requirements:

(i) The Navy shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during or within 24 hours after completion of training activities.

(ii) The Navy shall follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

(3) Mitigation Measures for Specific At-sea Training Events—If a marine mammal is injured or killed as a result of the proposed Navy training activities (e.g., instances in which it is clear that munitions explosions caused the death), the Navy shall suspend its activities immediately and report such incident to NMFS.

(i) Air-to-Surface At-Sea Bombing Exercises (1,000-lbs explosive bombs):

(A) This activity shall only occur in the W–155A/B (hot box) area, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in §218.31(c).

(B) Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise.

The survey of the impact area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at the slowest safe speed. Release of ordnance through cloud cover is prohibited; aircraft must be able to actually see ordnance impact areas.

(C) A buffer zone of a 5,100-yard (4,663-m) radius shall be established around the intended target zone. The exercises shall be conducted only if the buffer zone is clear of marine mammals.

(D) At-sea BOMBEXs using live ordnance shall occur during daylight hours only.

(ii) Small Arms Training—Explosive hand grenades (such as the MK3A2 grenades):

(A) Lookouts shall visually survey for marine mammals prior to and during exercise.

(B) A 200-yd (182-m) radius buffer zone shall be established around the intended target. The exercises shall be conducted only if the buffer zone is clear of marine mammals.

(b) [Reserved]

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