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As of October 1, 2012
Title 50, Part 200 to 599,
Revised as of October 1, 2012
Is Replaced by
Title 50, Parts 200 to 227
and
Title 50, Part 228 to 599
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To cite the regulations in this volume use title, part and section number. Thus, 50 CFR 216.1 refers to title 50, part 216, section 1.
Explanations

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

- Title 1 through Title 16..........................as of January 1
- Title 17 through Title 27..........................as of April 1
- Title 28 through Title 41..........................as of July 1
- Title 42 through Title 50..........................as of October 1

The appropriate revision date is printed on the cover of each volume.

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To determine whether a Code volume has been amended since its revision date (in this case, October 1, 2012), consult the “List of CFR Sections Affected (LSA),” which is issued monthly, and the “Cumulative List of Parts Affected,” which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

Effective and Expiration Dates

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cutoff date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request.
Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 2001, consult either the List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, or 1986–2000, published in eleven separate volumes. For the period beginning January 1, 2001, a “List of CFR Sections Affected” is published at the end of each CFR volume.

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(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Authorities and Rules. A list of CFR titles, chapters, subchapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of “Title 3—The President” is carried within that volume.
The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the “Contents” entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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CHARLES A. BARTH,
Director,
Office of the Federal Register.
October 1, 2012.
THIS TITLE

Title 50—Fish and Wildlife is composed of thirteen volumes. The parts in these volumes are arranged in the following order: Parts 1–16; part 17 (17.1 to 17.95(a)), part 17 (17.95(b)), part 17 (17.95(c) to (e)), part 17 (17.95(f) to end of 17.95), part 17 (17.96 to 17.98), part 17 (17.99(a) to 17.99(h)), part 17 (17.99(i) to end of part 17), parts 18–199, parts 200–227, parts 228–599, parts 600–659, and part 660 to end. The first nine volumes consist of parts 1–16, part 17 (17.1 to 17.95(a)), part 17 (17.95(b)), part 17 (17.95(c) to (e)), part 17 (17.95(f) to end of 17.95), part 17 (17.96 to 17.98), part 17 (17.99(a) to 17.99(h), part 17 (17.99(i) to end of part 17), and parts 18–199 and contain the current regulations issued under chapter I—United States Fish and Wildlife Service, Department of the Interior. The tenth volume (parts 200–227) contains the current regulations issued under chapter II—the National Marine Fisheries Service, National Oceanic and Atmospheric Administration. The eleventh volume (parts 228–599) contains the remaining current regulations issued under chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; and the current regulations issued under chapter III—International Fishing and Related Activities, chapter IV—Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee regulations; and chapter V—Marine Mammal Commission. The twelfth and thirteenth volumes (parts 600–659 and part 660 to end) contain the current regulations issued under chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 2012.

Alphabetical listings of endangered and threatened wildlife and plants appear in §§17.11 and 17.12.


For this volume, John V. Lilyea was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.
Title 50—Wildlife and Fisheries

(This book contains parts 200 to 227)
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Authority: 16 U.S.C. 1361 et seq., unless otherwise noted.

Source: 39 FR 1852, Jan. 15, 1974, unless otherwise noted.

Note to Part 216: See also 50 CFR parts 228 and 229 for regulations governing certain incidental takings of marine mammals.

Subpart A—Introduction

§ 216.1 Purpose of regulations.


§ 216.2 Scope of regulations.

This part 216 applies solely to marine mammals and marine mammal products as defined in §216.3. For regulations under the MMPA, with respect to other marine mammals and marine mammal products, see 50 CFR part 18.


§ 216.3 Definitions.

In addition to definitions contained in the MMPA, and unless the context otherwise requires, in this part 216:


Active sportfishing means paying passengers have their terminal fishing gear (lures, hooks, etc.) in the water in an attempt to catch fish or, in the case of fishing involving chumming, fishing is considered to be in progress from the instant fish have been sighted taking bait (boiling) during that chumming process.

Administrator, Southwest Region means the Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, or his or her designee.

Agreement on the International Dolphin Conservation Program (Agreement on the IDCP) means the Agreement establishing the formal binding IDCP that was signed in Washington, DC on May 21, 1998.

Alaskan Native means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)) (85 Stat. 588) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimishian Indians enrolled or not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or group, of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

Albacore tuna means the species Thunnus alalunga.

Article of handicraft means items made by an Indian, Aleut or Eskimo from the nonedible byproducts of fur seals taken for personal or family consumption which—

(1) Were commonly produced by Alaskan Natives on or before October 14, 1983;
§216.3

(2) Are composed wholly or in some significant respect of natural materials, and;

(3) Are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

Assistant Administrator means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910, or his/her designee.

Authentic native articles of handicrafts and clothing means items made by an Indian, Aleut or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production results.

Bluefin tuna means the species Thunnus thynnus or Thunnus orientalis.

Bona fide scientific research: (1) Means scientific research on marine mammals conducted by qualified personnel, the results of which:

(i) Likely would be accepted for publication in a refereed scientific journal;
(ii) Are likely to contribute to the basic knowledge of marine mammal biology or ecology. (Note: This includes, for example, marine mammal parts in a properly curated, professionally accredited scientific collection; or
(iii) Are likely to identify, evaluate, or resolve conservation problems.

(2) Research that is not on marine mammals, but that may incidentally take marine mammals, is not included in this definition (see sections 101(a)(3)(A), 101(a)(5)(A), and 101(a)(5)(D) of the MMPA, and sections 7(b)(4) and 10(a)(1)(B) of the ESA).

Carrying capacity means the Regional Director’s determination of the maximum amount of fish that a vessel can carry in short tons based on the greater of the amount indicated by the builder of the vessel, a marine surveyor’s report, or the highest amount reported landed from any one trip.

Certified charter vessel means a fishing vessel of a non-U.S. flag nation, which is operating under the jurisdiction of the marine mammal laws and regulations of another, harvesting, nation by a formal declaration entered into by mutual agreement of the nations.

Co-investigator means the on-site representative of a principal investigator.

Commercial fishing operation means the lawful harvesting of fish from the marine environment for profit as part of an ongoing business enterprise. Such terms may include licensed commercial passenger fishing vessel (as defined) activities, but no other sportfishing activities, whether or not the fish so caught are subsequently sold.

Commercial passenger fishing vessel means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

Custody means holding a live marine mammal pursuant to the conditional

Bigeye tuna means the species Thunnus obesus.
authority granted under the MMPA, and the responsibility therein for captive maintenance of the marine mammal.

Declaration of Panama means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

Director, Office of Protected Resources means Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Dolphin Mortality Limit (DML) means the maximum allowable number of incidental dolphin mortalities per calendar year assigned to a vessel, unless a shorter time period is specified.


ETP means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude and the coastlines of North, Central and South America.

Facility means, in the context specific to captive marine mammals: (1) One or more permanent primary enclosures used to hold marine mammals captive (i.e., pools, lagoons) and associated infrastructure (i.e., equipment and supplies necessary for the care and maintenance of marine mammals) where these enclosures are either located within the boundaries of a single contiguous parcel of land and water, or are grouped together within the same general area within which enclosure-to-enclosure transport is expected to be completed in less than one hour; or (2) A traveling display/exhibit, where the enclosure(s) and associated infrastructure is transported together with the marine mammals.

Feeding is offering, giving, or attempting to give food or non-food items to marine mammals in the wild. It includes operating a vessel or providing other platforms from which feeding is conducted or supported. It does not include the routine discard of bycatch during fishing operations or the routine discharge of waste or fish byproducts from fish processing plants or other platforms if the discharge is otherwise legal and is incidental to operation of the activity.

First exporter means the person or company that first exports the fish or fish product, or, in the case of shipments that are subject to the labeling requirements of 50 CFR part 247 and that only contain fish harvested by vessels of the United States, the first seller of the fish or fish product.

Fisheries Certificate of Origin, or FCO, means NOAA Form 370, as described in §216.24(f)(4).

Force majeure means forces outside the vessel operator’s or vessel owner’s control that could not be avoided by the exercise of due care.


Fur seal means North Pacific fur seal, scientifically known as Callorhinus ursinus.

Hard part means any bone, tooth, baleen, treated pelt, or other part of a marine mammal that is relatively solid or durable.

Harvesting nation means the country under whose flag one or more fishing vessels are documented, or which has by formal declaration agreed to assert jurisdiction over one or more certified charter vessels, from which vessel(s) fish are caught that are a part of any cargo or shipment of fish to be imported into the United States, regardless of any intervening transshipments.

Humane means the method of taking, import, export, or other activity which involves the least possible degree of pain and suffering practicable to the animal involved.

Import means to land on, bring into, or attempt to land on, or introduce into, or attempt to introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the Customs laws of the United States; except that, for the purpose of any ban issued under 16 U.S.C. 1371(a)(2) on the importation of fish or fish products, the definition of “import” in §216.24(f)(1)(ii) shall apply.

Incidental catch means the taking of a marine mammal (1) because it is directly interfering with commercial
fishing operations, or (2) as a consequence of the steps used to secure the fish in connection with commercial fishing operations: Provided, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury and further, that the taking of a marine mammal, which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

Intentional purse seine set means that a tuna purse seine vessel or associated vessels chase marine mammals and subsequently make a purse seine set.

International Dolphin Conservation Program (IDCP) means the international program established by the agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama and the Agreement on the IDCP.


International Review Panel (IRP) means the International Review Panel established by the Agreement on the IDCP.

Intrusive research means a procedure conducted for bona fide scientific research involving: A break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animal’s immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (i.e., chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (i.e., audio broadcasts directed at animals that may affect behavior). For captive animals, this definition does not include:

1. A procedure conducted by the professional staff of the holding facility or an attending veterinarian for purposes of animal husbandry, care, maintenance, or treatment, or a routine medical procedure that, in the reasonable judgment of the attending veterinarian, would not constitute a risk to the health or welfare of the captive animal; or

2. A procedure involving either the introduction of a substance or object (i.e., as described in this definition) or a stimulus directed at animals that, in the reasonable judgment of the attending veterinarian, would not involve a risk to the health or welfare of the captive animal.

Label means a display of written, printed, or graphic matter on or affixed to the immediate container of any article.

Land or landing means to begin offloading any fish, to arrive in port with the intention of offloading fish, or to cause any fish to be offloaded.

Large-scale driftnet means a gillnet that is composed of a panel or panels of webbing, or a series of such gillnets, with a total length of 2.5 kilometers or more that is used on the high seas and allowed to drift with the currents and winds for the purpose of harvesting fish by entangling the fish in the webbing of the net.

Level A Harassment means any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild.

Level B Harassment means any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

Longtail tuna means the species Thunnus tonngol.

Marine environment means the oceans and the seas, including estuarine and brackish waters.

Marine mammal means those specimens of the following orders, which are morphologically adapted to the marine environment, and whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales, dolphins, and porpoises) and Pinnipedia, other than walrus (seals and sea lions).
National Marine Fisheries Service/NOAA, Commerce § 216.3


Native village or town means any community, association, tribe, band, clan or group.

Optimum sustainable population is a population size which falls within a range from the population level of a given species or stock which is the largest sustainable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

Per-stock per-year dolphin mortality limit means the maximum allowable number of incidental dolphin mortalities and serious injuries from a specified stock per calendar year, as established under the IDCP.

Pregnant means pregnant near term.

Pribilovians means Indians, Aleuts, and Eskimos who live on the Pribilof Islands.

Principal investigator means the individual primarily responsible for the taking, importation, export, and any related activities conducted under a permit issued for scientific research or enhancement purposes.

Public display means an activity that provides opportunities for the public to view living marine mammals at a facility holding marine mammals captive.

Regional Director means the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930; or Regional Administrator, Northwest Regional Office, NMFS, 7600 Sandpoint Way, N.E., Building 1, Seattle, WA 98115; or Regional Administrator, Southeast Regional Office, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; or Regional Administrator, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802; or Regional Administrator, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814; or Regional Administrator, Alaska Regional Office, NMFS, PO Box 21668, Juneau, AK 99802.

Rehabilitation means treatment of beached and stranded marine mammals taken under section 109(h)(1) of the MMPA or imported under section 109(h)(2) of the MMPA, with the intent of restoring the marine mammal’s health and, if necessary, behavioral patterns.

Secretary shall mean the Secretary of Commerce or his authorized representative.

Serious injury means any injury that will likely result in mortality.

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

Skipjack tuna means the species Euthynnus (Katsuwonus) pelamis.

Soft part means any marine mammal part that is not a hard part. Soft parts do not include urine or fecal material.

South Pacific Ocean means any waters of the Pacific Ocean that lie south of the equator.

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, subpart D).

Southern bluefin tuna means the species Thunnus maccoyii.

Stranded or stranded marine mammal means a marine mammal specimen under the jurisdiction of the Secretary:

(1) If the specimen is dead, and is on a beach or shore, or is in the water within the Exclusive Economic Zone of the United States; or

(2) If the specimen is alive, and is on a beach or shore and is unable to return to the water, or is in the water within the Exclusive Economic Zone of the United States where the water is so shallow that the specimen is unable to return to its natural habitat under its own power.

Subsistence means the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker.
or those who depend upon the taker to provide them with such subsistence. 

Subsistence uses means the customary and traditional uses of fur seals taken by Pribilovians for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fur seals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this definition—

(1) Family means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(2) Barter means the exchange of fur seals or their parts, taken for subsistence uses—
   (i) For other wildlife or fish or their parts, or
   (ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

Take means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.


Trip means a voyage starting when a vessel leaves port with all fish wells empty of fish and ending when a vessel unloads all of its fish.

Tuna means any fish of the genus Thunnus and the species Euthynnus (Katsuwonus) pelamis.

Tuna product means any food product processed for retail sale and intended for human or animal consumption that contains an item listed in §216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days.

Wasteful manner means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence, subsistence uses, or for the making of authentic native articles of handicrafts and clothing, or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

Yellowfin tuna means the species Thunnus albacares (synonomy: Neothunnus macropterus).

§216.4 Other laws and regulations.

(a) Federal. Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) State laws or regulations. See part 403 of this chapter.

§216.5 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.
§ 216.6 Forfeiture and return of seized property.

(a) Whenever any cargo or marine mammal or marine mammal product has been seized pursuant to section 107 of the MMPA, the Secretary shall expedite any proceedings commenced under these regulations.

(b) Whenever a civil penalty has been assessed by the Secretary under these regulations, any cargo, marine mammal, or marine mammal product seized pursuant to section 107 of the MMPA shall be subject to forfeiture. If respondent voluntarily forfeits any such seized property or the monetary value thereof without court proceedings, the Secretary may apply the value thereof, if any, as determined by the Secretary, toward payment of the civil penalty.

(c) Whenever a civil penalty has been assessed under these regulations, and whether or not such penalty has been paid, the Secretary may request the Attorney General to institute a civil action in an appropriate United States District Court to compel forfeiture of such seized property or the monetary value thereof to the Secretary for disposition by him in such manner as he deems appropriate. If no judicial action to compel forfeiture is commenced within 30 days after final decision-making assessment of a civil penalty, pursuant to § 216.60, such seized property shall immediately be returned to the respondent.

(d) If the final decision of the Secretary under these regulations is that respondent has committed no violation of the MMPA or of any permit or regulations issued thereunder, any marine mammal, marine mammal product, or other cargo seized from respondent in connection with the proceedings under these regulations, or the bond or other monetary value substituted therefor, shall immediately be returned to the respondent.

(e) If the final decision of the Secretary under these regulations is that respondent has committed a violation of the MMPA, the Secretary may institute proceedings for the assessment of a civil penalty under this part: Provided, That if no such civil penalty proceedings have been commenced by the Secretary within 30 days following the final disposition of the criminal case, any property seized pursuant to section 107 of the MMPA shall be returned to the respondent.

(f) If any seized property is to be returned to the respondent, the Regional Director shall issue a letter authorizing such return. This letter shall be dispatched to the respondent by registered mail, return receipt requested, and shall identify the respondent, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter and proper identification, the seized property is authorized to be released. All charges for storage, care, or handling of the seized property accruing 5 days or more after the date of the return receipt shall be for the account of the respondent: Provided, That if it is the final decision of the Secretary under these regulations that the respondent has committed the alleged violation, all charges which have accrued for the storage, care, or handling of the seized property shall be for the account of the respondent.


§ 216.7 Holding and bonding.

(a) Any marine mammal, marine mammal product, or other cargo seized pursuant to section 107 of the MMPA shall be delivered to the appropriate Regional Director of the National Marine Fisheries Service (see § 201.2 of this title) or his designee, who shall either hold such seized property or arrange for the proper handling and care of such seized property.

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. Subpart F of 15 CFR part 904 contains additional procedures that govern seized property that is subject to forfeiture or has been forfeited under the MMPA.

§ 216.8 Enforcement officers.

Enforcement Agents of the National Marine Fisheries Service shall enforce the provisions of the MMPA and may take any actions authorized by the MMPA with respect to enforcement. In addition, the Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this MMPA. Pursuant to the terms of section 107(b) of the MMPA, the Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this MMPA.


Subpart B—Prohibitions

§ 216.11 Prohibited taking.

Except as otherwise provided in subparts C, D, and I of this part 216 or in part 228 or 229, it is unlawful for:

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States, or

(c) Any person subject to the jurisdiction of the United States to take any marine mammal during the moratorium.


§ 216.12 Prohibited importation.

(a) Except as otherwise provided in subparts C and D of this part 216, it is unlawful for any person to import any marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is otherwise authorized pursuant to subparts C and D of this part 216, it is unlawful for any person to import into the United States any:

(1) Marine mammal:

(i) Taken in violation of the MMPA, or

(ii) Taken in another country in violation of the laws of that country;

(2) Any marine mammal product if

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under paragraph (b)(1) of this section, or

(ii) The sale in commerce of such product in the country of origin if the product is illegal.

(c) Except in accordance with an exception referred to in subpart C and §§ 216.31 (regarding scientific research permits only) and 216.32 of this part 216, it is unlawful to import into the United States any:

(1) Marine mammal which was pregnant at the time of taking.

(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later.

(3) Specimen of an endangered or threatened species of marine mammal.

(4) Specimen taken from a depleted species or stock of marine mammals, or

(5) Marine mammal taken in an inhumane manner.

(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.


§ 216.13 Prohibited uses, possession, transportation, sales, and permits.

It is unlawful for:

(a) Any person to use any port, harbor or other place under the jurisdiction of the United States for any purpose in any way connected with a prohibited taking or an unlawful importation of any marine mammal or marine mammal product; or

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the MMPA or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.

(c) Any person subject to the jurisdiction of the United States to use in a
commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this MMPA.

(d) Any person to violate any term, condition, or restriction of any permit issued by the Secretary.

§ 216.14 Marine mammals taken before the MMPA.

(a) Section 102(e) of the MMPA provides, in effect, that the MMPA shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product, consisting of or composed in whole or in part of, any marine mammal taken before that date. This prior status of any marine mammal or marine mammal product may be established by submitting to the Director, National Marine Fisheries Service prior to, or at the time of importation, an affidavit containing the following:

(1) The Affiant’s name and address;
(2) Identification of the Affiant;
(3) A description of the marine mammals or marine mammal products which the Affiant desires to import;
(4) A statement by the Affiant that, to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;
(5) A statement by the Affiant in the following language:

The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of—under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(b) Either one of two exhibits shall be attached to such affidavit, and will contain either:

(1) Records or other available evidence showing that the product consists of or is composed in whole or in part of marine mammals taken prior to the effective date of the MMPA. Such records or other evidentiary material must include information on how, when, where, and by whom the animals were taken, what processing has taken place since taking, and the date and location of such processing; or
(2) A statement from a government agency of the country of origin exercising jurisdiction over marine mammals that any and all such mammals from which the products sought to be imported were derived were taken prior to December 21, 1972.

(c) No pre-Act marine mammal or pre-Act marine mammal product may be imported unless the requirements of this section have been fulfilled.

(d) This section has no application to any marine mammal or marine mammal product intended to be imported pursuant to §§ 216.21, 216.31 or §216.32.

§ 216.15 Depleted species.

The following species or population stocks have been designated by the Assistant Administrator as depleted under the provisions of the MMPA.

(a) Hawaiian monk seal (Monachus schauinslandi).
(b) Bowhead whale (Balaena mysticetus).
(c) North Pacific fur seal (Callorhinus ursinus). Pribilof Island population.
(d) Bottlenose dolphin (Tursiops truncatus), coastal-migratory stock along the U.S. mid-Atlantic coast.
(e) Eastern spinner dolphin (Stenella longirostris orientalis).
(f) Northeastern offshore spotted dolphin (Stenella attenuata).
(g) Cook Inlet, Alaska, stock of beluga whales (Delphinapterus leucas). The stock includes all beluga whales occurring in waters of the Gulf of Alaska north of 58° North latitude including, but not limited to, Cook Inlet, Kamishak Bay, Chinitna Bay, Tuxedni Bay, Prince William Sound, Yakutat Bay, Shellikof Strait, and off Kodiak Island and freshwater tributaries to these waters.
(h) Eastern North Pacific Southern Resident stock of killer whales (Orcinus orca). The stock includes all resident killer whales in pods J, K,
§ 216.16 Prohibitions under the General Authorization for Level B harassment for scientific research.

It shall be unlawful for any person to:

(a) Provide false information in a letter of intent submitted pursuant to §216.45(b);

(b) Violate any term or condition imposed pursuant to §216.45(d).

§ 216.17 General prohibitions.

It is unlawful for any person to:

(a) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, investigation or seizure in connection with enforcement of the MMPA, DPCIA, or IDCPA.

(b) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the MMPA.

(c) Resist a lawful arrest for any act prohibited under the MMPA.

(d) Make any false statement, oral or written, to an authorized officer concerning any act under the jurisdiction of the MMPA, DPCIA, IDCPA, or attempt to do any of the above.

(e) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the MMPA, DPCIA, or IDCPA.

§ 216.21 Actions permitted by international treaty, convention, or agreement.

The MMPA and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same relating to the taking or importation of marine mammals or marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in subpart B of this part and the provisions of the MMPA shall not apply to activities carried out pursuant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151 through 1187, as in each case, from time to time amended.

§ 216.22 Taking by State or local government officials.

(a) A State or local government official or employee may take a marine mammal in the normal course of his duties as an official or employee, and no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat. In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary
National Marine Fisheries Service/NOAA, Commerce § 216.22

captivity until such time as it is able to be returned to its natural habitat. It shall be permissible to dispose of a carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto.

(b) Each taking permitted under this section shall be included in a written report to be submitted to the Secretary every six months beginning December 31, 1973. Unless otherwise permitted by the Secretary, the report shall contain a description of:

(1) The animal involved;
(2) The circumstances requiring the taking;
(3) The method of taking;
(4) The name and official position of the State official or employee involved;
(5) The disposition of the animal, including in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and
(6) Such other information as the Secretary may require.

c) Salvage of dead stranded marine mammals or parts thereof and subsequent transfer.

(1) Salvage. In the performance of official duties, a state or local government employee; an employee of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or any other Federal agency with jurisdiction and conservation responsibilities in marine shoreline areas; or a person authorized under 16 U.S.C. 1382(c) may take and salvage a marine mammal specimen if it is stranded and dead or it was stranded or rescued and died during treatment, transport, captivity or other rehabilitation subsequent to that stranding or distress if salvage is for the purpose of utilization in scientific research or for the purpose of maintenance in a properly curated, professionally accredited scientific collection.

(2) Registration. A person salvaging a dead marine mammal specimen under this section must register the salvage of the specimen with the appropriate Regional Office of the National Marine Fisheries Service within 30 days after the taking or death occurs. The registration must include:

(i) The name, address, and any official position of the individual engaged in the taking and salvage;
(ii) A description of the marine mammal specimen salvaged including the scientific and common names of the species;
(iii) A description of the parts salvaged;
(iv) The date and the location of the taking;
(v) Such other information as deemed necessary by the Assistant Administrator.

(3) Identification and curation. The Regional Director will assign a single unique number to each carcass, and the parts thereof, that are salvaged under the provisions of this section. The person who salvaged the specimen may designate the number to be assigned. After this number is assigned, the person who salvaged the specimen must permanently mark that number on each separate hard part of that specimen and must affix that number with tags or labels to each soft part of that specimen or the containers in which that soft part is kept. Each specimen salvaged under this section must be curated in accordance with professional standards.

(4) No sale or commercial trade. No person may sell or trade for commercial purposes any marine mammal specimen salvaged under this section.

(5) Transfer without prior authorization. A person who salvages a marine mammal specimen under this section may transfer that specimen to another person if:

(i) The person transferring the marine mammal specimen does not receive remuneration for the specimen;
(ii) The person receiving the marine mammal specimen is an employee of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or any other Federal agency with jurisdiction and conservation responsibilities in marine shoreline areas; or is a person authorized under 16 U.S.C. 1382(c); or is a person who has received prior authorization under paragraph (c)(6) of this section;
(iii) The marine mammal specimen is transferred for the purpose of scientific
research, for the purpose of maintenance in a properly curated, professionally accredited scientific collection, or for educational purposes;

(iv) The unique number assigned by the National Marine Fisheries Service is on, marked on, or affixed to the marine mammal specimen or container; and

(v) Except as provided under paragraph (c)(8) of this section, the person transferring the marine mammal specimen notifies the appropriate Regional Office of the National Marine Fisheries Service of the transfer, including notification of the number of the specimen transferred and the person to whom the specimen was transferred, within 30 days after the transfer occurs.

(6) Other transfers within the United States. Except as provided under paragraphs (c)(5) and (c)(8) of this section, a person who salvages a marine mammal specimen, or who has received a marine mammal specimen under the provisions of this section, may not transfer that specimen to another person within the United States unless the Regional Director of the appropriate Regional Office of the National Marine Fisheries Service grants prior written authorization for the transfer. The Regional Director may grant authorization for the transfer if there is evidence that the conditions listed under paragraphs (c)(5)(i), (c)(5)(iii), and (c)(5)(iv) of this section are met.

(7) Transfers outside of the United States. A person who salvages a marine mammal specimen, or a person who has received a marine mammal specimen under the provisions of this section, may not transfer that specimen to a person outside of the United States unless the Assistant Administrator grants prior written authorization for the transfer. The Assistant Administrator may grant authorization for the transfer if there is evidence that the conditions listed under paragraphs (c)(5)(i), (c)(5)(iii), and (c)(5)(iv) of this section are met.

(8) Exceptions to requirements for notification or prior authorization. A person may transfer a marine mammal specimen salvaged under this section without the notification required in paragraph (c)(5)(v) of this section if the prior authorization required in paragraph (c)(6) of this section if:

(i) The transfer is a temporary transfer to a laboratory or research facility within the United States so that analyses can be performed for the person salvaging the specimen; or

(ii) The transfer is a loan of not more than 1 year to another professionally accredited scientific collection within the United States.


§ 216.23 Native exceptions.

(a) Taking. Notwithstanding the prohibitions of subpart B of this part 216, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

(1) By Alaskan Natives who reside in Alaska for subsistence, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

(b) Restrictions. (1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or

(ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or

(iii) It is an edible portion and it is sold in an Alaskan Native village or town.

(2) No marine mammal taken for purposes of creating and selling authentic native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:
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(i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or

(ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or

(iii) It has first been transformed into an authentic native article of handicraft or clothing; or

(iv) It is an edible portion and sold (A) in an Alaskan Native village or town, or (B) to an Alaskan Native for his consumption.

(c) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:

(i) The name and address of the applicant;

(ii) A description of the applicant’s procedures for receiving, storing, processing, and shipping materials;

(iii) A proposal for a system of bookkeeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos pursuant to this section;

(iv) Such other information as the Secretary may request;

(v) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(vi) The signature of the applicant.

The sufficiency of the application shall be determined by the Secretary, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to such conditions as the Secretary prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Secretary may charge a reasonable fee for processing such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(d) Notwithstanding the preceding provisions of this section, whenever, under the MMPA, the Secretary determines any species of stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the MMPA upon the taking of such marine animals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals shall conform to such regulations.

(e) Marking and reporting of Cook Inlet Beluga Whales—(1) Definitions. In addition to definitions contained in the MMPA and the regulations in this part:

(i) Reporting means the collection and delivery of biological data, harvest data, and other information regarding the effect of taking a beluga whale (Delphinapterus leucas) from Cook Inlet, as required by NMFS.

(ii) Whaling captain or vessel operator means the individual who is identified by Alaskan Natives as the leader of each hunting team (usually the other crew on the boat) and who is the whaling captain; or the individual operating the boat at the time the whale is harvested or transported to the place of processing.

(iii) Cook Inlet means all waters of Cook Inlet north of 59° North latitude, including, but not limited to, waters of Kachemak Bay, Kamishak Bay, Chinitna Bay, and Tuxedni Bay.

(2) Marking. Each whaling captain or vessel operator, upon killing and landing a beluga whale (Delphinapterus leucas) from Cook Inlet, Alaska, must remove the lower left jawbone, leaving the teeth intact and in place. When multiple whales are harvested during one hunting trip, the jawbones will be
marked for identification in the field to ensure correct reporting of harvest information by placing a label marked with the date, time, and location of harvest within the container in which the jawbone is placed. The jawbone(s) must be retained by the whaling captain or vessel operator and delivered to NMFS at the Anchorage Field Office, 222 West 7th Avenue, Anchorage, Alaska 99513 within 72 hours of returning from the hunt.

(3) Reporting. Upon delivery to NMFS of a jawbone, the whaling captain or vessel operator must complete and mail a reporting form, available from NMFS, to the NMFS Anchorage Field Office within 30 days. A separate form is required for each whale harvested.

(i) To be complete, the form must contain the following information: the date and location of kill, the method of harvest, and the coloration of the whale. The respondent will also be invited to report on any other observations concerning the animal or circumstance of the harvest.

(ii) Data collected pursuant to paragraph (e) of this section will be reported on forms obtained from the Anchorage Field Office. These data will be maintained in the NMFS Alaska Regional Office in Juneau, Alaska, where such data will be available for public review.

(4) No person may falsify any information required to be set forth on the reporting form as required by paragraph (e) of this section.

(5) The Anchorage Field Office of NMFS is located in room 517 of the Federal Office Building, 222 West 7th Avenue; its mailing address is: NMFS, Box 43, Anchorage, AK 99513.

(f) Harvest management of Cook Inlet beluga whales—(1) Cooperative management of subsistence harvest. Subject to the provisions of 16 U.S.C. 1371(b) and any further limitations set forth in §216.23, any taking of a Cook Inlet beluga whale by an Alaska Native must be authorized under an agreement for the co-management of subsistence uses (hereinafter in this paragraph “co-management agreement”) between the National Marine Fisheries Service and an Alaska Native organization(s).

(2) Limitations. (i) Sale of Cook Inlet beluga whale parts and products. Authentic Native articles of handicraft and clothing made from nonedible by-products of beluga whales taken in accordance with the provisions of this paragraph may be sold in interstate commerce. The sale of any other part or product, including food stuffs, from Cook Inlet beluga whales is prohibited, provided that nothing herein shall be interpreted to prohibit or restrict customary and traditional subsistence practices of barter and sharing of Cook Inlet beluga parts and products.

(ii) Beluga whale calves or adults with calves. The taking of a calf or an adult whale accompanied by a calf is prohibited.

(iii) Season. All takings of beluga whales authorized under §216.23(f) shall occur no earlier than July 1 of each year.

(iv) Taking during 2001–2004. The harvest of Cook Inlet beluga whales is restricted during the four-year period of 2001–2004 as follows:

(A) Strike limitations. Subject to the suspension provision of subparagraph (C), a total of six (6) strikes, which could result in up to six landings, are to be allocated through co-management agreement(s).

(B) Strike allocations. Four strikes, not to exceed one per year, are allocated to the Native Village of Tyonek. The remaining two strikes will be allocated over the 4-year period through co-management agreement with other Cook Inlet community hunters, with no more than one such strike being allocated during every other year.

(C) Emergency provisions. Takings of beluga whales authorized under §216.23 will be suspended whenever unusual mortalities exceed six (6) whales in any year. “Unusual mortalities” include all documented human-caused mortality (including illegal takings and net entanglements but excluding all legally harvested whales) and all documented mortality resulting from unknown or natural causes that occur above normal levels, considered for the purposes of this provision to be twelve beluga whales per year. The level of unusual mortalities shall be calculated by documenting mortality for the calendar year and subtracting twelve. The sum of this result and the carry over of unusual mortality from any previous year
from which the population has not recovered is the level of unusual mortalities for the current year. If in any year the number of unusual mortalities exceeds six whales, no strikes will be allowed in that year or in subsequent years until the population has recovered from those mortalities through foregone future harvests and natural recruitment.

(v) Taking during 2008 and subsequent years. (A) Co-management agreements pursuant to paragraph (f)(1) of this section may be established for 5-year intervals beginning in 2008. Agreements must include specific provisions regarding the number and allocation of strikes, hunting practices to promote consistency with limitations in paragraph (f)(2)(ii) of this section, and to improve efficiency of the harvest, mitigating measures, and enforcement. Agreements may include provisions regarding the sex composition of the beluga harvest.

(B) Strike/harvest levels for each 5-year planning interval beginning in 2008 will be determined by the recovery of this stock as measured by the average abundance in the prior 5-year interval and the best estimate of the population growth rate using information obtained in the 10 years prior to each 5-year interval. Criteria for categorizing growth rates are presented below as an algorithm using the estimated abundance, the distribution statistics for growth rates, and the date. Harvest levels are subject to the Expected Mortality Limit. The established strike levels are presented in the Harvest Table and the following algorithm will be used to determine harvest levels for each 5-year period beginning in 2008:

1. NMFS will calculate the average stock abundance over the previous 5-year period.

2. NMFS will calculate a population growth rate from abundance estimates for the most recent 10-year period prior to the next 5-year period.

3. Using the abundance and growth information obtained in accordance with paragraphs (f)(2)(v)(B)(i) and (f)(2)(v)(B)(ii), NMFS will calculate the probabilities that the growth rate within the population would be less than 1 percent, less than 2 percent, or greater than 3 percent. NMFS will then use paragraphs (f)(2)(v)(B)(3)(i) and (f)(2)(v)(B)(3)(vi) of this section to select the proper cell from the Harvest Table to determine the harvest levels for the next 5-year interval.

(i) Is the average stock abundance over the previous 5-year period less than 350 beluga whales? If yes, the Harvest Table provides that the harvest is zero during the next 5-year period. If no, go to paragraph (f)(2)(v)(B)(3)(ii) of this section.

(ii) Is the current year 2035 or later and is there more than a 20 percent probability the growth rate is less than 1 percent? If yes, the harvest is zero during the next 5-year period. If no, go to paragraph (f)(2)(v)(B)(3)(iii) of this section.

(iii) Is the current year between 2020 and 2034 and there is more than a 25 percent probability the growth rate is less than 1 percent? If yes, the harvest is three whales during the next 5-year period. If no, go to paragraph (f)(2)(v)(B)(3)(iv) of this section.

(iv) Is the current year 2015 or later and is there more than a 25 percent probability the growth rate is less than 2 percent? If yes, go to the harvest table using the “Low” growth rate column. If no, go to paragraph (f)(2)(v)(B)(3)(vi) of this section.

(v) Is the current year prior to 2015 and is there more than a 75 percent probability the growth rate is less than 2 percent? If yes, go to the harvest table using the “Low” growth rate column. If no, go to paragraph (f)(2)(v)(B)(3)(vi) of this section.

(vi) Is there more than a 25 percent probability the growth rate is more than 3 percent? If yes, go to the harvest table using the “High” growth rate column. If no, go to the harvest table using the “Intermediate” growth rate column.
(C) At the beginning of each 5-year period, an Expected Mortality Limit is determined from the Harvest Table using the 5-year average abundance. During the course of each calendar year, the number of beach casts carcasses and carcasses found floating either reported to NMFS or observed by NMFS personnel will be the number of mortalities for that year. If at the end of each calendar year this number exceeds the Expected Mortality Limit, then an unusual mortality event has occurred. The Estimated Excess Mortalities will be calculated as twice the number of reported dead whales above the Expected Mortality Limit. The harvest will then be adjusted as follows:

(1) The harvest level for the remaining years of the current 5-year period will be recalculated by reducing the 5-year average abundance from the previous 5-year period by the Estimated Excess Mortalities. The revised abundance estimate would then be used in the table to set the harvest level.


§216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

(a)(1) No marine mammal may be taken in the course of a commercial fishing operation by a U.S. purse seine fishing vessel in the ETP unless the taking constitutes an incidental catch as defined in §216.3, and vessel and operator permits have been obtained in accordance with these regulations, and such taking is not in violation of such permits or regulations.

(2)(i) It is unlawful for any person using a U.S. purse seine fishing vessel of 400 short tons (st) (362.8 metric tons (mt)) carrying capacity or less to intentionally deploy a net on or to encircle dolphins, or to carry more than two speedboats, if any part of its fishing trip is in the ETP.

(ii) It is unlawful for any person using a U.S. purse seine fishing vessel of greater than 400 st (362.8 mt) carrying capacity that does not have a valid permit obtained under these regulations to catch, possess, or land tuna
(iii) It is unlawful for any person subject to the jurisdiction of the United States to receive, purchase, or possess tuna caught, possessed, or landed in violation of paragraph (a)(2)(i) of this section.

(iv) It is unlawful for any person subject to the jurisdiction of the United States to intentionally deploy a purse seine net on, or to encircle, dolphins from a vessel operating in the ETP when there is not a DML assigned to that vessel.

(v) It is unlawful for any person subject to the jurisdiction of the United States to intentionally deploy a purse seine net on, or to encircle, dolphins from a vessel operating in the ETP with an assigned DML after a set in which the DML assigned to that vessel has been reached or exceeded.

(vi) Alleged violations of the Agreement on the IDCP and/or these regulations identified by the International Review Panel will be considered for potential enforcement action by NMFS.

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(ii) and (e)(1) of this section may be waived by the Administrator, Southwest Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report to the Administrator, Southwest Region, the vessel’s date of exit from or subsequent entry into the permit area.

(b) Permits—(1) Vessel permit. The owner or managing owner of a U.S. purse seine vessel of greater than 400 st (362.8 mt) carrying capacity that participates in commercial fishing operations in the ETP must possess a valid vessel permit issued under paragraph (b)(1) of this section. Such permits are not transferable and must be renewed annually. To receive a permit, the owner or managing owner must satisfactorily complete all required training under paragraph (c)(5) of this section. The operator’s permit is valid only when the permit holder is on a vessel with a valid vessel permit. Operator permits will be valid through December 31 of each year.

(2) Operator permit. The person in charge of and actually controlling fishing operations (hereinafter referred to as the operator) on a U.S. purse seine fishing vessel engaged in commercial fishing operations under a vessel permit must possess a valid operator permit issued under paragraph (b) of this section. Such permits are not transferable and must be renewed annually. To receive a permit, the operator must have satisfactorily completed all required training under paragraph (c)(5) of this section. The operator’s permit is valid only when the permit holder is on a vessel with a valid vessel permit.

(3) Possession and display. A valid vessel permit issued pursuant to paragraph (b)(1) of this section must be on board the vessel while engaged in fishing operations, and a valid operator permit issued pursuant to paragraph (b)(2) of this section must be in the possession of the operator to whom it was issued. Permits must be shown upon request to NMFS enforcement agents, U.S. Coast Guard officers, or designated agents of NMFS or the Inter-American Tropical Tuna Commission (IATTC) (including observers). A vessel owner or operator who is at sea on a fishing trip when his or her permit expires and to whom a permit for the next year has been issued, may take marine mammals under the terms of the new permit without having to display it on board the vessel until the vessel returns to port.

(4) Application for vessel permit. ETP tuna purse seine vessel permit application forms and instructions for their completion are available from NMFS. To apply for an ETP vessel permit, a vessel owner or managing owner must complete, sign, and submit the appropriate form via fax to (562) 980–4047, for prioritization purposes as described under §300.22(b)(4)(1)(D)(3) of this title, allowing at least 15 days for processing. To request that a vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active on the Vessel Register under §300.22(b)(4)(1) of this title in the following calendar year, the owner or managing owner must submit the vessel permit application via fax,
payment of the vessel permit application fee, and payment of the vessel assessment fee no later than September 15 for vessels for which a DML is requested for the following year, and no later than November 30 for vessels for which a DML is not requested for the following year.

(5) Application for operator permit. An applicant for an operator permit must complete, sign, and submit the appropriate form obtained from NMFS and submit payment of the permit application fee to the Administrator, Southwest Region, allowing at least 45 days for processing. Application forms and instructions for their completion are available from NMFS.

(6) Fees—(i) Vessel permit application fee. Payment of the permit application fee is required before NMFS will issue a permit. The Assistant Administrator may change the amount of this fee at any time if a different fee is determined in accordance with the NOAA Finance Handbook. The amount of the fee will be printed on the vessel permit application form provided by the Administrator, Southwest Region.

(ii) Operator permit fee. The Assistant Administrator may require a fee to be submitted with an application for an operator permit. The level of such a fee shall be determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(iii) Vessel assessment fee. The vessel assessment fee supports the placement of observers on individual tuna purse seine vessels, and maintenance of the observer program, as established by the IATTC or other approved observer program.

(A) The owner or managing owner of a purse seine vessel for which a DML has been requested must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than September 15 of the year prior to the calendar year for which the DML is requested. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register, as defined in §300.21 of this title, has been requested, but for which a DML has not been requested, must submit payment of the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the vessel assessment fee is required only if the vessel is listed as active and is required to carry an observer, or if the vessel is listed as inactive and exceeds 400 st (362.8 mt) in carrying capacity. Payment of the vessel assessment fee must be consistent with the vessel’s status, either active or inactive, on the Vessel Register in §300.22(b)(4) of this title.

(B) The owner or managing owner of a purse seine vessel that is licensed under the South Pacific Tuna Treaty must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the vessel assessment fee is required only if the vessel is listed as active and is required to carry an observer. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under §300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under §300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status, less the vessel assessment fee associated with inactive status that was already paid, before NMFS will request the IATTC Director change the status of the vessel from inactive to active. Payment of the vessel assessment fee is required only if the vessel is required to carry an observer.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under §300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status, less the vessel assessment fee associated with inactive status that was already paid, before NMFS will request the IATTC Director change the status of the vessel from inactive to active. Payment of the vessel assessment fee is required only if the vessel is required to carry an observer.
(E) The owner or managing owner of a purse seine vessel not listed on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under §300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status only if the vessel is required to carry an observer, before NMFS will request the IATTC Director change the status of the vessel to active.

(F) Payments will be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(E) of this section for vessels that were listed as active on the Vessel Register in the calendar year prior to the year for which active status was requested; or if received after the dates specified in paragraphs (b)(6)(iii)(A) or (b)(6)(iii)(B) of this section for vessels for which active status is requested if the vessel was listed as active during the year the request was made. Payments will not be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(C) or (b)(6)(iii)(D) of this section, or if received under paragraph (b)(6)(iii)(E) of this section for vessels that were not listed as active on the Vessel Register in the calendar year prior to the year for which active status was requested. Payments will also not be subject to a 10 percent surcharge if received after the date specified in paragraph (b)(6)(iii)(B) of this section for vessels for which inactive status is requested, or for vessels for which active status is requested if the vessel was not listed as active during the year the request was made. The Administrator, Southwest Region, will forward all vessel assessment fees described in this section to the IATTC or to the applicable organization approved by the Administrator, Southwest Region.

(7) Application approval. The Administrator, Southwest Region, will determine the adequacy and completeness of an application and, upon determining that an application is adequate and complete, will approve that application and issue the appropriate permit, except for applicants having unpaid or overdue civil penalties, criminal fines, or other liabilities incurred in a legal proceeding.

(8) Conditions applicable to all permits—(i) General conditions. Failure to comply with the provisions of a permit or with these regulations may lead to suspension, revocation, modification, or denial of a permit. The permit holder, vessel, vessel owner, operator, or master may be subject, jointly or severally, to the penalties provided for under the MMPA. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(ii) Observer placement. By obtaining a permit, the permit holder consents to the placement of an observer on the vessel during every trip involving operations in the ETP and agrees to payment of the fees for observer placement. No observer will be assigned to a vessel unless that vessel owner has submitted payment of observer fees to the Administrator, Southwest Region. The observers may be placed under an observer program of NMFS, IATTC, or another observer program approved by the Administrator, Southwest Region.

(iii) Explosives. The use of explosive devices is prohibited during all tuna purse seine operations that involve marine mammals.

(iv) Reporting requirements. (A) The vessel permit holder of each permitted vessel must notify the Administrator, Southwest Region or the IATTC contact designated by the Administrator, Southwest Region, at least 5 days in advance of the vessel’s departure on a fishing trip to allow for observer placement on every trip.

(B) The vessel permit holder must notify the Administrator, Southwest Region, or the IATTC contact designated by the Administrator, Southwest Region, of any change of vessel operator at least 48 hours prior to departing on a fishing trip. In the case of a change in operator due to an emergency, notification must be made within 72 hours of the change.

(v) Data release. By using a permit, the permit holder authorizes the release to NMFS and the IATTC of all data collected by observers aboard purse seine vessels during fishing trips under the IATTC observer program or another international observer program approved by the Administrator, Southwest Region. The permit holder
must furnish the international observer program with all release forms required to authorize the observer data to be provided to NMFS and the IATTC. Data obtained under such releases will be used for the same purposes as would data collected directly by observers placed by NMFS and will be subject to the same standards of confidentiality.

(9) Mortality and serious injury reports. The Administrator, Southwest Region, will provide to the public periodic status reports summarizing the estimated incidental dolphin mortality and serious injury by U.S. vessels of individual species and stocks.

(c) Pursing by vessels with Dolphin Mortality Limits (DMLs). In addition to the terms and conditions set forth in paragraph (b) of this section, any permit for a vessel to which a DML has been assigned under paragraph (c)(9) of this section and any operator permit when used on such a vessel are subject to the following terms and conditions:

(1) A vessel may be used to chase and encircle schools of dolphins in the ETP only under the immediate direction of the holder of a valid operator’s permit.

(2) No retention of live marine mammals. Except as otherwise authorized by a specific permit, live marine mammals incidentally taken must be immediately returned to the ocean without further injury. The operator of a purse seine vessel must take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Live marine mammals may not be brailed, sacked up, or hoisted onto the deck during ortza retrieval.

(3) Gear and equipment required for valid permit. A vessel possessing a vessel permit for purse seining involving the intentional taking of marine mammals may not engage in fishing operations involving the intentional deployment of the net on or encirclement of dolphins unless it is equipped with a dolphin safety panel in its purse seine, has the other required gear and equipment, and uses the required procedures.

(i) Dolphin safety panel. The dolphin safety panel must be a minimum of 180 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The dolphin safety panel must consist of small mesh webbing not to exceed 1 ¼ inches (3.18 centimeters (cm)) stretch mesh extending downward from the corkline and, if present, the base of the dolphin apron to a minimum depth equivalent to two strips of 100 meshes of 4 ¼ inches (10.80 cm) stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(ii) Dolphin safety panel markers. Each end of the dolphin safety panel and dolphin apron, if present, must be identified with an easily distinguishable marker.

(iii) Dolphin safety panel hand holds. Throughout the length of the corkline under which the dolphin safety panel and dolphin apron are located, hand hold openings must be secured so that they will not allow the insertion of a 1 ¼ inch (3.50 cm) diameter cylindrical-shaped object.

(iv) Dolphin safety panel corkline hangings. Throughout the length of the corkline under which the dolphin safety panel and dolphin apron if present, are located, corkline hangings must be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical-shaped object with a 1 ¼ inch (3.50 cm) diameter can be inserted between the cork and corkline hangings, must be tightened so as not to allow the insertion of a cylindrical-shaped object with a 1 ¼ inch (3.50 cm) diameter.

(v) Speedboats. A minimum of three speedboats in operating condition must be carried. All speedboats carried aboard purse seine vessels and in operating condition must be rigged with tow lines and towing bridles or towing
posts. Speedboat hoisting bridles may not be substituted for towing bridles.

(vi) **Raft.** A raft suitable to be used as a dolphin observation-and-rescue platform must be carried.

(vii) **Facemask and snorkel, or viewbox.** At least two facemasks and snorkels or viewboxes must be carried.

(viii) **Lights.** The vessel must be equipped with long-range, high-intensity floodlights with a sodium lamp of at least 1000 watts, or a multimode lamp of at least 1500 watts, for use in darkness to ensure sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(4) **Vessel inspection**—(i) **Twice per year.** At least twice during each calendar year, purse seine nets and other gear and equipment required under §216.24(c)(3) must be made available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit. The first such inspection shall be carried out before the vessel’s request for a DML is submitted to the IATTC. The second such inspection shall be carried out before notification of any reallocation of DMLs for vessels with full-year DMLs or during the last quarter of the year for vessels with second-semester DMLs.

(ii) **Reinspection.** Pursue seine nets and other gear and equipment required by these regulations must be made available for reinspection by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region. The vessel permit holder must notify the Administrator, Southwest Region, of any net modification at least 5 days prior to departure of the vessel in order to determine whether a reinspection or trial set/net alignment is required.

(iii) **Failure to pass inspection.** Upon failure to pass an inspection or reinspection, a vessel may not engage in purse seining involving the intentional taking of marine mammals until the deficiencies in gear or equipment are corrected as required by NMFS.

(5) **Operator permit holder training requirements.** An operator must maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session approved by the Administrator, Southwest Region, in order to obtain his or her permit. At the training session, an attendee will be instructed on the relevant provisions and regulatory requirements of the MMPA and the IDCP, and the fishing gear and techniques that are required for reducing serious injury and mortality of dolphin incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year permit will not be required to attend additional formal training sessions unless there are substantial changes in the relevant provisions or implementing regulations of the MMPA or the IDCP, or in fishing gear and techniques. Additional training may be required for any operator who is found by the Administrator, Southwest Region, to lack proficiency in the required fishing procedures or familiarity with the relevant provisions or regulations of the MMPA or the IDCP.

(6) **Marine mammal release requirements.** All operators fishing pursuant to paragraph (c) of this section must use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(i) **Backdown procedure.** Backdown must be performed following a purse seine set in which dolphins are captured in the course of catching tuna, and must be continued until it is no longer possible to remove live dolphins from the net by this procedure. At least one crewmember must be deployed during backdown to aid in the release of dolphins. Thereafter, other release procedures required will be continued so that all live dolphins are released prior to the initiation of the sack-up procedure.

(ii) **Prohibited use of sharp or pointed instrument.** The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(iii) **Sundown sets prohibited.** On every set encircling dolphin, the backdown procedure must be completed no later than one-half hour after sundown, except as provided here. For the purpose
of this section, sundown is defined as the time at which the upper edge of the sun disappears below the horizon or, if the view of the sun is obscured, the local time of sunset calculated from tables developed by the U.S. Naval Observatory or other authoritative source approved by the Administrator, Southwest Region. A sundown set is a set in which the backdown procedure has not been completed and rolling the net to sack-up has not begun within one-half hour after sundown. Should a set extend beyond one-half hour after sundown, the operator must use the required marine mammal release procedures including the use of the high intensity lighting system. In the event a sundown set occurs where the seine skiff was let go 90 or more minutes before sundown, and an earnest effort to rescue dolphins is made, the International Review Panel of the IDCP may recommend to the United States that prosecution by the United States is not recommended. Any such recommendation will be considered by the United States in evaluating the appropriateness of prosecution in a particular circumstance.

(iv) Dolphin safety panel. During backdown, the dolphin safety panel must be positioned so that it protects the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point.

(7) Experimental fishing operations. The Administrator, Southwest Region, may authorize experimental fishing operations, consistent with the provisions of the IDCP, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury, or do not require the encirclement of dolphins in the course of fishing operations. The Administrator, Southwest Region, may waive, as appropriate, any requirements of this section except DMLs and the obligation to carry an observer.

(i) A vessel permit holder may apply for an experimental fishing operation waiver by submitting the following information to the Administrator, Southwest Region, no less than 90 days before the date the proposed operation is intended to begin:

(A) The name(s) of the vessel(s) and the vessel permit holder(s) to participate;

(B) A statement of the specific vessel gear and equipment or procedural requirement to be exempted and why such an exemption is necessary to conduct the experiment;

(C) A description of how the proposed modification to the gear and equipment or procedures is expected to reduce incidental mortality or serious injury of marine mammals;

(D) A description of the applicability of this modification to other purse seine vessels;

(E) The planned design, time, duration, and general area of the experimental operation;

(F) The name(s) of the permitted operator(s) of the vessel(s) during the experiment;

(G) A statement of the qualifications of the individual or company doing the analysis of the research; and

(H) Signature of the permitted operator or of the operator’s representative.

(ii) The Administrator, Southwest Region, will acknowledge receipt of the application and, upon determining that it is complete, will publish a notice in the FEDERAL REGISTER summarizing the application, making the full application available for inspection and inviting comments for a minimum period of 30 days from the date of publication.

(iii) The Administrator, Southwest Region, after considering the information submitted in the application identified in paragraph (c)(7)(i) of this section and the comments received, will either issue a waiver to conduct the experiment that includes restrictions or conditions deemed appropriate, or deny the application, giving the reasons for denial.

(iv) A waiver for an experimental fishing operation will be valid only for the vessels and operators named in the permit, for the time period and areas specified, for trips carrying an observer designated by the Administrator, Southwest Region, and when all the
(v) The Administrator, Southwest Region, may suspend or revoke an experimental fishing waiver in accordance with 15 CFR part 904 if the terms and conditions of the waiver or the provisions of the regulations are not followed.

(8) Operator permit holder performance requirements. [Reserved]

(9) Vessel permit holder dolphin mortality limits. For purposes of this paragraph, the term "vessel permit holder" includes both the holder of a current vessel permit and also the holder of a vessel permit for the following year.

(i) By September 1 each year, a vessel permit holder desiring a DML for the following year must provide to the Administrator, Southwest Region, the name of the U.S. purse seine fishing vessel(s) of carrying capacity greater than 400 st (362.8 mt) that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the following year. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required by the IDCP, for assignment of a DML for the following year under the provisions of Annex IV of the Agreement on the IDCP.

(ii) Each vessel permit holder that desires a DML only for the period between July 1 to December 31 must provide the Administrator, Southwest Region, by September 1 of the prior year, the name of the U.S. purse seine fishing vessel(s) of carrying capacity greater than 400 st (362.8 mt) that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the period. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required by the IDCP, for assignment of a DML for the following year under the provisions of Annex IV of the Agreement on the IDCP.

(iii)(A) The Administrator, Southwest Region, will notify vessel owners of the DML assigned for each vessel for the following year, or the second half of the year, as applicable.

(B) The Administrator, Southwest Region, may adjust the DMLs in accordance with Annex IV of the Agreement on the IDCP. All adjustments of full-year DMLs will be made before January 1, and the Administrator, Southwest Region, will notify the Director of the IATTC of any adjustments prior to a vessel departing on a trip using its adjusted DML. The notification will be no later than February 1 in the case of adjustments to full-year DMLs, and no later than May 1 in the case of adjustments to DMLs for the second half of the year.

(C) In accordance with the requirements of Annex IV of the Agreement on the IDCP, the Administrator, Southwest Region, may adjust a vessel’s DML if it will further scientific or technological advancement in the protection of marine mammals in the fishery or if the past performance of the vessel indicates that the protection or use of the yellowfin tuna stocks or marine mammals is best served by the adjustment, within the mandates of the MMPA. Experimental fishing operation waivers or scientific research permits will be considered a basis for adjustments.

(iv)(A) A vessel assigned a full-year DML that does not make a set on dolphins by April 1 or that leaves the fishery will lose its DML for the remainder of the year, unless the failure to set on dolphins is due to force majeure or other extraordinary circumstances as determined by the International Review Panel.

(B) A vessel assigned a DML for the second half of the year will be considered to have lost its DML if the vessel has not made a set on dolphins before December 31, unless the failure to set on dolphins is due to force majeure or extraordinary circumstances as determined by the International Review Panel.

(C) Any vessel that loses its DML for 2 consecutive years will not be eligible half of an unadjusted full-year DML as calculated by the IDCP.

(iii)(A) The Administrator, Southwest Region, will notify vessel owners of the DML assigned for each vessel for the following year, or the second half of the year, as applicable.
to receive a DML for the following year.

(D) NMFS will determine, based on available information, whether a vessel has left the fishery.

(1) A vessel lost at sea, undergoing extensive repairs, operating in an ocean area other than the ETP, or for which other information indicates that vessel will no longer be conducting purse seine operations in the ETP for the remainder of the period covered by the DML will be determined to have left the fishery.

(2) NMFS will make all reasonable efforts to determine the intentions of the vessel owner. The owner of any vessel that has been preliminarily determined to have left the fishery will be provided notice of such preliminary determination and given the opportunity to provide information on whether the vessel has left the fishery prior to NMFS making a final determination under 15 CFR part 904 and notifying the IATTC.

(v) Any vessel that exceeds its assigned DML after any applicable adjustment under paragraph (c)(9)(iii) of this section will have its DML for the subsequent year reduced by 150 percent of the overage, unless another adjustment is determined by the International Review Panel, as mandated by the Agreement on the IDCP.

(vi) A vessel that is covered by a valid vessel permit and that does not normally fish for tuna in the ETP but desires to participate in the fishery on a limited basis may apply for a per-trip DML from the Administrator, Southwest Region, at any time, allowing at least 60 days for processing. The request must state the expected number of trips involving sets on dolphins and the anticipated dates of the trip or trips. The request will be forwarded to the Secretariat of the IATTC for processing in accordance with Annex IV of the Agreement on the IDCP. A per-trip DML will be assigned if one is made available in accordance with the terms of Annex IV of the Agreement on the IDCP. If a vessel assigned a per-trip DML does not set on dolphins during that trip, the vessel will be considered to have lost its DML unless this was a result of force majeure or other extraordinary circumstances as determined by the International Review Panel. After two consecutive losses of a DML, a vessel will not be eligible to receive a DML for the next fishing year.

(vii) Observers will make their records available to the vessel operator at any reasonable time, including after each set, in order for the operator to monitor the balance of the DML(s) remaining for use.

(viii) Vessel and operator permit holders must not deploy a purse seine net on or encircle any school of dolphins containing individuals of a particular stock of dolphins for the remainder of the calendar year:

(A) after the applicable per-stock per-year dolphin mortality limit for that stock of dolphins (or for that vessel, if so assigned) has been reached or exceeded; or

(B) after the time and date provided in actual notification or notification in the Federal Register by the Administrator, Southwest Region, based upon the best available evidence, stating when any applicable per-stock per-year dolphin mortality limit has been reached or exceeded, or is expected to be reached in the near future.

(ix) If individual dolphins belonging to a stock that is prohibited from being taken are not reasonably observable at the time the net skiff attached to the net is released from the vessel at the start of a set, the fact that individuals of that stock are subsequently taken will not be cause for enforcement action provided that all procedures required by the applicable regulations have been followed.

(x) Vessel and operator permit holders must not intentionally deploy a purse seine net on or encircle dolphins intentionally:

(A) after a set in which the vessel’s DML, as adjusted, has been reached or exceeded; or

(B) after the date and time provided in actual notification by letter, facsimile, radio, or electronic mail, or notice in the Federal Register by the Administrator, Southwest Region, based upon the best available evidence, that intentional sets on dolphins must cease because the total of the DMLs assigned to the U.S. fleet has been reached or exceeded, or is expected to be exceeded in the near future.
(d) Pursing by vessels without assigned DMLs. In addition to the requirements of paragraph (b) of this section, a vessel permit used for a trip not involving an assigned DML and the operator’s permit when used on such a vessel are subject to the following terms and conditions: a permit holder may take marine mammals provided that such taking is an accidental occurrence in the course of normal commercial fishing operations and the vessel does not intentionally deploy its net on, or to encircle, dolphins; marine mammals taken incidental to such commercial fishing operations must be immediately returned to the environment where captured without further injury, using release procedures such as hand rescue, or aborting the set at the earliest effective opportunity; and the use of one or more rafts and facemasks or viewboxes to aid in the rescue of dolphins is recommended.

(e) Observers—(1) The holder of a vessel permit must allow an observer duly authorized by the Administrator, Southwest Region, to accompany the vessel on all fishing trips in the ETP for the purpose of conducting research and observing operations, including collecting information that may be used in civil or criminal penalty proceedings, forfeiture actions, or permit sanctions. A vessel that fails to carry an observer in accordance with these requirements may not engage in fishing operations.

(2) Research and observation duties will be carried out in such a manner as to minimize interference with commercial fishing operations. Observers must be provided access to vessel personnel and to dolphin safety gear and equipment, electronic navigation equipment, radar displays, high powered binoculars, and electronic communication equipment. The navigator must provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. Observers must be provided with adequate space on the bridge or pilothouse for clerical work, as well as space on deck adequate for carrying out observer duties. No vessel owner, master, operator, or crew member of a permitted vessel may impair, or in any way interfere with, the research or observations being carried out. Masters must allow observers to use vessel communication equipment necessary to report information concerning the take of marine mammals and other observer collected data upon request of the observer.

(3) Any marine mammals killed during fishing operations that are accessible to crewmen and requested from the permit holder or master by the observer must be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals or marine mammal parts designated as biological specimens by the observer must be retained in cold storage aboard the vessel until retrieved by authorized personnel of NMFS or the IATTC when the vessel returns to port for unloading.

(4) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, or to influence or attempt to influence an observer, or to harass (including sexual harassment) an observer by conduct that has the purpose or effect of unreasonably interfering with the observer’s work performance, or that creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5)(i) All observers must be provided sleeping, toilet and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(ii) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet
§216.24  

and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established before the placement meeting and approved by NMFS or other approved observer program and must be followed during the entire trip.

(iii) In the event there are one or more female crew members, the female observer must be provided a bunk in a cabin shared solely with female crew members, and provided toilet and shower facilities shared solely with these female crew members.

(f) Importation, purchase, shipment, sale and transport. (1)(i) It is illegal to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if the fish have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of that allowed under this part for U.S. fishermen, or as specified at paragraph (f)(6) of this section.

(ii) For purposes of this paragraph (f), and in applying the definition of an “intermediary nation,” an import occurs when the fish or fish product is released from a nation’s Customs’ custody and enters into the commerce of the nation. For other purposes, “import” is defined in §216.3.

(2) Imports requiring a Fisheries Certificate of Origin. Shipments of tuna, tuna products, and certain other fish products identified in paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) of this section may not be imported into the United States unless a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, is filed with U.S. Customs and Border Protection (CBP) at the time of importation.

(i) Imports requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo. All shipments containing yellowfin tuna or yellowfin tuna products (other than fresh tuna) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following Harmonized Tariff Schedule of the United States (HTS) numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at www.usitc.gov. The scope of yellowfin tuna embargoes and procedures for attaining an affirmative finding are described under paragraphs (f)(6) and (f)(8) of this section, respectively.

(A) Frozen (products containing Yellowfin).
0303.42.0020  Yellowfin tunas, whole, frozen
0303.42.0040  Yellowfin tunas, head-on, frozen, except whole
0303.42.0060  Yellowfin tunas frozen, except whole, head-on, fillets, livers and roes
0304.29.6097  Tuna fish fillets, frozen, Not elsewhere specified or indicated (NESOI)
0304.99.1090  Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI

(B) Airtight Containers: (products containing Yellowfin).
1604.14.1010  Tunas and skipjack, in oil, in airtight containers, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each
1604.14.1099  Tunas and skipjack, in oil, in airtight containers, NESOI
1604.14.2291  Other tunas and skipjack, no oil, in foil/flexible airtight containers, not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year
1604.14.2299  Tunas, NESOI and skipjack, not in oil, in other airtight containers not over 7 kg, 4.8% of U.S. consumption of canned tuna during preceding year
1604.14.3091  Tunas and skipjack, NESOI, not in oil, in foil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each
1604.14.3099  Other tunas and skipjack, not in oil, in airtight containers, NESOI
(C) Loins: (products containing Yellowfin).
1604.14.4000  Tunas and skipjack, prepared or preserved, not in airtight containers, not in oil, in bulk or immediate containers with their contents over 6.8 kg each
1604.14.5000  Tunas and skipjack, prepared or preserved, not in airtight containers, NESOI
(D) Other: (products containing Yellowfin).
1604.20.1000  Fish paste
1604.20.2500  Fish balls, cakes, and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each
1604.20.3000  Fish balls, cakes and puddings, NESOI

(ii) Imports requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo. All shipments containing tuna or tuna products (other than fresh tuna or yellowfin tuna identified in paragraph (f)(2)(i) of this section) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following HTS numbers. Updated
### National Marine Fisheries Service/NOAA, Commerce § 216.24

HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at [www.usitc.gov](http://www.usitc.gov).

(A) Frozen (other than Yellowfin):

<table>
<thead>
<tr>
<th>HTS Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0303.41.0000</td>
<td>Albacore or longfined tunas, frozen, except fillets, lives and roes</td>
</tr>
<tr>
<td>0303.43.0000</td>
<td>Skipjack tunas or stripe-bellied bonitos, frozen, except fillets, lives and roes</td>
</tr>
<tr>
<td>0303.44.0000</td>
<td>Bigeye tunas, frozen, except fillets, lives and roes</td>
</tr>
<tr>
<td>0303.45.0000</td>
<td>Bluefin tunas, frozen, except fillets, lives and roes</td>
</tr>
<tr>
<td>0303.46.0000</td>
<td>Southern bluefin tunas, frozen, except fillets, lives and roes, NEOSI</td>
</tr>
<tr>
<td>0303.49.0100</td>
<td>Tunas, frozen, except fillets, lives and roes, NEOSI</td>
</tr>
<tr>
<td>0304.29.6097</td>
<td>Tuna fish fillets, frozen, NEOSI</td>
</tr>
<tr>
<td>0304.99.1090</td>
<td>Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NEOSI</td>
</tr>
</tbody>
</table>

(B) Airtight Containers (other than Yellowfin):

<table>
<thead>
<tr>
<th>HTS Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1604.14.1010</td>
<td>Tunas and skipjack, in oil, in airtight containers, containing in oil, or in oil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, NEOSI</td>
</tr>
<tr>
<td>1604.14.1091</td>
<td>Tunas, albacore, in oil, in airtight containers, NEOSI</td>
</tr>
<tr>
<td>1604.14.1099</td>
<td>Tunas and skipjack, in oil, in airtight containers, NEOSI</td>
</tr>
<tr>
<td>1604.14.2251</td>
<td>Albacore tuna, not in oil, in foil/flexible airtight containers, weighing not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year</td>
</tr>
<tr>
<td>1604.14.2259</td>
<td>Albacore tuna, not in oil, in airtight containers weighing not over 7 kg, NEOSI, 4.8% of U.S. consumption of canned tuna during preceding year</td>
</tr>
<tr>
<td>1604.14.2291</td>
<td>Other tunas and skipjack, not in oil, in foil/flexible airtight containers, weighing with their contents not more than 6.8 kg each, NEOSI</td>
</tr>
<tr>
<td>1604.14.2299</td>
<td>Tunas, NEOSI and skipjack, not in oil, in airtight containers, not over 7 kg, 4.8% of U.S. consumption of canned tuna during preceding year</td>
</tr>
<tr>
<td>1604.14.3051</td>
<td>Tuna, albacore not in oil, in foil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each, NEOSI</td>
</tr>
<tr>
<td>1604.14.3059</td>
<td>Tuna, albacore not in oil, in airtight containers, NEOSI</td>
</tr>
<tr>
<td>1604.14.3091</td>
<td>Tunas and skipjack, NEOSI, not in oil, in oil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each</td>
</tr>
<tr>
<td>1604.14.3099</td>
<td>Other tunas and skipjack, not in oil, in airtight containers, NEOSI</td>
</tr>
</tbody>
</table>

(C) Loins (other than Yellowfin):

<table>
<thead>
<tr>
<th>HTS Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1604.14.4000</td>
<td>Tunas and skipjacks, prepared or preserved, not in airtight containers, not in oil, in bulk or immediate containers with their contents over 6.8 kg each</td>
</tr>
<tr>
<td>1604.14.5000</td>
<td>Tunas and skipjack, prepared or preserved, not in airtight containers, NEOSI</td>
</tr>
</tbody>
</table>

(D) Other: only if the product contains tuna:

<table>
<thead>
<tr>
<th>HTS Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1604.20.1000</td>
<td>Fish pastes</td>
</tr>
<tr>
<td>1604.20.2500</td>
<td>Fish balls, cakes and puddings, not in oil, not in airtight containers, with their contents not over 6.8 kg each</td>
</tr>
<tr>
<td>1604.20.3000</td>
<td>Fish balls, cakes and puddings, NEOSI</td>
</tr>
</tbody>
</table>

( iii) Exports from driftnet nations only, requiring a Fisheries Certificate of Origin and official certification. The following HTS numbers identify categories of fish and shellfish, in addition to those identified in paragraphs (f)(2)(i) and (f)(2)(ii) of this section, known to have been harvested using a large-scale driftnet and imported into the United States. Shipments exported from a large-scale driftnet nation, as identified under paragraph (f)(7) of this section, and imported into the United States, including but not limited to those imported into the United States under any of the HTS numbers listed in paragraph (f)(2) of this section, must be accompanied by an FCO and the official statement described in paragraph (f)(4)(xiii) of this section.

<table>
<thead>
<tr>
<th>HTS Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0303.19.0012</td>
<td>Chinook (King) salmon (Oncorhynchus tschawytscha), frozen, except fillets, livers and roes</td>
</tr>
<tr>
<td>0303.19.0022</td>
<td>Chum (dog) salmon (Oncorhynchus keta), frozen, except fillets, livers and roes</td>
</tr>
<tr>
<td>0303.19.0032</td>
<td>Pink (humpie) salmon (Oncorhynchus gorbuscha), frozen, except fillets, livers and roes</td>
</tr>
<tr>
<td>0303.19.0052</td>
<td>Coho (silver) salmon (Oncorhynchus kisutch), frozen, except fillets, livers and roes</td>
</tr>
<tr>
<td>0303.19.0062</td>
<td>Pacific salmon (Oncorhynchus masou, Oncorhynchus rhodurus), frozen, except fillets, livers and roes, NEOSI</td>
</tr>
<tr>
<td>0303.21.0000</td>
<td>Trout (Salmo trutta; Oncorhynchus mykiss, chum, masou, Oncorhynchus keta), frozen, except fillets, livers and roes</td>
</tr>
<tr>
<td>0303.22.0000</td>
<td>Atlantic salmon (Salmo salar) and Danube salmon (Hucho hucho), frozen, except fillets, livers and roes, NEOSI</td>
</tr>
<tr>
<td>0303.29.0000</td>
<td>Salmonidae, frozen, except fillets, livers and roes, NEOSI</td>
</tr>
<tr>
<td>0303.61.0010</td>
<td>Swordfish steaks, frozen, except fillets, livers and roes</td>
</tr>
<tr>
<td>0303.61.0090</td>
<td>Swordfish, frozen, except steaks, fillets, livers and roes</td>
</tr>
<tr>
<td>0303.75.0010</td>
<td>Dogfish (Squalus spp.), frozen, except fillets, livers and roes</td>
</tr>
<tr>
<td>0303.75.0090</td>
<td>Sharks, frozen, except dogfish, fillets, livers and roes, NEOSI</td>
</tr>
<tr>
<td>0303.79.0079</td>
<td>Fish, frozen, except fillets, livers and roes, NEOSI</td>
</tr>
<tr>
<td>0304.21.0000</td>
<td>Swordfish fillets, frozen, NEOSI</td>
</tr>
<tr>
<td>0304.29.2066</td>
<td>Fish fillets, skinned, frozen blocks weighing over 4.5 kg each, to be minced, ground or cut into pieces of uniform weights and dimensions, NEOSI</td>
</tr>
</tbody>
</table>
(i) A properly completed FCO and its attached certificates as described in §216.91(a), if applicable, must accompany the required CBP entry documents that are filed at the time of import.

(ii) FCOs and associated certifications as described in §216.91(a), if any, that accompany imported shipments of tuna must be submitted by the importer of record to the Tuna Tracking and Verification Program, Southwest Region, within 10 calendar days of the shipment’s entry into the commerce of the United States. FCOs submitted via mail should be sent to the Tuna Tracking and Verification Program, Southwest Region, P.O. Box 32469, Long Beach, CA 90832–2469. Copies of the documents may be submitted electronically using a secure file transfer protocol (FTP) site. Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program at the following email address: SWRTuna.Track@noaa.gov. The Tuna Tracking and Verification Program will facilitate secure transfer and protection of certifications by assigning a separate electronic folder for each importer. Access to the electronic folder will require a user identification and password. The Tuna Tracking and Verification Program will assign each importer a unique user identification and password. Safeguarding the confidentiality of the user identification and password is the responsibility of the importer to whom they are assigned. Copies of the documents may also be submitted via mail either on compact disc or as hard copies. All electronic submissions, whether via FTP or on compact disc, must be in Portable Document Format (PDF).

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed.

(iv) Importers and exporters are required to retain their records, including FCOs, import or export documents, invoices, and bills of lading for 2 years.

\begin{table}[h]
\centering
\begin{tabular}{c|l}
\hline
0304.29.6006 & Atlantic Salmonidae (Salmo salar) fillets, frozen, NESOI \\
0304.29.6008 & Salmonidae fillets, frozen, except Atlantic salmon, NESOI \\
0304.29.6099 & Fish fillets, frozen, NESOI \\
0307.49.0010 & Squid fillets, frozen \\
0164.11.2020 & Pink (humpie) salmon, whole or in pieces, but not minced, in oil, in airtight containers \\
0164.11.2030 & Sockeye (red) salmon, whole or in pieces, but not minced, in oil, in airtight containers \\
0164.11.2090 & Salmon NESOI, whole or in pieces, but not minced, in oil, in airtight containers \\
0164.11.4010 & Chum (dog) salmon, not in oil, canned \\
0164.11.4020 & Pink (humpie) salmon, not in oil, canned \\
0164.11.4030 & Sockeye (red) salmon, not in oil, canned \\
0164.11.4040 & Salmon, NESOI, not in oil, canned \\
0164.11.4050 & Salmon, whole or in pieces, but not minced, NESOI \\
0164.19.2000 & Fish, NESOI, not in oil, in airtight containers \\
0164.19.3000 & Fish, NESOI, in oil, in airtight containers \\
0165.90.6050 & Loligo squid, prepared or preserved \\
0165.90.6055 & Squid except Loligo, prepared or preserved \\
0305.30.6080 & Fish fillets, dried, salted or in brine, but not smoked, NESOI \\
0305.41.000 & Pacific salmon (Oncorhynchus spp.), Atlantic salmon (Salmo salar), and Danube salmon (Hucho hucho), including fillets, smoked \\
0305.49.4040 & Fish including fillets, smoked, NESOI \\
0305.59.2000 & Shark fins, dried, whether or not salted but not smoked \\
0305.59.4000 & Fish, dried, whether or not salted but not smoked, NESOI \\
0305.69.4000 & Salmon, salted but not dried or smoked, in brine \\
0305.69.5000 & Fish in immediate containers weighing with their contents 6.8 kg or less each, salted but not dried or smoked, in brine, NESOI \\
0305.69.6000 & Fish, salted but not dried or smoked; in brine, NESOI \\
0307.49.0022 & Squid, Loligo opalescens, frozen (except fillets), dried, salted or in brine \\
0307.49.0024 & Squid, Loligo pealei, frozen (except fillets), dried, salted or in brine \\
0307.49.0029 & Loligo squid, frozen (except fillets), dried, salted or in brine, NESOI \\
0307.49.0050 & Squid, frozen (except fillets), dried, salted or in brine, except Loligo squid \\
0307.49.0060 & Cuttlefish (Sepia officinalis, Rossia macrosoma, Sepiola spp.), frozen, dried, salted or in brine \\
\hline
\end{tabular}
\caption{Disposition of Fisheries Certificates of Origin. The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at \url{http://serv.nmfs.noaa.gov/noaa370.htm}.}
\end{table}
and such records must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region.

(4) Contents of Fisheries Certificate of Origin. An FCO, certified to be accurate by the exporter(s) of the accompanying shipment, must include the following information:
  (i) CBP entry identification;
  (ii) Date of entry;
  (iii) Exporter’s full name and complete address;
  (iv) Importer’s or consignee’s full name and complete address;
  (v) Species description, product form, and HTS number;
  (vi) Total net weight of the shipment in kilograms;
  (vii) Ocean area where the fish were harvested (ETP, western Pacific Ocean, south Pacific Ocean, north Pacific Ocean, eastern Atlantic Ocean, western Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);
  (viii) Type of fishing gear used to harvest the fish (purse seine, longline, baitboat, large-scale driftnet, gillnet, pole and line/hook and line, or other);
  (ix) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel’s fishing operations;
  (x) Dates on which the fishing trip began and ended;
  (xi) The name of the harvesting vessel;
  (xii) Dolphin-safe condition of the shipment, described by checking the appropriate statement on the form and attaching additional certifications as described in §216.91(a) if required;
  (xiii) For shipments containing fish or fish products exported from, or harvested on the high seas by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to paragraph (f)(7) of this section, the High Seas Driftnet Certification contained on the FCO must be dated and signed by a responsible government official of the large-scale driftnet nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and
  (xiv) Each importer, exporter, or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describes the shipment of fish that they accompany.

(5) Dolphin-safe label. Tuna or tuna products sold in or exported from the United States that include on the label the term “dolphin-safe” or any other term or symbol that claims or suggests the tuna were harvested in a manner not injurious to dolphins are subject to the requirements of subpart H of this part (§216.90 et seq.).

(6) Scope of embargoes—(i) ETP yellowfin tuna embargo. Yellowfin tuna or products of yellowfin tuna harvested using a purse seine in the ETP identified by an HTS number listed in paragraph (f)(2)(i) of this section may not be imported into the United States if such tuna or tuna products were:
  (A) Harvested on or after March 3, 1999, the effective date of section 4 of the IDCPA, and harvested by, or exported from, a nation that the Assistant Administrator has determined has jurisdiction over purse seine vessels of greater than 400 st (362.8 mt) carrying capacity harvesting tuna in the ETP, unless the Assistant Administrator has made an affirmative finding required for importation for that nation under paragraph (f)(8) of this section;
  (B) Exported from an intermediary nation, as defined in Section 3 of the MMPA, and a ban is currently in force prohibiting the importation from that nation under paragraph (f)(9) of this section; or
  (C) Harvested before March 3, 1999, the effective date of Section 4 of the MMPA, and would have been banned from importation under Section 101(a)(2) of the MMPA at the time of harvest.

(ii) Driftnet embargo. A shipment containing fish or fish products identified by an HTS number listed in paragraph (f)(2) of this section may not be imported into the United States if it is harvested by a large-scale driftnet, or if it is exported from or harvested on the high seas by any nation determined by the Assistant Administrator to be engaged in large-scale driftnet fishing, unless a government official of the
large-scale driftnet nation completes, signs and dates the High Seas Driftnet section of the FCO certifying that the fish or fish products were harvested by a method other than large-scale driftnet.

(iii) Pelly certification. After 6 months of an embargo being in place against a nation under this section, the Secretary will certify that nation under section 8(a) of the Fishermen’s Protective Act (22 U.S.C. 1978(a)). When such an embargo is lifted, the Secretary will terminate the certification under Section 8(d) of that Act (22 U.S.C. 1978(d)).

(iv) Coordination. The Assistant Administrator will promptly advise the Department of State and the Department of Homeland Security of embargo decisions, actions, and finding determinations.

(7) Large-scale driftnet nation: determination. Based upon the best information available, the Assistant Administrator will determine which nations have registered vessels that engage in fishing using large-scale driftnets. Such determinations will be published in the FEDERAL REGISTER. A responsible government official of any such nation may certify to the Assistant Administrator that none of the nation’s vessels use large-scale driftnets. Upon receipt of the certification, the Assistant Administrator may find, and publish such finding in the FEDERAL REGISTER, that none of that nation’s vessels engage in fishing with large-scale driftnets.

(8) Affirmative finding procedure for nations harvesting yellowfin tuna using a purse seine in the ETP. (i) The Assistant Administrator will determine, on an annual basis, whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation or by the IDCP and the IATTC, and will publish the finding in the FEDERAL REGISTER. A finding will remain valid for 1 year or for such other period as the Assistant Administrator may determine. An affirmative finding will be terminated if the Assistant Administrator determines that the requirements of this paragraph are no longer being met. Every 5 years, the government of the harvesting nation must submit such documentary evidence directly to the Assistant Administrator and request an affirmative finding. Documentary evidence must be submitted by the harvesting nation for the first affirmative finding application. The Assistant Administrator may require the submission of supporting documentation or other verification of statements made in connection with requests to allow importations. An affirmative finding applies to yellowfin tuna and yellowfin tuna products that were harvested by vessels of the nation after March 3, 1999. To make an affirmative finding, the Assistant Administrator must find that:

(A) The harvesting nation participates in the IDCP and is either a member of the IATTC or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3, of the Convention establishing the IATTC, to become a member of that organization;

(B) The nation is meeting its obligations under the IDCP and its obligations of membership in the IATTC, including all financial obligations;

(C)(1) The annual total dolphin mortality of the nation’s purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the mortality limits assigned by the IDCP for that nation’s purse seine vessels for the year preceding the year in which the finding would start; or

(ii) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the total dolphin mortality of the nation’s purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the mortality limits assigned by the IDCP for that nation’s purse seine vessels for the year preceding the year in which the finding would start; or

(2)(i) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the total dolphin mortality of the nation’s purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the mortality limits assigned by the IDCP for that nation’s purse seine vessels; and

(ii) Immediately after the national authorities discovered the aggregate mortality of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with dolphins for the remainder of the calendar year; and

(D)(1) In any years in which the parties agree to a global allocation system for per-stock per-year individual stock
quotas, the nation responded to the notification from the IATTC that an individual stock quota had been reached by prohibiting any additional sets on the stock for which the quota had been reached;

(2) If a per-stock per-year quota is allocated to each nation, the annual per-stock per-year dolphin mortality of the nation’s purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation’s purse seine vessels (if any) for the year preceding the year in which the finding would start; or

(3)(i) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the per-stock per-year dolphin mortality of the nation’s purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation’s purse seine vessels; and

(ii) Immediately after the national authorities discovered the aggregate per-stock mortality limits of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with the stocks whose limits had been exceeded, for the remainder of the calendar year.

(3)(ii) Documentary Evidence and Compliance with the IDCP—(A) Documentary Evidence. The Assistant Administrator will make an affirmative finding under paragraph (f)(8)(i) of this section only if the government of the harvesting nation provides directly to the Assistant Administrator, or authorizes the IATTC to release to the Assistant Administrator, complete, accurate, and timely information that enables the Assistant Administrator to determine whether the nation is consistently failing to take enforcement actions on violations that diminish the effectiveness of the IDCP. The Assistant Administrator, in consultation with the Secretary of State, will revoke an affirmative finding issued to a nation that is not meeting the obligations of the IDCP.

(iii) A harvesting nation may apply for an affirmative finding at any time by providing to the Assistant Administrator the information and authorizations required in paragraphs (f)(8)(i) and (f)(8)(ii) of this section, allowing at least 60 days from the submission of complete information to NMFS for processing.

(iv) The Assistant Administrator will make or renew an affirmative finding for the period from April 1 through March 31 of the following year, or portion thereof, if the harvesting nation has provided all the information and authorizations required by paragraphs (f)(8)(i) and (f)(8)(ii) of this section, and has met the requirements of paragraphs (f)(8)(i) and (f)(8)(ii) of this section.

(v) Reconsideration of finding. The Assistant Administrator may reconsider a finding upon a request from, and the submission of additional information by, the harvesting nation, if the information indicates that the nation has met the requirements under paragraphs (f)(8)(i) and (f)(8)(ii) of this section.

(9) Intermediary nation. Except as authorized under this paragraph, no yellowfin tuna or yellowfin tuna products harvested by purse seine in the ETP classified under one of the HTS numbers listed in paragraph (f)(2)(i) of this section may be imported into the United States from any intermediary nation.

(i) An “intermediary nation” is a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to Section 101(a)(2)(B) of the MMPA.

(ii) Shipments of yellowfin tuna that pass through any nation (e.g. on a “through Bill of Lading”) and are not entered for consumption in that nation are not considered to be imports to
§216.25 Exempted marine mammals and marine mammal products.

(a) The provisions of the MMPA and these regulations shall not apply:

(1) Fish refused entry. If fish is denied entry under paragraph (f)(2) of this section, the Port Director of CBP shall refuse to release the fish for entry into the United States.

(2) Disposition of fish refused entry into the United States. Fish that is denied entry under paragraph (f)(2) of this section and that is not exported under CBP supervision within 90 days shall be disposed of under CBP laws and regulations at the importer’s expense. Provided, however, that any disposition shall not result in an introduction into the United States of fish caught in violation of the MMPA.

(12) Market Prohibitions. (i) It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products unless the tuna products are either:

(A) Dolphin-safe under subpart H of this part; or

(B) Harvested in compliance with the IDCP by vessels under the jurisdiction of a nation that is a member of the IATTC or has initiated, and within 6 months thereafter completes, all steps required by an applicant nation to become a member of the IATTC.

(ii) It is unlawful for any exporter, transshipper, importer, processor, or wholesaler/distributor to possess, sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals unless the label or mark complies with the requirements of 16 U.S.C. 1385(d).

(g) Penalties. Any person or vessel subject to the jurisdiction of the United States will be subject to the penalties provided for under the MMPA for the conduct of fishing operations in violation of these regulations. Penalties for violating these regulations may include, but are not limited to, civil monetary fines, permit suspension or revocation, and reductions in current and future DMLs. Recommended sanctions are identified in the IDCPA/DPCIA Tuna/Dolphin Civil Administrative Penalty Schedule. Procedures for the imposition of penalties under the MMPA are found at 15 CFR part 904.
(1) To any marine mammal taken before December 21, 1972.
(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) The prohibitions contained in §216.12(c)(3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which a notice is published in the Federal Register with respect to the designation of the species or stock concerned as depleted or endangered.

(c) Section 216.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

§216.26 Collection of certain marine mammal parts without prior authorization.

Notwithstanding any other provision of this subpart:

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within 1/4 of a mile of the ocean. The term ocean includes bays and estuaries.

(b) Notwithstanding the provisions of subpart D, soft parts that are sloughed, excreted, or discharged naturally by a living marine mammal in the wild may be collected or imported for bona fide scientific research and enhancement, provided that collection does not involve the taking of a living marine mammal in the wild.

(c) Any marine mammal part collected under paragraph (a) of this section or any marine mammal part collected and imported under paragraph (b) of this section must be registered and identified, and may be transferred or otherwise possessed, in accordance with §216.22(c). In registering a marine mammal part collected or imported under paragraph (b) of this section, the person who collected or imported the part must also state the scientific research or enhancement purpose for which the part was collected or imported.

(d) No person may purchase, sell or trade for commercial purposes any marine mammal part collected or imported under this section.

(e) The export of parts collected without prior authorization under paragraph (b) of this section may occur if consistent with the provisions at §216.37(d) under subpart D.


§216.27 Release, non-releasability, and disposition under special exception permits for rehabilitated marine mammals.

(a) Release requirements. (1) Any marine mammal held for rehabilitation must be released within six months of capture or import unless the attending veterinarian determines that:

(i) The marine mammal might adversely affect marine mammals in the wild;

(ii) Release of the marine mammal to the wild will not likely be successful given the physical condition and behavior of the marine mammal; or

(iii) More time is needed to determine whether the release of the marine mammal to the wild will likely be successful. Releasability must be reevaluated at intervals of no less than six months until 24 months from capture or import, at which time there will be a rebuttable presumption that release into the wild is not feasible.

(2) The custodian of the rehabilitated marine mammal shall provide written notification prior to any release into the wild.

(i) Notification shall be provided to:

(A) The NMFS Regional Director at least 15 days in advance of releasing any beached or stranded marine mammal, unless advance notice is waived in writing by the Regional Director; or

(B) The Office Director at least 30 days in advance of releasing any imported marine mammal.

(ii) Notification shall include the following:

1In the context of captive maintenance of marine mammals, the only marine mammals exempted under this section are those that were actually captured or otherwise in captivity before December 21, 1972.
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(A) A description of the marine mammal, including its physical condition and estimated age;  
(B) The date and location of release; and  
(C) The method and duration of transport prior to release.  

(3) The Regional Director, or the Office Director as appropriate, may:  
(i) Require additional information prior to any release;  
(ii) Change the date or location of release, or the method or duration of transport prior to release;  
(iii) Impose additional conditions to improve the likelihood of success or to monitor the success of the release; or  
(iv) Require other disposition of the marine mammal.  

(4) All marine mammals must be released near wild populations of the same species, and stock if known, unless a waiver is granted by the Regional Director or the Office Director.  

(5) All marine mammals released must be tagged or marked in a manner acceptable to the Regional Director or the Office Director. The tag number or description of the marking must be reported to the Regional Director or Office Director following release.  

(b) Non-releasability and postponed determinations.  

(1) The attending veterinarian shall provide the Regional Director or Office Director with a written report setting forth the basis of any determination under paragraphs (a)(1)(i) through (iii) of this section.  

(2) Upon receipt of a report under paragraph (b)(1) of this section, the Regional Director or Office Director, in their sole discretion, may:  
(i) Order the release of the marine mammal;  
(ii) Order continued rehabilitation for an additional 6 months; or  
(iii) Order other disposition as authorized.  

(3) No later than 30 days after a marine mammal is determined unreleasable in accordance with paragraphs (a)(1)(i) through (iii) of this section, the person with authorized custody must:  
(i) Request authorization to retain or transfer custody of the marine mammal in accordance with paragraph (c) of this section, or;  
(ii) Humanely euthanize the marine mammal or arrange any other disposition of the marine mammal authorized by the Regional Director or Office Director.  

(4) Notwithstanding any of the provisions of this section, the Office Director may require use of a rehabilitated marine mammal for any activity authorized under subpart D in lieu of animals taken from the wild.  

(5) Any rehabilitated beached or stranded marine mammal placed on public display following a non-releasability determination under paragraph (a)(1) of this section and pending disposition under paragraph (c) of this section, or any marine mammal imported for medical treatment otherwise unavailable and placed on public display pending disposition after such medical treatment is concluded, must be held in captive maintenance consistent with all requirements for public display.  

(c) Disposition for a special exception purpose.  

(1) Upon receipt of an authorization request made under paragraph (b)(3)(i) of this section, or release notification under (a)(2), the Office Director may authorize the retention or transfer of custody of the marine mammal for a special exception purpose authorized under subpart D.  

(2) The Office Director will first consider requests from a person authorized to hold the marine mammal for rehabilitation. The Office Director may authorize such person to retain or transfer custody of the marine mammal for scientific research, enhancement, or public display purposes.  

(3) The Office Director may authorize retention or transfer of custody of the marine mammal only if:  
(i) Documentation has been submitted to the Office Director that the person retaining the subject animal or the person receiving custody of the subject animal by transfer, hereinafter referred to as the recipient, complies with public display requirements of 16 U.S.C. 1374(c)(2)(A) or, for purposes of scientific research and enhancement, holds an applicable permit, or an application for such a special exception permit under §216.33 or a request for a major amendment under §216.39 has
§ 216.33 Permit application submission, review, and decision procedures.

(a) Application submission. Persons seeking a special exemption permit under this subpart must submit an application to the Office Director. The application must be signed by the applicant, and provide in a properly formatted manner all information necessary to process the application. Written instructions addressing information requirements and formatting may be obtained from the Office Director upon request.

(b) Applications to export living marine mammals. For applicants seeking a special exception permit to export living marine mammals, the application must:

(1) Be submitted through the Convention on International Trade in Endangered Fauna and Flora management authority of the foreign government or, if different, the appropriate agency or agencies of the foreign government that exercises oversight over marine mammals.
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(2) Include a certification from the foreign government that:
   (i) The information set forth in the application is accurate;
   (ii) The laws and regulations of the foreign government involved allow enforcement of the terms and conditions of the permit, and that the foreign government will enforce all terms and conditions; and
   (iii) The foreign government involved will afford comity to any permit amendment, modification, suspension or revocation decision.

(c) Initial review. (1) NMFS will notify the applicant of receipt of the application.
   (2) During the initial review, the Office Director will determine:
      (i) Whether the application is complete.
      (ii) Whether the proposed activity is for purposes authorized under this subpart.
      (iii) If the proposed activity is for enhancement purposes, whether the species or stock identified in the application is in need of enhancement for its survival or recovery and whether the proposed activity will likely succeed in its objectives.
      (iv) Whether the activities proposed are to be conducted consistent with the permit restrictions and permit specific conditions as described in §216.35 and §216.36(a).
      (v) Whether sufficient information is included regarding the environmental impact of the proposed activity to enable the Office Director:
         (A) To make an initial determination under the National Environmental Policy Act (NEPA) as to whether the proposed activity is categorically excluded from preparation of further environmental documentation, or whether the preparation of an environmental assessment (EA) or environmental impact statement (EIS) is appropriate or necessary; and
         (B) To prepare an EA or EIS if an initial determination is made by the Office Director that the activity proposed is not categorically excluded from such requirements.
      (3) The Office Director may consult with the Marine Mammal Commission (Commission) and its Committee of Scientific Advisors on Marine Mammals (Committee) in making these initial, and any subsequent, determinations.

(d) Notice of receipt and application review. (1) Upon receipt of a valid, complete application, and the preparation of any NEPA documentation that has been determined initially to be required, the Office Director will publish a notice of receipt in the Federal Register. The notice will:
      (i) Summarize the application, including:
         (A) The purpose of the request;
         (B) The species and number of marine mammals;
         (C) The type and manner of special exception activity proposed;
         (D) The location(s) in which the marine mammals will be taken, from which they will be imported, or to which they will be exported; and
         (E) The requested period of the permit.
      (ii) List where the application is available for review.
      (iii) Invite interested parties to submit written comments concerning the application within 30 days of the date of the notice.
      (iv) Include a NEPA statement that an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an EA or EIS, that an EA was prepared resulting in a finding of no significant impact, or that a final EIS has been prepared and is available for review.
      (2) The Office Director will forward a copy of the complete application to the Commission for comment. If no comments are received within 45 days (or such longer time as the Office Director may establish) the Office Director will consider the Commission to have no objection to issuing a permit.
(3) The Office Director may consult with any other person, institution, or agency concerning the application.

(4) Within 30 days of publication of the notice of receipt in the Federal Register, any interested party may submit written comments or may request a public hearing on the application.

(5) If the Office Director deems it advisable, the Office Director may hold a public hearing within 60 days of publication of the notice of receipt in the Federal Register. Notice of the date, time, and place of the public hearing will be published in the Federal Register not less than 15 days in advance of the public hearing. Any interested person may appear in person or through representatives and may submit any relevant material, data, views, or comments. A summary record of the hearing will be kept.

(6) The Office Director may extend the period during which any interested party may submit written comments. Notice of the extension must be published in the Federal Register within 60 days of publication of the notice of receipt in the Federal Register.

(7) If, after publishing a notice of receipt, the Office Director determines on the basis of new information that an EA or EIS must be prepared, the Office Director must deny the permit unless an EA is prepared with a finding of no significant impact. If a permit is denied under these circumstances the application may be resubmitted with information sufficient to prepare an EA or EIS, and will be processed as a new application.

(e) Issuance or denial procedures. (1) Within 30 days of the close of the public hearing or, if no public hearing is held, within 30 days of the close of the public comment period, the Office Director will issue or deny a special exception permit.

(2) The decision to issue or deny a permit will be based upon:

(i) All relevant issuance criteria set forth at §216.34;

(ii) All purpose-specific issuance criteria as appropriate set forth at §216.41, §216.42, and §216.43;

(iii) All comments received or views solicited on the permit application; and

(iv) Any other information or data that the Office Director deems relevant.

(3) If the permit is issued, upon receipt, the holder must date and sign the permit, and return a copy of the original to the Office Director. The permit shall be effective upon the permit holder’s signing of the permit. In signing the permit, the holder:

(i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations under this subpart; and

(ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization by the Office Director.

(4) Notice of the decision of the Office Director shall be published in the Federal Register within 10 days after the date of permit issuance or denial and shall indicate where copies of the permit, if issued, may be reviewed or obtained. If the permit issued involves marine mammals listed as endangered or threatened under the ESA, the notice shall include a finding by the Office Director that the permit:

(i) Was applied for in good faith;

(ii) If exercised, will not operate to the disadvantage of such endangered or threatened species; and

(iii) Is consistent with the purposes and policy set forth in section 2 of the ESA.

(5) If the permit is denied, the Office Director shall provide the applicant with an explanation for the denial.

(6) Under the MMPA, the Office Director may issue a permit for scientific research before the end of the public comment period if delaying issuance could result in injury to a species, stock, or individual, or in loss of unique research opportunities. The Office Director also may waive the 30-day comment period required under the ESA in an emergency situation where the health or life of an endangered or threatened marine mammal is threatened and no reasonable alternative is available. If a permit is issued under these circumstances, notice of such issuance before the end of the comment period shall be published in the Federal Register within 10 days of issuance.
§ 216.34 Issuance criteria.

(a) For the Office Director to issue any permit under this subpart, the applicant must demonstrate that:

(1) The proposed activity is humane and does not present any unnecessary risks to the health and welfare of marine mammals;

(2) The proposed activity is consistent with all restrictions set forth at §216.35 and any purpose-specific restrictions as appropriate set forth at §216.41, §216.42, and §216.43;

(3) The proposed activity, if it involves endangered or threatened marine mammals, will be conducted consistent with the purposes and policies set forth in section 2 of the ESA;

(4) The proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock;

(5) Whether the applicant’s expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application;

(6) If a live animal will be held captive or transported, the applicant’s qualifications, facilities, and resources are adequate for the proper care and maintenance of the marine mammal; and

(7) Any requested import or export will not likely result in the taking of marine mammals or marine mammal parts beyond those authorized by the permit.

(b) The opinions or views of scientists or other persons or organizations knowledgeable of the marine mammals that are the subject of the application or of other matters germane to the application will be considered.

[61 FR 21936, May 10, 1996]

§ 216.35 Permit restrictions.

The following restrictions shall apply to all permits issued under this subpart:

(a) The taking, importation, export, or other permitted activity involving marine mammals and marine mammal parts shall comply with the regulations of this subpart.

(b) The maximum period of any special exception permit issued, or any minor amendment granted, is five years from the effective date of the permit or major amendment. In accordance with the provisions of §216.39, the period of a permit may be extended by a minor amendment up to 12 months beyond that established in the original permit.

(c) Except as provided for in §216.41(c)(1)(v), marine mammals or marine mammal parts imported under the authority of a permit must be taken or imported in a humane manner, and in compliance with the Acts and any applicable foreign law. Importation of marine mammals and marine mammal parts is subject to the provisions of 50 CFR part 14.

(d) The permit holder shall not take from the wild any marine mammal which at the time of taking is either unweaned or less than eight months old, or is a part of a mother-calf/pup pair, unless such take is specifically authorized in the conditions of the special exception permit. Additionally, the permit holder shall not import any marine mammal that is pregnant or lactating at the time of taking or import, or is unweaned or less than eight months old unless such import is specifically authorized in the conditions of the special exception permit.

(e) Captive marine mammals shall not be released into the wild unless specifically authorized by the Office Director under a scientific research or enhancement permit.

(f) The permit holder is responsible for all activities of any individual who is operating under the authority of the permit;

(g) Individuals conducting activities authorized under the permit must possess qualifications commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications;
(h) Persons who require state or Federal licenses to conduct activities authorized under the permit must be duly licensed when undertaking such activities;

(i) Special exception permits are not transferable or assignable to any other person, and a permit holder may not require any direct or indirect compensation from another person in return for requesting authorization for such person to conduct the taking, import, or export activities authorized under the subject permit;

(j) The permit holder or designated agent shall possess a copy of the permit when engaged in a permitted activity, when the marine mammal is in transit incidental to such activity, and whenever marine mammals or marine mammal parts are in the possession of the permit holder or agent. A copy of the permit shall be affixed to any container, package, enclosure, or other means of containment, in which the marine mammals or marine mammal parts are placed for purposes of transit, supervision, or care. For marine mammals held captive and marine mammal parts in storage, a copy of the permit shall be kept on file in the holding or storage facility.

[61 FR 21936, May 10, 1996]

§ 216.36 Permit conditions.

(a) Specific conditions. (1) Permits issued under this subpart shall contain specific terms and conditions deemed appropriate by the Office Director, including, but not limited to:

(i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) The manner in which marine mammals may be taken according to type of take;

(iii) The location(s) in which the marine mammals may be taken, from which they may be imported, or to which they may be exported, as applicable, and, for endangered or threatened marine mammal species to be imported or exported, the port of entry or export;

(iv) The period during which the permit is valid.

(2) [Reserved]

(b) Other conditions. In addition to the specific conditions imposed pursuant to paragraph (a) of this section, the Office Director shall specify any other permit conditions deemed appropriate.

[61 FR 21937, May 10, 1996]

§ 216.37 Marine mammal parts.

With respect to marine mammal parts acquired by take or import authorized under a permit issued under this subpart:

(a) Marine mammal parts are transferrable if:

(1) The person transferring the part receives no remuneration of any kind for the marine mammal part;

(2) The person receiving the marine mammal part is:

(i) An employee of NMFS, the U.S. Fish and Wildlife Service, or any other governmental agency with conservation and management responsibilities, who receives the part in the course of their official duties;

(ii) A holder of a special exception permit which authorizes the take, import, or other activity involving the possession of a marine mammal part of the same species as the subject part; or

(iii) In the case of marine mammal parts from a species that is not depleted, endangered or threatened, a person who is authorized under section 112(c) of the MMPA and subpart C of this part to take or import marine mammals or marine mammal parts;

(iv) Any other person specifically authorized by the Regional Director, consistent with the requirements of paragraphs (a)(1) and (a)(3) through (6) of this section.

(3) The marine mammal part is transferred for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education, provided that, for transfers for educational purposes, the recipient is a museum, educational institution or equivalent that will ensure that the part is available to the public as part of an educational program;

(4) A unique number assigned by the permit holder is marked on or affixed to the marine mammal part or container;
(5) The person receiving the marine mammal part agrees that, as a condition of receipt, subsequent transfers may only occur subject to the provisions of paragraph (a) of this section; and

(6) Within 30 days after the transfer, the person transferring the marine mammal part notifies the Regional Director of the transfer, including a description of the part, the person to whom the part was transferred, the purpose of the transfer, certification that the recipient has agreed to comply with the requirements of paragraph (a) of this section for subsequent transfers, and, if applicable, the recipient's permit number.

(b) Marine mammal parts may be loaned to another person for a purpose described in paragraph (a)(3) of this section and without the agreement and notification required under paragraphs (a)(5) and (6) of this section, if:

(1) A record of the loan is maintained; and

(2) The loan is for not more than one year. Loans for a period greater than 12 months, including loan extensions or renewals, require notification of the Regional Director under paragraph (a)(6).

(c) Unless other disposition is specified in the permit, a holder of a special exception permit may retain marine mammal parts not destroyed or otherwise disposed of during or after a scientific research or enhancement activity, if such marine mammal parts are:

(1) Maintained as part of a properly curated, professionally accredited collection; or

(2) Made available for purposes of scientific research or enhancement at the request of the Office Director.

(d) Marine mammal parts may be exported and subsequently reimported by a permit holder or subsequent authorized recipient, for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education, provided that:

(1) The permit holder or other person receives no remuneration for the marine mammal part;

(2) A unique number assigned by the permit holder is marked on or affixed to the marine mammal specimen or container;

(3) The marine mammal part is exported or reimported in compliance with all applicable domestic and foreign laws;

(4) If exported or reimported for educational purposes, the recipient is a museum, educational institution, or equivalent that will ensure that the part is available to the public as part of an educational program; and

(5) Special reports are submitted within 30 days after both export and reimport as required by the Office Director under §216.38.

[61 FR 21937, May 10, 1996]

§ 216.38 Reporting.

All permit holders must submit annual, final, and special reports in accordance with the requirements established in the permit, and any reporting format established by the Office Director.

[61 FR 21937, May 10, 1996]

§ 216.39 Permit amendments.

(a) General. Special exception permits may be amended by the Office Director. Major and minor amendments may be made to permits in response to, or independent of, a request from the permit holder. Amendments must be consistent with the Acts and comply with the applicable provisions of this subpart.

(1) A major amendment means any change to the permit specific conditions under §216.36(a) regarding:

(i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) The manner in which these marine mammals may be taken, imported, exported, or otherwise affected, if the proposed change may result in an increased level of take or risk of adverse impact;

(iii) The location(s) in which the marine mammals may be taken, from which they may be imported, and to which they may be exported, as applicable; and

(iv) The duration of the permit, if the proposed extension would extend the duration of the permit more than 12
months beyond that established in the original permit.

(2) A minor amendment means any amendment that does not constitute a major amendment.

(b) Amendment requests and proposals.

(1) Requests by a permit holder for an amendment must be submitted in writing and include the following:

(i) The purpose and nature of the amendment;

(ii) Information, not previously submitted as part of the permit application or subsequent reports, necessary to determine whether the amendment satisfies all issuance criteria set forth at §216.34, and, as appropriate, §216.41, §216.42, and §216.43.

(iii) Any additional information required by the Office Director for purposes of reviewing the proposed amendment.

(2) If an amendment is proposed by the Office Director, the permit holder will be notified of the proposed amendment, together with an explanation.

(c) Review of proposed amendments—

(1) Major amendments. The provisions of §216.33(d) and (e) governing notice of receipt, review and decision shall apply to all proposed major amendments.

(2) Minor amendments. (i) After reviewing all appropriate information, the Office Director will provide the permit holder with written notice of the decision on a proposed or requested amendment, together with an explanation for the decision.

(ii) If the minor amendment extends the duration of the permit 12 months or less from that established in the original permit, notice of the minor amendment will be published in the Federal Register within 10 days from the date of the Office Director’s decision.

(iii) A minor amendment will be effective upon a final decision by the Office Director.

§216.40 Penalties and permit sanctions.

(a) Any person who violates any provision of this subpart or permit issued thereunder is subject to civil and criminal penalties, permit sanctions and forfeiture as authorized under the Acts, and 15 CFR part 904.

(b) All special exception permits are subject to suspension, revocation, modification and denial in accordance with the provisions of subpart D of 15 CFR part 904.

[61 FR 21938, May 10, 1996]

§216.41 Permits for scientific research and enhancement.

In addition to the requirements under §§216.33 through 216.38, permits for scientific research and enhancement are governed by the following requirements:

(a) Applicant. (1) For each application submitted under this section, the applicant shall be the principal investigator responsible for the overall research or enhancement activity. If the research or enhancement activity will involve a periodic change in the principal investigator or is otherwise controlled by and dependent upon another entity, the applicant may be the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) For any scientific research involving captive maintenance, the application must include supporting documentation from the person responsible for the facility or other temporary enclosure.

(b) Issuance Criteria. For the Office Director to issue any scientific research or enhancement permit, the applicant must demonstrate that:

(1) The proposed activity furthers a bona fide scientific or enhancement purpose;

(2) If the lethal taking of marine mammals is proposed:

(i) Non-lethal methods for conducting the research are not feasible; and

(ii) For depleted, endangered, or threatened species, the results will directly benefit that species or stock, or will fulfill a critically important research need.

(3) Any permanent removal of a marine mammal from the wild is consistent with any applicable quota established by the Office Director.

(4) The proposed research will not likely have significant adverse effects on any other component of the marine ecosystem of which the affected species or stock is a part.
(5) For species or stocks designated or proposed to be designated as depleted, or listed or proposed to be listed as endangered or threatened:
   (i) The proposed research cannot be accomplished using a species or stock that is not designated or proposed to be designated as depleted, or listed or proposed to be listed as threatened or endangered;
   (ii) The proposed research, by itself or in combination with other activities will not likely have a long-term direct or indirect adverse impact on the species or stock;
   (iii) The proposed research will either:
      (A) Contribute to fulfilling a research need or objective identified in a species recovery or conservation plan, or if there is no conservation or recovery plan in place, a research need or objective identified by the Office Director in stock assessments established under section 117 of the MMPA;
      (B) Contribute significantly to understanding the basic biology or ecology of the species or stock, or to identifying, evaluating, or resolving conservation problems for the species or stock; or
      (C) Contribute significantly to fulfilling a critically important research need.
(6) For proposed enhancement activities:
   (i) Only living marine mammals and marine mammal parts necessary for enhancement of the survival, recovery, or propagation of the affected species or stock may be taken, imported, exported, or otherwise affected under the authority of an enhancement permit. Marine mammal parts would include in this regard clinical specimens or other biological samples required for the conduct of breeding programs or the diagnosis or treatment of disease.
   (ii) The activity will likely contribute significantly to maintaining or increasing distribution or abundance, enhancing the health or welfare of the species or stock, or ensuring the survival or recovery of the affected species or stock in the wild.
   (iii) The activity is consistent with:
      (A) An approved conservation plan developed under section 115(b) of the MMPA or recovery plan developed under section 4(f) of the ESA for the species or stock; or
      (B) If there is no conservation or recovery plan, with the Office Director's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation or recovery plan.
   (iv) An enhancement permit may authorize the captive maintenance of a marine mammal from a threatened, endangered, or depleted species or stock only if the Office Director determines that:
      (A) The proposed captive maintenance will likely contribute directly to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing necessary biological information, or establishing animal reserves required to support directly these objectives; and
      (B) The expected benefit to the species or stock outweighs the expected benefits of alternatives that do not require removal of marine mammals from the wild.
   (v) The Office Director may authorize the public display of marine mammals held under the authority of an enhancement permit only if:
      (A) The public display is incidental to the authorized captive maintenance;
      (B) The public display will not interfere with the attainment of the survival or recovery objectives;
      (C) The marine mammals will be held consistent with all requirements and standards that are applicable to marine mammals held under the authority of the Acts and the Animal Welfare Act, unless the Office Director determines that an exception is necessary to implement an essential enhancement activity; and
      (D) The marine mammals will be excluded from any interactive program and will not be trained for performance.
   (vi) The Office Director may authorize non-intrusive scientific research to be conducted while a marine mammal is held under the authority of an enhancement permit, only if such scientific research:
      (A) Is incidental to the permitted enhancement activities; and
(B) Will not interfere with the attainment of the survival or recovery objectives.

(c) Restrictions. (1) The following restrictions apply to all scientific research permits issued under this subpart:

(i) Research activities must be conducted in the manner authorized in the permit.

(ii) Research results shall be published or otherwise made available to the scientific community in a reasonable period of time.

(iii) Research activities must be conducted under the direct supervision of the principal investigator or a co-investigator identified in the permit.

(iv) Personnel involved in research activities shall be reasonable in number and limited to:

(A) Individuals who perform a function directly supportive of and necessary to the permitted research activity; and

(B) Support personnel included for the purpose of training or as backup personnel for persons described in paragraph (c)(1)(iv)(A).

(v) Any marine mammal part imported under the authority of a scientific research permit must not have been obtained as the result of a lethal taking that would be inconsistent with the Acts, unless authorized by the Office Director.

(vi) Marine mammals held under a permit for scientific research shall not be placed on public display, included in an interactive program or activity, or trained for performance unless such activities:

(A) Are necessary to address scientific research objectives and have been specifically authorized by the Office Director under the scientific research permit; and

(B) Are conducted incidental to and do not in any way interfere with the permitted scientific research; and

(C) Are conducted in a manner consistent with provisions applicable to public display, unless exceptions are specifically authorized by the Office Director.

(vii) Any activity conducted incidental to the authorized scientific research activity must not involve any taking of marine mammals beyond what is necessary to conduct the research (i.e., educational and commercial photography).

(2) Any marine mammal or progeny held in captive maintenance under an enhancement permit shall be returned to its natural habitat as soon as feasible, consistent with the terms of the enhancement permit and the objectives of an approved conservation or recovery plan. In accordance with section 10(j) of the ESA, the Office Director may authorize the release of any population of an endangered or threatened species outside the current range of such species if the Office Director determines that such release will further the conservation of such species.

[61 FR 21938, May 10, 1996]

§ 216.42 Photography. [Reserved]

§ 216.43 Public display. [Reserved]

§ 216.44 Applicability/transition.

(a) General. The regulations of this subpart are applicable to all persons, including persons holding permits or other authorizing documents issued before June 10, 1996, by NMFS for the take, import, export, or conduct of any otherwise prohibited activity involving a marine mammal or marine mammal part for special exception purposes.

(b) Scientific research. Any intrusive research as defined in § 216.3, initiated after June 10, 1996, must be authorized under a scientific research permit. Intrusive research authorized by the Office Director to be conducted on captive marine mammals held for public display purposes prior to June 10, 1996, must be authorized under a scientific research permit one year after June 10, 1996.

[61 FR 21939, May 10, 1996]

§ 216.45 General Authorization for Level B harassment for scientific research.

(a) General Authorization. (1) Persons are authorized under section 104(c)(3)(C) of the MMPA to take marine mammals in the wild by Level B harassment, as defined in § 216.3, for purposes of bona fide scientific research Provided, That:

(i) They submit a letter of intent in accordance with the requirements of
paragraph (b) of this section, receive confirmation that the General Authorization applies in accordance with paragraph (c) of this section, and comply with the terms and conditions of paragraph (d) of this section; or

(ii) If such marine mammals are listed as endangered or threatened under the ESA, they have been issued a permit under Section 10(a)(1)(A) of the ESA and implementing regulations at 50 CFR parts 217–227, particularly at §222.23 through §222.28, to take marine mammals in the wild for the purpose of scientific research, the taking authorized under the permit involves such Level B harassment of marine mammals or marine mammal stocks, and they comply with the terms and conditions of that permit.

(2) Except as provided under paragraph (a)(1)(ii) of this section, no taking, including harassment, of marine mammals listed as threatened or endangered under the ESA is authorized under the General Authorization. Marine mammals listed as endangered or threatened under the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA.

(3) The following types of research activities will likely qualify for inclusion under the General Authorization: Photo-identification studies, behavioral observations, and vessel and aerial population surveys (except aerial surveys over pinniped rookeries at altitudes of less than 1,000 ft).

(b) Letter of intent. Except as provided under paragraph (a)(1)(i) of this section, any person intending to take marine mammals in the wild by Level B harassment for purposes of bona fide scientific research under the General Authorization must submit, at least 60 days before commencement of such research, a letter of intent by certified return/receipt mail to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226.

(1) The letter of intent must be submitted by the principal investigator (who shall be deemed the applicant). For purposes of this section, the principal investigator is the individual who is responsible for the overall research project, or the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) The letter of intent must include the following information:

(i) The name, address, telephone number, qualifications and experience of the applicant and any co-investigator(s) to be conducting the proposed research, and a curriculum vitae for each such investigator relevant to the objectives, methodology, or other aspects of the proposed research;

(ii) The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research;

(iii) The geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.;

(iv) The period(s) of time over which the research will be conducted (up to five years), including the field season(s) for the research, if applicable;

(v) The purpose of the research, including a description of how the proposed research qualifies as bona fide research as defined in §216.3;

(vi) The methods to be used to conduct the research.

(3) The letter of intent must be signed, dated, and certified by the applicant as follows:

In accordance with section 104(c)(3)(C) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) and implementing regulations (50 CFR part 216), I hereby notify the National Marine Fisheries Service of my intent to conduct research involving only Level B harassment on marine mammals in the wild, and request confirmation that the General Authorization for Level B Harassment for Scientific Research applies to the proposed research as described herein. I certify that the information in this letter of intent is complete, true, and correct to the best of my knowledge and belief, and I understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or penalties under the MMPA and implementing regulations. I acknowledge and accept that authority to conduct scientific research on marine mammals in the wild under the General Authorization is a limited conditional authority restricted to
Level B harassment only, and that any other take of marine mammals, including the conduct of any activity that has the potential to injure marine mammals (i.e., Level A harassment), may subject me to penalties under the MMPA and implementing regulations.

(c) Confirmation that the General Authorization applies or notification of permit requirement. (1) Not later than 30 days after receipt of a letter of intent as described in paragraph (b) of this section, the Chief, Permits Division, NMFS will issue a letter to the applicant either:

(i) Confirming that the General Authorization applies to the proposed scientific research as described in the letter of intent;

(ii) Notifying the applicant that all or part of the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment and, as a result, cannot be conducted under the General Authorization, and that a scientific research permit is required to conduct all or part of the subject research; or

(iii) Notifying the applicant that the letter of intent fails to provide sufficient information and providing a description of the deficiencies, or notifying the applicant that the proposed research as described in the letter of intent is not bona fide research as defined in §216.3.

(2) A copy of each letter of intent and letter confirming that the General Authorization applies or notifying the applicant that it does not apply will be forwarded to the Marine Mammal Commission.

(3) Periodically, NMFS will publish a summary document in the Federal Register notifying the public of letters of confirmation issued.

(d) Terms and conditions. Persons issued letters of confirmation in accordance with paragraph (c) of this section are responsible for complying with the following terms and conditions:

(1) Activities are limited to those conducted for the purposes, by the means, in the locations, and during the periods of time described in the letter of intent and acknowledged as authorized under the General Authorization in the confirmation letter sent pursuant to paragraph (c) of this section;

(2) Annual reports of activities conducted under the General Authorization must be submitted to the Chief, Permits Division (address listed in paragraph (b) of this section) within 90 days of completion of the last field season(s) during the calendar year or, if the research is not conducted during a defined field season, no later than 90 days after the anniversary date of the letter of confirmation issued under paragraph (c) of this section. Annual reports must include:

(i) A summary of research activities conducted;

(ii) Identification of the species and number of each species taken by Level B harassment;

(iii) An evaluation of the progress made in meeting the objectives of the research as described in the letter of intent; and

(iv) Any incidental scientific, educational, or commercial uses of photographs, videotape, and film obtained as a result of or incidental to the research and, if so, names of all photographers.

(3) Authorization to conduct research under the General Authorization is for the period(s) of time identified in the letter of intent or for a period of 5 years from the date of the letter of confirmation issued under paragraph (c) of this section, whichever is less, unless extended by the Director or modified, suspended, or revoked in accordance with paragraph (e) of this section;

(4) Activities conducted under the General Authorization may only be conducted under the on-site supervision of the principal investigator or co-investigator(s) named in the letter of intent. All personnel involved in the conduct of activities under the General Authorization must perform a function directly supportive of and necessary for the research being conducted, or be one of a reasonable number of support personnel included for the purpose of training or as back-up personnel;

(5) The principal investigator must notify the appropriate Regional Director, NMFS, (Regional Director) in writing at least 2 weeks before initiation of on-site activities. The Regional Director shall consider this information in efforts to coordinate field research activities to minimize adverse impacts
§ 216.46 U.S. citizens on foreign flag vessels operating under the International Dolphin Conservation Program.

The MMPA’s provisions do not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations in the ETP which are outside the U.S. exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)), while employed on a fishing vessel of a harvesting nation that is participating in, and in compliance with, the IDC.

[65 FR 56, Jan. 3, 2000]

§ 216.47 Access to marine mammal tissue, analyses, and data.

(a) Applications for the National Marine Mammal Tissue Bank samples (NMMTB). (1) A principal investigator, contributor or holder of a scientific research permit issued in accordance with the provisions of this subpart may apply for access to a tissue specimen sample in the NMMTB. Applicants for tissue specimen samples from the NMMTB must submit a signed written request with attached study plan to the Marine Mammal Health and Stranding Response Program (MMHSRP) Program Manager, Office of Protected Resources, NMFS. The written request must include:

(i) A clear and concise statement of the proposed use of the banked tissue specimen. The applicant must demonstrate that the proposed use of the tissue specimen is necessary to achieve the stated goals of the proposed study; and

(ii) The letter of intent included false information or statements of a material nature;

(b) NMFS may review scientific research conducted pursuant to the General Authorization. If requested by NMFS, the applicant must cooperate with any such review and shall:

(i) Allow any employee of NOAA or any other person designated by the Director, Office of Protected Resources to observe research activities; and

(ii) Provide any documents or other information relating to the scientific research;

(c) Any photographs, videotape, or film obtained during the conduct of research under the General Authorization must be identified by a statement that refers to the General Authorization number and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific, educational, or commercial uses of the images, and if any such uses, the names of all photographers; and

(d) Persons conducting scientific research under authority of the General Authorization may not transfer or assign any authority granted thereunder to any other person.

(e) Suspension, revocation, or modification. (1) NMFS may suspend, revoke, or modify the authority to conduct scientific research under the General Authorization if:

(i) The letter of intent included false information or statements of a material nature;

(ii) The research does not constitute bona fide scientific research;

(iii) Research activities result in takings of marine mammals other than by Level B harassment;

(iv) Research activities differ from those described in the letter of intent submitted by the applicant and letter of confirmation issued by NMFS;

(v) The applicant violates any term or condition set forth in this section.

(2) Any suspension, revocation, or modification is subject to the requirements of 15 CFR part 904.

[59 FR 50376, Oct. 3, 1994]
banked tissue is consistent with the goals of the NMMTB and the MMHSRP.

(A) The goals of the MMHSRP are to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events.

(B) The goal of the NMMTB is to maintain quality controlled marine mammal tissues that will permit retrospective analyses to determine environmental trends of contaminants and other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques.

(ii) A copy of the applicant’s scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit;

(iii) Name of principal investigator, official title, and affiliated research or academic organization;

(iv) Specific tissue sample and quantity desired;

(v) Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance (AQA) program, which was designed to ensure the accuracy, precision, level of detection, and intercompatibility of data resulting from chemical analyses of marine mammal tissues. The AQA consists of annual interlaboratory comparisons and the development of control materials and standard reference materials for marine mammal tissues;

(vi) Verification that funding is available to conduct the research;

(vii) Estimated date for completion of research, and schedule/date of subsequent reports;

(viii) Agreement that all research findings based on use of the banked tissue will be reported to the NMMTB, MMHSRP Program Manager and the contributor; and the sequences of tissue specimen samples that are used/released for genetic analyses (DNA sequencing) will be archived in the National Center for biotechnology Information’s GenBank. Sequence accessions in GenBank should document the source, citing a NIST field number that indentifies the animal; and

(ix) Agreement that credit and acknowledgment will be given to U.S. Fish and Wildlife Service (USFWS), US Geologic Service (USGS), National Institute of Standards and Technology (NIST), the Minerals Management Service (MMS), NMFS, the NMMTB, and the collector for use of banked tissues.

(2) The applicant shall insert the following acknowledgment in all publications, abstracts, or presentations based on research using the banked tissue:

The specimens used in this study were collected by [the contributor] and provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of MMS, USGS, USFWS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

(3) Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

(i) Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species; and

(ii) Representatives of the NMMTB Collaborating Agencies (NMFS, USFWS, USGS Biological Resources Division, and NIST) If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which may be outside of NMFS or USFWS but within the Federal Government.

(4) The MMHSRP Program Manager will send the request and attached study plan to any contributor(s) of the tissue specimen sample. The contributor(s) of the sample may submit comments on the proposed research activity to the Director, Office of Protected Resources within 30 days of the date
that the request was sent to the contributor(s).

(5) The USFWS Representative of the NMMTB Collaborating Agencies will be chair of review committees for requests involving species managed by the DOI. The MMHSRP Program Manager will be chair of all other review committees.

(6) Each committee chair will provide recommendations on the request and an evaluation of the study plan to the Director, Office of Protected Resources, NMFS.

(7) The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee, comments received from any contributor(s) of the sample within the time provided in paragraph (a)(4) of this section, and determination that the proposed use of the banked tissue specimen is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members. If the samples are released, the response will indicate whether the samples have been homogenized and, if not, the homogenization schedule.

(8) The applicant will bear all shipping and homogenization costs related to use of any specimens from the NMMTB.

(9) The applicant will dispose of the tissue specimen sample consistent with the provisions of the applicant’s scientific research permit after the research is completed, unless the requester submits another request and receives approval pursuant to this section. The request must be submitted within three months after the original project has been completed.

(b) For the information of importers, designated ports of entry for the United States are:

- New York, N.Y.
- Miami, Fla.
- Chicago, Ill.
- San Francisco, Calif.
- Los Angeles, Calif.
- New Orleans, La.
- Seattle, Wash.
- Honolulu, Hi.

(c) Additionally, marine mammals or marine mammal products which are entered into Alaska, Hawaii, Puerto Rico, Guam, American Samoa or the Virgin Islands and which are not to be forwarded or transhipped within the United States may be imported through the following ports:

- Alaska—Juneau, Anchorage, Fairbanks
- Hawaii—Honolulu
- Puerto Rico—San Juan
- Guam—Honolulu, Hi.
- American Samoa—Honolulu, Hi.
- Virgin Islands—San Juan, P.R.

(d) Importers are advised to see 50 CFR part 14 for importation requirements and information.

Subpart F—Pribilof Islands, Taking for Subsistence Purposes

§ 216.71 Allowable take of fur seals.

Pribilovians may take fur seals on the Pribilof Islands if such taking is

(a) For subsistence uses, and

(b) Not accomplished in a wasteful manner.

§ 216.72 Restrictions on taking.

(a) The harvests of seals on St. Paul and St. George Islands shall be treated independently for the purposes of this section. Any suspension, termination, or extension of the harvest is applicable only to the island for which it is issued.
(b) By April 1 of every third year, beginning April 1994, the Assistant Administrator will publish in the Federal Register a summary of the preceding 3 years of harvesting and a discussion of the number of seals expected to be taken annually over the next 3 years to satisfy the subsistence requirements of each island. This discussion will include an assessment of factors and conditions on St. Paul and St. George Islands that influence the need by Pribilof Aleuts to take seals for subsistence uses and an assessment of any changes to those conditions indicating that the number of seals that may be taken for subsistence each year should be made higher or lower. Following a 30-day public comment period, a final notification of the expected annual harvest levels for the next 3 years will be published.

(c)(1) No fur seal may be taken on the Pribilof Islands before June 23 of each year.

(2) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including stunning followed immediately by exsanguination. The harvesting method shall include organized drives of subadult males to killing fields unless it is determined by the NMFS representatives, in consultation with the Pribilovians conducting the harvest, that alternative methods will not result in increased disturbance to the rookery or the increased accidental take of female seals.

(3) Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(d) The scheduling of the harvest is at the discretion of the Pribilovians, but must be such as to minimize stress to the harvested seals. The Pribilovians must give adequate advance notice of their harvest schedules to the NMFS representatives to allow for necessary monitoring activities. Scheduling must be consistent with the following restrictions:

(1) St. Paul Island—Seals may only be harvested from the following haulout areas: Zapadni, English Bay, Northeast Point, Polovina, Lukanin, Kitovi, and Reef. No haulout area may be harvested more than once per week.

(2) St. George Island—Seals may only be harvested from the following haulout areas: Northeast and Zapadni. Neither haulout area may be harvested more than twice per week.

(e)(1) The Assistant Administrator is required to suspend the take provided for in §215.31 when:

(i) He determines, after reasonable notice by NMFS representatives to the Pribilovians on the island, that the subsistence needs of the Pribilovians on the island have been satisfied; or

(ii) He determines that the harvest is otherwise being conducted in a wasteful manner; or

(iii) The lower end of the range of the estimated subsistence level provided in the notice issued under paragraph (b) of this section is reached.

(2) A suspension based on a determination under paragraph (e)(1)(ii) of this section may be lifted by the Assistant Administrator if he finds that the conditions which led to the determination that the harvest was being conducted in a wasteful manner have been remedied.

(3) A suspension issued in accordance with paragraph (e)(1)(iii) of this section may not exceed 48 hours in duration and shall be followed immediately by a review of the harvest data to determine if a finding under paragraph (e)(1)(i) of this section is warranted. If a harvest is not suspended under paragraph (e)(1)(i) of this section, the Assistant Administrator must provide a revised estimate of the number of seals required to satisfy the Pribilovians' subsistence needs.

(f) The Assistant Administrator shall terminate the take provided for in §215.31 on August 8 of each year or when it is determined under paragraph (e)(1)(i) of this section that the subsistence needs of the Pribilovians on the
§ 216.73 Disposition of fur seal parts.

Except for transfers to other Alaskan Natives for barter or sharing for personal or family consumption, no part of a fur seal taken for subsistence uses may be sold or otherwise transferred to any person unless it is a nonedible byproduct which:

(a) Has been transformed into an article of handicraft, or
(b) Is being sent by an Alaskan Native directly, or through a registered agent, to a tannery registered under 50 CFR 216.23(c) for the purpose of processing, and will be returned directly to the Alaskan Native for conversion into an article of handicraft, or
(c) Is being sold or transferred to an Alaskan Native, or to an agent registered under 50 CFR 216.23(c) for resale or transfer to an Alaskan Native, who will convert the seal part into a handicraft.


§ 216.74 Cooperation with Federal officials.

Pribilovians who engage in the harvest of seals are required to cooperate with scientists engaged in fur seal research on the Pribilof Islands who may need assistance in recording tag or other data and collecting tissue or other fur seal samples for research purposes. In addition, Pribilovians who take fur seals for subsistence use must, consistent with 5 CFR 336.23(b), cooperate with the NMFS representatives on the Pribilof Islands who are responsible for compiling the following information on a daily basis:

(a) The number of seals taken each day in the subsistence harvest,
(b) The extent of the utilization of fur seals taken, and
(c) Other information determined by the Assistant Administrator to be necessary for determining the subsistence needs of the Pribilovians or for making determinations under § 215.32(e).


§ 216.81 Visits to fur seal rookeries.

From June 1 to October 15 of each year, no person, except those authorized by a representative of the National Marine Fisheries Service, or accompanied by an authorized employee of the National Marine Fisheries Service, shall approach any fur seal rookery or hauling grounds nor pass beyond any posted sign forbidding passage.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.82 Dogs prohibited.

In order to prevent molestation of fur seal herds, the landing of any dogs at Pribilof Islands is prohibited.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.83 Importation of birds or mammals.

No mammals or birds, except house- hold cats, canaries and parakeets, shall be imported to the Pribilof Islands without the permission of an authorized representative of the National Marine Fisheries Service.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.84 [Reserved]

§ 216.85 Walrus and Otter Islands.

By Executive Order 1044, dated February 27, 1909, Walrus and Otter Islands were set aside as bird reservations. All persons are prohibited to land on these islands except those authorized by the appropriate representative of the National Marine Fisheries Service.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.86 Local regulations.

Local regulations will be published from time to time and will be brought to the attention of local residents and persons assigned to duty on the Islands.
by posting in public places and brought to the attention of tourists by personal notice.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.87 Wildlife research.

(a) Wildlife research, other than research on North Pacific fur seals, including specimen collection, may be permitted on the Pribilof Islands subject to the following conditions:

(1) Any person or agency, seeking to conduct such research shall first obtain any Federal or State of Alaska permit required for the type of research involved.

(2) Any person seeking to conduct such research shall obtain prior approval of the Director, Pribilof Islands Program, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1700 Westlake Avenue North, Seattle, WA 98109, by filing with the Director an application which shall include:

(i) Copies of the required Federal and State of Alaska permits; and

(ii) A resume of the intended research program.

(3) All approved research shall be subject to all regulations and administrative procedures in effect on the Pribilof Islands, and such research shall not commence until approval from the Director is received.

(4) Any approved research program shall be subject to such terms and conditions as the Director, Pribilof Islands Program deems appropriate.

(5) Permission to utilize the Pribilof Islands to conduct an approved research program may be revoked by the Director, Pribilof Islands Program at any time for noncompliance with any terms and conditions, or for violations of any regulation or administrative procedure in effect on the Pribilof Islands.


Subpart H—Dolphin Safe Tuna Labeling


§ 216.90 Purposes.

This subpart governs the requirements for using the official mark described in § 216.95 or an alternative mark that refers to dolphins, porpoises, or marine mammals, to label tuna or tuna products offered for sale in or exported from the United States using the term dolphin-safe or suggesting the tuna were harvested in a manner not injurious to dolphins.

[69 FR 55307, Sept. 13, 2004]

§ 216.91 Dolphin-safe labeling standards.

(a) It is a violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna products that are exported from or offered for sale in the United States to include on the label of those products the term "dolphin-safe" or any other term or symbol that claims or suggests that the tuna contained in the products were harvested using a method of fishing that is not harmful to dolphins if the products contain tuna harvested:

(1) ETP large purse seine vessel. In the ETP by a purse seine vessel of greater than 400 ft (362.8 mt) carrying capacity unless:

(i) the documentation requirements for dolphin-safe tuna under § 216.92 and 216.93 are met;

(ii) No dolphins were killed or seriously injured during the sets in which the tuna were caught; and

(iii) None of the tuna were caught on a trip using a purse seine net intentionally deployed on or to encircle dolphins, provided that this paragraph (a)(1)(iii) will not apply if the Assistant Administrator publishes a notification in the FEDERAL REGISTER announcing a finding under 16 U.S.C. 1385(g)(2) that the intentional deployment of purse seine nets on or encirclement of dolphins is not having a significant adverse impact on any depleted stock.

(2) Non-ETP purse seine vessel. Outside the ETP by a vessel using a purse seine net:

(i) In a fishery in which the Assistant Administrator has determined that a
§216.92 Dolphin-safe requirements for tuna harvested in the ETP by large purse seine vessels.

(a) U.S. vessels. Tuna products that contain tuna harvested by U.S. flag purse seine vessels of greater than 400 st (362.8 mt) carrying capacity in the ETP may be labeled dolphin-safe only if the following requirements are met:

(1) Tuna Tracking Forms containing a complete record of all the fishing activities on the trip, certified by the vessel Captain and the observer, are submitted to the Administrator, Southwest Region, at the end of the fishing trip during which the tuna was harvested;

(2) The tuna is delivered for processing to a U.S. tuna processor in a plant located in one of the 50 states, Puerto Rico, or American Samoa that is in compliance with the tuna tracking and verification requirements of §216.93; and

(3) Driftnet. By a vessel engaged in large-scale driftnet fishing; or

(4) Other fisheries. By a vessel in a fishery other than one described in paragraphs (a)(1) through (a)(3) of this section that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied as described in §216.24(f)(3) by a written statement executed by the Captain of the vessel certifying that no driftnet was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were caught, and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) In any other fishery unless the products are accompanied as described in §216.24(f)(3) by a written statement executed by the Captain of the vessel certifying that no driftnet was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught;

(b) Imported tuna. (1) Yellowfin tuna or tuna products harvested in the ETP by vessels of greater than 400 st (362.8 mt) carrying capacity and presented for import into the United States may be labeled dolphin-safe only if the yellowfin tuna was harvested by a U.S. vessel fishing in compliance with the requirements of the IDCP and applicable U.S. law, or by a vessel belonging to a nation that is a Party to the Agreement on the IDCP or has applied to become a Party and is adhering to all the requirements of the Agreement.

(2) Tuna or tuna products, other than yellowfin tuna, harvested in the ETP by purse seine vessels of greater than 400 st (362.8 mt) carrying capacity and presented for import into the United States may be labeled dolphin-safe only if:

(i) The tuna was harvested by a U.S. vessel fishing in compliance with the requirements of the IDCP and applicable U.S. law, or by a vessel belonging to a nation that is a Party to the Agreement on the IDCP or has applied to become a Party and is adhering to all the requirements of the Agreement.

§216.92 Dolphin-safe requirements for tuna harvested in the ETP by large purse seine vessels.

(a) U.S. vessels. Tuna products that contain tuna harvested by U.S. flag purse seine vessels of greater than 400 st (362.8 mt) carrying capacity in the ETP may be labeled dolphin-safe only if the following requirements are met:

(1) Tuna Tracking Forms containing a complete record of all the fishing activities on the trip, certified by the vessel Captain and the observer, are submitted to the Administrator, Southwest Region, at the end of the fishing trip during which the tuna was harvested;

(2) The tuna is delivered for processing to a U.S. tuna processor in a plant located in one of the 50 states, Puerto Rico, or American Samoa that is in compliance with the tuna tracking and verification requirements of §216.93; and

(3) Driftnet. By a vessel engaged in large-scale driftnet fishing; or

(4) Other fisheries. By a vessel in a fishery other than one described in paragraphs (a)(1) through (a)(3) of this section that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied as described in §216.24(f)(3) by a written statement executed by the Captain of the vessel certifying that no driftnet was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were caught, and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) In any other fishery unless the products are accompanied as described in §216.24(f)(3) by a written statement executed by the Captain of the vessel certifying that no driftnet was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught;
on the IDCP Tuna Tracking and Verification Plan:

(ii) The tuna or tuna products are accompanied as described in §216.24(f)(3) by a properly completed FCO; and

(iii) The tuna or tuna products are accompanied as described in §216.24(f)(3) by valid documentation signed by a representative of the appropriate IDCP member nation, containing the harvesting vessel names and tuna tracking form numbers represented in the shipment, and certifying that:

(A) There was an IDCP approved observer on board the vessel(s) during the entire trip(s); and

(B) The tuna contained in the shipment were caught according to the dolphin-safe labeling standards of §216.91.

§ 216.93 Tracking and verification program.

The Administrator, Southwest Region, has established a national tracking and verification program to accurately document the dolphin-safe condition of tuna, under the standards set forth in §§216.91 and 216.92. The tracking program includes procedures and reports for use when importing tuna into the United States and during U.S. purse seine fishing, processing, and marketing in the United States and abroad. Verification of tracking system operations is attained through the establishment of audit and document review requirements. The tracking program is consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

(a) Tuna tracking forms. Whenever a U.S. flag tuna purse seine vessel of greater than 400 st (362.8 mt) carrying capacity fishes in the ETP, IDCP approved Tuna Tracking Forms (TTFs), bearing a unique number assigned to that trip, are used by the observer to record every set made during that trip. One TTF is used to record dolphin-safe sets and a second TTF is used to record non-dolphin-safe sets. The information entered on the TTFs following each set includes the date, well number, weights by species composition, estimated tons loaded, and additional notes, if any. The observer and the vessel engineer initial the entry as soon as possible following each set, and the vessel captain and observer review and sign both TTFs at the end of the fishing trip certifying that the information on the forms is accurate. TTFs are confidential official documents of the IDCP, consistent with Article XVIII of the Agreement on the IDCP, and the Agreement on the IDCP Rules of Confidentiality.

(b) Dolphin-Safe Certification. Upon request, the Office of the Administrator, Southwest Region, will provide written certification that tuna harvested by U.S. purse seine vessels greater than 400 st (362.8 mt) carrying capacity is dolphin-safe, but only if NMFS' review of the TTFs for the subject trip shows that the tuna for which the certification is requested is dolphin-safe under the requirements of the Agreement on the IDCP and U.S. law.

(c) Tracking fishing operations. (1) During ETP fishing trips by purse seine vessels greater than 400 st (362.8 mt) carrying capacity, tuna caught in sets designated as dolphin-safe by the vessel observer must be stored separately from tuna caught in non-dolphin-safe sets from the time of capture through unloading. Vessel personnel will decide into which wells tuna will be loaded. The observer will initially designate whether each set is dolphin-safe or not, based on his/her observation of the set. The observer will initially identify a vessel fish well as dolphin-safe if the first tuna loaded into the well during a trip was captured in a set in which no dolphin died or was seriously injured. The observer will initially identify a vessel fish well as non-dolphin-safe if the first tuna loaded into the well during a trip was captured in a set in which a dolphin died or was seriously injured. Any tuna loaded into a well previously designated non-dolphin-safe is considered non-dolphin-safe tuna. The observer will change the designation of a dolphin-safe well to non-dolphin-safe if any tuna are loaded into the well that were captured in a set in which a dolphin died or was seriously injured.

(2) The captain, managing owner, or vessel agent of a U.S. purse seine vessel greater than 400 st (362.8 mt) returning
to port from a trip, any part of which included fishing in the ETP, must provide at least 48 hours notice of the vessel’s intended place of landing, arrival time, and schedule of unloading to the Administrator, Southwest Region.

(3) If the trip terminates when the vessel enters port to unload part or all of its catch, new TTFs will be assigned to the new trip, and any information concerning tuna retained on the vessel will be recorded as the first entry on the TTFs for the new trip. If the trip is not terminated following a partial unloading, the vessel will retain the original TTFs and submit a copy of those TTFs to the Administrator, Southwest Region, within 5 working days. In either case, the species and amount unloaded will be noted on the respective originals.

(4) Tuna offloaded to trucks, storage facilities, or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the dolphin-safe or non-dolphin-safe designation of the tuna as it left the fishing vessel.

(5) The handling of TTFs and the tracking and verification of tuna caught in the Convention Area by a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity shall be conducted consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

(d) Tracking cannery operations. (1) Whenever a U.S. tuna canning company in the 50 states, Puerto Rico, or American Samoa receives a domestic or imported shipment of ETP caught tuna for processing, a NMFS representative may be present to monitor delivery and verify that dolphin-safe and non-dolphin-safe tuna are clearly identified and remain segregated. Such inspections may be scheduled or unscheduled, and canners must allow the NMFS representative access to all areas and records.

(2) Tuna processors must report on a monthly basis the amounts of ETP-caught tuna that were immediately utilized upon receipt or removed from cold storage. This report may be submitted in conjunction with the monthly report required in paragraph (d)(2) of this section. This report must contain:

(i) The date of removal from cold storage or disposition;
(ii) Storage container or lot identifier number(s) and dolphin-safe or non-dolphin-safe designation of each container or lot; and
(iii) Details of the disposition of fish (for example, canning, sale, rejection, etc.).

(4) During cannery activities, nondolphin-safe tuna may not be mixed in any manner or at any time during processing with any dolphin-safe tuna or tuna products and may not share the same storage containers, cookers, conveyers, tables, or other canning and labeling machinery.

(e) Tracking imports. All tuna products, except fresh tuna, that are imported into the United States must be accompanied as described in §216.24(f)(3) by a properly certified FCO as required by §216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 10 calendar days of the shipment’s entry into the commerce of the United States as required by §216.24(f)(3)(ii).

(f) Verification requirements. (1) Record maintenance. Any exporter,
transshipper, importer, processor, or wholesaler/distributor of any tuna or tuna products must maintain records related to that tuna for at least 2 years. These records include, but are not limited to: FCOs and required certifications, any reports required in paragraphs (a), (b) and (d) of this section, invoices, other import documents, and trip reports.

(2) Record submission. Within 10 calendar days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required certifications for those tuna or tuna products.

(3) Audits and spot checks. Upon request of the Administrator, Southwest Region, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, stored, and processed tuna.

(g) Confidentiality of proprietary information. Information submitted to the Assistant Administrator under this section will be treated as confidential in accordance with NOAA Administrative Order 216–100 “Protection of Confidential Fisheries Statistics.”


§ 216.94 False statements or endorsements.

Any person who knowingly and willfully makes a false statement or false endorsement required by §216.92 is liable for a civil penalty not to exceed $100,000, that may be assessed in an action brought in any appropriate District Court of the United States on behalf of the Secretary.


§ 216.95 Official mark for “Dolphin-safe” tuna products.

(a) This is the “official mark” (see figure 1) designated by the United States Department of Commerce that may be used to label tuna products that meet the “dolphin-safe” standards set forth in the Dolphin Protection Consumer Information Act, 16 U.S.C. 1385, and implementing regulations at §§216.91 through 216.94:
§ 216.101 Purpose.

The regulations in this subpart implement section 101(a)(5) (A) through (D) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1371(a)(5), which provides a mechanism for allowing, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region.

§ 216.102 Scope.

The taking of small numbers of marine mammals under section 101(a)(5) (A) through (D) of the Marine Mammal Protection Act may be allowed only if the National Marine Fisheries Service:

(a) Finds, based on the best scientific evidence available, that the total taking by the specified activity during the specified time period will have a negligible impact on species or stock of
§ 216.103 Definitions.

In addition to definitions contained in the MMPA, and in §216.3, and unless the context otherwise requires, in subsequent subparts to this part:

Arctic waters means the marine and estuarine waters north of 60° N. lat.

Citizens of the United States and U.S. citizens mean individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13). U.S. Federal, state and local government agencies shall also constitute citizens of the United States for purposes of this part.

Incidental harassment, incidental taking and incidental, but not intentional, taking all mean an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable or accidental. (A complete definition of “take” is contained in §216.3).

Negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Small numbers means a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.

Specified activity means any activity, other than commercial fishing, that takes place in a specified geographical region and potentially involves the taking of small numbers of marine mammals.

Specified geographical region means an area within which a specified activity is conducted and that has certain biogeographic characteristics.

Unmitigable adverse impact means an impact resulting from the specified activity:

(1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by:
   (i) Causing the marine mammals to abandon or avoid hunting areas;
   (ii) Directly displacing subsistence users; or
   (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and

(2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

§ 216.104 Submission of requests.

(a) In order for the National Marine Fisheries Service to consider authorizing the taking by U.S. citizens of small numbers of marine mammals incidental to a specified activity (other than commercial fishing), or to make a finding that an incidental take is unlikely to occur, a written request must be submitted to the Assistant Administrator. All requests must include the following information for their activity:

(1) A detailed description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals;

(2) The date(s) and duration of such activity and the specific geographical region where it will occur;

(3) The species and numbers of marine mammals likely to be found within the activity area;
(4) A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks of marine mammals likely to be affected by such activities;

(5) The type of incidental taking authorization that is being requested (i.e., takes by harassment only; takes by harassment, injury and/or death) and the method of incidental taking;

(6) By age, sex, and reproductive condition (if possible), the number of marine mammals (by species) that may be taken by each type of taking identified in paragraph (a)(5) of this section, and the number of times such takings by each type of taking are likely to occur;

(7) The anticipated impact of the activity upon the species or stock of marine mammal;

(8) The anticipated impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses;

(9) The anticipated impact of the activity upon the habitat of the marine mammal populations, and the likelihood of restoration of the affected habitat;

(10) The anticipated impact of the loss or modification of the habitat on the marine mammal populations involved;

(11) The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;

(12) Where the proposed activity would take place in or near a traditional Arctic subsistence hunting area and/or may affect the availability of a species or stock of marine mammal for Arctic subsistence uses, the applicant must submit either a plan of cooperation or information that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(i) A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;

(ii) A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;

(iii) A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and

(iv) What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation;

(13) The suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking or impacts on populations of marine mammals that are expected to be present while conducting activities and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity. Monitoring plans should include a description of the survey techniques that would be used to determine the movement and activity of marine mammals near the activity site(s) including migration and other habitat uses, such as feeding. Guidelines for developing a site-specific monitoring plan may be obtained by writing to the Director, Office of Protected Resources; and

(14) Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects.

(b)(1) The Assistant Administrator shall determine the adequacy and completeness of a request and, if determined to be adequate and complete, will begin the public review process by publishing in the FEDERAL REGISTER either:

(i) A proposed incidental harassment authorization; or

(ii) A notice of receipt of a request for the implementation or reimplementation of regulations governing the incidental taking.
(2) Through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media in the coastal areas that may be affected by such activity, NMFS will invite information, suggestions, and comments for a period not to exceed 30 days from the date of publication in the Federal Register. All information and suggestions will be considered by the National Marine Fisheries Service in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization or conditions governing the issuance of an incidental harassment authorization.

(3) Applications that are determined to be incomplete or inappropriate for the type of taking requested, will be returned to the applicant with an explanation of why the application is being returned.

(c) The Assistant Administrator shall evaluate each request to determine, based upon the best available scientific evidence, whether the taking by the specified activity within the specified geographic region will have a negligible impact on the species or stock and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. If the Assistant Administrator finds that the mitigating measures would render the impact of the specified activity negligible when it would not otherwise satisfy that requirement, the Assistant Administrator may make a finding of negligible impact subject to such mitigating measures being successfully implemented. Any preliminary findings of “negligible impact” and “no unmitigable adverse impact” shall be proposed for public comment along with either the proposed incidental harassment authorization or the proposed regulations for the specific activity.

(d) If, subsequent to the public review period, the Assistant Administrator finds that the taking by the specified activity would have more than a negligible impact on the species or stock of marine mammal or would have an unmitigable adverse impact on the availability of such species or stock for subsistence uses, the Assistant Administrator shall publish in the Federal Register the negative finding along with the basis for denying the request.

§ 216.105 Specific regulations.

(a) For all petitions for regulations under this paragraph, applicants must provide the information requested in § 216.104(a) on their activity as a whole, which includes, but is not necessarily limited to, an assessment of total impacts by all persons conducting the activity.

(b) For allowed activities that may result in incidental takings of small numbers of marine mammals by harassment, serious injury, death or a combination thereof, specific regulations shall be established for each allowed activity that set forth:

(1) Permissible methods of taking;

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

(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(c) Regulations will be established based on the best available information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review.


(a) A Letter of Authorization, which may be issued only to U.S. citizens, is required to conduct activities pursuant to any regulations established under § 216.105. Requests for Letters of Authorization shall be submitted to the Director, Office of Protected Resources. The information to be submitted in a request for an authorization will be specified in the appropriate subpart to this part or may be obtained by writing to the above named person.

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.
§216.107 Incidental harassment authorization for Arctic waters.

(a) Except for activities that have the potential to result in serious injury or mortality, which must be authorized under §216.105, incidental harassment authorizations may be issued, following a 30-day public review period, to allowed activities that may result in only the incidental harassment of a small number of marine mammals. Each such incidental harassment authorization shall set forth:

(1) Permissible methods of taking by harassment;
(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and
(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(b) Issuance of an incidental harassment authorization will be based on a determination that the number of marine mammals taken by harassment will be small, will have a negligible impact on the species or stock of marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses.

(c) An incidental harassment authorization will be either issued or denied within 45 days after the close of the public review period.

(d) Notice of issuance or denial of an incidental harassment authorization will be published in the Federal Register within 30 days of issuance of a determination.

(e) Incidental harassment authorizations will be valid for a period of time not to exceed 1 year but may be renewed for additional periods of time not to exceed 1 year for each reauthorization.

(f) An incidental harassment authorization shall be modified, withdrawn, or suspended if, after notice and opportunity for public comment, the Assistant Administrator determines that:

(1) The conditions and requirements prescribed in the authorization are not being substantially complied with; or
(2) The authorized taking, either individually or in combination with other authorizations, is having, or may have, more than a negligible impact on the species or stock or, where relevant, an unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses.

(g) The requirement for notice and opportunity for public review in paragraph (f) of this section shall not apply if the Assistant Administrator determines that an emergency exists that poses a significant risk to the wellbeing of the species or stocks of marine mammals concerned.

(h) A violation of any of the terms and conditions of an incidental harassment authorization shall subject the
§ 216.108 Requirements for monitoring and reporting under incidental harassment authorizations for Arctic waters.

(a) Holders of an incidental harassment authorization in Arctic waters and their employees, agents, and designees must cooperate with the National Marine Fisheries Service and other designated Federal, state, or local agencies to monitor the impacts of their activity on marine mammals. Unless stated otherwise within an incidental harassment authorization, the holder of an incidental harassment authorization effective in Arctic waters must notify the Alaska Regional Director, National Marine Fisheries Service, of any activities that may involve a take by incidental harassment in Arctic waters at least 14 calendar days prior to commencement of the activity.

(b) Holders of incidental harassment authorizations effective in Arctic waters may be required by their authorization to designate at least one qualified biological observer or another appropriately experienced individual to observe and record the effects of activities on marine mammals. The number of observers required for monitoring the impact of the activity on marine mammals will be specified in the incidental harassment authorization. If observers are required as a condition of the authorization, the observer(s) must be approved in advance by the National Marine Fisheries Service.

(c) The monitoring program must, if appropriate, document the effects (including acoustical) on marine mammals and document or estimate the actual level of take. The requirements for monitoring plans, as specified in the incidental harassment authorization, may vary depending on the activity, the location, and the time.

(d) Where the proposed activity may affect the availability of a species or stock of marine mammal for taking for subsistence purposes, proposed monitoring plans or other research proposals must be independently peer-reviewed prior to issuance of an incidental harassment authorization under this subpart. In order to complete the peer-review process within the time frames mandated by the MMPA for an incidental harassment authorization, a proposed monitoring plan submitted under this paragraph must be submitted to the Assistant Administrator no later than the date of submission of the application for an incidental harassment authorization. Upon receipt of a complete monitoring plan, and at its discretion, the National Marine Fisheries Service will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan. The applicant must submit a final monitoring plan to the Assistant Administrator prior to the issuance of an incidental harassment authorization.

(e) At its discretion, the National Marine Fisheries Service may place an observer aboard vessels, platforms, aircraft, etc., to monitor the impact of activities on marine mammals.

(f)(1) As specified in the incidental harassment authorization, the holder of an incidental harassment authorization for Arctic waters must submit reports to the Assistant Administrator within 90 days of completion of any individual components of the activity (if any), within 90 days of completion of the activity, but no later than 120 days prior to expiration of the incidental harassment authorization, whichever is earlier. This report must include the following information:

(i) Dates and type(s) of activity;
(ii) Dates and location(s) of any activities related to monitoring the effects on marine mammals; and
(iii) Results of the monitoring activities, including an estimate of the actual level and type of take, species name and numbers of each species observed, direction of movement of species, and any observed changes or modifications in behavior.

(2) Monitoring reports will be reviewed by the Assistant Administrator and, if determined to be incomplete or inaccurate, will be returned to the
§ 216.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by the 30th Space Wing, United States Air Force, and those persons it authorizes to engage in:

(1) Launching up to 15 missiles each year from Vandenberg Air Force Base, for a total of up to 75 missiles over the 5-year period of the regulations in this subpart,

(2) Launching up to 35 rockets each year from Vandenberg Air Force Base, for a total of up to 175 rocket launches over the 5-year period of the regulations in this subpart,

(3) Aircraft flight test operations, and

(4) Helicopter operations from Vandenberg Air Force Base.

(b) The incidental take of marine mammals on Vandenberg Air Force Base and in waters off southern California, under the activity identified in paragraph (a) of this section, is limited to the following species: Harbor seals (Phoca vitulina); California sea lions (Zalophus californianus); northern elephant seals (Mirounga angustirostris); and northern fur seals (Callorhinus ursinus).


§ 216.121 Effective dates.

Amended regulations are effective from February 1, 2012, through February 6, 2014.

[77 FR 4921, Feb. 1, 2012]

§ 216.122 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §216.106 and 216.127, the 30th Space Wing, U.S. Air Force, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in §216.120, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The taking of marine mammals is authorized for the species listed in §216.120(b) and is limited to Level B Harassment.

§ 216.123 Prohibitions.

Notwithstanding takings specified in §216.120 and authorized by a Letter of Authorization issued under §§216.106 and 216.127, no person in connection with the activities described in §216.120 may:

(a) Take any marine mammal not specified in §216.120(b);

(b) Take any marine mammal specified in §216.120(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in §216.120(b) 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.
§ 216.124 Mitigation.

(a) The activity identified in §216.120(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.120(a), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 216.127 must be implemented. These mitigation measures include (but are not limited to):

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting), which may require approaching pinniped haul-outs and rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) Vandenberg Air Force Base must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, California sea lion, and northern fur seal pupping seasons of March through June.

(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch of the same vehicle under that Letter of Authorization.

(b) [Reserved]

§ 216.125 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§216.106 and 216.127 for activities described in §216.120(a) are required to cooperate with NMFS, and any other Federal, state or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, NMFS, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in §216.120(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in §216.120(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301-713-2289), within 48 hours of the discovery of the injured or dead animal.

(b) Holders of Letters of Authorization must designate qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization, to:

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haul-out, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season (1 March through 30 June) and continue for a period of time not less than 48 hours subsequent to launching.

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals.

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf could occur in
those areas (this determination will be made in consultation with NMFS).

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season,

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that surveys are required that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental conditions such as tide, wind speed, air temperature, and swell.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit a report to the Southwest Administrator, NMFS, within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch,

(2) Design of the monitoring program, and

(3) Results of the monitoring program, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haul-out prior to commencement of the launch,

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise,

(iii) The length of time pinnipeds remained off the haul-out or rookery,

(iv) Numbers of pinniped adults, juveniles or pups that may have been injured or killed as a result of the launch, and

(v) Behavioral modifications by pinnipeds that were likely the result of launch noise or the sonic boom.

(e) An annual report must be submitted at the time of renewal of the Letter of Authorization.

(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports,

(2) Assess the impacts at each of the major rookeries,

(3) Assess the cumulative impacts on pinnipeds and other marine mammals from Vandenberg activities, and

(4) State the date(s), location(s), and findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations.

§ 216.126 Applications for Letters of Authorization.

(a) 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 § 216.120(a) (30th Space Wing, U.S. Air Force) must apply for and obtain either an initial Letter of Authorization in accordance with § 216.127 or a renewal under § 216.128.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Applications for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of pinnipeds.

§ 216.127 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.128.
(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).

§ 216.128 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §216.106 and §216.127 for the activity identified in §216.120(a) will be renewed annually upon:
(1) Notification to NMFS that the activity described in the application submitted under §216.126 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;
(2) Timely receipt of the monitoring reports required under §216.125(d) and (e), and the Letter of Authorization issued under §216.127, which has been reviewed and accepted by NMFS; and
(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§216.124 and 216.125 and the Letter of Authorization issued under §§216.106 and 216.127, were undertaken and will be undertaken during the upcoming annual 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 216.128 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, 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.

§ 216.129 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 216.127 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §216.128, without modification (except for the period of validity), is not considered a substantive modification.

(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 §216.120(b), a Letter of Authorization issued pursuant to §§216.106 and 216.127 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subparts L–M [Reserved]

Subpart N—Taking of Marine Mammals Incidental to Missile Launch Activities from San Nicolas Island, CA

SOURCE: 74 FR 26587, June 3, 2009, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 26587, June 3, 2009, subpart N, consisting of §§216.150 through 216.159 was added, effective June 2, 2009 through June 2, 2014.
§ 216.150 Specified activity and specified geographical region.

(a) This subpart applies only to the incidental taking of marine mammals specified in paragraph (b) of this section by the Naval Air Warfare Center Weapons Division, U.S. Navy, and those persons it authorizes to engage in missile launch activities and associated aircraft and helicopter operations at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: northern elephant seals (Mirounga angustirostris), harbor seals (Phoca vitulina), and California sea lions (Zalophus californianus).

§ 216.151 Effective dates.

This subpart is effective June 2, 2009 through June 2, 2014.

§ 216.152 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.157, the U.S. Navy, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 216.150, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The taking of marine mammals is authorized for the species listed in § 216.150(b) and is limited to Level B Harassment.

§ 216.153 Prohibitions.

Notwithstanding takings contemplated in § 216.150 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.157, no person in connection with the activities described in § 216.150 may:

(a) Take any marine mammal not specified in § 216.150(b);

(b) Take any marine mammal specified in § 216.150(b) other than by incidental, unintentional harassment, as discussed in § 216.152;

(c) Take a marine mammal specified in § 216.150(b) 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 and 216.157.

§ 216.154 Mitigation.

(a) The activity identified in § 216.150 must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.150(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.157 must be implemented. These mitigation measures include (but are not limited to):

(1) The holder of the Letter of Authorization must prohibit personnel from entering pinniped haul-out sites below the missile’s predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid launch activities during harbor seal pupping season (February through April), unless constrained by factors including, but not limited to, human safety, national security, or for launch trajectory necessary to meet mission objectives.

(3) The holder of the Letter of Authorization must limit launch activities during other pinniped pupping seasons, unless constrained by factors including, but not limited to, human safety, national security, or for launch trajectory necessary to meet mission objectives.

(4) The holder of the Letter of Authorization must avoid launching multiple missiles in quick succession over
haul-out sites, especially when young pups are present, except when required by mission objectives. (6) The holder of the Letter of Authorization must limit launch activities during nighttime hours, except when required by mission objectives. (7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (305 m) from pinniped haul-outs and rookeries, except in emergencies or for real-time security incidents (e.g., search-and-rescue, firefighting, adverse weather conditions), which may require approaching pinniped haul-outs and rookeries closer than 1,000 feet (305 m). (8) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch of the same vehicle under that Letter of Authorization. (9) Additional mitigation measures as contained in a Letter of Authorization. (b) [Reserved]

§ 216.155 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.157 for activities described in § 216.150 are required to cooperate with NMFS, and any other Federal, state or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, NMFS, by letter, e-mail, or telephone, at least 1 week prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in § 216.150 is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 216.150(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–713–2289), and the Administrator, Southwest Region, NMFS, or designee, by telephone (562–980–3232), within 48 hours of the discovery of the injured or dead animal.

(b) The National Marine Fisheries Service must be informed immediately of any changes or deletions to any portions of the proposed monitoring plan submitted, in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site individual(s), approved in advance by the National Marine Fisheries Service, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) Visual Land-Based Monitoring. (i) Prior to each missile launch, an observer(s) will place 3 autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site. Each video camera will be set to record data for focal subgroups of pinnipeds.

(ii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded on digital video for subsequent analysis for no less than 1 hour prior to the estimated launch time and for up to 1 hour immediately following each missile launch.

(iii) Documentation, both via autonomous video cameras and human observers, will consist of:

(A) Numbers and sexes of each age class in focal subgroups;

(B) Description and timing of launch activities or other disruptive event(s);

(C) Movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;

(D) Description of reactions;

(E) Minimum distances between interacting and reacting pinnipeds;

(F) Study location;

(G) Local time;
(H) Substratum type;  
(I) Substratum slope;  
(J) Weather condition;  
(K) Horizontal visibility; and  
(L) Tide state.

(2) Acoustic Monitoring.  
(i) During all missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the missile’s flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of missiles in three dimensions, whenever data coverage allows.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each missile.

(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report to the National Marine Fisheries Service, Southwest Region Office, providing reporting items found under the Letter of Authorization, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

(i) Timing and nature of launch operations;

(ii) Summary of pinniped behavioral observations;

(iii) Estimate of the amount and nature of all takes by harassment or by other means; and

(iv) Evidence of compliance with mitigation measures.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of the regulations in this subpart, providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final comprehensive technical report, including all monitoring results during the entire period of the Letter of Authorization will be due 90 days after the end of the period of effectiveness of the regulations in this subpart.

(5) Both the 60-day and final reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under §§216.106 and 216.157, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

§216.156 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations contained in this subpart, the U.S. citizen (as defined by §216.103) conducting the activity identified in §216.150 (Naval Air Warfare Center Weapons Division, U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §216.157 or a renewal under §216.158.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Applications for a Letter of Authorization and for renewals of Letters
of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of pinnipeds.

§ 216.157 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §216.158.

(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).

§ 216.158 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §§216.106 and 216.157 for the activity identified in §216.150 will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §216.156 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §216.155(e), and the Letter of Authorization issued under §216.157, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§216.154 and 216.155 and the Letter of Authorization issued under §§216.106 and 216.157, were undertaken and will be undertaken during the upcoming annual 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 this section indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, 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.

§ 216.159 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 216.157 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §216.158, without modification (except for the period of validity), is not considered a substantive modification.

(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 §216.150(b), a Letter of Authorization issued pursuant to §§216.106 and 216.157 may be substantively modified without prior notification and an opportunity for public
comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS MESA VERDE (LPD 19) by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

SOURCE: 73 FR 43136, July 24, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 73 FR 43136, July 24, 2008, subpart O, consisting of §§216.161 through 216.166 was added, effective July 18, 2008 through July 18, 2013.

§ 216.161 Specified activity and incidental take levels by species.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by persons engaged in the detonation of up to four 4,536 kg (10,000 lb) conventional explosive charges within the waters of the U.S. Atlantic Coast offshore Mayport, FL, for the purpose of conducting one full ship-shock trial (FSST) of the USS MESA VERDE (LPD 19) during the time period between July 23 and September 20, 2008, and May 1 and September 20, 2009 through 2013.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Minke whale (Balaenoptera acutorostrata), dwarf sperm whale (Kogia simus); pygmy sperm whale (K. breviceps); pilot whale (Globicephala macrorhynchus); Atlantic spotted dolphin (Stenella frontalis); spinner dolphin (S. longirostris); bottlenose dolphin (Tursiops truncatus); Risso’s dolphin (Grampus griseus); rough-toothed dolphin (Steno bredanensis); common dolphin (Delphinus delphis); false killer whale (Pseudorca crassidens); Cuvier’s beaked whale (Ziphius cavirostris), Blainville’s beaked whale (Mesoplodon densirostris); Gervais’ beaked whale (M. europaeus); and True’s beaked whale (M. mirus).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total, across all species, of no more than 1 mortality or serious injury, 2 takings by Level A harassment (injuries), and 282 takings by Level B behavioral harassment (through temporary threshold shift). The incidental taking of any species listed as threatened or endangered under the Endangered Species Act is prohibited.

§ 216.162 Effective dates.

Regulations in this subpart are effective July 18, 2008 through July 18, 2013.

§ 216.163 Mitigation.

(a) Under a Letter of Authorization issued pursuant to §216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals in the course of the activity described in §216.161(a) provided all requirements of these regulations and such Letter of Authorization are met.

(b) The activity identified in paragraph §216.161(a) of this section must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be implemented:

(1) Except as provided under the following paragraph (2), if any marine mammals are visually detected within the designated 3.5 nm (6.5 km) Safety Range surrounding the USS MESA VERDE, detonation must be delayed until the marine mammals are positively resighted outside the Safety Range either due to the animal(s) swimming out of the Safety Range or due to the Safety Range moving beyond the mammal’s last verified location.

(2) If a North Atlantic right whale or other marine mammal listed under the Endangered Species Act (ESA) is seen within the Safety Range, detonation must not occur until the animal is positively resighted outside the Safety Range and at least one additional aerial monitoring of the Safety Range shows that no other right whales or other ESA-listed marine mammals are present;

(3) If the sea state exceeds 3 on the Beaufort scale (i.e., whitecaps on 33 to 50 percent of surface; 2 ft (0.6 m) to 3 ft (0.9 m) waves), the visibility is equal to

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§ 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 detonation 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...
§ 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):
(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):
   (i) AN/SQS–53 (hull-mounted sonar)—up to 6420 hours over the course of 5 years (an average of 1284 hours per year)
   (ii) AN/SQS–56 (hull-mounted sonar)—up to 1915 hours over the course of 5 years (an average of 383 hours per year)
   (iii) AN/AQS–22 (helicopter dipping sonar)—up to 5050 dips over the course of 5 years (an average of 1010 dips per year)
   (iv) SSQ–62 (sonobuoys)—up to 12115 sonobuoys over the course of 5 years (an average of 2423 sonobuoys per year)
   (v) MK–48 (torpedoes)—up to 1565 torpedoes over the course of 5 years (an average of 313 torpedoes per year)
   (vi) AN/BQQ–10 (submarine mounted sonar)—up to 1000 hours over the course of 5 years (an average of 200 per year)
   (vii) AN/SSQ–125 (AEER sonar sonobuoy)—4800 sonobuoys (total, of IEER/EER and AEER combined) over the course of 5 years (an average of 960 sonobuoy deployments per year)

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:
   (A) 5″ Naval Gunfire (9.5 lbs).
   (B) 76 mm rounds (1.6 lbs).
   (C) Maverick (78.5 lbs).
   (D) Harpoon (488 lbs).
   (E) MK–82 (238 lbs).
   (F) MK–83 (574 lbs).
   (G) MK–84 (945 lbs).
   (H) MK–48 (851 lbs).
   (I) Demolition Charges (20 lbs).
   (J) EER/IEER (5 lbs).

(2) Training Events:
   (A) Mine Neutralization—up to 340 exercises over the course of 5 years (an average of 68 per year).
   (B) Air-to-Surface MISSILEX—up to 250 exercises over the course of 5 years (an average of 50 per year).
   (C) Surface-to-Surface MISSILEX—up to 60 exercises over the course of 5 years (an average of 12 per year).

(D) BOMBEX—up to 195 exercises over the course of 5 years (an average of 38 per year).

(E) SINKEX—I up to 30 exercises over the course of 5 years (an average of 6 per year).

(F) Surface-to-Surface GUNEX—I up to 455 exercises over the course of 5 years (an average of 91 per year).

(G) Naval Surface Fire Support—up to 140 exercises over the course of 5 years (an average of 28 per year).

(H) EER/IEER—4800 sonobuoys (total, of EER/IEER and AEER combined) over the course of 5 years (an average of 960 sonobuoy deployments per year)

(d) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in §216.170(c) should the amounts (e.g., hours, dips, or number of exercises) vary from those estimated in §216.170(c), provided that the variation does not result in exceeding the amount of take indicated in §216.172(c).


§216.171 Effective dates and definitions.

(a) Amended regulations are effective from February 1, 2012, through January 5, 2014.

(b) The following definitions are utilized in these regulations:

(1) Uncommon Stranding Event (USE)—A stranding event that takes place during a major training exercise and involves any one of the following:
   (i) Two or more individuals of any cetacean species (not including mother/calf pairs, unless of species of concern listed in next bullet) found dead or alive on shore within a two day period and occurring on same shorelines or facing shorelines of different islands.
   (ii) A single individual or mother/calf pair of any of the following marine mammals of concern: Beaked whale of any species, Kogia sp., Risso’s dolphin, melon-headed whale, pilot whales, humpback whales, sperm whales, blue whales, fin whales, sei whales, or monk seal.
   (iii) A group of 2 or more cetaceans of any species exhibiting indicators of distress.

(2) Shutdown (this definition specifically applies only to the word as used
§ 216.172 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.177, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §216.170(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.170(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 §216.170(c) is limited to the following species, by the indicated method of take and the indicated number of times:

1. Level B Harassment (±10 percent of the number of takes indicated below):
   (i) Mysticetes:
      (A) Humpback whale (Megaptera novaeangliae)—49470 (an average of 9894 annually).
      (B) Minke whale (Balaenoptera acutorostrata)—320 (an average of 64 annually).
      (C) Sei whale (Balaenoptera borealis)—230 (an average of 46 annually).
      (D) Sperm whale (Physeter macrocephalus)—3905 (an average of 781 annually).
      (E) Pygmy sperm whale (Kogia breviceps)—4325 (an average of 865 annually).
      (F) Dwarf sperm whale (Kogia sima)—10610 (an average of 2122 annually).
   (ii) Odontocetes:
      (A) Bottlenose dolphin (Tursiops truncatus)—3905 (an average of 781 annually).
      (B) Pygmy killer whale (Feresa attenuata)—980 (an average of 196 annually).
      (C) False killer whale (Pseudorca crassidens)—230 (an average of 46 annually).
      (D) Cuvier’s beaked whale (Ziphius cavirostris)—5750 (an average of 1150 annually).
      (E) Blainville’s beaked whale (Mesoplodon densirostris)—1785 (an average of 357 annually).
      (F) Longman’s beaked whale (Indopacetus pacificus)—5750 (an average of 1150 annually).
      (G) Rough-toothed dolphin (Steno bredanensis)—5385 (an average of 1077 annually).
      (H) Bottlenose dolphin (Tursiops truncatus)—3670 (an average of 734 annually).
      (I) Pan-tropical dolphins (Stenella attenuata)—10995 (an average of 2199 annually).
      (J) Spinner dolphins (Stenella longirostris)—2105 (an average of 421 annually).
      (K) Striped dolphins (Stenella coeruleoalba)—2485 (an average of 497 annually).
      (L) Risso’s dolphin (Grampus griseus)—16045 (an average of 3209 annually).
      (M) Melon-headed whale (Peponocephala electra)—2985 (an average of 597 annually).
      (N) Fraser’s dolphin (Lagenodelphis hosei)—6235 (an average of 1247 annually).
      (O) Pantropical spotted dolphin (Stenella attenuata)—10995 (an average of 2199 annually).
      (P) Pygmy killer whale (Feresa attenuata)—980 (an average of 196 annually).
      (Q) Short-finned pilot whale (Globicephala melaena)—8990 (an average of 1798 annually).

2. Level A Harassment and/or morality of no more than 10 individuals total of each of the species listed below over the course of the 5-year regulations:
   (B) Bottlenose dolphin (Tursiops truncatus), Pygmy and Dwarf sperm whales (Kogia breviceps and sima), Melon-headed whale (Peponocephala electra), Pantropical spotted dolphin (Stenella attenuata), Pygmy killer whale (Feresa attenuata), Short-finned pilot whale (Globicephala
§ 216.173 Prohibitions.  
Notwithstanding takings contemplated in § 216.172 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.177, no person in connection with the activities described in §216.170 may:

(a) Take any marine mammal not specified in §216.172(c);

(b) Take any marine mammal specified in §216.172(c) other than by incidental take as specified in §216.172(c)(1) and (2);

(c) Take a marine mammal specified in §216.172(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 these regulations or a Letter of Authorization issued under §§ 216.106 and 216.177.

§ 216.174 Mitigation.

(a) When conducting training activities identified in §216.170(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.177 must be implemented. These mitigation measures include, but are not limited to:

(1) Mitigation Measures for ASW training:
   (i) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training (MSAT) material prior to use of mid-frequency active sonar.
   (ii) All Commanding Officers, Executive Officers, and officers standing watch on the Bridge shall have reviewed the MSAT material prior to a training event employing the use of mid-frequency active sonar.
   (iii) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA, 12968-D).
   (iv) 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).

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

   (vi) On the bridge of surface ships, there shall be at least three people on watch whose duties include observing the water surface around the vessel.

   (vii) All surface ships participating in ASW exercises shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as lookouts.

   (viii) Personnel on lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

   (ix) On surface vessels equipped with mid-frequency active sonar, pedestal mounted ‘Big Eye’ (20x110) binoculars shall be present and in good working order.

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

   (xi) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

   (xii) Personnel on lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck.

   (xiii) CPF shall distribute the final mitigation measures contained in the LOA and BO to the Fleet.

   (xiv) 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.

(xv) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(xvi) During mid-frequency active sonar training activities, personnel shall utilize all available sensor and optical systems (such as Night Vision Goggles) to aid in the detection of marine mammals.

(xvii) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine mammals as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(xviii) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yards (182 m) of the sonobuoy.

(xix) Marine mammal detections shall be reported immediately 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.

(xx) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that MFAS transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1000 yards (914 m) of the sonar dome (the bow).

(A) Ships and submarines shall continue to limit maximum MFAS transmission levels by this 6-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(B) The Navy shall ensure that MFAS transmissions will be limited to at least 10 dB below the equipment’s normal operating level if any detected animals are within 500 yards (457 m) of the sonar dome. Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2000 yards (1828 m) beyond the location of the last detection.

(C) The Navy shall ensure that MFAS transmissions will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards beyond the location of the last detection.

(D) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the Officer of the Deck concludes that dolphins or porpoises are deliberately closing to ride the vessel’s bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(E) If the need for power-down should arise as detailed in “Safety Zones” in paragraph (a)(1)(xx) of this section, Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 dB sonar was being operated).

(xxii) Prior to start up or restart of active sonar, operators shall check that the Safety Zone radius around the sound source is clear of marine mammals.

(xxii) Sonar levels (generally)—Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(xxiii) Helicopters shall observe/survey the vicinity of an ASW Exercise for 10 minutes before the first deployment of active (dipping) sonar in the water.
(xxiv) Helicopters shall not dip their sonar within 200 yards (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yards (183 m) after pinging has begun.

(xxv) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training activities involving active mid-frequency sonar.

(xxvi) Night vision goggles shall be available to all ships and air crews, for use as appropriate.

(xxvii) Humpback Whale Cautionary Area: An area extending 5km (2.7 nm) from a line drawn from Kaunakakai on the island of Molokai to Kaena Point on the Island of Lanai; and an area extending 5 km (2.7 nm) from a line drawn from Kaunolu on the Island of Lanai to the most Northeastern point on the Island of Kahoolawe; and within a line drawn from Kanapou Bay on the Island of Kahoolawe to Kanahena Point on the Island of Maui and a line drawn from Cape Halawa on the Island of Molokai to Lipo Point on the Island of Maui, excluding the existing submarine operating area.

(A) Should national security needs require MFAS training and testing in the cautionary area between 15 December and 15 April, it must be personally authorized by the Commander, U.S. Pacific Fleet based on his determination that training and testing in that specific area is required for national security purposes. This authorization shall be documented by the CPF in advance of transiting and training in the cautionary area, and the determination shall be based on the unique characteristics of the area from a military readiness perspective, taking into account the importance of the area for humpback whales and the need to minimize adverse impacts on humpback whales from MFAS whenever practicable. Further, Commander, U.S. Pacific Fleet will provide specific direction on required mitigation measures prior to operational units transiting to and training in the cautionary area.

(B) The Navy shall provide advance notification to NMFS of any such activities listed in paragraph (a)(1)(xxvii)(A) of this section.

(C) The Navy shall include in its periodic reports for compliance with the MMPA whether or not activities occurred in the Humpback Whale Cautionary Area and any observed effects on humpback whales due to the conduct of these activities.

(xxviii) The Navy shall abide by the letter of the “Stranding Response Plan for Major Navy Training Exercises in the HRC” to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in §216.171(b)) occurs during a Major Training Exercise (MTE, including RIMPAC, USWEX, or Multi-Strike Group Exercise) in the HRC, the Navy shall implement the procedures described below.

(1) The Navy shall implement a Shutdown (as defined §216.171(b)) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the HRC Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy will maintain a dialogue, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(2) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(3) If the Navy finds an injured or dead animal 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 behavior (if alive), and photo or video (if available). Based on the information provided, NMFS will 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 qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or 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 training activities or explosive detonations, though farther than 14 nm from the distressed animal(s), is likely contributing to the animals’ refusal to return to the open water. If so, NMFS and the Navy will further coordinate to determine what measures are necessary to improve the probability that the animals will return to open water and implement those measures as appropriate.

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

(C) 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.

(xxx) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a “safe speed” 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.

(2) Mitigation for IEER—The following are protective measures for use with Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER) given an explosive source generates the acoustic wave used in this sonobuoy.

(i) Crews shall conduct aerial visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search should be conducted below 500 yards (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft training activities, crews are allowed to conduct coordinated area clearances.

(ii) Crews shall conduct a minimum of 30 minutes of visual and acoustic monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(iii) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 1,000 yards (914 m) of observed marine mammal activity, the Navy shall deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yards (914 m) of the intended post position, co-locate the explosive source sonobuoy (AN/SSQ–110A) (source) with the receiver.

(iv) When able, crews will conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of communication range of these sensors.

(v) Aural Detection: If the presence of marine mammals is detected aurally, then that shall cue the aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then
the crew may continue multi-static active search.

(vi) Visual Detection:
(A) If marine mammals are visually detected within 1,000 yards (914 m) of the explosive source sonobuoy (AN/SSQ–110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 1,000 yards (914 m) safety buffer.
(B) Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000 yards (914 m) safety buffer.

(vii) Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the “Payload 1 Release” command followed by the “Payload 2 Release” command. Aircrews shall refrain from using the “Scuttle” command when two payloads remain at a given post. Aircrews will ensure that a 1,000 yard (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(viii) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(ix) The navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ–110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(x) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(3) Mitigation for Demolitions (DEMOs) and Mine Countermeasure (MCM) Training (Up to 20 lb).

(i) Exclusion Zones—Explosive charges shall not be detonated if a marine mammal is detected within 700 yards (640 m) of the detonation site.

(ii) Pre-Exercise Surveys—For MCM training activities, the Navy shall conduct a pre-exercise survey within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air. If a marine mammal is detected within the survey area, the exercise shall be suspended until the animal voluntarily leaves the area.

(iii) Post-Exercise Surveys—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

(iv) Reporting—Any evidence of a marine mammal that may have been injured or killed by the action shall be reported immediately to NMFS.

(v) Mine Laying Training—Though mine laying training operations involve aerial drops of inert training shapes on floating targets, measures 1, 2, and 3 for Demolitions and Mine countermeasures will apply to mine laying training. To the maximum extent feasible, the Navy shall retrieve inert mine shapes dropped during Mine Laying Training.

(4) Mitigation for SINKEX, GUNEX, MISSILEX, and BOMBEX.

(i) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(ii) Extensive range clearance operations shall be conducted in the hours prior to commencement of the exercise.

(iii) An exclusion zone with a radius of 1.0 nm (1.85 km) shall be established around each target. An additional buffer of 0.5 nm (0.93 km) shall be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which extends out an additional 0.5 nm (0.93 km), shall be surveyed. Together, the zones extend out 2 nm (3.7 km) from the target.

(iv) A series of surveillance overflights shall be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol would be as follows:

(A) Overflights within the exclusion zone shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy’s
Search and Rescue (SAR) Tactical Aid (TACAID).

(B) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team shall have completed the Navy’s marine mammal training program for lookouts.

(C) In addition to the overflights, the exclusion zone shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring shall be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals in the vicinity of the exercise. The sonobuoys shall be re-seeded as necessary throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The Officer Conducting the Exercise (OCE) shall be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

(D) On each day of the exercise, aerial surveillance of the exclusion and safety zones shall commence two hours prior to the first firing.

(E) The results of all visual, aerial, and acoustic searches shall be reported immediately to the OCE. No weapons launches or firing would commence until the OCE declares the safety and exclusion zones free of marine mammals.

(F) If a marine mammal observed within the exclusion zone is diving, firing shall be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes has elapsed.

(G) During breaks in the exercise of 30 minutes or more, the exclusion zone shall again be surveyed for any marine mammals. If marine mammals are sighted within the exclusion zone, the OCE would be notified, and the procedure described in paragraph (a)(4)(iv)(F) of this section would be followed.

(H) Upon sinking of the vessel, a final surveillance of the exclusion zone shall be monitored for two hours, or until sunset, to verify that no marine mammals were harmed.

(v) Aerial surveillance would be conducted using helicopters or other aircraft based on necessity and availability. These aircraft shall be capable of (and shall, to the extent practicable) flying at the slow safe speeds necessary to enable viewing of marine mammals with unobstructed, or minimally obstructed, downward and outward visibility. The Navy may cancel the exclusion and safety zone surveys in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

(vi) Where practicable, the Navy shall conduct the exercise in sea states that are ideal for marine mammal sighting, i.e., Beaufort Sea State 3 or less. In the event of a Beaufort Sea State of 4 or above, the Navy shall utilize additional aircraft (conducting tight search patterns), if available, to increase survey efforts within the zones.

(vii) The exercise shall not be conducted unless the exclusion zone can be adequately monitored visually.

(viii) In the unlikely event that any marine mammals are observed to be harmed in the area, a detailed description of the animal shall be documented, the location noted, and if possible, photos taken. This information would be provided to NMFS.

(b) [Reserved]
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.


(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 HRC 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 HRC Monitoring Plan, described in §216.175(b). Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will be gathered, the marine mammal observers (MMOs) collecting marine mammal data pursuant to the HRC Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in §216.175(f)(1).

The HRC 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 HRC Exercise Report—The Navy shall submit an Annual HRC Exercise Report on October 1 of every year (covering data gathered through August 1 (or completion of RIMPAC if later than Aug 1) of the same year). This report shall contain information identified in subsections 216.175(f)(1)–(f)(5).

(1) MFAS/HFAS Major Training Exercises—This section shall contain the following information for Major Training Exercises (MTEs, which include RIMPAC, USWEX, and Multi Strike Group) conducted in the HRC:

(A) Exercise Information (for each MTE):

(i) Exercise designator.

(ii) Date that exercise began and ended.

(iii) Location.

(iv) Number and types of active sources used in the exercise.

(v) Number and types of passive acoustic sources used in exercise.

(vi) Number and types of vessels, aircraft, etc., participating in exercise.

(vii) Total hours of observation by watchstanders.

(viii) Total hours of all active sonar source operation.

(ix) 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.).)

(x) Wave height (high, low, and average during exercise).

(B) Individual marine mammal sighting info (for each sighting in each MTE):

(i) Location of sighting.

(ii) Species (if not possible—indication of whale/dolphin/pinniped).

(iii) Number of individuals.

(iv) Calves observed (y/n).

(v) Initial Detection Sensor.

(vi) Indication of specific type of platform observation made from (including, for example, what type of surface vessel, i.e., FFG, DDG, or CG).

(vii) Length of time observers maintained visual contact with marine mammal.
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(H) Wave height (in feet).
(I) Visibility.
(J) Sonar source in use (y/n).
(K) Indication of whether animal is <200yd, 200–500yd, 500–1000yd, 1000–2000yd, or >2000yd 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 (see paragraph (f)(1)(ii)(J) of this section) is hullmounted, 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 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 (i.e., 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) Total hours (from December 15 through April 15) of hullmounted active sonar operation occurring in the dense humpback areas plus a 5-km buffer, but not including the Pacific Missile Range Facility. The Navy shall work with NMFS to develop the exact boundaries of this area.

(iii) Total estimated annual hours of hull-mounted active sonar operation conducted in Humpback Whale Cautionary area between December 15 and April 15.

(iv) 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 RIMPAC, USWEX, or Multi-Strike Group Exercises) 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 HRC. The Navy shall include (in the HRC annual report) a brief annual progress update on the status of development 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).

(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 (91 m for SINKEX in HRC);

(2) The required exclusion zone (1 nm for SINKEX in HRC);

(3) The required observation distance (if different than the exclusion zone (2 nm for SINKEX in HRC); and

(4) Greater than the required observed distance. For example, in this case, the observer would indicate if < 91 m, from 91 m—1 nm, from 1 nm—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 HRC.

(ii) Total 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 major exercise. (RIMPAC, USWEX, or Multi Strike Group) indicating:

(1) Location of the exercise.

(2) Beginning and end dates of the exercise.

(3) Type of exercise (e.g., RIMPAC, USWEX, or Multi Strike Group).

(h) HRC 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 HRC Exercise Reports and HRC 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 Comprehensive National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders in accordance with the Monitoring Plans for the HRC, the Atlantic Fleet Active Sonar Training, the Southern California (SOCAL) Range Complex, 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 HRC Comprehensive Report, the draft National ASW report, the Annual HRC Exercise Report, or the Annual HRC 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'
§ 216.176 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 of this chapter) conducting the activity identified in §216.170(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §216.177 or a renewal under §216.178.

§ 216.177 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in §216.178 and the modification conditions in §216.179.

(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).

§ 216.178 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §§216.106 and 216.177 for the activity identified in §216.170(c) may be renewed for an amount of time not to exceed the periods of validity of this subpart upon:

(1) Notification to NMFS that the activity described in the application submitted under §216.176 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;

(2) Timely receipt (by the dates indicated in these regulations) of the monitoring reports required under §216.175(c) through (j); and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §216.174 and the Letter of Authorization issued under §§216.106 and 216.177, were undertaken and will be undertaken during the upcoming period of validity.

(b) If a request for a renewal of a Letter of Authorization issued under this §216.106 and §216.178 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. 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 HRC or other locations).
2. Findings of the Monitoring Workshop that the Navy will convene in 2011 (§216.175(q)).
3. Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP §216.175(d)).
4. Results from specific stranding investigations (either from the HRC Study Area or other locations, and involving coincident MFAS/HFAS or explosives training or not involving coincident use).
5. Results from the Long Term Prospective Study. (6) Results from general marine mammal and sound research (funded by the Navy (or otherwise).

§216.179 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 216.177 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §216.178, without modification (except for the period of validity), is not considered a substantive modification.

(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 §216.172(c), a Letter of Authorization issued pursuant to §§216.106 and 216.177 may be substantially modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.
§ 216.212 Effective dates.
Regulations in this subpart are effective from July 21, 2008 until July 19, 2013.

§ 216.213 Permissible methods of taking.
The Holder of a Letter of Authorization issued pursuant to § 216.218, may incidentally, but not intentionally, take marine mammals by harassment within the area described in § 216.211(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

§ 216.214 Prohibitions.
No person in connection with the activities described in § 216.211(a) shall:
(a) Take any marine mammal not specified in § 216.211(b);
(b) Take any marine mammal specified in § 216.211(b) in a manner or amount greater than described therein;
(c) Take any marine mammal specified in § 216.211(b) if NMFS determines that the taking of marine mammals incidental to the activities described in § 216.211(a) is having more than a negligible impact on the species or stocks of marine mammals;
(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued pursuant to §§ 216.106 and 216.218;
(e) Take any marine mammal in violation of these regulations by using a charge with a weight greater than 500 lbs (227 kg);
(f) Take any marine mammal when conditions preclude conducting mitigation and monitoring requirements of these regulations or a Letter of Authorization.

§ 216.215 Definitions, terms, and criteria
(a) Definitions. (1) Below-mud-line or BML means that the explosives are detonated below the water-mud interface, either inside or outside a pipe, other structure or cable.
(2) Above-mud-line or AML means that the explosives are detonated in the water column above the water-mud interface, either inside or outside a pipe, other structure or cable.

(3) Multiple charge detonation means any explosive configuration where more than one charge is required in a single detonation event.
(4) Scenario means an alpha-numeric designation provided to describe charge size, activity location, and target design employed in order to determine the appropriate marine mammal mitigation/monitoring measures.
(b) Terms (1) Impact zone (required for all scenarios) means the area around a decommissioning target measured by the horizontal radius, in which a marine mammal could be affected by the pressure or acoustic energy released during the detonation of an explosive-severance charge.
(2) Predetonation survey (required for all scenarios) means any marine mammal monitoring survey (e.g., surface, aerial, or acoustic) conducted prior to the detonation of any explosive severance tool.
(3) Postdetonation survey (required for all scenarios) means any marine mammal monitoring survey (e.g., surface, aerial, or post-post-detonation aerial) conducted after the detonation event occurs.
(4) Waiting period (required for all scenarios) means the amount of time detonation operations must hold before the requisite monitoring survey(s) can be repeated.
(5) Company observer (for scenarios A1–A4 only) means trained company observers authorized to perform marine mammal detection surveys only for “very-small” blasting scenarios A1–A4.
(6) NMFS observer (for scenarios B1–E4) means observers trained and approved by an instructor with experience as a NMFS Platform Removal Observer Program trainer. NMFS observers are required to perform marine mammal detection surveys for all detonation scenarios with the exception of scenarios A1–A4. Two NMFS observers will be assigned to each operation for detection survey duties, except mitigation-scenarios C2, C4, D2, D4, E2, and E4 require a minimum of three NMFS observers for the simultaneous surface, aerial, and acoustic surveys.
(c) Criteria—(1) Blasting category parameters and associated severance scenarios. To determine the appropriate
marine mammal mitigation and monitoring requirements in §§216.218 and 216.219, holders of Letters of Authorization for activities described in §216.211(a) of this subpart must determine, from Table 1 in §216.217(b)(1), the appropriate explosive severance mitigation/monitoring scenario to follow for the blasting category, species-delination zone, and charge configuration for their activity.

(2) [Reserved]

§ 216.216 Mitigation.

(a) The activity identified in §216.211(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.211(a), all mitigation measures contained in this subpart and in the Letter of Authorization issued pursuant to §§216.106 and 216.218 must be implemented. When using explosives, the following mitigation measures must be carried out:

(i) If marine mammals are observed within (or about to enter) the marine mammal impact zone identified in Table 1 in §216.217(b)(1) column 5 for the relevant charge range and configuration (i.e., BML or AML) for the activity, detonation must be delayed until the marine mammal(s) are outside that zone;

(ii) Pre-detonation surveys shall not begin prior to sunrise and detonations shall not occur if the post-detonation survey cannot be concluded prior to sunset;

(iii) Whenever weather or sea conditions preclude adequate aerial, shipboard or subsurface marine mammal monitoring as determined by the trained observer, detonations must be delayed until conditions improve sufficiently for marine mammal monitoring to be undertaken or resumed;

(iv) Whenever the weather or sea conditions prevent implementation of the aerial survey monitoring required under §216.217(c)(2), the aerial survey must be repeated prior to detonation of charges; and

(v) Multiple charge detonations must be staggered at an interval of 0.9 sec (900 msec) between blasts.

(2) [Reserved]

§ 216.217 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued for activities described in §216.211(a) are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency with regulatory authority over the offshore oil-and-gas activities for the purpose of monitoring the impacts of the activity on marine mammals.

(b) If a marine mammal is found seriously injured, or dead, the explosive severance activity will immediately cease and the holder of the Letter of Authorization, designee or the designated lead observer will contact the Minerals Management Service and the Regional Administrator, National Marine Fisheries Service’ Southeast Regional Office, or designee at the earliest opportunity. Procedures and monitoring methods will be reviewed and, if necessary, appropriate changes made to the mitigation and monitoring measures prior to conducting the next detonation to avoid future injury or mortality takings.

(c) Any mitigation measures proposed to be contained in a Letter of Authorization that are not specified in this subpart, or not considered an emergency requirement under §216.219(d), will first be subject to notice and comment through publication in the Federal Register, as provided in §216.219(c).
<table>
<thead>
<tr>
<th>Blasting Category</th>
<th>Configuration (Charge wt/ placement)</th>
<th>Species Delimitation Zone</th>
<th>Mitigation Scenario</th>
<th>Impact Zone Radius</th>
<th>Pre Det Surface Survey (min)</th>
<th>Pre Det Aerial Survey (min)</th>
<th>Pre Det Acoustic Survey (min)</th>
<th>Post Det Surface Survey (min)</th>
<th>Post Det Aerial Survey (min)</th>
<th>Post Det Aerial Survey (Yes/No)</th>
<th>Waiting Period (min)</th>
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<tbody>
<tr>
<td>BML Shelf (&lt;200 m)</td>
<td>A1</td>
<td>261 m</td>
<td>60</td>
<td>N/A</td>
<td>N/A</td>
<td>30</td>
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<td>No</td>
<td>30</td>
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<tr>
<td>Very- (&lt;0-10 lb)</td>
<td>B1</td>
<td>90</td>
<td>30</td>
<td>N/A</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
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<tr>
<td>Small AML Shelf</td>
<td>A2</td>
<td>(856 ft)</td>
<td>60</td>
<td>N/A</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>No</td>
<td>30</td>
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<td>30</td>
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<tr>
<td>(&lt;0-5 lb) Slope</td>
<td>A3</td>
<td>293 m</td>
<td>60</td>
<td>N/A</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
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<td>30</td>
<td>No</td>
<td>30</td>
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<td>Small BML Shelf</td>
<td>A4</td>
<td>(961 ft)</td>
<td>90</td>
<td>N/A</td>
<td>N/A</td>
<td>30</td>
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<td>No</td>
<td>30</td>
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<td>(&lt;5-20 lb) Slope</td>
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<td>373 m</td>
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<td>30</td>
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<td>30</td>
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<td>No</td>
<td>30</td>
<td>No</td>
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</tr>
<tr>
<td>Small AML Shelf</td>
<td>B2</td>
<td>(1,224 ft)</td>
<td>90</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>No</td>
<td>30</td>
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<td>30</td>
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<tr>
<td>(&gt;10-20 lb) Slope</td>
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<td>522 m</td>
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<td>30</td>
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<td>Small BML Shelf</td>
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<td>90</td>
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<td>30</td>
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<td>30</td>
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<td>(&gt;5-20 lb) Slope</td>
<td>B1</td>
<td>631 m</td>
<td>90</td>
<td>30</td>
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<td>No</td>
<td>30</td>
<td>No</td>
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<tr>
<td>Standard AML Shelf</td>
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<td>(2,069 ft)</td>
<td>90</td>
<td>45</td>
<td>120</td>
<td>N/A</td>
<td>30</td>
<td>No</td>
<td>30</td>
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<td>30</td>
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<td>(&gt;20-80 lb) Slope</td>
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<td>829 m</td>
<td>90</td>
<td>45</td>
<td>120</td>
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<td>No</td>
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<td>30</td>
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<td>(2,211 ft)</td>
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<td>60</td>
<td>150</td>
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<td>45</td>
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<tr>
<td>(&gt;20-80 lb) Slope</td>
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<td>941 m</td>
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<td>60</td>
<td>150</td>
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<td>45</td>
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<td>45</td>
<td>120</td>
<td>180</td>
<td>N/A</td>
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<td>45</td>
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<td>45</td>
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<tr>
<td>(&gt;80-200 lb) Slope</td>
<td>D2</td>
<td>(3,086 ft)</td>
<td>120</td>
<td>45</td>
<td>120</td>
<td>N/A</td>
<td>30</td>
<td>Yes</td>
<td>45</td>
<td>Yes</td>
<td>45</td>
</tr>
<tr>
<td>Large AML Shelf</td>
<td>D3</td>
<td>1,126 m</td>
<td>120</td>
<td>60</td>
<td>180</td>
<td>N/A</td>
<td>30</td>
<td>Yes</td>
<td>45</td>
<td>Yes</td>
<td>45</td>
</tr>
<tr>
<td>(&gt;80-200 lb) Slope</td>
<td>D4</td>
<td>(3,693 ft)</td>
<td>150</td>
<td>60</td>
<td>210</td>
<td>N/A</td>
<td>30</td>
<td>Yes</td>
<td>45</td>
<td>Yes</td>
<td>45</td>
</tr>
<tr>
<td>BML Shelf (&lt;200 m)</td>
<td>E1</td>
<td>1,503 m</td>
<td>150</td>
<td>90</td>
<td>N/A</td>
<td>N/A</td>
<td>45</td>
<td>No</td>
<td>45</td>
<td>Yes</td>
<td>45</td>
</tr>
<tr>
<td>(Specialty AML Shelf)</td>
<td>E2</td>
<td>(4,916 ft)</td>
<td>180</td>
<td>90</td>
<td>270</td>
<td>N/A</td>
<td>45</td>
<td>Yes</td>
<td>45</td>
<td>Yes</td>
<td>45</td>
</tr>
<tr>
<td>(&gt;200-500 lb) Slope</td>
<td>E3</td>
<td>1,528 m</td>
<td>150</td>
<td>90</td>
<td>N/A</td>
<td>N/A</td>
<td>45</td>
<td>No</td>
<td>45</td>
<td>Yes</td>
<td>45</td>
</tr>
<tr>
<td>Specialty AML Shelf</td>
<td>E4</td>
<td>(5,013 ft)</td>
<td>180</td>
<td>90</td>
<td>270</td>
<td>N/A</td>
<td>45</td>
<td>Yes</td>
<td>45</td>
<td>Yes</td>
<td>45</td>
</tr>
</tbody>
</table>

1 Severance of subsea structures that do not penetrate the sea surface will follow the mitigation scenario for above mudline (AML) detonations even if charges are placed below mudline.
(c) Holders of Letters of Authorization must ensure that the following monitoring programs are conducted as appropriate for the required monitoring scenario.

(1) Surface monitoring survey. A surface monitoring survey must be conducted for the length of time that corresponds to the relevant explosive severance scenario. Surface monitoring surveys are to be conducted from the highest vantage point and/or other location(s) that provide the best, clear view of the entire impact zone. These vantage points may be on the structure being removed or proximal surface vessels (i.e., crewboats, derrick barges, etc.). Surface surveys are restricted to daylight hours only, and the monitoring will cease if the designated lead observer determines that weather or marine conditions are not adequate for visual observations.

(2) Aerial monitoring survey. Aerial surveys are required for all explosive severance scenarios except monitoring scenarios A1–A4. Aerial monitoring surveys are to be conducted from helicopters running standard low-altitude search patterns over the extent of the impact zone that corresponds to the appropriate explosive severance scenario. Aerial surveys will be restricted to daylight hours only (defined as “legal sunrise” to “legal sunset”), and cannot begin until the requisite surface monitoring survey has been completed. Aerial surveys will cease if the designated lead observer determines that weather or marine conditions are not adequate for visual observations, or when the pilot/removal supervisor determines that helicopter operations must be suspended.

(3) Acoustic monitoring survey.

(i) Acoustic monitoring surveys are required to be conducted on all Standard, Large, and Specialty blasting scenarios conducted at slope ≤200 m (656 ft) locations (i.e., scenarios C2, C4, D2, D4, E2, and E4).

(ii) Persons conducting acoustic surveys will be required to comply with NMFS-approved passive acoustic monitoring protocols and use approved devices and technicians.

(iii) Acoustic surveys will be run concurrent with requisite pre-detonation surveys, beginning with the surface observations and concluding at the finish of the aerial surveys when the detonation(s) is allowed to proceed.

(4) Post-detonation surface monitoring survey. A 30-minute post-detonation surface survey must be conducted by the trained company observer for scenarios A1 – A4 immediately upon conclusion of the detonation.

(5) Post-detonation aerial monitoring survey. For scenarios B1–D4, a 30-minute aerial survey must be conducted immediately upon conclusion of the detonation. For scenarios B1–E4, a 45-minute aerial survey must be conducted immediately upon conclusion of the detonation.

(6) Post-post-detonation aerial monitoring survey. Post-post-detonation aerial monitoring surveys must be conducted for scenarios C4, D2, D4, E2 and E4 within 2–7 days after detonation activities conclude, by either helicopter or fixed-wing aircraft. Observations are to start at the removal site and proceed leeward and outward of wind and current movement. Any distressed, shocked, injured or dead marine mammals will be noted in the survey report, and if possible, tracked and collected after notifying the National Marine Fisheries Service within the time requirements stated in §216.217(f).

(7) If unforeseen conditions or events occur during an explosive severance operation that may necessitate additional monitoring not specified in this paragraph, the designated NMFS lead observer will contact the appropriate National Marine Fisheries Service and Minerals Management Service personnel as detailed in the Letter of Authorization for additional guidance.

(d) Holders of Letters of Authorization must conduct all monitoring and research required under the Letter of Authorization. Any monitoring or research measures proposed to be contained in a Letter of Authorization that are not specified in this subpart or not considered an emergency requirement under §216.218(d), will first be subject to public notice and comment through publication in the Federal Register, as provided by §216.219(c).

(e) Reporting

(1) A report summarizing the results of structure removal
§ 216.218 Letters of Authorization.

(a) To incidentally take marine mammal species listed in § 216.211(b) pursuant to these regulations, each company or contractor responsible for the removal of the structure or an industry-related seafloor obstruction in the area specified in § 216.211(a) must apply for and obtain either a Letter of Authorization in accordance with § 216.106 or a renewal under § 216.219(a).

(b) An application for a Letter of Authorization must be submitted to the National Marine Fisheries Service at least 30 days before the explosive removal activity is scheduled to begin.

(c) Issuance of a Letter of Authorization and renewal of a Letter of Authorization under § 216.219(a) will be based on a determination by the National Marine Fisheries Service that the number of each species or stock of cetaceans taken annually by the activity will be small and that the total taking over the 5-year period will have a negligible impact on the species or stock of affected marine mammal(s).

(d) A Letter of Authorization may be renewed annually, subject to conditions in § 216.219(a).

(e) A Letter of Authorization for activities in this subpart will not be valid after the effective period of this subpart.

(f) A copy of the Letter of Authorization must be in the possession of the persons conducting the activity specified in § 216.211(a) that may involve incidental takings of marine mammals.

(g) Notice of issuance or denial of a Letter of Authorization will be published in the Federal Register within 30 days of a determination.

§ 216.219 Renewal and modifications of Letters of Authorization.

(a) A Letter of Authorization issued for the activity identified in § 216.211(a) will be renewed annually upon:

(1) Receipt of an application for renewal of a Letter of Authorization under § 216.218.

(2) Timely receipt of the report(s) required under § 216.217(f), which have been reviewed by the Assistant Administrator and determined to be acceptable; and

(3) A determination that the required mitigation, monitoring and reporting measures have been undertaken.

(b) Notice of issuance of a renewal of the Letter of Authorization will be published in the Federal Register within 30 days of issuance.

(c) In addition to complying with the provisions of § 216.106, except as provided in paragraph (d) of this section, no substantive modification, including a request for a variance in the mitigation or monitoring requirements in this subpart or a withdrawal or suspension of the 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. For purposes of this paragraph, renewal of a Letter of Authorization under § 216.219, without modification other than an effective date change, is not considered a substantive modification.

(d) 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 § 216.211(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.118, or renewed pursuant to this paragraph may be modified without prior notice and opportunity for public comment. A notice will be published in the Federal Register subsequent to the action.
Subparts U–T [Reserved]

Subpart V—Taking and Importing Marine Mammals; U.S. Navy’s Atlantic Fleet Active Sonar Training (AFAST)

SOURCE: 74 FR 4876, Jan. 27, 2009, unless otherwise noted.


§ 216.240 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 AFAST Study Area, which extends east from the Atlantic Coast of the U.S. to 45° W. long. and south from the Atlantic and Gulf of Mexico Coasts to approximately 23° N. lat., excluding the Bahamas (see Figure 1–1 in the Navy’s Application).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the use of the following mid-frequency active sonar (MFAS) sources, high frequency active sonar (HFAS) sources, explosive sonobuoys, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

(1) AN/SQS–53 (hull-mounted sonar)—up to 16970 hours over the course of 5 years (an average of 3314 hours per year).

(2) AN/SQS–56 (hull-mounted sonar)—up to 8420 hours over the course of 5 years (an average of 1684 hours per year).

(3) AN/SQS–56 or 53 (hull mounted sonar in object detection mode)—up to 1080 hours over the course of 5 years (an average of 216 hours per year).

(4) AN/BQQ–10 or 5 (submarine sonar)—up to 49880 pings over the course of 5 years (an average of 9976 pings per year) (an average of 1 ping per two hours during training events, 60 pings per hour for maintenance).

(5) AN/AQS–22 or 13 (helicopter dipping sonar)—up to 14760 dips over the course of 5 years (an average of 2952 dips per year—10 pings per five-minute dip).

(6) SSQ–62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 29265 sonobuoys over the course of 5 years (an average of 5853 sonobuoys per year).

(7) MK–48 (heavyweight torpedoes)—up to 100 torpedoes over the course of 5 years (an average of 20 torpedoes per year).

(8) MK–46 or 54 (lightweight torpedoes)—up to 120 torpedoes over the course of 5 years (an average of 24 torpedoes per year).

(9) AN/SSQ–110A (IEER explosive sonobuoy) and AN/SSQ–125 (AEER sonar sonobuoy)—up to 4360 sonobuoys, between these 2 sources, over the course of 5 years (an average of 872 buoys per year).

(10) AN/SQQ–32 (over the side mine-hunting sonar)—up to 22370 hours over the course of 5 years (an average of 4474 hours per year).

(11) AN/SLQ–25 (NIXIE—towed countermeasure)—up to 1660 hours over the course of 5 years (an average of 332 hours per year).

(12) AN/BQS–15 (submarine navigation)—up to 2250 hours over the course of 5 years (an average of 450 hours per year).

(13) MK–1 or 2 or 3 or 4 (Submarine-fired Acoustic Device Countermeasure (ADC))—up to 1125 ADCs over the course of 5 years (an average of 225 ADCs per year).

(14) Noise Acoustic Emitters (NAE—Sub-fired countermeasure)—up to 635 NAEs over the course of 5 years (an average of 127 NAEs per year).

(d) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in §216.240(c) should the amounts (e.g., hours, dips, or number of exercises) vary from those estimated in §216.240(c), provided that the variation does not result in exceeding the amount of take indicated in §216.242(c).

§ 216.241 Effective dates and definitions.

(a) Amended regulations are effective from February 1, 2012, through January 22, 2014.

(i) Two or more individuals of any cetacean species (not including mother/calf pairs), unless of species of concern listed in § 216.241(b)(1)(ii) found dead or live on shore within a 2-day period and occurring within 30 miles of one another.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: beaked whale of any species, dwarf or pygmy sperm whales, melon-headed whales, pilot whales, right whales, humpback whales, sperm whales, blue whales, fin whales, or sei whales.

(iii) A group of 2 or more cetaceans of any species exhibiting indicators of distress as defined in § 216.241(b)(3).

(b) Shutdown—The cessation of MFAS/HFAS operation or detonation of explosives within 14 nm (Atlantic Ocean) or 17 nm (Gulf of Mexico) of any live, in the water, animal involved in a USE.


§ 216.242 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.247, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 216.240(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.240(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 §216.240(c) is limited to the following species, by the identified method of take and the indicated number of times:

(1) Level B Harassment (±10 percent of the number of takes indicated below):

(i) Mysticetes:

(A) North Atlantic right whale (Eubalaena glacialis)—3330 (an average of 666 annually).

(B) Humpback whale (Megaptera novaeangliae)—21010 (an average of 4202 annually).

(C) Minke whale (Balaenoptera acutorostrata)—2075 (an average of 415 annually).

(D) Sei whale (Balaenoptera borealis)—5285 (an average of 1057 annually).

(E) Fin whale (Balaenoptera physalus)—4410 (an average of 882 annually).

(F) Bryde’s whale (Balaenoptera edeni)—180 (an average of 36 annually).

(G) Blue whale (Balaenoptera musculus)—4005 (an average of 801 annually).

(ii) Odontocetes:

(A) Sperm whales (Physeter macrocephalus)—48790 (an average of 9758 annually).

(B) Pygmy or dwarf sperm whales (Kogia breviceps or Kogia sima)—21920 (an average of 4384 annually).

(C) Beaked Whales (Cuvier’s, True’s, Gervais’, Sowerby’s, Blainville’s, Northern bottlenose whale) (Ziphius cavirostris, Mesoplodon mirus, M. europaeus, M. bidens, M. densirostris, Hyperoodon ampullatus)—24535 (an average of 4907 annually).

(D) Rough-toothed dolphin (Steno bredanensis)—13540 (an average of 2708 annually).

(E) Bottlenose dolphin (Tursiops truncatus)—3034010 (an average of 606802 annually).

(F) Pan-tropical dolphin (Stenella attenuata)—696530 (an average of 139306 annually).

(G) Atlantic spotted dolphin (Stenella frontalis)—1881805 (an average of 376361 annually).

(H) Spinner dolphin (Stenella longirostris)—105775 (an average of 21155 annually).

(I) Clymene dolphin (Stenella clymene)—232190 (an average of 46438 annually).

(J) Striped dolphin (Stenella coeruleoalba)—873620 (an average of 174274 annually).

(K) Common dolphin (Delphinus spp.)—482300 (an average of 96460 annually).
(L) Fraser’s dolphin (*Lagenodelphis hosei*)—1730 (an average of 346 annually).
(M) Risso’s dolphin (*Grampus griseus*)—470375 (an average of 94075 annually).
(N) Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—103255 (an average of 20651 annually).
(O) White-beaked dolphin (*Lagenorhynchus albirostris*)—17250 (an average of 3450 annually).
(P) Melon-headed whale (*Peponocephala electra*)—8270 (an average of 1654 annually).
(Q) Pygmy killer whale (*Feresa attenuata*)—1400 (an average of 280 annually).
(R) False killer whale (*Pseudorca crassidens*)—2690 (an average of 538 annually).
(S) Killer whale (*Orcinus orca*)—2515 (an average of 503 annually).
(T) Pilot whales (Short-finned pilot or long-finned) (*Globicephala melaena* or *G. macrorhynchus*)—636965 (an average of 127393 annually).
(U) Harbor porpoise (*Phocoena phocoena*)—767405 (an average of 153481 annually).

(iii) Pinnipeds:
(A) Gray seal (*Halichoerus grypus*)—39295 (an average of 7859 annually).
(B) Harbor seal (*Phoca vitulina*)—63295 (an average of 12659 annually).
(C) Hooded seal (*Cystophora cristata*)—78390 (an average of 15718 annually).
(D) Harp seal (*Pagophilus groenlandicus*)—55040 (an average of 11002 annually).

(2) Level A Harassment and/or mortality of no more than 10 beaked whales (total), of any of the species listed in §216.242(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 these regulations or a Letter of Authorization issued under §§216.106 and 216.247.

§216.244 Mitigation.

(a) When conducting training activities identified in §216.240(c), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 216.247 must be implemented. These mitigation measures include, but are not limited to:

(1) Mitigation Measures for ASW and MIW training:

(i) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training (MSAT) material prior to use of mid-frequency active sonar.

(ii) All Commanding Officers, Executive Officers, and officers standing watch on the Bridge shall review the MSAT material prior to a training event employing the use of mid- or high-frequency active sonar.

(iii) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA, 12968–D).

(iv) 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).

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

(vi) On the bridge of surface ships, there shall always be at least three people on watch whose duties include
observing the water surface around the vessel.

(vii) All surface ships participating in ASW exercises shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as lookouts.

(viii) Personnel on lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(ix) On surface vessels equipped with MFAS, pedestal mounted “Big Eye” (20 x 110) binoculars shall be present and in good working order.

(x) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D). Surface lookouts should 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 should always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout should 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 should scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They should 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 should be lowered to allow the eyes to rest for a few seconds, and then the lookout should search back across the sector with the naked eye.

(xi) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook. At night, lookouts should not sweep the horizon with their eyes because this method is not effective when the vessel is moving. Lookouts should scan the horizon in a series of movements that should allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they should 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.

(xii) Personnel on lookout shall be responsible for informing the Officer of the Deck all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine species that may need to be avoided as warranted.

(xiii) Commanding Officers shall make use of marine mammal detection cues and information to limit interaction with marine mammals to the maximum extent possible consistent with safety of the ship.

(xiv) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(xv) Units shall use training lookouts to survey for marine mammals prior to commencement and during the use of active sonar.

(xvi) During operations involving sonar, personnel shall utilize all available sensor and optical systems (such as Night Vision Goggles) to aid in the detection of marine mammals.

(xvii) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine mammals as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(xviii) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yards (182 m) of the sonobuoy.

(xix) Marine mammal detections shall be reported immediately to assigned Aircraft Control Unit (if participating) for further dissemination to ships in the vicinity of the marine mammals. This action shall occur when it is reasonable to conclude that the course of the ship will likely close
the distance between the ship and the detected marine mammal.

(xx) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that the distance between the ship and the detected marine mammal.

(XX) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that sonar transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1000 yards (914 m) of the sonar dome (the bow).

(A) Ships and submarines shall continue to limit maximum transmission levels by this 6-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(B) Should a marine mammal be detected within or closing to inside 457 m (500 yd) of the sonar dome, active sonar transmissions shall be limited to at least 10 dB below the equipment’s normal operating level. Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2000 yards (1828 m) beyond the location of the last detection.

(C) Should the marine mammal be detected within or closing to inside 183 m (200 yd) of the sonar dome, active sonar transmissions shall cease. Sonar shall not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(D) If the need for power-down should arise as detailed in “Safety Zones” in paragraph (a)(1)(xx) of this section, Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down shall be to 229 dB, regardless of at what level above 235 sonar was being operated).

(xxii) Prior to startup or restart of active sonar, operators shall check that the Safety Zone radius around the sound source is clear of marine mammals.

(xxii) Sonar levels (generally)—The Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(xxiii) Helicopters shall observe/survey the vicinity of an ASW Operation for 10 minutes before the first deployment of active (dipping) sonar in the water.

(xxiv) Helicopters shall not dip their sonar within 200 yards (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yards of the helicopter dipping sonar (183 m) after pinging has begun.

(xxv) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training activities involving active sonar.

(xxvi) Helicopters shall observe/survey the vicinity of an ASW Operation for 10 minutes before the first deployment of active (dipping) sonar in the water.

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distribution, and relevant behaviors of marine mammals of the western north Atlantic. Observers shall fill out Standard Sighting Forms and the data shall be housed at the Naval Undersea Warfare Center Division Newport (NUWCDIVNPT). Any sightings of North Atlantic right whales shall be immediately communicated to the Sighting Advisory System (SAS). All platforms shall have onboard a copy of:

(1) The Guide to Marine Mammals and Turtles of the U.S. Atlantic and Gulf of Mexico (Wynne and Schwartz 1999);

(2) The NMFS Critical Sightings Program placard;

(3) Right Whales, Guidelines to Mariners placard.

(D) In addition to the visual surveillance discussed above, dedicated aerial surveys shall be conducted utilizing a fixed-wing aircraft. An aircraft with an overhead wing (i.e., Cessna Skymaster or similar) shall be used to facilitate a clear view of the test area. Two trained observers, in addition to the pilot, shall be embarked on the aircraft. Surveys shall be conducted at an approximate altitude of 1000 ft (305 m) flying parallel track lines at a separation of 1 nmi (1.85 km), or as necessary to facilitate good visual coverage of the sea surface. While conducting surveillance, the aircraft shall maintain an approximate speed of 100 knots (185 km/hr). Since factors that affect visibility are highly dependent on the specific time of day of the survey, the flight operator will have the flexibility to adjust the flight pattern to reduce glare and improve visibility. The entire test site shall be surveyed initially, but once preparations are being made for an actual test launch, survey effort shall be concentrated over the vicinity of the individual test location. Further, for approximately ten minutes immediately prior to launch, the aircraft shall racetrack back and forth between the launch vessel and the target vessel.

(E) Commencement of an individual torpedo test scenario shall not occur until observers from all vessels and aircraft involved in the exercise have reported to the Officer in Tactical Command (OTC) and the OTC has declared that the range is clear of marine mammals. Should marine mammals be present within or seen moving toward the test area, the test shall be either delayed or moved as required to avoid interference with the animals.

(F) The TORPEX shall be suspended if the Beaufort Sea State exceeds 3 or if visibility precludes safe operations.

(G) Vessel speeds:

(1) During transit through the northeastern North Atlantic right whale critical habitat, surface vessels and submarines shall maintain a speed of no more than 10 knots (19 km/hr) while not actively engaged in the exercise procedures;

(2) During TORPEX operations, a firing vessel should, where feasible, not exceed 10 knots. When a submarine is used as a target, vessel speeds should, where feasible, not exceed 18 knots. However, on occasion, when surface vessels are used as targets, the vessel may exceed 18 kts in order to fully test the functionality of the torpedoes. This increased speed would occur for a short period of time (e.g., 10–15 minutes) to evade the torpedo when fired upon.

(H) In the event of an animal strike, or if an animal is discovered that appears to be in distress, the Navy shall immediately report the discovery through the appropriate Navy chain of Command.

(xxix) The Navy shall abide by the following additional measures:

(A) The Navy shall avoid planning major exercises in the specified planning awareness areas (PAAs—as depicted in NMFS’ “Environmental Assessment of Mitigation Alternatives for Issuance of Incidental Take Regulations to U.S. Navy for Atlantic Fleet Active Sonar Training (AFAST)”’ where feasible. Should national security require the conduct of more than four major exercises (C2X, JTFEX, SEASWITI, or similar scale event) in these areas (meaning all or a portion of the exercise) per year the Navy shall provide NMFS with prior notification and include the information in any associated after-action or monitoring reports.

(B) The Navy shall conduct no more than one of the four above-mentioned major exercises (COMPTUEX, JTFEX, SEASWITI or similar scale event) per year in the Gulf of Mexico to the extent operationally feasible. If national
security needs require more than one major exercise to be conducted in the Gulf of Mexico PAAs, the Navy shall provide NMFS with prior notification and include the information in any associated after-action or monitoring reports.

(C) The Navy shall include the PAAs in the Navy’s Protective Measures Assessment Protocol (PMAP) (implemented by the Navy for use in the protection of the marine environment) for unit level situational awareness (i.e., exercises other than COMPTUEX, JTFEX, SEASWITI) and planning purposes.

(D) Helicopter Dipping Sonar—Unless otherwise dictated by national security needs, the Navy shall minimize helicopter dipping sonar activities within the southeastern areas of North Atlantic right whale critical habitat (as designated in 50 CFR part 226) from November 15–April 15.

(E) Object Detection Exercises—The Navy shall implement the following measures regarding object detection activities in the southeastern areas of the North Atlantic right whale critical habitat:

1. The Navy shall reduce the time spent conducting object detection exercises in the NABW critical habitats; and
2. Prior to conducting surface ship object detection exercises in the southeastern areas of the North Atlantic right whale critical habitat during the time of November 15–April 15, ships shall contact FACSFAJAX to obtain the latest North Atlantic right whale sighting information. FACSFAJAX shall advise ships of all reported whale sightings in the vicinity of the critical habitat and associated areas of concern (which extend 9 km (5 NM) seaward of the designated critical habitat boundaries). To the extent operationally feasible, ships shall avoid conducting training in the vicinity of recently sighted North Atlantic right whales. Ships shall maneuver to maintain at least 500 yards separation from any observed whale, consistent with the safety of the ship.

(xxx) The Navy shall abide by the letter of the “Stranding Response Plan for Major Navy Training Exercises in the AFAST Study Area” (available at: http://www.nmfs.noaa.gov/pr/permits/incidental.htm), to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in §216.241) occurs during a Major Training Exercise (MTE, including SEASWITI, IAC, Group Sails, JTFEX, or COMPTUEX) in the AFAST Study Area, the Navy shall implement the procedures described below.

1. The Navy shall implement a Shutdown (as defined §216.241) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the AFAST Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy shall communicate, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

2. Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

3. If the Navy finds an injured or dead animal of any species other than North Atlantic right whale 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.

4. If the Navy finds an injured (or entangled) North Atlantic right whale floating at sea during an MTE, the Navy shall implement shutdown procedures (14 or 17 nm, as defined below) around the animal immediately (without waiting for notification from NMFS). The Navy shall then notify NMFS (pursuant to the AFAST Communication Protocol) 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). Subsequent to the discovery of the injured whale, any Navy platforms in the area shall report any North Atlantic right whale sightings to NMFS (or to a contact that can alert NMFS as soon as possible). Based on the information provided, NMFS may initiate/organize an aerial survey (by requesting the Navy’s assistance pursuant to the memorandum of agreement (MOA) (see (a)(1)(xxx)(C) of this section) or by other available means) to see if other North Atlantic right whales are in the vicinity. Based on the information provided by the Navy and, if necessary, the outcome of the aerial surveys, NMFS will determine whether any additional mitigation measures are necessary on a case-by-case basis.

(5) 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 should coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of MFAS/HFAS training activities or explosive detonations, though farther than 14 or 17 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.

(B) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the AFAST 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.

(C) 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. This document shall be finalized in 2009 (unless NMFS notifies the Navy that a delay is needed).

(2) Mitigation for IEER/AEER—The following are mitigation measures for use with Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER) and Advanced Extended Echo Ranging given an explosive source generates the acoustic wave used in this sonobuoy.

(i) Navy crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search should be conducted below 500 yards (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft training activities, crews are allowed to conduct coordinated area clearances.

(ii) For IEER (AN/SSQ–110A), Navy crews shall conduct a minimum of 30 minutes of visual and acoustic monitoring of the search area prior to commanding the first post (source/receiver sonobuoy pair) detonation. This 30-minute observation period may include pattern deployment time.

(iii) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 1,000 yards (914 m) of observed marine mammal activity, deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yards (914 m) of the intended post position, co-locate the explosive source sonobuoy (AN/SSQ–110A) (source) with the receiver.

(iv) When operationally feasible, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of communication range of these sensors.

(v) **Aural Detection:** If the presence of marine mammals is detected aurally, then that should cue the aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the Navy crew may continue multi-static active search.

(vi) **Visual Detection:**
(A) If marine mammals are visually detected within 1,000 yards (914 m) of the explosive source sonobuoy (AN/SSQ–110A) intended for use, then that payload shall not be detonated.

(B) Navy Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 1,000 yards (914 m) safety buffer.

(C) Navy Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000 yards (914 m) safety buffer.

(vii) For IEER (AN/SSQ–110A), Navy Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the “Payload 1 Release” command followed by the “Payload 2 Release” command. Aircrews shall refrain from using the “Scuttle” command when two payloads remain at a given post. Aircrews shall ensure that a 1,000 yard (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(viii) Navy Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(ix) The Navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ–110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(x) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(3) Mitigation Measures Related to Vessel Transit and North Atlantic Right Whales:

(i) **Mid-Atlantic, Offshore of the Eastern United States:**
4.49

4.52

18.58

52.13

Feb–Apr.

073–57.76

°

Oct and Mar–Apr.

N. lat. 070–50.23


N. lat. 075–1.93


N. lat. 075–57.76

W. long.): Nov–Dec and Feb–Apr.

North Carolina (34–41.54

W. long.): Dec–Apr.

South Carolina (33–11.84

W. long. and 32–43.39

N. lat.

W. long.): Oct–Apr.

During the months indicated in paragraph (a)(3)(i)(A) of this section, Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified in paragraph (a)(3)(i)(A) of this section.

All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (1,500 ft) away from any observed whale, consistent with vessel safety.

Southeast Atlantic, Offshore of the Eastern United States—for the purposes of the measures below (within this paragraph), the "southeast" encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30–15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15–April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.

Prior to transiting or training in the critical habitat or associated area of concern, ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

The following specific mitigation measures apply to activities occurring within the critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessel must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

Ships shall not transit through the critical habitat or associated area of concern in a North-South direction.
§216.245 Requirements for monitoring and reporting.

(a) As outlined in the AFAST Stranding Communication Plan, the Navy must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §216.240(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 §216.242(c).

(b) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the AFAST Monitoring Plan, which is incorporated herein by reference.

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

(1) A method for prioritizing monitoring projects that clearly describes
§ 216.245

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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.


(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 AFAST 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 AFAST 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 AFAST Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in §216.245(f)(1). The AFAST Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from AFAST and multiple Range Complexes.

(f) Annual AFAST Exercise Report—The Navy shall submit an Annual AFAST 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 subsections §216.245(f)(1) through (f)(5).

(1) MFAS/HFAS Major Training Exercises—This section shall contain the following information for the major training exercises for reporting (MTERs), which include the South-eastern ASW Integrated Training Initiative (SEASWITI), Integrated ASW Course (IAC), Composite Training Unit Exercises (COMPTUEX), and Joint Task Force Exercises (JTFEX) conducted in the AFAST Study Area:

(i) Exercise Information (for each MTER):

(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 MTER):

(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 hullmounted, 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 MTERs) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to MFAS. 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 MTERs and non-major training exercises:

(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 MTERs) 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 AFAST Study Area. To the extent practicable, this report will also include the total number of sonar hours (from helicopter-dipping sonar and object detection exercises) conducted within the southern NARW critical habitat plus 5 nm buffer area. The Navy shall include (in the AFAST 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) IEER/AEER Summary—This section shall include an annual summary of the following IEER and AEER information:

(i) Total number of IEER and AEER events conducted in the AFAST Study Area;
(ii) Total expended/detonated rounds (buoys);
(iii) Total number of self-scuttled IEER rounds.

(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 MTER indicating:

(1) Location of the exercise;
(2) Beginning and end dates of the exercise;
(3) Type of exercise (e.g., COMPTUEX or SEASWITI).

(h) AFAST 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, MIW and IEER/AEER exercises for which annual reports are required (Annual AFAST Exercise Reports and AFAST 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 AFAST, SOCAL, 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 AFAST Comprehensive Report, the Comprehensive National ASW report, the Annual AFAST Exercise Report, or the Annual AFAST 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 modifications to the Monitoring Plan shall be made, as appropriate.

§ 216.246 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 § 216.240(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 216.247 or a renewal under § 216.248.


(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 216.248 and the modification conditions in § 216.249.

(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).


(a) A Letter of Authorization issued under §§ 216.106 and 216.247 for the activity identified in § 216.240(c) may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.246 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;

(2) Timely receipt (by the dates indicated in these regulations) of the monitoring reports required under § 216.245(c) through (j); and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 216.244 and the Letter of Authorization issued under §§ 216.106 and 216.247, 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 216.248 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
§ 216.270 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 SOCAL Range Complex (as depicted in Figure ES–1 in the Navy’s Final Environmental Impact Statement for the SOCAL Range Complex), which extends southwest from southern California in an approximately 700 by 200 nm rectangle with the seaward corners at 27°30′00″ N. lat.; 127°10′04″ W. long. and 24°00′01″ N. lat.; 125°00′03″ W. long.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) Results from the Navy’s monitoring from the previous year (either from AFAST or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (section 216.245(l)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§ 216.245(d))).

(4) Results from specific stranding investigations (either from the AFAST Study Area or other locations, and involving coincident MFAS/HFAS or explosives training or not involving coincident use).

(5) Results from the Long Term Prospective Study described in the preamble to these regulations.

(6) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).


§ 216.249 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.247 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.248, without modification (except for the period of validity), is not considered a substantive modification.

(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 § 216.242(c), a Letter of Authorization issued pursuant to §§ 216.106 and 216.247 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.
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§ 216.271 Effective dates and definitions.

(a) Amended regulations are effective from the date of publication of the final rule, through January 14, 2014.

(b) The following definitions are utilized in these regulations:

(1) Uncommon Stranding Event (USE)—A stranding event that takes place during an integrated, coordinated, or major training exercise.

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

(i) Underwater Explosives:

(A) 5” Naval Gunfire (9.5 lbs)
(B) 76 mm rounds (1.6 lbs)
(C) Maverick (78.5 lbs)
(D) Harpoon (448 lbs)
(E) MK–82 (238 lbs)
(F) MK–83 (574 lbs)
(G) MK–84 (945 lbs)
(H) MK–48 (851 lbs)
(J) AN/SSQ–110A (IEER explosive sonobuoy—5 lbs)

(ii) Training Events:

(A) Surface-to-surface Gunnery Exercises (S–S GUNEX)—up to 2010 exercises over the course of 5 years (an average of 402 per year)
(B) Air-to-surface Missile Exercises (A-S MISSILEX)—up to 250 exercises over the course of 5 years (an average of 50 per year)
(C) Bombing Exercises (BOMBEX)— up to 200 exercises over the course of 5 years (an average of 40 per year)
(D) Sinking Exercises (SINKEX)—up to 10 exercises over the course of 5 years (an average of 2 per year)
(E) Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) Systems—up to 15 exercises (total, of EER/IEER and AEER combined) over the course of 5 years (an average of 3 exercises, or 108 sonobuoy deployments, per year).

(d) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in §216.270(c) should the amounts (e.g., hours, dips, or number of exercises) vary from those estimated in §216.270(c), provided that the variation does not result in exceeding the amount of take indicated in §216.272(c).
§ 216.272 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.277, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 216.270(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.270(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 § 216.270(c) is limited to the following species, by the indicated method of take and the indicated number of times:

1. Level B Harassment (±10 percent of the number of takes indicated below):
   (i) Mysticetes:
      (A) Humpback whale (Megaptera novaeangliae)—110 (an average of 22 annually)
      (B) Fin whale (Balaenoptera physalus)—870 (an average of 174 annually)
      (C) Blue whale (Balaenoptera musculus)—3085 (an average of 617 annually)
      (D) Minke whale (Balaenoptera acutorostrata)—665 (an average of 133 annually)
      (E) Gray whale (Eschrichtius robustus)—27340 (an average of 5468 annually)
   (ii) Odontocetes:
      (A) Sperm whales (Physeter macrocephalus)—775 (an average of 155 annually)
      (B) Pygmy sperm whales (Kogia breviceps)—830 (an average of 166 annually)
      (C) Dwarf sperm whale (Kogia sima)—100 (an average of 20 annually)
      (D) Mesoplodont beaked whales (Blainville’s, Hubbard’s, Perrin’s, pygmy, and ginkgo-toothed) (Mesoplodon densirostris, M. carlhubbsi, M. perrini, M. peruvianus, M. ginkgodens)—690 (an average of 138 annually)
      (E) Cuvier’s beaked whales (Ziphius cavirostris)—2175 (an average of 435 annually)
      (F) Baird’s beaked whales (Berardius bairdii)—100 (an average of 20 annually)
      (G) Unidentified beaked whales—555 (an average of 104 annually)
      (H) Rough-toothed dolphin (Steno bredanensis)—100 (an average of 20 annually)
      (I) Bottlenose dolphin (Tursiops truncatus)—7480 (an average of 1516 annually)
      (J) Pan-tropical spotted dolphin (Stenella attenuata)—100 (an average of 20 annually)
      (K) Spinner dolphin (Stenella longirostris)—100 (an average of 20 annually)
      (L) Striped dolphin (Stenella coeruleoalba)—9190 (an average of 1838 annually)
      (M) Long-beaked common dolphin (Delphinus capensis)—23145 (an average of 4629 annually)
      (N) Risso’s dolphin (Grampus griseus)—17995 (an average of 3599 annually)
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Notwithstanding takings contemplated in §216.272 and authorized by a Letter of Authorization issued under §§216.106 and 216.277, no person in connection with the activities described in §216.270 may:

(a) Take any marine mammal not specified in §216.272(c);

(b) Take any marine mammal specified in §216.272(c) other than by incidental take as specified in §216.272(c)(1) and (2);

(c) Take a marine mammal specified in §216.272(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 these regulations or a Letter of Authorization issued under §§216.106 and 216.277.

§ 216.274 Mitigation.

(a) When conducting activities identified in §216.270(c), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 216.277 must be implemented. These mitigation measures include, but are not limited to:

(1) Navy's General SOCAL Maritime Measures for All Training at Sea:

(i) Personnel Training (for all Training Types):

(A) All commanding officers (COs), executive officers (XOs), lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-submarine Warfare (ASW)/Mine Warfare (MIW) helicopter crews shall complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel.

(B) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Education and Training Command [NAVEDTRA] 12968–D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced lookout. 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). Personnel being trained as lookouts can be counted among required
lookouts as long as supervisors monitor their progress and performance.

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

(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) COs 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 will watch for and report to the OOD the presence of marine mammals.

(D) On surface vessels equipped with a mid-frequency active sensor, pedestal mounted “Big Eye” (20x110) binoculars shall be properly installed and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

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

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

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

(H) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

(I) Floating weeds and kelp, algal mats, clusters of seabirds, and jellyfish are good indicators of marine mammals. Therefore, where these circumstances are present, the Navy shall exercise increased vigilance in watching for marine mammals.

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine mammals 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 when 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 will be kept for a period of 30 days following completion of a major training exercise.

(2) Navy’s Measures for MFAS Operations:

(i) Personnel Training (for MFAS Operations):

(A) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training material prior to use of mid-frequency active sonar.

(B) All COs, XOs, and officers standing watch on the bridge shall have reviewed the Marine Species Awareness Training material prior to a training event employing the use of mid-frequency active sonar.

(C) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with
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(D) 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). This does not forbid personnel being trained as lookouts from being counted as those listed in previous measures so long as supervisors monitor their progress and performance.

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

(ii) Lookout and Watchstander Responsibilities:

(A) On the bridge of surface ships, there shall always be at least three people on watch whose duties include observing the water surface around the vessel.

(B) All surface ships participating in ASW training events shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as marine mammal lookouts.

(C) Personnel on lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(D) On surface vessels equipped with mid-frequency active sonar, pedestal mounted “Big Eye” (20x110) binoculars shall be present and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

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

(F) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

(G) Personnel on lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine species that may need to be avoided as warranted.

(iii) Operating Procedures:

(A) Navy will distribute final mitigation measures contained in the LOA and the Incidental take statement of NMFS’ biological opinion to the Fleet.

(B) COs 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) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(D) During mid-frequency active sonar operations, personnel shall utilize all available sensor and optical systems (such as night vision goggles) to aid in the detection of marine mammals.

(E) 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.

(F) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yds (183 m) of the sonobuoy.

(G) 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.
(H) Safety Zones—When marine mammals are detected by any means (aerial, shipboard lookout, or acoustically) within or closing to inside 1,000 yds (914 m) of the sonar dome (the bow), the ship or submarine shall limit active transmission levels to at least 6 decibels (dB) below normal operating levels.

(1) Ships and submarines shall continue to limit maximum transmission levels by this 6-dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(2) Should a marine mammal be detected within or closing to inside 500 yds (457 m) of the sonar dome, active sonar transmissions shall be limited to at least 10-dB below the equipment's normal operating level. Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(3) Should the marine mammal be detected within or closing to inside 200 yds (183 m) of the sonar dome, active sonar transmissions shall cease. Sonar shall not resume until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(4) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the OOD concludes that dolphins or porpoises are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(5) If the need for power-down should arise as detailed in paragraph (a)(2)(iii)(H) of this section, the Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 dB active sonar was being operated).

(I) Prior to start up or restart of active sonar, operators will check that the Safety Zone radius around the sound source is clear of marine mammals.

(3) Active sonar levels (generally)—Navy shall operate active sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(K) Helicopters shall observe/survey the vicinity of an ASW training event for 10 minutes before the first deployment of active (dipping) sonar in the water.

(L) Helicopters shall not dip their active sonar within 200 yds (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yds (183 m) after pinging has begun.

(M) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training events involving active mid-frequency sonar.

(N) Night vision goggles shall be available to all ships and air crews, for use as appropriate.

(3) Navy's Measures for Underwater Detonations:

(1) Surface-to-Surface Gunnery (explosive rounds):

(A) Lookouts shall visually survey for floating weeds and kelp. Intended impact (i.e., where the Navy is aiming) shall not be within 600 yds (585 m) of known or observed floating weeds and kelp, and algal mats.

(B) For exercises using targets towed by a vessel or aircraft, target-towing vessels/aircraft shall maintain a trained lookout for marine mammals, if applicable. If a marine mammal is sighted in the vicinity, the tow aircraft/vessel shall immediately notify the firing vessel, which shall suspend the exercise until the area is clear.

(C) A 600-yard radius buffer zone shall be established around the intended target.

(D) From the intended firing position, trained lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable.
(E) The exercise shall be conducted only when the buffer zone is visible and marine mammals are not detected within it.

(ii) Surface-to-Surface Gunnery (non-explosive rounds):
(A) Lookouts shall visually survey for floating weeds and kelp, and algal mats. Intended impact will not be within 200 yds (183 m) of known or observed floating weeds and kelp, and algal mats.
(B) A 200-yd (183 m) radius buffer zone shall be established around the intended target.
(C) From the intended firing position, trained lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable.
(D) If applicable, target towing vessels shall maintain a lookout. If a marine mammal is sighted in the vicinity of the exercise, the tow vessel shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.
(E) The exercise shall be conducted only when marine mammals are not visible within the buffer zone.

(iii) Surface-to-Air Gunnery (explosive and non-explosive rounds):
(A) Vessels shall orient the geometry of gunnery exercises in order to prevent debris from falling in the area of sighted marine mammals.
(B) Vessels will expedite the recovery of any parachute deploying aerial targets to reduce the potential for entanglement of marine mammals.
(C) Target towing aircraft shall maintain a lookout, if applicable. If a marine mammal is sighted in the vicinity of the exercise, the tow aircraft shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.
(D) A 1,000 yd (914 m) radius buffer zone shall be established around the intended target.
(E) 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 (155 m) 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. The exercise will be conducted only if marine mammals are not visible within the buffer zone.

(v) Small Arms Training—(grenades, explosive and non-explosive rounds)— Lookouts will visually survey for floating weeds or kelp, algal mats, and marine mammals. Weapons shall not be fired in the direction of known or observed floating weeds or kelp, algal mats, or marine mammals.

(vi) Air-to-Surface At-sea Bombing Exercises (explosive and non-explosive):
(A) If surface vessels are involved, lookouts will visually survey for floating kelp in the target area. Ordinance shall not be targeted to impact within 1,000 yds (914 m) of known or observed floating kelp or marine mammals.
(B) A 1,000 yd (914 m) radius buffer zone shall be established around the intended target.
(C) 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 (155 m) 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. Survey aircraft should employ most effective search tactics and capabilities.
(D) The exercise will be conducted only if marine mammals are not visible within the buffer zone.

(vii) Air-to-Surface Missile Exercises (explosive and non-explosive):
(A) Ordnance shall not be targeted to impact within 1,800 yds (1,646 m) of known or observed floating kelp.

(B) Aircraft shall visually survey the target area for marine mammals. Visual inspection of the target area shall be made by flying at 1,500 (457 m) feet or lower; if safe to do so, and at slowest safe speed. Firing or range clearance aircraft must be able to actually see ordinance impact areas. Explosive ordinance shall not be targeted to impact within 1,800 yds (1,646 m) of sighted marine mammals.

(viii) Demolitions, Mine Warfare, and Mine Countermeasures (up to a 20-lb NEW charge):

(A) Exclusion Zones—All Demolitions, Mine Warfare and Mine Countermeasures Operations involving the use of explosive charges must include exclusion zones for marine mammals to prevent physical and/or acoustic effects to those species. These exclusion zones shall extend in a 700-yard arc radius around the detonation site.

(B) Pre-Exercise Surveys—For Demolition and Ship Mine Countermeasures Operations, pre-exercise survey shall be conducted within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air, and personnel shall be alert to the presence of any marine mammal. Should a marine mammal be present within the survey area, the exercise shall be paused until the animal voluntarily leaves the area. The Navy shall suspend detonation exercises and ensure the area is clear for a full 30 minutes prior to detonation. Personnel shall record any marine mammal observations during the exercise.

(C) Post-Exercise Surveys—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

(D) Reporting—If there is evidence that a marine mammal may have been stranded, injured or killed by the action, Navy activities shall be immediately suspended and the situation immediately reported by the participating unit to the Officer in Charge of the Exercise (OCE), who will follow Navy procedures for reporting the incident to Commander, Pacific Fleet, Commander, Third Fleet, Commander, Navy Region Southwest, Environmental Director, and the chain-of-command. The situation shall also be reported to NMFS (see Stranding Plan for details).

(ix) Mining Operations—Initial target points shall be briefly surveyed prior to inert ordnance (no live ordnance used) release from an aircraft to ensure the intended drop area is clear of marine mammals. To the extent feasible, the Navy shall retrieve inert mine shapes dropped during Mining Operations.

(x) Sink Exercise:

(A) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(B) An exclusion zone with a radius of 1.5 nm shall be established around each target. This 1.5 nm zone includes a buffer of 0.5 nm to account for errors, target drift, and animal movement. In addition to the 1.5 nm exclusion zone, a further safety zone, which extends from the exclusion zone at 1.5 nm out an additional 0.5 nm, shall be surveyed. Together, the zones (exclusion and safety) extend out 2 nm from the target.

(C) A series of surveillance overflights shall be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol shall be as follows:

(1) Overflights within the exclusion zone shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy’s Search and Rescue Tactical Aid, which provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.

(2) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team shall have completed the Navy’s marine mammal training program for lookouts.
In addition to the overflights, the exclusion zone shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring would be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals (particularly sperm whales) in the vicinity of the exercise. The sonobuoys shall be re-seeded as necessary throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE would be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

On each day of the exercise, aerial surveillance of the exclusion and safety zones shall commence 2 hours prior to the first firing.

The results of all visual, aerial, and acoustic searches shall be reported immediately to the OCE. No weapons launches or firing may commence until the OCE declares the safety and exclusion zones free of marine mammals.

If a protected species observed within the exclusion zone is diving, firing shall be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes have elapsed. After 30 minutes, if the animal has not been re-sighted it would be assumed to have left the exclusion zone.

During breaks in the exercise of 30 minutes or more, the exclusion zone shall again be surveyed for any protected species. If marine mammals are sighted within the exclusion zone, the OCE shall be notified, and the procedure in paragraph (a)(3)(x)(C)(6) of this section would be followed.

Upon sinking of the vessel, a final surveillance of the exclusion zone shall be monitored for 2 hours, or until sunset, to verify that no marine mammals were harmed.

Aerial surveillance shall be conducted using helicopters or other aircraft based on necessity and availability. The Navy has several types of aircraft capable of performing this task; however, not all types are available for every exercise. For each exercise, the available asset best suited for identifying objects on and near the surface of the ocean would be used. These aircraft would be capable of flying at the slow safe speeds necessary to enable viewing of marine vertebrates with unobstructed, or minimally obstructed, downward and outward visibility. The exclusion and safety zone surveys may be cancelled in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

Where practicable, the Navy shall conduct the exercise in sea states that are ideal for marine mammal sighting, i.e., Beaufort Sea State 3 or less. In the event of a 4 or above, survey efforts shall be increased within the zones. This shall be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.

The exercise shall not be conducted unless the exclusion zone can be adequately monitored visually.

In the event that any marine mammals are observed to be harmed in the area, a detailed description of the animal shall be taken, the location noted, and if possible, photos taken. This information shall be provided to NMFS via the Navy’s regional environmental coordinator for purposes of identification (see the Stranding Plan for detail).

An after action report detailing the exercise’s time line, the time the surveys commenced and terminated, amount, and types of all ordnance expended, and the results of survey efforts for each event shall be submitted to NMFS.

Crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search shall be conducted at an altitude below 457 m (500 yd) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft operations, crews are allowed to conduct coordinated area clearances.

For EER (AN/SSQ-110A), crews shall conduct a minimum of 30 minutes
of visual and aural monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(C) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 914 m (1,000 yd) of observed marine mammal activity, the Navy shall deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 914 m (1,000 yd) of the intended post position, the Navy shall co-locate the explosive source sonobuoy (AN/SSQ–110A) (source) with the receiver.

(D) When able, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of RF range of these sensors.

(E) Aural Detection—If the presence of marine mammals is detected aurally, then that shall cue the Navy aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

(F) Visual Detection—If marine mammals are visually detected within 914 m (1,000 yd) of the explosive source sonobuoy (AN/SSQ–110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 914 m (1,000 yd) safety buffer. Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 914 m (1,000 yd) safety buffer.

(G) For IEER (AN/SSQ–110A), aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the “Payload 1 Release” command followed by the “Payload 2 Release” command. Aircrews shall refrain from using the “Scuttle” command when two payloads remain at a given post. Aircrews will ensure that a 914 m (1,000 yd) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(H) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(I) The Navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ–110A) that can not be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(J) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(4) The Navy shall abide by the letter of the “Stranding Response Plan for Major Navy Training Exercises in the SOCAL Range Complex” (available at: http://www.nmfs.noaa.gov/pr/permits/incidental.htm), which is incorporated herein by reference, to include the following measures:

(1) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in §216.271) occurs during a Major Training Exercise (MTE) (as defined in the Stranding Plan, meaning including Sustainment, SHAREM, IAC2, JTFEX, or COMPTUEX) in the SOCAL Range Complex, the Navy shall implement the procedures described below.

(A) The Navy shall implement a Shutdown (as defined §216.271) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the SOCAL Range Complex Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy shall communicate, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(B) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have
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 Stranding Communication Plan) 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.

(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.


(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). 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 (JTFEX) 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 down 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
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).


(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;

(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)).
PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

Subpart A [Reserved]

Subpart B—Taking of Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

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§ 217.11 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the Monterey Bay National Marine Sanctuary (MBNMS) and those persons it authorizes to display fireworks within the MBNMS for the taking of marine mammals that occurs in the area described in paragraph (b) of this section and that occurs incidental to authorization of commercial fireworks displays.

(b) The taking of marine mammals by MBNMS may be authorized in a Letter of Authorization (LOA) only if it occurs in waters of the MBNMS.

§ 217.12 Effective dates.

Regulations in this subpart are effective from June 28, 2012, through June 28, 2017.

§ 217.13 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§216.106 and 217.17 of this chapter, the Holder of the LOA (hereinafter “MBNMS”) may incidentally, but not intentionally, take marine mammals within the area described in §217.11(b) of this chapter, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in §217.11(a) of this chapter is limited to the following species and is limited to Level B Harassment:

(1) Harbor seal (Phoca vitulina)—1,150 (an average of 230 annually)

(2) California sea lion (Zalophus californianus)—21,095 (an average of 4,219 annually)

§ 217.14 Prohibitions.

Notwithstanding takings contemplated in §217.11 of this chapter and authorized by a LOA issued under §§216.106 and 217.17 of this chapter, no person in connection with the activities described in §217.11 of this chapter may:

(a) Take any marine mammal not specified in §217.13(b) of this chapter;

(b) Take any marine mammal specified in §217.13(b) of this chapter other
(a) The activity identified in §217.11(a) of this chapter must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting the activities identified in §217.11(a) of this chapter, the mitigation measures contained in the LOA issued under §§216.106 and 217.17 of this chapter must be implemented. These mitigation measures include but are not limited to:

1. Limiting the location of the authorized fireworks displays to the four specifically designated areas at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Breakwater, and Cambria (Santa Rosa Creek);
2. Limiting the frequency of authorized fireworks displays to no more than twenty total displays per year and no more than one fireworks display every 2 months in each of the four prescribed areas;
3. Limiting the duration of authorized individual fireworks displays to no longer than 30 minutes each, with the exception of two longer shows not to exceed 1 hour;
4. Prohibiting fireworks displays at MBNMS between March 1 and June 30 of any year; and
5. Continuing to implement authorization requirements and general and special restrictions for each event, as determined by MBNMS. Standard requirements include, but are not limited to, the use of a ramp-up period, where-in salutes are not allowed in the first 5 minutes of the display; the removal of plastic and aluminum labels and wrappings; and post-show reporting and cleanup. MBNMS shall continue to assess displays and restrict the number of aerial salute effects on a case-by-case basis, and shall implement general and special restrictions unique to each fireworks event as necessary.

(b) The mitigation measures that the individuals conducting the fireworks are responsible for will be included as a requirement in fireworks display authorizations issued by MBNMS to the individual entities.

§217.16 Requirements for monitoring and reporting.

(a) MBNMS is responsible for ensuring that all monitoring required under a LOA is conducted appropriately, including, but not limited to:

1. A census of all pinnipeds in the impact area on the day prior to all displays, with observations to occur for no less than 30 minutes, and
2. Reporting to NMFS of all marine mammal injury, serious injury, or mortality observed in the vicinity of the display area. Monitoring for injury, serious injury, or mortality shall occur no later than the morning after each fireworks display, and shall occur for no less than 30 minutes.

(b) Unless specified otherwise in the LOA, MBNMS must submit a draft annual monitoring report to the Director, Office of Protected Resources, NMFS, no later than 60 days after the conclusion of each calendar year. This report must contain:

1. An estimate of the number of marine mammals disturbed by the authorized activities.
2. Results of the monitoring required in §217.16(a) of this chapter, and any additional information required by the LOA. A final annual monitoring report must be submitted to NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final annual monitoring report.

(c) A draft comprehensive monitoring report on all marine mammal monitoring conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, NMFS at least 120 days prior to expiration of these regulations. A final comprehensive monitoring report must be submitted to the NMFS within
30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final comprehensive monitoring report.


(a) To incidentally take marine mammals pursuant to these regulations, MBNMS must apply for and obtain a LOA.

(b) A LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, MBNMS must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, MBNMS must apply for and obtain a modification of the LOA as described in §217.18 of this chapter.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

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

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of a LOA shall be published in the FEDERAL REGISTER within 30 days of a determination.

§ 217.18 Renewals and modifications of Letters of Authorization.

(a) A LOA issued under §§216.106 and 217.17 of this chapter for the activity identified in §217.11(a) of this chapter shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in §217.18(c)(1) of this chapter), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in §217.18(c)(1) of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis illustrating the change, and solicit public comment before issuing the LOA.

(c) A LOA issued under §§217.106 and 217.17 of this chapter for the activity identified in §217.11(a) of this chapter may be modified by NMFS under the following circumstances:

(i) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with MBNMS regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(ii) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from MBNMS’s monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(i) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are
substantial, NMFS will publish a notice of proposed LOA in the Federal Register and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §217.13(b) of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notification would be published in the Federal Register within 30 days of the action.

Subpart C–G [Reserved]

Subpart H—Taking of Marine Mammals Incidental to Space Vehicle and Missile Launches at Kodiak Launch Complex, Alaska

SOURCE: 76 FR 16318, Mar. 23, 2011, unless otherwise noted.


§ 217.70 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in space vehicle and missile launch activities at the Kodiak Launch Complex on Kodiak Island, Alaska.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to 32 juvenile and adult Steller sea lions (Eumetopius jubatus), 1,125 Pacific harbor seals (Phoca vitulina) of all ages, and 17 harbor seal pups.

§ 217.71 Effective dates.

Regulations in this subpart are effective from March 22, 2011 through March 22, 2016.

§ 217.72 Permissible methods of taking.

(a) Under a Letter of Authorization issued pursuant to §216.106 of this chapter, the Alaska Aerospace Corporation and its contractors may incidentally, but not intentionally, take Steller sea lions and Pacific harbor seals by Level B harassment and harbor seal pups by Level A harassment or mortality in the course of conducting space vehicle and missile launch activities within the area described in §217.70(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activities identified in §217.70(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitat.

§ 217.73 Prohibitions.

The following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §216.106 of this chapter.

(c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

§ 217.74 Mitigation.

(a) The activity identified in §217.70(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §217.70(a), the mitigation measures contained in the Letter of Authorization issued under §§216.106 of this chapter and 217.76 must be implemented. These mitigation measures include (but are not limited to):

(1) Security overflights by helicopter associated with a launch will not approach occupied pinniped haulouts on Ugak Island by closer than 0.25 mile (0.4 km), and will maintain a vertical distance of 1000 ft (305 m) from the haulouts when within 0.5 miles (0.8 km), unless indications of human presence or activity warrant closer inspection of the area to assure that national security interests are protected in accordance with law;

(2) For missile and rocket launches, holders of Letters of Authorization must avoid launches during the harbor seal pupping season of May 15 through
June 30, except when launches are necessary for the following purposes: human safety, national security, space vehicle launch trajectory necessary to meet mission objectives, or other purposes related to missile or rocket launches.

(3) All flights by fixed-wing aircraft associated with the marine mammal abundance quarterly surveys must maintain a minimum altitude of 500 ft (152 m) and remain 0.25 miles from recognized seal haulouts.

(4) If launch monitoring or quarterly aerial surveys indicate that the distribution, size, or productivity of the potentially affected pinniped populations has been affected due to the specified activity, the launch procedures and the monitoring methods will be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes may be made through modifications to a given LOA, prior to conducting the next launch of the same vehicle under that LOA.

(5) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 217.75 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§216.106 of this chapter and 217.76 for activities described in §217.70(a) are required to cooperate with NMFS, and any other Federal, State, or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, NMFS, by letter, e-mail or telephone, prior to each launch. If the authorized activity identified in §217.70(a) is thought to have resulted in the take of marine mammals not identified in §217.70(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–713–2289), within 48 hours of the discovery of the take.

(b) Holders of Letters of Authorization must designate qualified protected species observers, approved in advance by NMFS, as specified in the Letter of Authorization, to:

(1) Deploy for AAC a remote camera system designed to detect pinniped responses to rocket launches for at least the first five launches conducted under these regulations. AAC will conduct visual monitoring for at least 2 hours before, during, and 2 hours after launch;

(2) Ensure a remote camera system will be in place and operating in a location which allows visual monitoring of a harbor seal rookery, if a launch during the harbor seal pupping season cannot be avoided;

(3) Relocate the camera system to or re-aim the camera system on another haulout to be chosen in cooperation with NMFS after the first five launches with harbor seals present;

(4) Review and log pinniped presence, behavior, and re-occupation time data from the visual footage obtained from the remote camera system and report results to NMFS within 90 days post-launch;

(5) Obtain, whenever a new class of rocket is flown from the Kodiak Launch Complex, a real-time sound pressure and sound exposure record for documentation purposes and to correlate with the behavioral response record. Two monitors shall be used: one shall be placed at the established recording location known as Narrow Cape, and the other as close as practical to the remote video system;

(6) Conduct quarterly aerial surveys, ideally during midday coinciding with low tide, to obtain data on pinniped presence, abundance, and behavior within the action area to determine long-term trends in pinniped haulout use. Results of these quarterly surveys will be reported once as part of the year-end summary report that will accompany the request for a new LOA.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit a report to the Alaska Region Administrator, NMFS, within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch;
National Marine Fisheries Service/NOAA, Commerce § 217.77

(2) Location of camera system and acoustic recorders (if used);
(3) Design of the monitoring program and a description of how data is stored and analyzed; and
(4) Results of the monitoring program, including, but not necessarily limited to:
   (i) Numbers of pinnipeds, by species and age class (if possible), present on the haulout prior to commencement of the launch;
   (ii) Numbers of pinnipeds, by species and age class (if possible), that may have been harassed, including the number that entered the water as a result of launch noise;
   (iii) The length of time pinnipeds remained off the haulout during post-launch monitoring;
   (iv) Number of harbor seal pups that may have been injured or killed as a result of the launch;
   (v) Other behavioral modifications by pinnipeds that were likely the result of launch noise.
(5) Results of sound pressure and sound exposure level monitoring will be reported in flat weighted, A-weighted, and peak measurements.

(e) An annual report must be submitted at the time of request for a renewal of the Letter of Authorization; it will include results of the aerial quarterly trend counts of pinnipeds at Ugak Island.

(f) A final report must be submitted at least 90 days prior to expiration of these regulations if new regulations are sought or 180 days after expiration of regulations. This report will:
   (1) Summarize the activities undertaken and the results reported in all previous reports;
   (2) Assess the impacts of launch activities on pinnipeds within the action area, including potential for pup injury and mortality; and
   (3) Assess the cumulative impacts on pinnipeds and other marine mammals from multiple rocket launches.

§ 217.76 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization, but a Letter of Authorization may not be valid beyond the effective period of the regulations.

(b) A Letter of Authorization with a period of validity less than the effective period of the regulations in this subpart may be renewed subject to renewal conditions in § 217.76.

(c) A Letter of Authorization will set forth:
   (1) The number of marine mammals, by species and age class, authorized to be taken;
   (2) Permissible methods of incidental taking;
   (3) Specified geographical region;
   (4) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and
   (5) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the total taking by the activity as a whole will have no more than a negligible impact on the affected species or stocks of marine mammal(s).

(e) Notice of issuance or denial of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§ 217.77 Renewal of a Letter of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 217.76 for the activity identified in § 217.70(a) will be renewed annually upon:
   (1) Notification to NMFS that the activity described in the application for a Letter of Authorization submitted under § 217.76 will be undertaken and that there will not be a substantial modification to the described activity, mitigation, or monitoring undertaken during the upcoming season;
   (2) Timely receipt of and acceptance by NMFS of the monitoring reports required under § 217.75;
   (3) A determination by NMFS that the mitigation, monitoring, and reporting measures required under §§ 217.74 and 217.75 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and
§ 217.78 Modifications to a 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 the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. A renewal of a Letter of Authorization under §217.77 without modification is not considered a substantive modification.

(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 §217.70(b), a Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart I—Taking of Marine Mammals Incidental to Naval Explosive Ordnance Disposal School (NEODS) Training Operations

SOURCE: 77 FR 16736, Mar. 22, 2012, unless otherwise noted.

§ 217.80 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by the United States Air Force, Headquarters 96th Air Base Wing, Eglin Air Force Base, and those persons who engage in activities described in paragraphs (a)(1) through (7) of this section and the area set forth in paragraph (b) of this section.

(1) NEODS missions involving underwater detonations of small, live explosive charges adjacent to inert mines in order to disable the mine function,

(2) Live training events occurring eight times annually, averaging one event occurring every 6 to 7 weeks,

(3) Four of the training events involving 5-lb charges, and four events involving 10-lb charges,

(4) Up to 20 5-lb detonations and twenty 10-lb detonations annually, for a total of 40 detonations,

(5) The five charges occurring for each training event shall be detonated...
§ 217.83 Prohibitions.

Notwithstanding takings contemplated in §217.80 and authorized by a Letter of Authorization issued under §§216.106 of this chapter and 217.87, no person in connection with the activities described in §217.80 may:

(a) Take any marine mammal not specified in §217.80(b);

(b) Take any marine mammal specified in §217.80(b) other than by incidental take as specified in §217.82(a) through (d);

(c) Take a marine mammal specified in §217.80(b) 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 217.87.

§ 217.81 Effective dates.

Regulations in this subpart are effective from April 23, 2012, through April 24, 2017.

§ 217.82 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §216.106 of this chapter and §217.87, the U.S. Department of the Air Force, Headquarters 96th Air Base Wing, Eglin Air Force Base (U.S. Air Force), its contractors, and clients, may incidentally, but not intentionally, take marine mammals by Level B harassment, within the area described in §217.80, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The incidental taking of marine mammals is authorized for the species listed in §217.80(b) and is limited to Level B harassment.

(c) The incidental taking of an average of 10 individuals annually and 50 individuals during the 5-year rule, for Atlantic bottlenose dolphins.

(d) The U.S. Air Force shall suspend NEODS training operations until it obtains additional authorization for the take of marine mammals if:

(1) A marine mammal is injured, seriously injured, or killed during training operations;

(2) The injury, serious injury, or death could be associated with the activities; and

(3) After coordination and concurrence with NMFS, the U.S. Air Force determines that supplementary measures are unlikely to reduce the risk of injury, serious injury or death to a very low level, require the U.S. Air Force to suspend its activities until an authorization for such taking has been obtained.
§ 217.84 Mitigation.

(a) The activity identified in §217.80(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §217.80(a), the mitigation measures contained in the Letter of Authorization issued under §§216.106 of this chapter and 217.87 must be implemented. These mitigation measures include (but are not limited to):

(1) Underwater detonations using timed delay devices will only be conducted during daylight hours. The time of detonation shall be limited to an hour after sunrise and an hour before sunset.

(2) NEODS missions shall be postponed if:
   (i) The Beaufort sea state is greater than scale number three. Such a delay would maximize detection of marine mammals.
   (ii) Large concentrations of fish, jellyfish, and/or large Sargassum rafts are observed within the mitigation-monitoring zone. The delay would continue until the fish, jellyfish, and/or Sargassum rafts that cause the postponement are confirmed to be outside the mitigation-monitoring zone.

(3) Time delays longer than 10 minutes will not be used. Initiation of the timer device will not start until the mitigation-monitoring zone is clear of marine mammals for 30 minutes.

(4) A calculated mitigation-monitoring zone will be established around each underwater detonation location based on charge weight and length of time-delay used. When conducting surveys within the mitigation-monitoring zone radius (but always outside the detonation plume/human safety zone) and travel in a circular pattern around the detonation point, surveying the inner (toward the detonation site) and outer (away from the detonation site) areas. For a survey radius of 914.4 meters, the boat will be positioned at 457.2 meters from the detonation point. Similarly, for a survey radius of 1,280.2 meters, boats will be positioned at 640.1 meter distance.

(5) For a survey radius of 914.4 meters, two boats are required. For a radius of 1,280.2 meters, either three boats or two boats/helicopter are required.

(6) When using two boats, each boat will be positioned on opposite sides of the detonation location, separated by 180 degrees. When using three boats, each boat will be separated by 120 degrees (equidistant from each other).

(7) Two observers in each boat will conduct continuous visual surveys of the mitigation-monitoring zone for the entire duration of the training event, including at least 30 minutes prior to detonation. Observers will search the mitigation-monitoring zone for the presence of marine mammals, and other marine species such as sea turtles, diving birds, large concentrations of fish or jellyfish, and large Sargassum mats. The presence of diving birds, fish, jellyfish, and Sargassum may indicate an increased likelihood of dolphin presence.

(8) To the extent practicable, boats will maintain 18.5 kilometer per hour search speed. This search speed is expected to ensure adequate coverage of the buffer zone. While weather conditions and sea state may require slower speeds in some instances, 18.5 kilometers per hour is considered a prudent, safe, and executable speed that will allow adequate surveillance. For a 914.4 meter survey zone, a boat traveling at 18.5 kilometers per hour and 457.2 meters from the detonation point would circle the point approximately 3.2 times during a 30 minute survey period. By using two boats, approximately 6.4 circles would be completed in total. Similarly, for a 1,280.2 meter radius, each boat would circle the detonation point approximately 2.3 times within 30 minutes, and use of three boats would result in 6.9 total circles.

(9) If available, a U.S. Navy helicopter can be used in lieu of one of the survey boats, so long as safety of flight is not jeopardized. U.S. Navy helicopter pilots are trained to conduct searches for relatively small objects in the water, such as a missing person. A helicopter search pattern is dictated by standard U.S. Navy protocols and accounts for multiple variables, such as size and shape of the search area, size of the object, and environmental conditions, among others.
(10) The mitigation-monitoring zone will be surveyed for 30 minutes prior to detonation and continue for 30 minutes after detonation (concentrated on the area down current of the test site), in order to monitor for marine mammals and other protected species. It is the U.S. Air Force’s (on behalf of the U.S. Navy) intent to conduct five successive detonations with a maximum time of 20 minutes between detonations, although a variety of factors may cause a delay of longer than 20 minutes between detonations, although a variety of factors can cause a delay of longer than 20 minutes, including a delay until the following day. Monitoring would continue during the 20 minutes time between detonations, and would serve as both post-detonation monitoring as well as pre-mission monitoring for the next detonation. If the time between detonations is delayed beyond 20 minutes, post-mission monitoring will be conducted for 30 minutes. At the conclusion of the final detonation, post-monitoring will be conducted for 30 minutes.

(11) Other personnel besides designated observers shall also maintain situational awareness of the presence of marine mammals within the mitigation-monitoring zone to the extent practicable given dive safety considerations.

(12) Divers placing the charges on mines will observe the immediate underwater area around the detonation site for marine mammals and other marine species such as diving birds, sea turtles, and Gulf sturgeon, and report sightings to surface observers.

(13) If a marine mammal is sighted within an established mitigation-monitoring zone or moving towards it, underwater detonation events will be postponed or suspended until the marine mammal that caused the postponement/suspension of training operations has voluntarily left the area and the area is clear of marine mammals for at least 30 minutes.

(14) If a marine mammal is detected within or about to enter an established mitigation-monitoring zone and subsequently cannot be reacquired, the mission will be postponed or suspended until the last specified location is outside the mitigation-monitoring zone, the animals is moving away from the area, and the area is clear of marine mammals for at least 30 minutes.

(15) Any marine mammal observed after an underwater detonation either injured or exhibiting signs of distress will be reported to Eglin Air Force Base. Eglin Air Force Base will coordinate with other members of marine mammal stranding networks, as appropriate, and report these events to NMFS or U.S. Fish and Wildlife Service. The report will contain date and time of sighting, location, species description, and indications of the animal’s status.

(16) Training operations shall be suspended if the conditions of §217.83(a)–(d) regarding the injury, serious injury, or death of a marine mammal during NEODS training operations are met.

(17) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 217.85 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization pursuant to §216.106 of this chapter and §217.87 for activities described in §216.80(a) are required to cooperate with NMFS, and any other Federal, state, or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southeast Region, NMFS, by letter or telephone, prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in §217.80(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in §217.80(b), then the Holder of the Letter of Authorization must, in addition to complying with the requirements of §217.82(a)–(d), notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–427–8400), within 24 hours of the discovery of the injured or dead animal.

(b) Holders of Letters of Authorization must designate trained, qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of
Authorization to perform the following monitoring requirements:

1. For NEODS testing, areas to be used in missions shall be visually monitored for marine mammal presence from a surface support vessel prior to detonation of mine neutralization charges. Monitoring shall be conducted 30 minutes before missions to clear the mitigation-monitoring zone. Post-mission monitoring shall also be conducted for 30 minutes after the final detonation (concentrated on the area down current of the test site). If marine mammals are inside the mitigation-monitoring zone, detonations shall be postponed until they have left the area. The observer on the vessel must be equipped with the proper optical equipment and lines of communication in order to recommend the decision to move forward with the mission.

2. Monitoring shall occur pre-mission (for 30 minutes), throughout the mission, and post-mission (for 30 minutes). Post-mission monitoring shall concentrate on the area down current of the test site.

3. Survey clearance procedures shall be conducted using best operational methods possible. After the mitigation-monitoring zone is cleared, all dolphins and protected species indicators (e.g., Sargassum rafts) shall be avoided to the maximum extent possible.

4. Clearance procedures shall be re-conducted if dolphins or protected species indicators (e.g., Sargassum rafts) are encountered.

5. After conducting post-mission monitoring, NEODS training operations data as required by Eglin Air Force Base’s Natural Resources Section, 96 CEG/CEVSN shall be reported. Post-mission monitoring shall commence immediately following each detonation and shall be concentrated on the area down current of the test site. If any injured or dead marine mammals are observed, that information will be reported and coordinated with marine animals stranding networks.

6. An annual summary (coordinated through 96 CEG/CEVSN) of mission observations shall be submitted to: NMFS, Southeast Regional Office, Protected Resources Division, 9721 Executive Center Drive North, St. Petersburg, Florida 33702; and NMFS, Office of Protected Resources, 1315 East West Highway, Silver Spring, Maryland 20910.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit an annual report summarizing the specified activity as well as monitoring and mitigation data to the Southeast Regional Administrator and Director of the Office of Protected Resources, NMFS, within 90 days after the conclusion of the NEODS training operations. This report must contain the following information:

1. Date(s), time(s), and location(s) of explosive activities,

2. Design of the monitoring program,

3. Results of the monitoring program including, but not necessarily limited to:
   (i) Species counts,
   (ii) Numbers of observed disturbances,
   (iii) Descriptions of the disturbance behaviors before, during, and after explosive activities,
   (iv) Bearing and distances,
   (v) Observations of unusual behaviors, numbers, or distributions of marine mammals in the activity area shall be reported to NMFS and the U.S. Fish and Wildlife Service so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing marine mammals, sea turtles, and fish carcasses as well as any rare or unusual species of marine mammals and fish shall be reported to NMFS and U.S. Fish and Wildlife Service.

(e) An annual report (referred to in §217.85(d)) must be submitted at the time of notification of the renewal of the Letter of Authorization.

(f) A draft comprehensive final report must be submitted at least 180 days prior to expiration of these regulations. This comprehensive technical report shall provide full documentation of methods, results, and interpretation of all monitoring during the first four years of operation.
and a half years of the Letter of Authorization. A revised final comprehensive technical report, including all monitoring results during the entire period of the Letters of Authorization, must be submitted 90 days after the end of the period of effectiveness of the regulations. This report shall summarize the activities undertaken and the results reported in all previous reports.

(g)(1) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by a Letter of Authorization, such as an injury, serious injury, or mortality, Eglin Air Force Base will immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS at 301–427–8401 and/or by email to Jolie.Harrison@noaa.gov and Howard.Goldstein@noaa.gov, and the NMFS Southeast Regional Marine Mammal Stranding Network at 877–433–8299 and/or by email to Blair.Mase@noaa.gov and Erin.Fougeres@noaa.gov. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;
(ii) Description of the incident;
(iii) Status of all noise-generating source use in the 24 hours preceding the incident;
(iv) Water depth;
(v) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
(vi) Description of all marine mammal observations in the 24 hours preceding the incident;
(vii) Species identification or description of the animal(s) involved;
(viii) Fate of the animal(s); and
(ix) Photographs or video footage of the animal(s) (if available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Eglin Air Force Base to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Eglin Air Force Base may not resume their activities until notified by NMFS via letter or email, or telephone.

(2) In the event that Eglin Air Force Base discovers an injured or dead marine mammal, and the lead observer determines that the cause of injury or death is unknown and the death is relatively recent (i.e., less than a moderate state of decomposition as described in the next paragraph), Eglin Air Force Base will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to Jolie.Harrison@noaa.gov and Howard.Goldstein@noaa.gov, and the NMFS Southeast Region Marine Mammal Stranding Network (877–433–8299) and/or by email to the Southeast Regional Stranding Coordinator (Blair.Mase@noaa.gov) and Southeast Regional Stranding Program Administrator (Erin.Fougeres@noaa.gov). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident, NMFS will work with Eglin Air Force Base to determine whether modifications in the activities are appropriate.

(3) In the event that Eglin Air Force Base discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the Letter of Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Eglin Air Force Base will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to Jolie.Harrison@noaa.gov and Howard.Goldstein@noaa.gov, and the NMFS Southeast Regional Marine Mammal Stranding Network (877–433–8299), and/or by email to the Southeast Regional Stranding Coordinator (Blair.Mase@noaa.gov) and Southeast Regional Stranding Program Administrator (Erin.Fougeres@noaa.gov), within 24 hours of discovery. Eglin Air Force Base will provide photographs or video footage (if available) or other documentation of the stranded animals.
sighting to NMFS and the Marine Mammal Stranding Network.

§ 217.86 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103) conducting the activity identified in §217.80(a) must apply for and obtain either an initial Letter of Authorization in accordance with §217.87 or a renewal under §217.88.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Application for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization;

(2) A description of the activity, the dates of the activity, and the specific location of the activity; and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of marine mammals.

(e) [Reserved]

§ 217.87 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, shall be valid for a period of time not to exceed the period of validity of this subpart.

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

§ 217.88 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §216.106 of this chapter and §217.87 for the activity identified in §217.80(a) shall be renewed upon a request by the applicant or determination by NMFS and the applicant that modifications are appropriate pursuant to the adaptive management component of these regulations, provided that:

(1) NMFS is notified that the activity described in the application submitted under §217.86 shall be undertaken and there shall not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) NMFS has received, reviewed, and accepted the monitoring reports required under §217.85(d) and (e) and the Letter of Authorization issued under §217.87;

(3) NMFS determines that the mitigation, monitoring, and reporting measures required under §§217.84 and 217.85 and the Letter of Authorization issued under §§216.106 and 217.87 of this chapter, were undertaken and shall be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(4) NMFS makes the determination required by §217.87(c).

(b) If either a request for a renewal of a Letter of Authorization issued under §216.106 of this chapter and §217.88, or a determination by NMFS and the applicant that modifications are appropriate pursuant to the adaptive management component of these regulations indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season shall occur, NMFS shall publish a proposed modification to the Letter of Authorization in the FEDERAL REGISTER and provide the public a period of 30 days for review and comment. Review and comment on renewals or modifications 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 substantive 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 shall be published in the Federal Register.

(d) Adaptive Management—NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the U.S. Air Force regarding the practicability of the modifications) 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 U.S. Air Force’s monitoring from the previous year;
(2) Results from marine mammal and sound research; or
(3) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 217.89 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS issued pursuant to §216.106 of this chapter and §217.87 of this chapter and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §217.88, without modification (except for the period of validity), is not considered a substantive modification.

(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 §217.80(b), a Letter of Authorization issued pursuant to §216.106 of this chapter and §217.87 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification shall be published in the Federal Register within 30 days subsequent to the action.

Subparts J–Q [Reserved]

Subpart R—Taking of Marine Mammals Incidental to Operation and Maintenance of the Neptune Liquefied Natural Gas Facility Off Massachusetts

SOURCE: 76 FR 34172, June 13, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 34172, June 13, 2011, subpart R was added, effective July 11, 2011 through July 10, 2016.

§ 217.170 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Neptune LNG LLC (Neptune) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to commissioning and operation, including maintenance and repair activities, at the Neptune Deepwater Port (Port).

(b) The taking of marine mammals by Neptune may be authorized in a Letter of Authorization only if it occurs at the Neptune Deepwater Port within Outer Continental Shelf blocks NK 19–04 6525 and NK 19–04 6575, which are located at approximately 42°28′09″ N. lat and 70°36′22″ W. long.

§ 217.171 Effective dates.

Regulations in this subpart are effective from July 11, 2011, through July 10, 2016.

[76 FR 35996, June 21, 2011]

§ 217.172 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 217.177 of this chapter, the Holder of the Letter of Authorization (hereinafter "Neptune") may incidentally, but not intentionally, take marine mammals
§ 217.173 Prohibitions.

Notwithstanding takings contemplated in §217.170 and authorized by a Letter of Authorization issued under §§216.106 and 217.177 of this chapter, no person in connection with the activities described in §217.170 may:

(a) Take any marine mammal not specified in §217.172(b);
(b) Take any marine mammal specified in §217.172(b) other than by incidental, unintentional Level B Harassment;
(c) Take a marine mammal specified in §217.172(b) 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 and 217.177 of this chapter.

§ 217.174 Mitigation.

(a) When conducting the activities identified in §217.170(a), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 217.177 must be implemented. These mitigation measures include but are not limited to:

(1) Major Repairs (May 1–November 30):

(i) During repairs, if a marine mammal is detected within 0.6 mi (1 km) of the repair vessel (or acoustically), the vessel superintendent or on-deck supervisor shall be notified immediately. The vessel’s crew will be put on a heightened state of alert. The marine mammal will be monitored constantly to determine if it is moving toward the repair area.

(ii) Repair vessels shall cease any movement in the area if a marine mammal other than a right whale is sighted within or approaching to a distance of 100 yd (91 m) from the operating repair vessel. Repair vessels shall cease any movement in the construction area if a right whale is sighted within or approaching to a distance of 500 yd (457 m) from the operating vessel. Vessels transiting the repair area, such as pipe haul barge tugs, shall also be required to maintain these separation distances.

(iii) Repair vessels shall cease all sound emitting activities if a marine mammal other than a right whale is sighted within or approaching to a distance of 100 yd (91 m) from the operating vessel. Repair vessels shall cease any movement in the construction area if a right whale is sighted within or approaching to a distance of 500 yd (457 m) from the operating vessel. Vessels transiting the repair area, such as pipe haul barge tugs, shall also be required to maintain these separation distances.

(2) Odontocetes:

(i) Long-finned pilot whale (Globicephala melas)—595 (an average of 119 annually).

(ii) Atlantic white-sided dolphin (Lagenorhynchus acutus)—1,935 (an average of 387 annually).

(iii) Bottlenose dolphin (Tursiops truncatus)—50 (an average of 10 annually).

(iv) Common dolphin (Delphinus delphis)—100 (an average of 20 annually).

(v) Risso’s dolphin (Grampus griseus)—100 (an average of 20 annually).

(vi) Killer whale (Orcinus Orca)—100 (an average of 20 annually).

(vii) Harbor porpoise (Phocoena phocoena)—25 (an average of 5 annually).

(3) Pinnipeds:

(i) Harbor seal (Phoca vitulina)—75 (an average of 15 annually).

(ii) Gray seal (Halichoerus Grypus)—75 (an average of 15 annually).
operating repair vessel. The back-calculated source level, based on the most conservative cylindrical model of acoustic energy spreading, is estimated to be 139 dB re 1 \( \mu \)Pa.

(iv) Repair activities may resume after the marine mammal is positively reconfirmed outside the established zones (either 500 yd (457 m) or 100 yd (91 m), depending upon species) or if the marine mammal has not been re-sighted in the established zones for 30 minutes.

(v) While under way, all repair vessels shall remain 500 yd (457 m) away from right whales and 100 yd (91 m) away from all other marine mammals, unless constrained by human safety concerns or navigational constraints.

(vi) All repair vessels 300 gross tons or greater must maintain a speed of 10 knots (18.5 km/hr) or less. Vessels less than 300 gross tons carrying supplies or crew between the shore and the repair site must contact the Mandatory Ship Reporting System, the U.S. Coast Guard (USCG), or the protected species observers (PSOs) at the repair site before leaving shore for reports of recent right whale sightings or active Dynamic Management Areas (DMAs) and, consistent with navigation safety, restrict speeds to 10 knots (18.5 km/hr) or less within 5 mi (8 km) of any recent sighting location and within any existing DMA.

(vii) Vessels transiting through the Cape Cod Canal and Cape Cod Bay (CCB) must reduce speeds to 10 knots (18.5 km/hr) or less, follow the recommended routes charted by NOAA to reduce interactions between right whales and shipping traffic, and avoid aggregations of right whales in the eastern portion of CCB.

(2) Major Repairs (December 1–April 30): If unplanned/emergency repair activities cannot be conducted between May 1 and November 30, then Neptune shall implement the following mitigation measures in addition to those listed in §217.174(a)(1)(i) through (vii):

(i) If on-board PSOs do not have at least 0.6-mi (1-km) visibility, they shall call for a shutdown of repair activities. If dive operations are in progress, then they shall be halted and divers brought on board until visibility is adequate to see a 0.6-mi (1-km) range. At the time of shutdown, the use of thrusters must be minimized to the lowest level needed to maintain personnel safety. If there are potential safety problems due to the shutdown, the captain must decide what operations can safely be shut down and shall document such activities in the data log.

(ii) Prior to leaving the dock to begin transit, the barge must contact one of the PSOs on watch to receive an update of sightings within the visual observation area. If the PSO has observed a North Atlantic right whale within 30 minutes of the transit start, the vessel shall hold for 30 minutes and again seek clearance to leave from the PSOs on board. PSOs will assess whale activity and visual observation ability at the time of the transit request to clear the barge for release and will grant clearance if no North Atlantic right whales have been sighted in the last 30 minutes in the visual observation area.

(iii) Neptune or its contractor shall provide a half-day training course to designated crew members assigned to the transit barges and other support vessels who will have responsibilities for watching for marine mammals. This course shall cover topics including, but not limited to, descriptions of the marine mammals found in the area, mitigation and monitoring requirements contained in the Letter of Authorization, sighting log requirements, and procedures for reporting injured or dead marine mammals. These designated crew members shall be required to keep watch on the bridge and immediately notify the navigator of any whale sightings. All watch crew members shall sign into a bridge log book upon start and end of watch. Transit route, destination, sea conditions, and any protected species sightings/mitigation actions during watch shall be recorded in the log book. Any whale sightings within 3,281 ft (1,000 m) of the vessel shall result in a high alert and slow speed of 4 knots (7.4 km/hr) or less. A sighting within 2,461 ft (750 m) shall result in idle speed and/or ceasing all movement.

(iv) The material barges and tugs used for repair work shall transit from the operations dock to the work sites during daylight hours, when possible,
provided the safety of the vessels is not compromised. Should transit at night be required, the maximum speed of the tug shall be 5 knots (9.3 km/hr).

(v) Consistent with navigation safety, all repair vessels must maintain a speed of 10 knots (18.5 km/hr) or less during daylight hours. All vessels shall operate at 5 knots (9.3 km/hr) or less at all times within 3.1 mi (5 km) of the repair area.

(3) Speed Restrictions in Seasonal Management Areas (SMAs): Repair vessels and shuttle regasification vessels (SRVs) shall transit at 10 knots (18.5 km/hr) or less in the following seasons and areas, which either correspond to or are more restrictive than the times and areas in NMFS' regulations at 50 CFR 224.105 that implement speed restrictions to reduce the likelihood and severity of ship strikes of right whales:

(i) CCB SMA from January 1 through May 15, which includes all waters in CCB, extending to all shorelines of the Bay, with a northern boundary of 42°12’ N. latitude;

(ii) Off Race Point SMA year round, which is bounded by straight lines connecting the following coordinates in the order stated: 42°30’ N. 69°45’ W.; thence to 42°30’ N. 70°30’ W.; thence to 42°12’ N. 70°30’ W.; thence to 42°12’ N. 70°12’ W.; thence to 42°04’ 56.5” N. 70°12’ W.; thence along mean high water line and inshore limits of COLREGS limit to a latitude of 41°40’ N.; thence due east to 41°41’ N. 69°45’ W.; thence back to starting point; and

(iii) Great South Channel (GSC) SMA from April 1 through July 31, which is bounded by straight lines connecting the following coordinates in the order stated:

(A) 42°30’ N. 69°45’ W.
(B) 41°40’ N. 69°45’ W.
(C) 41°00’ N. 69°05’ W.
(D) 42°00’ N. 67°06’ 24” W.
(E) 42°30’ N. 67°27’ W.
(F) 42°30’ N. 69°45’ W.

(4) Additional Mitigation Measures:

(i) When approaching and departing from the Neptune Port, SRVs shall use the Boston Traffic Separation Scheme (TSS) starting and ending at the entrance to the GSC. Upon entering the TSS, the SRV shall go into a “heightened awareness” mode of operation.

(ii) In the event that a whale is visually observed within 0.6 mi (1 km) of the Port or a confirmed acoustic detection is reported on either of the two auto-detection buoys (ABs) closest to the Port, departing SRVs shall delay their departure from the Port, unless extraordinary circumstances, defined in the Marine Mammal Detection, Monitoring, and Response Plan (the Plan), require that the departure is not delayed. The departure delay shall continue until either the observed whale has been visually (during daylight hours) confirmed as more than 0.6 mi (1 km) from the Port or 30 minutes have passed without another confirmed detection either acoustically within the acoustic detection range of the two ABs closest to the Port or visually within 0.6 mi (1 km) from Neptune.

(iii) SRVs that are approaching or departing from the Port and are within the Area to be Avoided (ATBA) surrounding Neptune shall remain at least 0.6 mi (1 km) away from any visually detected right whales and at least 100 yd (91 m) away from all other visually detected whales unless extraordinary circumstances, as defined in Section 1.2 of the Plan, require that the vessel stay its course. The ATBA is defined in 33 CFR 150.940. It is the largest area of the Port marked on nautical charts, and it is enforceable by the USCG in accordance with the 33 CFR 150.900 regulations. The Vessel Master shall designate at least one lookout to be exclusively and continuously monitoring for the presence of marine mammals at all times while the SRV is approaching or departing Neptune.

(iv) Neptune shall ensure that other vessels providing support to Port operations during regasification activities that are approaching or departing from the Port and are within the ATBA shall be operated so as to remain at least 0.6 mi (1 km) away from any visually detected right whales and at least 100 yd (91 m) from all other visually detected whales.

(v) PSOs shall direct a moving vessel to slow to idle if a baleen whale is seen less than 0.6 mi (1 km) from the vessel.

(vi) Use of lights during repair or maintenance activities shall be limited
National Marine Fisheries Service/NOAA, Commerce § 217.175

§ 217.175 Requirements for monitoring and reporting.

(a) Visual Monitoring Program:

(1) Neptune shall employ PSOs during maintenance- and repair-related activities on each vessel that has a dynamic positioning system. Two (2) PSOs shall be on-duty at all times. All PSOs must receive NMFS-approved PSO training and be approved in advance by NMFS after a review of their qualifications.

(2) Qualifications for these PSOs shall include direct field experience on a marine mammal observation vessel and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico.

(3) The PSOs (one primary and one secondary) are responsible for visually locating marine mammals at the ocean’s surface and, to the extent possible, identifying the species. The primary PSO shall act as the identification specialist, and the secondary PSO shall serve as data recorder and also assist with identification. Both PSOs shall have responsibility for monitoring for the presence of marine mammals.

(4) The PSOs shall monitor the maintenance/repair area using the naked eye, hand-held binoculars, and/or power binoculars.

(5) The PSOs shall scan the ocean surface during maintenance- and repair-related activities and record all sightings in marine mammal field sighting logs. Observations of marine mammals shall be identified to the species or the lowest taxonomic level possible, and their relative position in relation to the vessel shall be recorded.

(b) Passive Acoustic Monitoring (PAM) Program:

(1) Neptune shall work with NMFS, Stellwagen Bank National Marine Sanctuary (SBNMS), and other scientists to install and monitor an array of passive acoustic detection buoys in the Boston TSS that meets the criteria specified in the recommendations developed by NOAA through consultation.
(2) Neptune shall work with NMFS, SBNMS, and other scientists to monitor the archival array of acoustic recording units (ARUs), or “pop-ups,” around the Port that meets the criteria specified in the program developed by NOAA in consultation with the USCG under the NMSA. The ARUs shall remain in place for 5 years following initiation of operations to monitor the actual acoustic output of port operations and alert NOAA to any unanticipated adverse effects of port operations, such as large-scale abandonment of the area or greater acoustic impacts than predicted through modeling.

(3) Passive acoustic devices shall be actively monitored for detections by a NMFS-approved bioacoustic technician.

(4) Repair Activity PAM Measures: PAM, in addition to that required in this section of these regulations, shall be required, on a case-by-case basis, during both planned and emergency repair activities in order to better detect right whales in the area of repair work and to collect additional data on the noise levels produced during repair and maintenance activities.

(i) Neptune shall work with NOAA (NMFS and SBNMS) to evaluate when to install and maintain an array of real-time passive acoustic detection buoys to provide early warnings for potential occurrence of right whales in the vicinity of the repair area. The number of passive acoustic detection buoys installed around the activity site, if deemed necessary, shall be commensurate with the type and spatial extent of maintenance/repair work required, but must be sufficient to detect vocalizing right whales within the 120-dB impact zone.

(ii) Neptune shall provide NMFS with empirically measured source level data for all sources of noise associated with Port maintenance and repair activities. Measurements shall be carefully planned and coordinated with noise-producing activities and shall be collected from the passive detection network.

(5) SRV Regasification PAM Measures: Source levels associated with dynamic positioning of SRVs at the buoys shall be estimated using empirical measurements collected from a platform positioned as close as practicable to thrusters while in use.

(c) Neptune must implement the following reporting requirements:

(1) Because the Port is within the Mandatory Ship Reporting Area (MSRA), all SRVs transiting to and from the Port must report their activities to the mandatory reporting section of the USCG to remain apprised of North Atlantic right whale movements within the area. All vessels entering and exiting the MSRA must report their activities to WHALESNORTH. Any North Atlantic right whale sightings must be reported to the NMFS Sighting Advisory System.

(2) Repair work reports. (i) For major repair work associated with the pipeline lateral or other port components, Neptune shall notify the appropriate NOAA personnel as soon as practicable after it is determined that repair work must be conducted.

(ii) During maintenance and repair of the pipeline lateral or other port components, weekly status reports must be provided to NOAA. The weekly report must include data collected for each distinct marine mammal species observed in the project area during the period of the repair activity. The weekly reports shall include the following:

(A) The location, time, and nature of the pipeline lateral activities;

(B) Whether the dynamic position (DP) system was operated and, if so, the number of thrusters used and the time and duration of DP operation;

(C) Marine mammals observed in the area (number, species, age group, and initial behavior);

(D) The distance of observed marine mammals from the repair activities;

(E) Observed marine mammal behaviors during the sighting;

(F) Whether any mitigation measures were implemented;

(G) Weather conditions (sea state, wind speed, wind direction, ambient temperature, precipitation, and percent cloud cover, etc.);

(H) Condition of the marine mammal observation (visibility and glare); and
(I) Details of passive acoustic detections and any action taken in response to those detections.

(iii) For all minor repair work, Neptune must notify NOAA regarding when and where the repair/maintenance work is to take place along with a tentative schedule and description of the work, as soon as practicable after it is determined that repair work must be conducted. Vessel crews shall record/document any marine mammal sightings during the work period.

(iv) At the conclusion of all minor repair work, Neptune shall provide NOAA with a report describing any marine mammal sightings, the type of work taking place when the sighting occurred, and any avoidance actions taken during the repair/maintenance work.

(3) Incident reports. During all phases of project repair/maintenance activities and operation, sightings of any injured or dead marine mammals must be reported immediately to the Chief, Permits, Conservation and Education Division or staff member and the Northeast Stranding and Disentanglement Program, regardless of whether the injury or death is caused by project activities. If the injury or death was caused by a project vessel (e.g., SRV, support vessel, or construction vessel), the USCG must be notified immediately, and a full report must be provided to NMFS. Activities will not resume until review and approval has been given by NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;
(ii) The name and type of vessel involved;
(iii) The vessel’s speed during the incident;
(iv) Description of the incident;
(v) Water depth;
(vi) Environmental conditions (e.g., wind speed and direction, sea state, cloud cover, and visibility);
(vii) Species identification or description of the animal;
(viii) The fate of the animal; and
(ix) Photographs or video footage of the animal (if equipment is available).

(4) Annual reports. (i) An annual report on marine mammal monitoring and mitigation shall be submitted to NMFS, Office of Protected Resources, and NMFS, Northeast Regional Office (specific contact information to be provided in Letter of Authorization), on August 1 of each year. The annual report shall cover the time period of January 1 through December 31 of each year of activity.

(ii) The annual report shall include data collected for each distinct marine mammal species observed in the project area in the Massachusetts Bay during the period of Port operations and repair/maintenance activities. The annual report shall also include a description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to operation and repair/maintenance activities. Additional information that shall be recorded by Neptune or its contractor during operations and repair/maintenance activities and contained in the reports include: results of empirical source level estimation for thrusters while in use and activities associated with maintenance and repair events, date and time of marine mammal detections (visually or acoustically), weather conditions, species identification, approximate distance from the source, activity of the vessel when a marine mammal is sighted, and whether thrusters were in use and, if so, how many at the time of the sighting.

(5) Five-year comprehensive report. (i) Neptune shall submit a draft comprehensive final report to NMFS, Office of Protected Resources, and NMFS, Northeast Regional Office (specific contact information to be provided in Letter of Authorization), 180 days prior to the expiration of the regulations. This comprehensive technical report shall provide full documentation of methods, results, and interpretation of all monitoring during the first four and a half years of the LOA.

(ii) Neptune shall submit a revised final comprehensive technical report, including all monitoring results during the entire period of the LOAs, 90 days after the end of the period of effectiveness of the regulations to NMFS, Office of Protected Resources, and NMFS.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. Citizen (as defined by §216.103) conducting the activity identified in §217.170(a) (i.e., Neptune) must apply for and obtain either an initial Letter of Authorization in accordance with §217.177 or a renewal under §217.178.

(b) [Reserved]

§ 217.177 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, shall be valid for a period of time not to exceed the period of validity of this subpart.

(b) The Letter of Authorization shall 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 shall 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).

§ 217.178 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §§216.106 and 217.177 of this chapter for the activity identified in §217.170(a) shall be renewed upon request by the applicant or determination by NMFS and the applicant that modifications are appropriate pursuant to the adaptive management component of these regulations indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If either a request for a renewal of a Letter of Authorization issued under §§216.106 and 217.178 or a determination by NMFS and the applicant that modifications are appropriate pursuant to the adaptive management component of these regulations indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(1) NMFS receives the monitoring reports required under §217.175(c)(1)–(4); and

(2) NMFS determines that the mitigation, monitoring and reporting measures required under §§217.174 and 217.175 and the Letter of Authorization issued under §§216.106 and 217.177 of this chapter were undertaken and will be undertaken during the upcoming annual period of validity of a renewed 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) Adaptive Management—NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with Neptune regarding the practicability of the modifications) 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 Neptune’s monitoring from the previous year;
(2) Results from general marine mammal and sound research; or
(3) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

§217.179 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization issued by NMFS, pursuant to §§216.106 and 217.177 of this chapter and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §217.178, without modification (except for the period of validity), is not considered a substantive modification.

(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 §217.172(b), a Letter of Authorization issued pursuant to §§216.106 and 217.177 of this chapter and subject to the provisions of this subpart may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subparts S–T (Reserved)

Subpart U—Taking Of Marine Mammals Incidental To The Port of Anchorage Marine Terminal Redevelopment Project

§217.200 Specified activities and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in §217.202(b) by the Port of Anchorage and the U.S. Department of Transportation Maritime Administration (MARAD), and those persons it authorizes to engage in construction activities associated with the Port of Anchorage Marine Terminal Redevelopment Project, specifically in-water pile driving, at the Port of Anchorage, Alaska.

(b) [Reserved]

§217.201 Effective dates.

Regulations in this subpart are effective from July 15, 2009, through July 14, 2014.

§217.202 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §216.106 of this chapter and §217.207, the Port of Anchorage and MARAD, and persons under their authority, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in §217.200, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The taking of marine mammals under a Letter of Authorization is limited to the incidental take, by Level B harassment only, of the following species under the activities identified in §217.200(a): Cook Inlet beluga whales (Delphinapterus leucas), harbor seals (Phoca vitulina), harbor porpoises (Phocoena phocoena), and killer whales (Orcinus orca).

(c) The taking by injury or death of the species listed in paragraph (b) of this section or the taking by Level B harassment, injury or death of any other marine mammal species is prohibited and may result in the modification, suspension, or revocation of a Letter of Authorization.

§217.203 Prohibitions.

Notwithstanding takings contemplated in §217.202(b) and authorized by a Letter of Authorization issued under §216.106 of this chapter and §217.207, no person in connection with the activities described in §217.200 may:

(a) Take any marine mammal not specified in §217.202(b);

(b) Take any marine mammal specified in §217.202(b) other than by incidental, unintentional Level B harassment;

(c) Take a marine mammal specified in §217.202(b) if such taking results in more than a negligible impact on the
§ 217.204 Mitigation.

(a) When conducting operations identified in § 217.200(a), the mitigation measures contained in the Letter of Authorization, issued under § 216.106 of this chapter and § 217.207, must be implemented. These mitigation measures are:

(1) Through monitoring described under § 217.205, the Holder of a Letter of Authorization will ensure that no marine mammal is subjected to a sound pressure levels of 190 or 180 dB re: 1 microPa or greater for pinnipeds and cetaceans, respectively. If a marine mammal is detected within or approaching a distance 200 m from in-water pile driving or in-water chipping, operations shall be immediately delayed or suspended until the marine mammal moves outside these designated zones or the animal is not detected within 15 minutes of the last sighting.

(2) If a marine mammal is detected within or approaching the Level B harassment zone designated for impact pile driving (350 m) prior to in-water impact pile driving, operations shall not commence until the animal moves outside this zone or it is not detected within 15 minutes of the last sighting.

(3) If a marine mammal is detected within or approaching the Level B harassment zone designated for vibratory pile driving (1,300 m) prior to in-water vibratory pile driving, operations shall not commence until the marine mammal moves outside this zone or it is not detected within 15 minutes of the last sighting.

(4) A start" technique shall be used at the beginning of each day’s in-water pile driving activities or if pile driving has ceased for more than one hour to allow any marine mammal that may be in the immediate area to leave before piling driving reaches full energy. For vibratory hammers, the soft start requires the holder of the Letter of Authorization to initiate noise from the hammers for 15 seconds at reduced energy followed by 1-minute waiting period and repeat the procedure two additional times. If an impact hammer is used, the soft start requires an initial set of three strikes from the impact hammer at 40 percent energy, followed by a one minute waiting period, then two subsequent 3 strike sets.

(5) In-water pile driving or chipping shall not occur when conditions restrict clear, visible detection of all waters within the appropriate harassment zones or the 200 m safety zone. Such conditions that can impair sightibility include, but are not limited to, fog and rough sea state.

(6) In-water piles will be driven with a vibratory hammer to the maximum extent possible (i.e., until a desired depth is achieved or to refusal) prior to using an impact hammer.

(7) In-water impact pile driving shall not occur during the period from two hours before low tide until two hours after low tide.

(8) The following measures apply to all in-water pile driving, except during the “stabbing” phase, and all in-water chipping associated with demolition of the existing dock:

(i) No in-water pile driving (impact or vibratory) or chipping shall occur if any marine mammal is located within 200m of the hammer in any direction. If any marine mammal is sighted within or approaching this 200m safety zone, pile-driving or chipping must be suspended until the animal has moved outside the 200m safety zone or the animal is not resighted within 15 minutes.

(ii) If a group of more than 5 beluga whales is sighted within the Level B harassment isopleths, in-water pile driving shall be suspended. If the group is not re-sighted within 15 minutes, pile driving may resume.

(iii) If a beluga whale calf or group with a calf is sighted within or approaching a harassment zone, in-water pile driving shall cease and shall not be resumed until the calf or group is confirmed to be outside of the harassment zone and moving along a trajectory away from such zone. If the calf or group with a calf is not re-sighted within 15 minutes, pile driving may resume.
(9) If maximum authorized take is reached or exceeded for a particular species, any marine mammal of that species entering into the harassment or safety isopleths will trigger mandatory in-water pile driving shut down.

(10) For Port of Anchorage operated in-water heavy machinery work other than pile driving or chipping (i.e., dredging, dump scowles, tug boats used to move barges, barge mounted hydraulic excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 50 m, those operations will cease and vessels will reduce to the slowest speed practicable while still maintaining control of the vessel and safe working conditions.

(11) In the event the Port of Anchorage conducts out-of-water blasting, detonation of charges will be delayed if a marine mammal is detected anywhere within a visible distance from the detonation site.

(12) Additional mitigation measures as contained in a Letter of Authorization.

(b) The Holder of a Letters of Authorization must designate qualified, on-site marine mammal observers (MMOs), approved in advance by NMFS, as specified in the Letter of Authorization, to:

(1) Conduct visual marine mammal monitoring at the Port of Anchorage beginning 30 minutes prior to and during all in-water pile driving or chipping and out-of-water blasting.

(2) Record the following information on NMFS-approved marine mammal sighting sheets whenever a marine mammal is detected:

(i) Date and time of initial sighting to end of sighting, tidal stage, and weather conditions (including Beaufort Sea State);

(ii) Species, number, group composition, initial and closest distance to pile driving hammer, and behavior (e.g., activity, group cohesiveness, direction and speed of travel, etc.) of animals throughout duration of sighting;

(iii) Any discrete behavioral reactions to in-water work;

(iv) The number (by species) of marine mammals that have been taken;

(v) Pile driving, chipping, or out of water blasting activities occurring at the time of sighting and if and why shut down was or was not implemented.

(3) Employ a scientific marine mammal monitoring team separate from the on-site MMOs to characterize beluga whale abundance, movements, behavior, and habitat use around the Port of Anchorage and observe, analyze, and document potential changes in behavior in response to in-water construction work. This monitoring team is not required to be present during all in-water pile driving operations but will continue monitoring one-year post in-water construction. The on-site MMOs and this marine mammal monitoring team shall remain in contact to alert each other to marine mammal presence when both teams are working.

(c) The Holder of a Letter of Authorization shall submit a monthly report to NMFS’ Headquarters Permits, Education and Conservation Division and...

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103 of this chapter) conducting the activity identified in §217.200(a) (the Port of Anchorage and MARAD) must apply for and obtain either an initial Letter of Authorization in accordance with §217.207 or a renewal under §217.208.

(b) The application must be submitted to NMFS at least 60 days before the expiration of the initial or current Letter of Authorization.

(c) Applications for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization;

(2) The date(s), duration, and the specified geographic region where the activities specified in §217.200 will occur; and

(3) The most current population estimate of Cook Inlet beluga whales and the estimated percentage of marine mammal populations potentially affected for the 12-month period of effectiveness of the Letter of Authorization;

(4) A summary of take levels, monitoring efforts and findings at the Port of Anchorage to date.

(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with this section and, if adequate and complete, issue a Letter of Authorization.

§ 217.207 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §217.208.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking; and

(2) Requirements for mitigation, monitoring and reporting, including, but not limited to, means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses.

(c) Issuance of a Letter of Authorization will be based on the determination that the number of marine mammals taken during the period the Letter of Authorization is valid will be small, that the total taking of marine mammals by the activities specified in §217.200(a) will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for subsistence uses.

(d) Notice of issuance or denial of an application for a Letter of Authorization will be published in the Federal Register within 30 days of a determination.

§ 217.208 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §216.106 of this chapter and §217.207 for the activity identified in §217.200(a) will be renewed annually upon:
(1) Notification to NMFS that the activity described in the application submitted under §217.206 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §217.205(d) and (e), and the Letter of Authorization issued under §217.207, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§217.204 and 217.205 and the Letter of Authorization issued under §216.106 of this chapter and §217.207, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(4) A determination by NMFS that the number of marine mammals taken during the period of the Letter of Authorization will be small, that the total taking of marine mammals by the activities specified in §217.200(a) will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for subsistence uses.

(b) If a request for a renewal of a Letter of Authorization issued under §216.106 of this chapter indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request.

(c) Notice of issuance or denial of a renewal of a Letter of Authorization will be published in the Federal Register within 30 days of a determination.


(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §216.106 of this chapter and §217.207 and subject to the provisions of this subpart, shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §217.208, without modification (except for the period of validity), is not considered a substantive modification.

(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 §217.202(b), a Letter of Authorization issued pursuant to §216.106 of this chapter and §217.207 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Subpart A—Taking Marine Mammals Incidental to U.S. Navy Training in the Virginia Capes Range Complex (VACAPES Range Complex)

Sec. 218.1 Specified activity, specified geographical area and effective dates.
218.2 Permissible methods of taking.
218.3 Prohibitions.
218.4 Mitigation.
218.5 Requirements for monitoring and reporting.
218.6 Applications for Letters of Authorization.
218.7 Letters of Authorization.
218.8 Renewal of Letters of Authorization and adaptive management.
218.9 Modifications to Letters of Authorization.

Subpart B—Taking Marine Mammals Incidental to U.S. Navy Training in the Jacksonville Range Complex

218.10 Specified activity and specified geographical area and effective dates.
218.11 Permissible methods of taking.
218.12 Prohibitions.
218.13 Mitigation.
218.14 Requirements for monitoring and reporting.
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218.105 Requirements for monitoring and reporting.

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218.172 Prohibitions.

218.173 Mitigation.

218.174 Requirements for monitoring and reporting.

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218.178 Modifications to Letters of Authorization.

§ 218.178 Modifications to Letters of Authorization.

Subpart S—Taking Marine Mammals Incidental to U.S. Naval Surface Warfare Center Panama City Division Mission Activities

218.178 Modifications to Letters of Authorization.

218.180 Specified activity and specified geographical area and effective dates.

218.181 Permissible methods of taking.

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218.185 Applications for Letters of Authorization.

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218.230 Specified activity, level of taking, and species.

218.231 Effective dates.

218.232 Permissible methods of taking.

218.233 Prohibitions.

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218.241 Adaptive management.

AUTHORITY: 16 U.S.C. 1361 et seq.

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§ 218.2 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §216.106 of this chapter and §218.7, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.1(c), provided that 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 §218.1(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 §218.1(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(i) Level B Harassment:

(A) Humpback whale (Megaptera novaeangliae)—10 (an average of 2 annually); and

(B) Fin whale (Balaenoptera physalus)—10 (an average of 2 annually).

(ii) Odontocetes:

(A) Sperm whale (Physeter macrocephalus)—10 (an average of 2 annually);

(B) Pygmy or dwarf sperm whales (Kogia sp.)—15 (an average of 3 annually);

(C) Rough-toothed dolphin (Steno bredanensis)—5 (an average of 1 annually);

(D) Bottlenose dolphin (Tursiops truncatus)—145 (an average of 29 annually);

(E) Pantropical spotted dolphin (Stenella attenuata)—350 (an average of 70 annually);

(F) Striped dolphin (S. coeruleoalba)—15 (an average of 3 annually);

(G) Clymene dolphin (S. clymene)—165 (an average of 33 annually);

(H) Atlantic spotted dolphin (S. frontalis)—215 (an average of 43 annually);

(I) Common dolphin (Delphinus delphis)—1,065 (an average of 213 annually);

(J) Risso’s dolphin (Grampus griseus)—80 (an average of 16 annually); and

(K) Pilot whales (Globicephala sp.)—50 (an average of 10 annually).

(ii) Level A Harassment (Injury):

(A) Atlantic spotted dolphin—5 (an average of 1 annually);

(B) Common dolphin—100 (an average of 20 annually);

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

(D) Striped dolphin—15 (an average of 3 annually).

§ 218.3 Prohibitions.

Notwithstanding takings contemplated in §218.2 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.7, no person in connection with the activities described in §218.1 may:

(a) Take any marine mammal not specified in §218.2(c);

(b) Take any marine mammal specified in §218.2(c) other than by incidental take as specified in §218.2(c)(1) and (2);

(c) Take a marine mammal specified in §218.2(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or
§ 218.4 Mitigation.

(a) When conducting training activities identified in §218.1(c), the mitigation measures contained in the Letter of Authorization issued under §216.106 of this chapter and §218.7 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 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” 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 whales 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 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 Applicable to Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration: The mitigation measures apply to all Navy vessel transits, including those vessels that would transit to and from East Coast ports and the VACAPES Range Complex.

(i) Mid-Atlantic, Offshore of the Eastern United States:

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission and safety (at a speed that does not compromise safety of navigation) during the months indicated below and within a 37 km (20 nm) arc (except as noted) of the specified associated reference points:

(1) South and East of Block Island (37 km (20 NM) seaward of line between 41–4.49° N. lat. 071–51.15° W. long. and 41–18.58° N. lat. 070–50.23° W. long.): Sept-Oct and Mar-Apr

(2) New York/New Jersey (40–30.64° N. lat. 073–57.76° W. long.): Sep-Oct and Feb-Apr.


(4) Chesapeake Bay (Hampton Roads and Baltimore) (37–1.11° N. lat. 075–57.56° W. long.): Nov-Dec and Feb-Apr.


(B) During the months indicated in paragraph (a)(3)(i)(A) of this section, Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not
specifically identified in paragraph (a)(3)(i)(A) of this section.

(C) All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

(D) Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (1,500 ft) away from any observed whale, consistent with vessel safety.

(ii) Southeast Atlantic, Offshore of the Eastern United States—for the purposes of the measures below (paragraphs (a)(3)(ii)(A) & (B) of this section), the “southeast” encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30–15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15–April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised) and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the North Atlantic right whale critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(1) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

(2) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(3) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(4) During the North Atlantic right whale calving season, north-south transits through the critical habitat are prohibited.

(5) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).

(iii) Northeast Atlantic, Offshore of the Eastern United States:

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat., 69–65° W. long.; 41–45° N. lat., 69–45° W. long.; 42–10° N. lat., 68–31° W. long.; 41–38° N. lat., 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat., 70–10° W. long.; 42–12° N. lat., 70–15° W. long.; 42–12° N. lat., 70–30° W. long.; 41–46.8° N. lat., 70–30° W. long.
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(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the northeastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos were taken. Navy personnel are encouraged to take photos whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(1) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when change of course would create an imminent and serious threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(2) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed (the minimum speed at which mission goals or safety will not be compromised) so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(3) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(4) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions per Rule 6 of International Navigational Rules.

(4) Mitigation Measures for Specific At-sea Training Events—If a marine mammal is 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 the incident to NMFS.


(A) FIREX using IMPASS would only be conducted in the four designated areas specified in the Navy’s LOA application in the VACAPES Range Complex.

(B) Pre-exercise monitoring of the target area shall be conducted with “Big Eyes” prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships shall be required to maintain a lookout dedicated to visually searching for marine mammals 180° along the ship track line and 360° at each buoy drop-off location.

(C) “Big Eyes” on the ship shall be used to monitor a 600 yd (548 m) buffer zone around the target area for marine mammals during naval-gunfire events.

(D) Ships shall not fire on the target if any marine mammals are detected within or approaching the 600 yd (548 m) buffer zone until the area is cleared. If marine mammals are present, operations shall be suspended. Visual observation shall occur for approximately 45 minutes, or until the animal has been observed to have cleared the area and is heading away from the buffer zone.

(E) Post-exercise monitoring of the entire target area shall take place with “Big Eyes” and the naked eye during the retrieval of the IMPASS sonobuoy array following each firing exercise.

(F) FIREX with IMPASS shall take place during daylight hours only.

(G) FIREX with IMPASS shall only be used in Beaufort Sea State three (3) or less.
National Marine Fisheries Service/NOAA, Commerce § 218.5

(H) The visibility must be such that the fall of shot is visible from the firing ship during the exercise.

(I) No firing shall occur if marine mammals are detected within 70 yd (64 m) of the vessel.

(ii) Air-to-Surface At-Sea Bombing Exercises (250-lbs to 2,000-lbs explosive bombs):

(A) 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.

(B) A buffer zone of 5,100-yd (4,663 m) radius shall be established around the intended target zone. The exercises shall be conducted only when marine mammals are observed to be outside the buffer zone.

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

(iii) Air-to-Surface Missile Exercises (Explosive):

(A) Aircraft shall initially survey the intended ordnance impact area for marine mammals.

(B) During the actual firing of the weapon, the aircraft involved must be able to observe the intended ordnance impact area to ensure the area is free of marine mammal transiting the range.

(C) Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at slowest safe speed.

(D) Explosive ordnance shall not be targeted to impact within 1,800 yd (1,646 m) of sighted marine mammals.

(iv) Mine Neutralization Training Involving Underwater Detonations (up to 20-lb charges):

(A) This activity shall only occur in W-50 of the VACAPES Range Complex.

(B) Observers shall survey the Zone of Influence (ZOI), a 700 yd (640 m) radius from detonation location for marine mammals from all participating vessels during the entire operation. A survey of the ZOI (minimum of 3 parallel tracklines 219 yd [200 m] apart) using support craft shall be conducted at the detonation location 30 minutes prior through 30 minutes post detonation. Aerial survey support shall be utilized whenever assets are available.

(C) Detonation operations shall be conducted during daylight hours only.

(D) If a marine mammal is sighted within the ZOI, the animal shall be allowed to leave of its own volition. The Navy shall suspend detonation exercises and ensure the area is clear of marine mammals for a full 30 minutes prior to detonation.

(E) Divers placing the charges on mines and dive support vessel personnel shall survey the area for marine mammals and shall report any sightings to the surface observers. These animals shall be allowed to leave of their own volition and the ZOI shall be clear of marine mammals for 30 minutes prior to detonation.

(F) No detonations shall take place within 3.2 nm (6 km) of an estuarine inlet (Chesapeake Bay Inlets).

(G) No detonations shall take place within 1.6 nm (3 km) of shoreline.

(H) Personnel shall record any protected species observations during the exercise as well as measures taken if species are detected within the ZOI.

(b) [Reserved]

§ 218.5 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §216.106 of this chapter and §218.7 for activities described in §218.1(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §218.1(c) is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in §218.2(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the VACAPES Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below.
§ 218.5
(1) Vessel or aerial surveys. (i) The Holder of this Authorization shall visually survey a minimum of 2 explosive events per year, one of which shall be a multiple detonation event. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs).

(ii) Where operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(iii) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (i.e., the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(iv) When conducting a particular survey, the survey team shall collect:

(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);
(K) Observed behavior—Watchstanders shall 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; and
(M) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.

(2) Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.

(i) Any time a towed hydrophone array is employed during shipboard surveys the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

(iii) The array shall have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

(3) Marine mammal observers on Navy platforms. (i) As required in §218.5(c)(1), MMOs selected for aerial or vessel survey shall be placed on a Navy platform during one of the explosive exercises being monitored per year, the other designated exercise shall be monitored by the Navy lookouts/watchstanders.

(ii) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the lookouts.

(v) The MMOs shall not be part of the Navy’s formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only
exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs be the same as those collected by Navy lookout/watchstanders described in §218.5(c)(1)(iv).

(d) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan 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.


(e) 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 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).

(f) Annual VACAPES Range Complex Monitoring Plan Report—The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the VACAPES Range Complex Monitoring Plan. Data collection methods shall be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the VACAPES Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in §218.5(g). The VACAPES Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from VACAPES Range Complex and multiple range complexes.

(g) Annual VACAPES Range Complex Exercise Report—The Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall provide an annual update on the Navy’s explosive tracking methods, including improvements from the previous year.

(1) Total annual number of each type of explosive exercise (of those identified as part of the “specified activity” in this final rule) conducted in the VACAPES Range Complex.

(2) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(h) VACAPES 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 the VACAPES Range Complex exercises for which annual reports are required (Annual VACAPES Range Complex Exercise Reports and VACAPES Range Complex Monitoring Plan Reports). This report shall be submitted at the end of the fourth year of the rule (May 2013), covering activities that have occurred through December 1, 2012.

(i) The Navy shall respond to NMFS’ comments and requests for additional information or clarification on the VACAPES Range Complex Comprehensive Report, the Annual VACAPES
Range Complex Exercise Report, or the Annual VACAPES 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 shall 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.

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

§ 218.6 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations in this subpart, the U.S. citizen (as defined by §216.103) conducting the activity identified in §218.1(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.7 or a renewal under §218.8.

§ 218.7 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 §218.8 and the modification conditions in §218.9.

(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).

§ 218.8 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §216.106 of this chapter and §218.7 for the activity identified in §218.1(c) may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under §218.6 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;

(2) Timely receipt of the monitoring reports required under §218.5(c) through (i); and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §218.4 and the Letter of Authorization issued under §216.106 of this chapter and §218.7, 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 of this chapter and §218.8 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, 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
National Marine Fisheries Service/NOAA, Commerce § 218.10

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 VACAPES Range Complex or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§218.5(j)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§218.5(d)).

(4) Results from specific stranding investigations (either from the VACAPES Range Complex Study Area or other locations, and involving coincident explosives training or not involving coincident use).

(5) Results from general marine mammal and sound research (funded by the Navy or otherwise).

(6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.


§ 218.9 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §216.106 of this chapter and §218.7 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.8, without modification (except for the period of validity), is not considered a substantive modification.

(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 §218.2(c), a Letter of Authorization issued pursuant to §216.106 of this chapter and §218.7 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart B—Taking Marine Mammals Incidental to U.S. Navy Training in the Jacksonville Range Complex (JAX Range Complex)

SOURCE: 74 FR 28365, June 15, 2009, unless otherwise noted.

§ 218.10 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 JAX Range Complex Operation Areas (OPAREAs), which are located along the southern east coast of the U.S. The two principal OPAREAs within the JAX Study Area are the Jacksonville OPAREA and the Charleston OPAREA (sometimes referred to collectively as the JAX/CHASN OPAREA, or simply the OPAREA). The northernmost point of the JAX/CHASN OPAREA is located just north of Wilmington, North Carolina (34°37′ N) in waters less than 20 m (65.6 ft) deep, while the easternmost boundary lies 281 nm (518.6 km) offshore of Jacksonville, Florida (77°00′ W in waters with a bottom depth of nearly 2,000 m [1.243 mi]).

(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
§ 218.11 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 of this chapter and 218.16, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.10(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 § 218.10(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 § 218.10(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)—100 (an average of 20 annually);
   (iv) Atlantic spotted dolphin (S. frontalis)—310 (an average of 62 annually);
   (v) Striped dolphin (S. coeruleoalba)—100 (an average of 20 annually);
   (vi) Risso’s dolphin (Grampus griseus)—150 (an average of 30 annually);
   (vii) Common dolphin (Delphinus delphis)—150 (an average of 30 annually);
   (viii) Pilot whales (Globicephala sp.)—100 (an average of 20 annually);
   (ix) Dwarf or pygmy sperm whales (Kogia sp.)—15 (an average of 3 annually);
   (x) Beaked whales—100 (an average of 20 annually);
   (xi) Minke whales (Balaenoptera acutorostrata)—15 (an average of 3 annually).

2. Level A Harassment (Injury):
   (i) Atlantic spotted dolphin—10 (an average of 2 annually).
   (ii) [Reserved]

§ 218.12 Prohibitions.

Notwithstanding takings contemplated in § 218.11 and authorized by a Letter of Authorization issued under § 216.106 of this chapter and § 218.16, no person in connection with the activities described in § 218.10 may:

(a) Take any marine mammal not specified in § 218.11(c); and

(b) Take any marine mammal specified in § 218.11(c) other than by incidental take as specified in § 218.11(c)(1) and (2);
(c) Take a marine mammal specified in §218.11(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 §218.16.

§ 218.13 Mitigation.

(a) When conducting training activities identified in §218.10(c), the mitigation measures contained in the Letter of Authorization issued under §216.106 of this chapter and §218.16 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 & 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
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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/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 yds (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 Applicable to Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration: The mitigation measures apply to all Navy vessel transits, including those vessels that would transit to and from East Coast ports and the JAX Range Complex OPAREA.

(i) Mid-Atlantic, Offshore of the Eastern United States:

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission and safety during the months indicated below and within a 37 km (20 nm) arc (except as noted) of the specified associated reference points:

(1) South and East of Block Island (37 km (20 NM) seaward of line between 41–4.49° N. lat. 071–51.15° W. long. and 41–18.56° N. lat. 070–50.23° W. long): Sept–Oct and Mar–Apr

(2) New York/New Jersey (40–30.64° N. lat. 073–57.76° W. long.): Sep–Oct and Feb–Apr.


(5) North Carolina (34–41.54° N. lat. 076–40.20° W. long.): Dec–Apr

(6) South Carolina (33–11.84° N. lat. 079–8.99° W. long. and 32–43.39° N. lat. 079–48.72° W. long.): Oct–Apr
(B) During the months indicated in paragraph (a)(3)(i)(A) of this section, Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified in paragraph (a)(3)(i)(A) of this section.

(C) All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

(D) Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (1,500 ft) away from any observed whale, consistent with vessel safety.

(ii) Southeast Atlantic, Offshore of the Eastern United States—for the purposes of the measures below (paragraphs (a)(3)(ii)(A) & (B) of this section), the “southeast” encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30–15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15—April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.

(A) Prior to transiting or training in the critical habitat or associated area of concern, ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised) and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the North Atlantic right whale critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(1) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

(2) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(3) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(4) During the North Atlantic right whale calving season, north-south transits through the critical habitat are prohibited, except for Precision Anchoring drills and the Shipboard Electronic System Evaluation Facility range that necessarily operate at slow, safe speed.

(5) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).

(6) Naval vessel operations in the North Atlantic right whale critical habitat and AAOC during the calving season shall be undertaken during daylight and periods of good visibility, to the extent practicable and consistent with mission, training, and operation. When operating in the critical habitat and AAOC at night or during periods of poor visibility, vessels shall operate as
if in the vicinity of a recently reported NARW sighting.

   (iii) Northeast Atlantic, Offshore of the Eastern United States:
   
   (A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat., 69–05°W. long.; 41–45° N. lat., 69–45° W. long.; 42–10° N. lat., 68–31° W. long.; 41–38° N. lat., 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat., 70–10° W. long.; 42–12° N. lat., 70–15° W. long.; 42–12° N. lat., 70–30° W. long.; 41–46.8° N. lat., 70–30° W. long.

   (B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the northeastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

   (C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes in marine mammals must be reported immediately. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos were taken. Navy personnel are encouraged to take photos whenever possible.

   (D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

     (1) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when change of course would create an imminent and serious threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

     (2) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed (the minimum speed at which mission goals or safety will not be compromised) so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

     (3) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

     (4) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions as per Rule 6 of International Navigational Rules.

     (4) 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 death), the Navy shall suspend its activities immediately and report such incident to NMFS.


             (A) This activity shall only occur in Areas BB and CC, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in §216.11(c).

             (B) During North Atlantic right whale calving season no explosive ordnance shall be used.

         (C) Pre-exercise monitoring of the target area shall be conducted with “Big Eyes” prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships shall maintain a lookout dedicated to visually searching for marine mammals 180° along the ship
§ 218.14 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §216.106 of this chapter and §218.16 for activities
§ 218.14

The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §218.10(b) is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in §218.10(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the JAX Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below:

(1) Vessel or aerial surveys:
   (i) The Holder of this Authorization shall visually survey a minimum of 2 explosive events per year, one of which shall be a multiple detonation event. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs).
   (ii) When operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.
   (iii) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (i.e., the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel-based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.
   (iv) When conducting a particular survey, the survey team shall collect:
      (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);
      (K) Observed behavior—Watchstanders shall 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; and
      (M) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.

(2) Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.
   (i) Any time a towed hydrophone array is employed during shipboard surveys, the towed array shall be deployed during daylight hours for each of the days the ship is at sea.
   (ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).
   (iii) The array shall have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

(3) Marine mammal observers on Navy platforms:
   (i) As required in §218.14(c)(1), MMOs selected for aerial or vessel surveys shall be placed on a Navy platform during one of the explosive exercises being monitored per year, the other designated exercise shall be monitored by the Navy lookouts/watchstanders.
   (ii) The MMO must possess expertise in species identification of regional
marine mammal species and experience collecting behavioral data.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the lookouts.

(v) MMOs shall not be part of the Navy’s formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs shall be the same as those collected by Navy lookout/watchstanders described in §218.14(c)(iv).

(d) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan 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.


(e) 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 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).

(f) Annual JAX Range Complex Monitoring Plan Report—The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the JAX 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 MMOs collecting marine mammal data pursuant to the JAX Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in §218.14(g). The JAX Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from JAX Range Complex and multiple range complexes.

(g) Annual JAX Range Complex Exercise Report—The Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall 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 exercise (of those identified as part of the ‘specified activity’ in this final rule) conducted in the JAX Range Complex.
§ 218.15 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103 of this chapter) conducting the activity identified in §218.10(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.16 or a renewal under §218.17.

§ 218.16 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 §218.17 and modification conditions in §218.18.

(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).


§ 218.17 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §216.106 of this chapter and §218.16 for the activity identified in §218.10(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under §218.15 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;

(2) Timely receipt of the monitoring reports required under §218.14; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §218.13 and the Letter of Authorization issued under §216.106 of this chapter and §218.16, 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
§ 218.18 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to § 216.106 of this chapter and § 218.16 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.17, without modification (except for the period of validity), is not considered a substantive modification.

(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 § 218.11(b), a Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.16 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subpart C—Taking Marine Mammals Incidental to U.S. Navy Training in the Cherry Point Range Complex

SOURCE: 74 FR 28385, June 15, 2009, unless otherwise noted.

§ 218.20 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 Cherry Point Range Complex Operation Area (OPAREA), not authorized by these regulations or subsequent Letters of Authorization.

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, 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).

(xv) Pygmy killer whale (Feresa attenuata)—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).  

§ 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.
   (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
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and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(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 training activities 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 Applicable to Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration: The mitigation measures apply to all Navy vessel transits, including those vessels that would transit to and from East Coast ports and the Cherry Point OPAREA.

(i) Mid-Atlantic, Offshore of the Eastern United States:

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed (at a speed that does not compromise safety of navigation)
consistent with mission and safety during the months indicated below and within a 37 km (20 NM) arc (except as noted) of the specified associated reference points:

4. Chesapeake Bay (Hampton Roads and Baltimore) (37–1.11° N. lat. 70°–57.56° W. long.): Nov–Dec and Feb–Apr.
5. North Carolina (34–41.54° N. lat. 70°–60.20° W. long.): Dec–Apr.

(a) During the months indicated in paragraph (a)(3)(i)(A) of this section, Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified in paragraph (a)(3)(i)(A) of this section.

(b) All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

(c) Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (500 yd) away from any observed whale, consistent with vessel safety.

(ii) Southeast Atlantic, Offshore of the Eastern United States—for the purposes of the measures below (paragraphs (a)(3)(i)(A) & (B) of this section), the “southeast” encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30–15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15—April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.

(A) Prior to transiting or training in the critical habitat or associated area of concern (AAOC), ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised) and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the North Atlantic right whale critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

1. When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

2. Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

3. Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

4. During the North Atlantic right whale calving season, north-south
transits through the critical habitat are prohibited.

(5) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).

(6) Naval vessel operations in the North Atlantic right whale critical habitat and AAOC during the calving season shall be undertaken during daylight and periods of good visibility, to the extent practicable and consistent with mission, training, and operation. When operating in the critical habitat and AAOC at night or during periods of poor visibility, vessels shall operate as if in the vicinity of a recently reported NARW sighting.

(iii) Northeast Atlantic, Offshore of the Eastern United States: (A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat., 69–65° W. long.; 41–45° N. lat, 69–45° W. long.; 42–10° N. lat., 68–31° W. long.; 41–38° N. lat., 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat., 70–10° W. long.; 42–12° N. lat., 70–15° W. long.; 42–12° N. lat., 70–30° W. long.; 41–46.8° N. lat., 70–30° W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) to the northeastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos of the whale were taken. Navy personnel are encouraged to take photos of the whale whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(I) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when change of course would create an imminent and serious threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(2) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed (the minimum speed at which mission goals or safety will not be compromised) so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(1) Vessels shall maintain a distance appropriate to the circumstances and conditions.

(3) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(4) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions as per Rule 6 of International Navigational Rules.

(4) Mitigation Measures for Specific At-sea Training Events—If a marine mammal is 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 the incident to NMFS.

(i) Firing Exercise (FIREX) Using the Integrated Maritime Portable Acoustic Scoring System (IMPASS) (5-in Explosive Rounds)

(A) This activity shall only occur in Areas 4/5 and 13/14, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in §218.21(c).

(B) Pre-exercise monitoring of the target area shall be conducted with “Big Eyes” prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships shall maintain lookouts dedicated to visually searching for marine mammals 180° along the ship track line and 360° at each buoy drop-off location.

(C) “Big Eyes” on the ship shall be used to monitor a 600-yd (548-m) buffer zone for marine mammals during naval-gunfire events.

(D) Ships shall not fire on the target if any marine mammals are detected within or approaching the 600-yd (548-m) buffer zone. If marine mammals are present, operations must be suspended. Visual observation shall occur for approximately 45 min, or until the animal has been observed to have cleared the area and is heading away from the buffer zone. At such time as animals have cleared the area and are heading away from the buffer zone, the Navy may begin or resume operations.

(E) Post-exercise monitoring of the entire target area shall take place with “Big Eyes” and the naked eye during the retrieval of the IMPASS sonobuoy array following each firing exercise.

(F) The naval gunfire shall take place during daylight hours only.

(G) FIREX with IMPASS shall only be used in Beaufort Sea State three (3) or less.

(H) The visibility must be such that the fall of shot is visible from the firing ship during the exercise.

(i) No firing shall occur if marine mammals are detected within 70 yd (64 m) of the vessel.

(ii) Air-to-Surface Missile Exercises (Explosive):

(A) Aircraft shall initially survey the intended ordnance impact area for marine mammals.

(B) During the actual firing of the weapon, the aircraft involved must be able to observe the intended ordnance impact area to ensure the area is free of marine mammals transiting the range.

(C) Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at slowest safe speed.

(D) Explosive ordnance shall not be targeted to impact within 1,800 yd (1,646 m) of sighted marine mammals.

(iii) Mine Neutralization Training Involving Underwater Detonations (up to and including 20-lb charges):

(A) This activity shall only occur in W–15 of the Cherry Point Range Complex.

(B) Observers shall survey the Zone of Influence (ZOI), a 700 yd (640 m) radius from detonation location for marine mammals from all participating vessels during the entire operation. A survey of the ZOI (minimum of 3 parallel tracklines 219 yd [200 m] apart) using support craft shall be conducted at the detonation location 30 minutes prior through 30 minutes post detonation. Aerial survey support shall be utilized whenever operationally feasible.

(C) Detonation operations shall be conducted during daylight hours only.

(D) If a marine mammal is sighted within the ZOI, the animal shall be allowed to leave of its own volition. The Navy shall suspend detonation exercises and ensure the area is clear of marine mammals for a full 30 minutes prior to detonation.

(E) Divers placing the charges on mines and dive support vessel personnel shall survey the area for marine mammals and shall report any sightings to the surface observers. These animals shall be allowed to leave of their own volition and the ZOI shall be clear of marine mammals for 30 minutes prior to detonation.

(F) No detonations shall take place within 3.2 nm (6 km) of an estuarine inlet.

(G) No detonations shall take place within 1.6 nm (3 km) of shoreline.

(H) Personnel shall record any protected species observations during the
§218.24 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §216.106 of this chapter and §218.26 for activities described in §218.20(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §218.20(c) is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in §218.21(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the Cherry Point Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below.

(1) Vessel or aerial surveys.
   (i) The Holder of this Authorization shall visually survey a minimum of 1 explosive event per year. If possible, the event surveyed shall be one involving multiple detonations. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs). If it is impossible to conduct the required surveys due to lack of training exercises, the missed annual survey requirement shall roll into the subsequent year to ensure that the appropriate number of surveys (i.e., total of five) occurs over the 5-year period of effectiveness of this subject.
   (ii) When operationally feasible, for specified training events, aerial or vessel surveys shall be used 1-2 days prior to, during (if reasonably safe), and 1-5 days post detonation.
   (iii) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (i.e., the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel based surveys, a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(iv) When conducting a particular survey, the survey team shall collect:
   (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 detonation/exercise, and how many minutes before or after;
   (J) Distance of marine mammal from actual detonations (or target spot if not yet detonated);
   (K) Observed behavior—Watchstanders shall 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; and
   (M) If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection.

(2) Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.

(i) Any time a towed hydrophone array is employed during shipboard surveys, the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).
(iii) The array should have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

(3) Marine mammal observers on Navy platforms:

(i) As required in §218.24(c)(1), MMOs who are selected for aerial or vessel surveys shall be placed on a Navy platform during one of the explosive exercises being monitored per year, the other designated exercise shall be monitored by the Navy lookouts/watchstanders.

(ii) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the lookouts.

(v) The MMOs shall not be part of the Navy’s formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs should be the same as those collected by Navy lookouts/watchstanders described in §218.24(c)(1)(iv).

(d) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This plan 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.


(e) 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 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).

(f) Annual Cherry Point Range Complex Monitoring Plan Report—The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the Cherry Point Range Complex Monitoring Plan. Data collection methods shall be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the Cherry Point Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in §218.24(g). The Cherry Point Range Complex Monitoring Plan
§ 218.25 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103 of this chapter) conducting the activity identified in §218.20(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.26 or a renewal under §218.27.

§ 218.26 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 §218.27 and the modification conditions in §218.28.

(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.

§ 218.27 Renewal of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under §216.106 and §218.26 of this chapter for the activity identified in §218.20(c) will be renewed annually upon:
§ 218.28 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 218.26 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.27, without modification (except for the period of validity), is not considered a substantive modification.

(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 § 218.20(b), a Letter of Authorization issued pursuant to §§ 216.106 and 218.26 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.
Subpart D—Taking Marine Mammals Incidental to U.S. Navy Training in the Gulf of Mexico Range Complex

§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°30’ W and 27°24’30” 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 36 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).


§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:

<table>
<thead>
<tr>
<th>Species</th>
<th>Level B Harassment</th>
<th>Level A Harassment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sperm whale (Physeter macrocephalus)</td>
<td>25 (an average of 5 annually)</td>
<td>5 (an average of 1 annually)</td>
</tr>
<tr>
<td>Beaked whales</td>
<td>100 (an average of 20 annually)</td>
<td></td>
</tr>
<tr>
<td>Bottlenose dolphin (Tursiops truncatus)</td>
<td>150 (an average of 30 annually)</td>
<td></td>
</tr>
<tr>
<td>Pantropical spotted dolphin (Stenella attenuata)</td>
<td>130 (an average of 26 annually)</td>
<td></td>
</tr>
<tr>
<td>Clymene dolphin (S. clymene)</td>
<td>100 (an average of 20 annually)</td>
<td></td>
</tr>
<tr>
<td>Atlantic spotted dolphin (S. frontalis)</td>
<td>100 (an average of 20 annually)</td>
<td></td>
</tr>
<tr>
<td>Spinner dolphin (S. longirostris)</td>
<td>135 (an average of 27 annually)</td>
<td></td>
</tr>
<tr>
<td>Striped dolphin (S. coeruleoalba)</td>
<td>100 (an average of 20 annually)</td>
<td></td>
</tr>
<tr>
<td>Pantropical spotted dolphin (Stenella attenuata)</td>
<td>5 (an average of 1 annually)</td>
<td></td>
</tr>
<tr>
<td>Spinner dolphin (S. longirostris)</td>
<td>5 (an average of 1 annually)</td>
<td></td>
</tr>
</tbody>
</table>

§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) 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).

(2) Level A Harassment (injury):

(i) Pantropical spotted dolphin—5 (an average of 1 annually);
§218.33  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 sec-
tor, 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 approxi-
mately five seconds in as many small
steps as possible across the field seen
through the binoculars. They shall
search the entire sector in approxi-
mately five-degree steps, pausing be-
tween steps for approximately five sec-
onds 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 peri-
dic 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 atten-
tion to the things on the outer edges of
their field of vision. Lookouts shall
also have night vision devices available
for use.

(i) 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 ma-
rine 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 bin-
oculars. Lookouts already posted for
safety of navigation and man-over-
board precautions may be used to fill
this requirement. As part of their reg-
ular duties, lookouts shall watch for
and report to the OOD the presence of
marine mammals.

(D) Personnel on lookout shall em-
ploy visual search procedures employ-
ing 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
cautions, and proceed at a “safe speed”
(the minimum speed at which mission
goals or safety will not be com-
promised) 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 appro-
priate 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 ma-
rine 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 ap-
proaching whales head-on. This re-
quirement does not apply if a vessel’s
safety is threatened, such as when
change of course will create an immi-
nent and serious threat to a person,
vessel, or aircraft, and to the extent
vessels are restricted in their ability to
maneuver. Vessels shall take reason-
able 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]


§ 218.34 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §216.106 of this chapter and §218.36 for activities described in §218.30(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §218.30(c) is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in §218.31(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the GOMEX Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below.

(1) Vessel or aerial surveys.
§ 218.34  

(i) The Holder of this Authorization shall visually survey a minimum of 1 explosive event per year. One of the vessel or aerial surveys should involve professional trained marine mammal observers (MMOs). If it is impossible to conduct the required surveys due to lack of training exercises, the missed annual survey requirement shall roll into the subsequent year to ensure that the appropriate number of surveys (i.e., total of five) occurs over the 5-year period of effectiveness of this subject.

(ii) When operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(iii) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (i.e., the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel-based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(iv) When conducting a particular survey, the survey team shall collect:

(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);
(K) Observed behavior—Watchstanders shall 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; and
(M) If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection.

(2) Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.

(i) Any time a towed hydrophone array is employed during shipboard surveys the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

(iii) The array should have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

(3) Marine mammal observers on Navy platforms:

(i) As required in § 218.34(c)(1), MMOs who are selected for aerial or vessel surveys shall, to the extent practicable, be placed on a Navy platform during the exercises being monitored.

(ii) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise. Instead, MMOs should be employed during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the look-outs.
§ 218.34

(v) The MMOs shall not be part of the Navy's formal reporting chain of command during their data collection efforts; Navy lookout shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs should be the same as those collected by the survey team described in § 218.34(c)(1)(iv).

(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 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).

(e) Annual GOMEX Range Complex Monitoring Plan Report—The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the GOMEX Range Complex Monitoring Plan. Data collection methods shall be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the GOMEX Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in § 218.34(c)(1)(iv). The GOMEX Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from GOMEX Range Complex and multiple range complexes.

(f) Annual GOMEX Range Complex Exercise Report—The Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(1) Total annual number of each type of explosive exercise (of those identified as part of the "specified activity" in this final rule) conducted in the GOMEX Range Complex.

(2) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(g) GOMEX 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 the GOMEX Range Complex exercises for which annual reports are required (Annual GOMEX Range Complex Exercise Reports and GOMEX Range Complex Monitoring Plan Reports). This report shall be submitted at the end of the fourth year of the rule (February 2015), covering activities that have occurred through August 1, 2014.

(h) The Navy shall respond to NMFS comments and requests for additional information or clarification on the GOMEX Range Complex Comprehensive Report, the Annual GOMEX Range Complex Exercise Report, or the Annual GOMEX 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.

(i) 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.
§ 218.35 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103 of this chapter) conducting the activity identified in §218.30(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.36 or a renewal under §218.37.

§ 218.36 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 §218.37 and the modification conditions in §218.38.

(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).

§ 218.37 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §216.106 of this chapter and §218.36 for the activity identified in §218.30(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under §218.35 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;

(2) Timely receipt of the monitoring reports required under §218.34; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §218.33 and the Letter of Authorization issued under §216.106 of this chapter and §218.36, 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 218.37 of this chapter indicates that a substantial modification 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 GOMEX Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§218.34(j)).

(3) Results from specific stranding investigations (either from the GOMEX...
§ 218.100 Specified activity and specified geographical area.

(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 may be authorized in a Letter of Authorization (LOA) if it occurs within the Mariana Islands Range Complex (MIRC) Study Area (as depicted in Figure 1–1 in the Navy’s application for MIRC), which is bounded by a pentagon with the following five corners:

16°46’29.3376″ N. lat., 138°00’59.835″ E. long.;
20°02’24.8904″ N. lat., 140°10’13.8642″ E. long.;
20°32’27.5538″ N. lat., 149°17’41.0388″ E. long.;
7°00’30.0702″ N. lat., 149°16’14.8542″ E. long.; and
6°59’24.633″ N. lat., 138°1’29.7228″ E. long.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(i) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

(ii) AN/SQS–53 (hull-mounted active sonar)—up to 10865 hours over the course of 5 years (an average of 2173 hours per year);

(iii) AN/SQS–56 (hull-mounted active sonar)—up to 705 hours over the course of 5 years (an average of 141 hours per year);

(iv) AN/SSQ–58 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 8270 sonobuoys over the course of 5 years (an average of 1654 sonobuoys per year);

(v) AN/AQS–22 (helicopter dipping sonar)—up to 2,960 dips over the course of 5 years (an average of 592 dips per year);

(vi) AN/BQQ–10 (submarine hull-mounted sonar)—up to 10866 hours over the course of 5 years (an average of 2173 hours per year);
§ 218.101 Effective dates.

Amended regulations are effective February 1, 2012, through August 3, 2015.

§ 218.102 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.107 of this chapter, the Holder of the Letter of Authorization (hereinafter "Navy") may incidentally, but not intentionally, take marine mammals within the area described in § 218.100(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 218.100(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 § 218.100(c) is limited to the species listed in this paragraph (4), (5), and (6) of this section (c) by the indicated number of times (estimated based on the authorized amounts of sound source operation), but with the following allowances for annual variation in activities:

(1) In any given year, annual take, by harassment, of any species of marine mammal may not exceed the amount identified in paragraphs (b)(4) and (b)(5) of this section, for that species by more than 25% (a post-calculation/estimation of which must be provided in the annual LOA application);
(2) In any given year, annual take by harassment of all marine mammal species combined may not exceed the estimated total of all species combined, indicated in paragraphs (b)(4) and (b)(5) of this section, by more than 10%; and

(3) Over the course of the effective period of this subpart, total take, by harassment, of any species may not exceed the 5-year amounts indicated in paragraphs (b)(4) and (b)(5) of this section by more than 10%. A running calculation/estimation of takes of each species over the course of the years covered by the rule must be maintained.

(4) Level B Harassment:
(i) Mysticetes:
(A) Humpback whale (Megaptera novaeangliae)—4,025 (an average of 805 annually);
(B) Fin whale (Balaenoptera physalus)—910 (an average of 182 annually);
(C) Blue whale (Balaenoptera musculus)—650 (an average of 130 annually);
(D) Sei whale (Balaenoptera borealis)—1,625 (an average of 325 annually);
(E) Minke whale (Balaenoptera acutorostrata)—2,225 (an average of 445 annually);
(F) Bryde’s whale (Balaenoptera edeni)—2,285 (an average of 457 annually); and
(G) Unidentified Baleanopterid whales—360 (an average of 72 annually).
(ii) Odontocetes:
(A) Sperm whales (Physeter macrocephalus)—4,120 (an average of 824 annually);
(B) Killer whale (Orcinus orca)—1,150 (an average of 230 annually);
(C) Pygmy or dwarf sperm whales (Kogia breviceps or Kogia sima)—33,530 (an average of 6,706 annually);
(D) Blainville’s beaked whales (Mesoplodon densirostris)—3,850 (an average of 770 annually);
(E) Cuvier’s beaked whales (Ziphius cavirostris)—18,140 (an average of 3,628 annually);
(F) Ginkgo-toothed beaked whales (Mesoplodon ginkgodens)—2,150 (an average of 430 annually);
(G) Longman’s beaked whale (Indopacetus pacificus)—1,090 (an average of 206 annually);
(H) Short-finned pilot whale (Globicephala macrorhynchus)—11,370 (an average of 2,274 annually);
(I) Melon-headed whale (Peponocephala electra)—14,315 (an average of 2,863 annually);
(J) Pygmy killer whale (Feresa attenuata)—800 (an average of 160 annually);
(K) False killer whale (Pseudorca crassidens)—6,445 (an average of 1,289 annually);
(L) Striped dolphin (Stenella coeruleoalba)—44,290 (an average of 8,858 annually);
(M) Short-beaked common dolphin (Delphinus delphis)—11,370 (an average of 2,274 annually);
(N) Melon-headed whale (Peponocephala electra)—14,315 (an average of 2,863 annually);
(O) Pygmy killer whale (Feresa attenuata)—800 (an average of 160 annually);
(P) Fraser’s dolphin (Lagenodelphis hosei)—23,075 (an average of 4,615 annually);
(Q) Pantropical spotted dolphin (Stenella attenuata)—162,495 (an average of 32,499 annually);
(R) Rough-toothed dolphin (Steno bredanensis)—1,205 (an average of 241 annually);
(S) Pantropical spotted dolphin (Stenella attenuata)—162,495 (an average of 32,499 annually);
(T) Unidentified delphinid—7,690 (an average of 1,538 annually).
(5) Level A Harassment:
(i) Sperm whale—5 (an average of 1 annually);
(ii) Pantropical spotted dolphin—5 (an average of 1 annually);
(6) Level A Harassment and/or mortality of no more than 10 beaked whales (total), of any of the species listed in §218.102(c)(4)(ii)(D) through (G) over the course of the 5-year regulations.

§218.103 Prohibitions.

No person in connection with the activities described in §218.100 may:

(a) Take any marine mammal not specified in §218.102(c); and
(b) Take any marine mammal specified in §218.102(c) other than by incidental take as specified in §§218.102(c)(1) and (c)(2);
§ 218.104 Mitigation.

(a) When conducting training and utilizing the sound sources or explosives identified in § 218.100(c), the mitigation measures contained in a Letter of Authorization issued under §§ 216.106 and 218.107 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) Personnel Training:
   (i) All commanding officers (COs), executive officers (XOs), lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-submarine Warfare (ASW)/Mine Warfare (MIW) helicopter crews shall complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel.
   (ii) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Education and Training Command [NAVEDTRA] 12968-D).
   (iii) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced lookout. 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). Personnel being trained as lookouts can be counted among required lookouts as long as supervisors monitor their progress and performance.
   (iv) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of protective measures if marine species are spotted.
   (v) All lookouts onboard platforms involved in ASW training events will review the NMFS-approved Marine Species Awareness Training material prior to use of MFAS.
   (vi) All COs, XOs, and officers standing watch on the bridge will review the Marine Species Awareness Training material prior to a training event employing the use of MFAS/HFAS.

(2) General Operating Procedures (for all training types):
   (i) 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 protective measures.
   (ii) COs shall make use of marine species detection cues and information to limit interaction with marine mammals to the maximum extent possible consistent with safety of the ship.
   (iii) 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 will watch for and report to the OOD the presence of marine mammals.
   (iv) On surface vessels equipped with a multi-function active sensor, pedestal mounted “Big Eye” (20x110) binoculars shall be properly installed and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.
   (v) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).
   (vi) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).
   (vii) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a “safe speed”, which means the speed at which the CO...
can maintain crew safety and effectiveness of current operational directives, so that the vessel can take action to avoid a collision with any marine mammal.

(viii) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and take all reasonable actions to avoid collisions and close interaction of naval assets and marine mammals. Such action may include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

(ix) Navy aircraft participating in exercises at-sea shall conduct and maintain surveillance for marine mammals as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(x) All 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 when 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.

(xi) Naval vessels will maneuver to keep at least 1,500 ft (500 yds) away from any observed whale in the vessel's path and avoid approaching whales head-on. These requirements do 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. Restricted maneuverability includes, but is not limited to, situations when vessels are engaged in dredging, submerged activities, launching and recovering aircraft or landing craft, minesweeping activities, replenishment while underway and towing activities that severely restrict a vessel’s ability to deviate course. Vessels will take reasonable steps to alert other vessels in the vicinity of the whale. Given rapid swimming speeds and maneuverability of many dolphin species, naval vessels would maintain normal course and speed on sighting dolphins unless some condition indicated a need for the vessel to maneuver.

(3) Operating Procedures (for Anti-submarine Warfare (ASW) Operations):

(i) On the bridge of surface ships, there shall always be at least three people on watch whose duties include observing the water surface around the vessel.

(ii) All surface ships participating in ASW training events shall have, in addition to the three personnel on watch noted in (i), at least two additional personnel on watch as lookouts at all times during the exercise.

(iii) Personnel on lookout and officers on watch on the bridge will have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(iv) Personnel on lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine mammal that may need to be avoided.

(v) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(vi) During MFAS operations, personnel shall utilize all available sensor and optical systems (such as night vision goggles) to aid in the detection of marine mammals.

(vii) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yards (183 m) of the sonobuoy.

(viii) Helicopters shall observe/survey the vicinity of an ASW exercise for 10 minutes before the first deployment of active (dipping) sonar in the water.

(ix) Helicopters shall not dip their sonar within 200 yards of a marine mammal and shall cease pinging if a marine mammal closes within 200 yards after pinging has begun.

(x)(A) Safety Zones—When marine mammals are detected by any means
(aircraft, shipboard lookout, or acoustically) the Navy shall ensure that sonar transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1000 yards (914 m) of the sonar dome (the bow) (i.e., limit to at most 229 dB for AN/SQS–53 and 219 dB for AN/SQS–56, etc.). Ships and submarines shall continue to limit maximum transmission levels by this 6-dB factor until the animal has been seen to leave the 1000-yd safety zone, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(B) When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that sonar transmission levels are limited to at least 10 dB below normal operating levels if any detected marine mammals are within 500 yards (457 m) of the sonar dome (the bow). Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the animal has been seen to leave the 500-yd safety zone, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(C) When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that sonar transmission ceases if any detected marine mammals are within 200 yards (183 m) of the sonar dome (the bow). Sonar shall not resume until the animal has been seen to leave the 200-yd safety zone, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(D) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the OOD concludes that dolphins or porpoises are deliberately closing to ride the vessel’s bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(xi) Prior to start up or restart of active sonar, operators will check that the 1000-m Safety Zone radius around the sound source is clear of marine mammals.

(xii) Active sonar levels (generally)—Navy shall operate active sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(xiii) Submarine sonar operators will review detection indicators of close-aboard marine mammals prior to the commencement of ASW training events involving MFAS.

(E) If the need for power-down should arise (as detailed in 218.114(a)(3)(x)) when the Navy is operating a hull-mounted or sub-mounted source above 235 dB (infrequent), the Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 dB active sonar was being operated).

(4) Operating Procedures for Underwater Detonations (up to 10-lb charges):

(i) Exclusion Zones—All demolitions and ship mine countermeasures training exercises involving the use of explosive charges must include exclusion zones for marine mammals to prevent physical and/or acoustic effects to those species. These exclusion zones shall extend in a 700-yard arc radius around the detonation site. Should a marine mammal be present within the surveillance area, the explosive event shall not be started until the animal leaves the area.

(ii) Pre-Exercise Surveys—For Demolition and Ship Mine Countermeasures Operations, pre-exercise surveys shall be conducted for 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air, and personnel shall be alert to the presence of any marine mammal. Should such an animal be present within the survey area, the explosive event shall not be started until the animal voluntarily leaves the area. The Navy will ensure the area is clear of marine mammals for a full 30 minutes prior to initiating the explosive...
event. Personnel will record any marine mammal observations during the exercise as well as measures taken if species are detected within the exclusion zone.

(iii) Post-Exercise Surveys—Surveys within the same exclusion zone radius shall also be conducted within 30 minutes after the completion of the explosive event.

(iv) Reporting—If there is evidence that a marine mammal may have been stranded, injured or killed by the action, Navy training activities shall be immediately suspended and the situation immediately reported by the participating unit to the Officer in Charge of the Exercise (OCE), who will follow Navy procedures for reporting the incident to Commander, Pacific Fleet, Commander, Navy Region Marianas, Environmental Director, and the chain-of-command. The situation shall also be reported to NMFS (see Stranding Plan for details).

(5) Sinking Exercise:

(i) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(ii) An exclusion zone with a radius of 1.0 nm (1.9 km) will be established around each target. An additional buffer of 0.5 nm (0.9 km) will be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which will extend beyond the buffer zone by an additional 0.5 nm (0.9 km), shall be surveyed. Together, the zone extends out 2 nm (3.7 km) from the target.

(iii) A series of surveillance overflights shall be conducted within the 2-nm zone around the target, prior to and during the exercise, when feasible. Survey protocol shall be as follows:

(A) Overflights within the 2-nm zone around the target shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy’s Search and Rescue Tactical Aid, which provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.

(B) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team will have completed the Navy’s marine mammal training program for lookouts.

(C) In addition to the overflights, the 2-nm zone around the target shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring would be maintained throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE will be informed of any aural detection of marine mammals and will include this information in the determination of when it is safe to commence the exercise.

(D) On each day of the exercise, aerial surveillance of the 2-nm zone around the target shall commence 2 hours prior to the first firing.

(E) The results of all visual, aerial, and acoustic searches shall be reported immediately to the OCE. No weapons launches or firing may commence until the OCE declares this 2-nm zone around the target is free of marine mammals.

(F) If a marine mammal is observed within the 2-nm zone around the target, firing will be delayed until the animal is re-sighted outside the 2-nm zone around the target, or 30 minutes have elapsed. After 30 minutes, if the animal has not been re-sighted it can be assumed to have left the 2-nm zone around the target. The OCE will determine if the marine mammal is in danger of being adversely affected by commencement of the exercise.

(G) During breaks in the exercise of 30 minutes or more, the 2-nm zone around the target shall again be surveyed for any marine mammal. If marine mammals are sighted within the 2-nm zone around the target, the OCE shall be notified, and the procedures described in this section shall be followed.

(H) Upon sinking of the vessel, a final surveillance of the 2-nm zone around the target shall be monitored for 2 hours, or until sunset, to verify that no marine mammals were harmed.
(iv) Aerial surveillance shall be conducted using helicopters or other aircraft based on necessity and availability. The Navy has several types of aircraft capable of performing this task; however, not all types are available for every exercise. For each exercise, the available asset best suited for identifying objects on and near the surface of the ocean shall be used. These aircraft shall be capable of flying at the slow safe speeds necessary to enable viewing of marine vertebrates with unobstructed, or minimally obstructed, downward and outward visibility. The exclusion and safety zone surveys may be cancelled in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

(v) Every attempt shall be made to conduct the exercise in sea states that are ideal for marine mammal sighting, Beaufort Sea State 3 or less. In the event of a 4 or above, survey efforts shall be increased within the 2-nm zone around the target. This shall be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.

(vi) The exercise shall not be conducted unless the 2-nm zone around the target could be adequately monitored visually. Should low cloud cover or surface visibility prevent adequate visual monitoring as described previously, the exercise would be delayed until conditions improved, and all of the above monitoring criteria could be met.

(vii) In the event that any marine mammals are observed to be harmed in the area, a detailed description of the animal shall be taken, the location noted, and if possible, photos taken of the marine mammal. This information shall be provided to NMFS via the Navy’s regional environmental coordinator for purposes of identification (see the Stranding Plan for detail).

(viii) An after action report detailing the exercise’s time line, the time the surveys commenced and terminated, amount, and types of all ordnance expended, and the results of survey efforts for each event shall be submitted to NMFS.

(6) Surface-to-Surface Gunnery (up to 5-Inch Explosive Rounds):

(i) For exercises using targets towed by a vessel, target-towing vessels shall maintain a trained lookout for marine mammals when feasible. If a marine mammal is sighted in the vicinity, the tow vessel will immediately notify the firing vessel, which will suspend the exercise until the area is clear.

(ii) A 600 yard (585 m) radius buffer zone will be established around the intended target.

(iii) From the intended firing position, trained lookouts will survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable. Due to the distance between the firing position and the buffer zone, lookouts are only expected to visually detect breaching whales, whale blows, and large pods of dolphins and porpoises.

(iv) The exercise will be conducted only when the buffer zone is visible and marine mammals are not detected within it.

(7) Surface-to-Surface Gunnery (non-explosive rounds):

(i) A 200-yd (183 m) radius buffer zone shall be established around the intended target.

(ii) From the intended firing position, trained lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable.

(iii) If available, target towing vessels shall maintain a lookout (unmanned towing vessels will not have a lookout available). If a marine mammal is sighted in the vicinity of the exercise, the tow vessel shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(iv) The exercise shall be conducted only when the buffer zone is visible and marine mammals are not detected within the target area and the buffer zone.

(8) Surface-to-Air Gunnery (Explosive and Non-explosive Rounds):

(i) Vessels will orient the geometry of gunnery exercises in order to prevent debris from falling in the area of sighted marine mammals.

(ii) Vessels will attempt to recover any parachute deploying aerial targets
to the extent practicable (and their parachutes if feasible) to reduce the potential for entanglement of marine mammals.

(iii) Target towing aircraft shall maintain a lookout if feasible. If a marine mammal is sighted in the vicinity of the exercise, the tow aircraft will immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(9) Air-to-Surface Gunnery (Explosive and Non-explosive Rounds):

(i) A 200 yard (183 m) radius buffer zone will be established around the intended target.

(ii) If surface vessels are involved, lookout(s) will visually survey the buffer zone for marine mammals to and during the exercise.

(iii) Aerial surveillance of the buffer zone for marine mammals will be conducted prior to commencement of the exercise. Aerial surveillance altitude of 500 feet to 1,500 feet (152–456 m) is optimum. Aircraft crew/pilot will maintain visual watch during exercises. Release of ordnance through cloud cover is prohibited; aircraft must be able to actually see ordnance impact areas.

(iv) The exercise will be conducted only if marine mammals are not visible within the buffer zone.

(10) Small Arms Training (Grenades, Explosive and Non-explosive Rounds)—Lookouts will visually survey for marine mammals. Weapons will not be fired in the direction of known or observed marine mammals.

(11) Air-to-Surface At-sea Bombing Exercises (explosive bombs and rockets):

(i) If surface vessels are involved, trained lookouts will survey for marine mammals. Ordnance shall not be targeted to impact within 1,000 yards (914 m) of known or observed marine mammals.

(ii) A 1,000 yard (914 m) radius buffer zone will be established around the intended target.

(iii) Aircraft will visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area will be made by flying at 1,500 feet (456 m) or lower, if safe to do so, and at the slowest safe speed. When safety or other considerations require the release of weapons without the releasing pilot having visual sight of the target area, a second aircraft, the “wingman,” will clear the target area and perform the clearance and observation functions required before the dropping plane may release its weapons. Both planes must have direct communication to assure immediate notification to the dropping plane that the target area may have been fouled by encroaching animals or people. The clearing aircraft will assure it has visual site of the target area at a maximum height of 1500 ft. The clearing plane will remain within visual sight of the target until required to clear the area for safety reasons. Survey aircraft shall employ most effective search tactics and capabilities.

(iv) The exercise will be conducted only if marine mammals are not visible within the buffer zone.

(12) Air-to-Surface At-Sea Bombing Exercises (Non-explosive Bombs and Rockets):

(i) If surface vessels are involved, trained lookouts will survey for marine mammals. Ordnance shall not be targeted to impact within 1,000 yards (914 m) of known or observed marine mammals.

(ii) A 1,000 yard (914 m) radius buffer zone will be established around the intended target.

(iii) Aircraft will visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area will be made by flying at 1,500 feet (456 m) or lower, if safe to do so, and at the slowest safe speed. When safety or other considerations require the release of weapons without the releasing pilot having visual sight of the target area, a second aircraft, the “wingman,” will clear the target area and perform the clearance and observation functions required before the dropping plane may release its weapons. Both planes must have direct communication to assure immediate notification to the dropping plane that the target area may have been fouled by encroaching animals or people. The clearing aircraft will assure it has visual site of the target area at a maximum height of 1500 ft. The clearing plane will remain within visual sight of the target until required to clear the area for safety reasons.
Survey aircraft shall employ most effective search tactics and capabilities.

(iv) The exercise will be conducted only if marine mammals and are not visible within the buffer zone.

(13) Air-to-Surface Missile Exercises (explosive and non-explosive):

(i) Aircraft will visually survey the target area for marine mammals. Visual inspection of the target area will be made by flying at 1,500 (457 m) feet or lower, if safe to do so, and at slowest safe speed. Firing or range clearance aircraft must be able to actually see ordnance impact areas.

(ii) Explosive ordnance shall not be targeted to impact within 1,800 yds (1646 m) of sighted marine mammals.

(14) Aircraft Training Activities Involving Non-Explosive Devices:

An exclusion zone of 200 yds around the target location, therefore, shall be clear of marine mammals. Pre- and post-surveillance and reporting requirements outlined for underwater detonations shall be implemented during Mining Training Activities.

(15) Extended Echo Ranging/Improved Extended Echo Ranging and Advanced Extended Echo-ranging (EER/IEER/AEER)—The following mitigation measures shall be used with the employment of IEER/AEER sonobuoys:

(i) Crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search shall be conducted at an altitude below 500 yd (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft operations, crews are allowed to conduct coordinated area clearances.

(ii) For IEER (AN/SSQ–110A), crews shall conduct a minimum of 30 minutes of visual and aural monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(iii) For any part of the intended sonobuoy pattern where a post (source-receiver sonobuoy pair) will be deployed within 1,000 yd (914 m) of observed marine mammal activity, the Navy shall deploy the receiver ONLY (i.e., not the source) and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yd (914 m) of the intended post position, the source sonobuoy (AN/SSQ–110A/SSQ–125) will be co-located with the receiver.

(iv) When operationally feasible, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This shall include monitoring of own-aircraft sensors from the time of the first sensor placement until the aircraft have left the area and are out of RF range of these sensors.

(v) Aural Detection. If the presence of marine mammals is detected aurally, then that shall cue the Navy aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

(vi) Visual Detection. If marine mammals are visually detected within 1,000 yd (914 m) of the explosive source sonobuoy (AN/SSQ–110A/SSQ–125) intended for use, then that payload shall not be activated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 1,000 yd (914 m) safety buffer. Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000 yd (914 m) safety buffer.

(vii) For IEER (AN/SSQ–110A), aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the “Payload 1 Release” command followed by the “Payload 2 Release” command. Aircrews shall refrain from using the “Scuttle” command when two payloads remain at a given post. Aircrews shall ensure that a 1,000 yd (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(viii) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.
(ix) The Navy shall ensure all pay-loads are accounted for. Explosive source sonobuoys (AN/SSQ-110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(x) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(16) The Navy shall implement the “Stranding Response Plan for Major Navy Training Exercises in the MIRC” (available at: http://www.nmfs.noaa.gov/pr/permits/incidental.htm), which is incorporated herein by reference, including the following measures:

(i) Shutdown Procedures. When an Uncommon Stranding Event (USE—defined in §216.271) occurs during a Major Training Exercise (MTE) (as defined in the Stranding Plan, meaning including Multi-strike group exercises, Joint Expeditionary exercises, and Marine Air Ground Task Force exercises in the MIRC), the Navy shall implement the procedures described in this section.

(A) The Navy shall implement a Shutdown (as defined in the Stranding Response Plan for MIRC) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the MIRC Stranding Communication Protocol that a USE (as defined in the Stranding Response Plan for MIRC) involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy shall communicate, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(B) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have 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 of the animals (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 MIRC 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.

(b) [Reserved]

§218.105 Requirements for monitoring and reporting.

(a) General Notification of Injured or Dead Marine Mammals. Navy personnel shall ensure that NMFS is notified immediately (see Communication Plan) or as soon as clearance procedures allow if an injured, stranded, or dead
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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 will provide NMFS with the name of 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 of the animal(s) (if available). In the event that an injured, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or during or shortly after, MFAS, HFAS, or underwater explosive detonations, the Navy will report the same information as listed above as soon as operationally feasible and clearance procedures allow.

(b) General Notification of Ship Strike. In the event of a ship strike by any Navy vessel, at any time or place, the Navy shall do the following:

(1) Immediately report to NMFS the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead, or whether its status is unknown.

(2) Report to NMFS as soon as operationally feasible the size and length of animal, an estimate of the injury status (e.g., dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status.

(3) Report to NMFS the vessel length, speed, and heading as soon as feasible.

(4) Provide NMFS a photo or video of the animal(s), if equipment is available.

(c) The Navy must conduct all monitoring and/or research required under the Letter of Authorization, including abiding by the annual MIRC Monitoring Plan. (http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications)

(d) Report on Monitoring required in paragraph (c) of this section. The Navy shall submit a report annually describing the implementation and results of the monitoring required in paragraph (c) of this section. Required submission date will be identified each year in the LOA. Navy will standardize data collection methods across ranges to allow for comparison in different geographic locations.

(e) 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 Major Training Exercise for Reporting (MTER) indicating:

(1) Location of the exercise;

(2) Beginning and end dates of the exercise; and

(3) Type of exercise.

(f) Annual MIRC Report. The Navy will submit an Annual Exercise MIRC Report every year. This report shall contain the subsections and information indicated below.

(1) MFAS/HFAS Major Training Exercises—This section shall contain the following information for the following Coordinated and Strike Group exercises, which for simplicity will be referred to as MTERs: Joint Multi-strike Group Exercises; Joint Expeditionary Exercises; and Marine Air Ground Task Force MIRC:

(i) Exercise Information (for each MTER):

(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;

(1) 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 MTER):

(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(s);

(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, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from sonar source in paragraph (f)(1)(i)(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 in paragraph (f)(1)(i)(J) is hullmounted, true bearing of animal from ship, true direction of ship’s travel, and estimation of animal’s motion relative to ship (opening, closing, parallel); and

(N) Observed behavior. Watchstanders shall describe, 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 MTERs) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to MFAS. 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 non-major training exercises (unit-level exercises, such as TRACKEXs):

(i) Total Hours. 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 Impacts. To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major training exercises geographically across MIRC. The Navy shall include (in the MIRC 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) Sinking Exercises (SINKEXs). This section shall include the following information for each SINKEX completed that year:

(a) Exercise info:

(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); and

(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 during SINKEX (by Navy lookouts) information:

(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) 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 (TBD m for SINKEX in MIRC);

(2) The required exclusion zone (1 nm for SINKEX in MIRC);

(3) The required observation distance (if different than the exclusion zone (2 nm for SINKEX in MIRC); and

(4) Greater than the required observed distance. For example, in this case, the observer shall indicate if < TBD m, from 426 m–1 nm, from 1 nm–2 nm, and >2 nm.

(K) Observed behavior—Watchstanders will describe, 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.), 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 munitions type in use at time of marine mammal detection.

(4) Improved Extended Echo-Ranging System (IEER)/Advanced Extended Echo-Ranging (AEER) Summary:

(i) Total number of IEER and AEER events conducted in MIRC;

(ii) Total expended/detonated rounds (buoys); and

(iii) Total number of self-scuttled IEER rounds.

(5) Explosives Summary. The Navy is in the process of improving the methods used to track explosive use to provide increased granularity. To the extent practicable, the Navy shall 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 exercise (of those identified as part of the “activity” in this Subpart) conducted in MIRC; and

(ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(g) MIRC 5-year 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 MIRC Exercise Reports and MIRC Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2014), covering activities that have occurred through July 15, 2014.

(b) 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 Northwest Training Range Complex, the Southern California Range Complex, the Atlantic Fleet Active Sonar Training, the Hawaii Range Complex, the Mariana Islands Range Complex, and the Gulf of Alaska.

(i) The Navy shall comply with the 2009 Integrated Comprehensive Monitoring Program (ICMP) Plan and continue to improve the program in consultation with NMFS. Changes and improvements to the program made during 2010 (as prescribed in the 2009 ICMP and deemed appropriate by the Navy and NMFS) will be described in an updated 2010 ICMP and submitted to NMFS by October 31, 2010, for review. An updated 2010 ICMP will be finalized by December 31, 2010.

§ 218.106 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. Citizen (as defined by §216.103) conducting the activity identified in §218.100(c) (i.e., the Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.107 or a renewal under §218.108.

§ 218.107 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 §218.108.
and the modification conditions in §218.109.

(b) Each Letter of Authorization shall 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 shall 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).


(a) A Letter of Authorization issued under §216.106 of this chapter and §218.107 for the activity identified in §218.100(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under §218.106 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;

(2) Receipt of the monitoring reports and notifications within the time-frames indicated in the previous LOA; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §218.104 and the Letter of Authorization issued under §216.106 of this chapter and §218.107, 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 218.208 indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request.

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

(d) Adaptive Management. NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the Navy regarding the practicability of the modifications) 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 MIRC Study Area or other locations).

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

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the Integrated Comprehensive Monitoring Plan).

(4) Results from specific stranding investigations (either from the MIRC Study Area or other locations, and involving coincident MFAS/HFAS or explosives training or not involving coincident use).

(5) Results from the Long Term Prospective Study described in the preamble to these regulations.

(6) Results from general marine mammal and sound research.

(7) Any information which reveals that marine mammals may have been taken in a manner, extent or number not anticipated by these regulations or subsequent Letters of Authorization.


(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 218.107 of this chapter and
subject to the provisions of this subpart, shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.108 without modification (except for the period of validity) is not considered a substantive modification.

(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 §218.100(b), a Letter of Authorization issued pursuant to §§216.106 and 218.107 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subpart M—Taking and Importing Marine Mammals; U.S. Navy’s Northwest Training Range Complex (NWTRC)

SOURCE: 75 FR 69319, Nov. 10, 2010, unless otherwise noted.

EFFECTIVE DATE NOTE: At 75 FR 69319, Nov. 10, 2010, subpart M was added, effective Nov. 9, 2010 through Nov. 9, 2015.

§ 218.110 Specified activity and specified geographical area.

(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 Offshore area of the Northwest Training Range Complex (NWTRC) (as depicted in Figure ES–1 in the Navy’s Draft Environmental Impact Statement for NWTRC), which is bounded by 48°30’ N. lat.; 130°00’ W. long.; 40°00’ N. lat.; and on the east by 124°00’ W. long or by the shoreline where the shoreline extends west of 124°00’ W. long (excluding the Strait of Juan de Fuca (east of 124°40’ W. long), which is not included in the Offshore area).

(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, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

i. AN/SQS–53 (hull-mounted active sonar)—up to 215 hours over the course of 5 years (an average of 43 hours per year);

ii. AN/SQS–56 (hull-mounted active sonar)—up to 325 hours over the course of 5 years (an average of 65 hours per year);

iii. SSQ–62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 4430 sonobuoys over the course of 5 years (an average of 886 sonobuoys per year)

iv. MK–48 (heavyweight torpedoes)—up to 10 torpedoes over the course of 5 years (an average of 2 torpedoes per year);

v. AN/BQS–15 (mine detection and submarine navigational sonar)—up to 210 hours over the course of 5 years (an average of 42 hours per year);

vi. AN/SSQ–125 (AEER)—up to 745 buoys deployed over the course of 5 years (total combined with the AN/SSQ–110A (IEER)) (an average of 149 per year);

vii. Range Pingers—up to 900 hours over the course of 5 years (an average of 180 hours per year); and

viii. PUTR Uplink—up to 750 hours over the course of 5 years (an average of 150 hours per year).

2. The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

i. Underwater Explosives:

A. 5” Naval Gunfire (9.5 lbs);

B. 76 mm rounds (1.6 lbs);

C. Maverick (78.5 lbs);

D. Harpoon (448 lbs);

E. MK–82 (238 lbs);

F.MK–48 (851 lbs);

G. Demolition Charges (2.5 lbs);

H. AN/SSQ–110A (IEER explosive sonobuoy—5 lbs).
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(I) HARM;
(J) Hellfire;
(K) SLAM; and
(L) GBU 10, 12, and 16.

(ii) Training Events:
(A) Surface-to-surface Gunnery Exercises (S–S GUNEX)—up to 1700 exercises over the course of 5 years (an average of 340 per year).
(B) Bombing Exercises (BOMBEX)—up to 150 exercises over the course of 5 years (an average of 30 per year).
(C) Sinking Exercises (SINKEX)—up to 10 exercises over the course of 5 years (an average of 2 per year).
(D) Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) Systems—up to 60 exercises (total combined with the AN/SSQ–125A (AEER)) over the course of 5 years (an average of 12 per year).

(3) The taking of marine mammals may also be authorized in an LOA for the activities and sources listed in § 218.110(c)(1) should the amounts (i.e., hours, dips, number of exercises) vary from those estimated in § 218.110(c)(2), provided that the variation does not result in exceeding the amount of take indicated in § 218.112(c).


§ 218.111 Effective dates.

Amended regulations are effective February 1, 2012, through November 9, 2015.

[77 FR 4924, Feb. 1, 2012]

§ 218.112 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.117 of this chapter, the Holder of the Letter of Authorization (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in § 218.110(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) [Reserved]

(c) The incidental take of marine mammals under the activities identified in § 218.110(c) is limited to the species listed in paragraphs (c)(4) and (5) of this section by the indicated method of take and the indicated number of times (estimated based on the authorized amounts of sound source operation), but with the following allowances for annual variation in sonar activities:

(1) In any given year, annual take, by harassment, of any species of marine mammal may not exceed the amount indentified in paragraph (c)(4) and (5) of this section, for that species by more than 25 percent (a post-calculation/estimation of which must be provided in the annual LOA application);

(2) In any given year, annual take by harassment of all marine mammal species combined may not exceed the estimated total of all species combined, indicated in paragraphs (c)(4) and (5), by more than 10 percent; and

(3) Over the course of the effective period of this subpart, total take, by harassment, of any species may not exceed the 5-year amounts indicated in paragraphs (c)(4) and (5) by more than 10 percent. A running calculation/estimation of takes of each species over the course of the years covered by the rule must be maintained.

(4) Level B Harassment:

(i) Mysticetes:

(A) Humpback whale (Megaptera novaeangliae)—75 (an average of 15 annually);

(B) Fin whale (Balaenoptera physalus)—720 (an average of 144 annually);

(C) Blue whale (Balaenoptera musculus)—95 (an average of 19 annually);

(D) Sei whale (Balaenoptera borealis)—5 (an average of 1 annually);

(E) Minke whale (Balaenoptera acutorostrata)—45 (an average of 9 annually); and

(F) Gray whale (Eschrichtius robustus)—20 (an average of 4 annually).

(ii) Odontocetes:

(A) Sperm whales (Physeter macrocephalus)—635 (an average of 127 annually);

(B) Killer whale (Orcinus Orca)—70 (an average of 14 annually);

(C) Pygmy or dwarf sperm whales (Kogia breviceps or Kogia sima)—20 (an average of 4 annually);

(D) Mesopodont beaked whales—75 (an average of 15 annually);
 § 218.113 Prohibitions.

No person in connection with the activities described in § 218.110 may:

(a) Take any marine mammal not specified in § 218.112(c);

(b) Take any marine mammal specified in § 218.112(c) other than by incidental take as specified in §§ 218.112(c)(1) and (c)(2);

(c) Take a marine mammal specified in § 218.112(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 these regulations or a Letter of Authorization issued under §§ 216.106 and 218.117 of this chapter.

§ 218.114 Mitigation.

(a) When conducting training and utilizing the sound sources or explosives identified in § 218.110(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 218.117 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) Navy’s General Maritime Measures for All Training at Sea:

(i) Personnel Training (for all Training Types):

(A) All commanding officers (COs), executive officers (XOs), lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-submarine Warfare (ASW)/Mine Warfare (MIW) helicopter crews shall complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel.

(vi) Short-beaked common dolphin—10 (an average of 2 annually);

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced lookout. 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). Personnel being trained as lookouts can be counted among required lookouts as long as supervisors monitor their progress and performance.

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

(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 protective measures.

(B) COs 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 will watch for and report to the OOD the presence of marine mammals.

(D) On surface vessels equipped with a multi-function active sensor, pedestal mounted “Big Eye” (20x110) binoculars shall be properly installed and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

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

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

(G) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a “safe speed” 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.

(H) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

(I) Naval vessels shall maneuver to keep at least 1,500 ft (500 yds) away from any observed whale in the vessel’s path and avoid approaching whales head-on. These requirements do 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. Restricted maneuverability includes, but is not limited to, situations when vessels are engaged in dredging, submerged activities, launching and recovering aircraft or landing craft, minesweeping activities, replenishment while underway and towing activities that severely restrict a vessel’s ability to deviate course. Vessels will take reasonable steps to alert other vessels in the vicinity of the whale. Given rapid swimming speeds and maneuverability of many dolphin species, naval vessels would maintain normal course and speed on sighting dolphins unless some condition indicated a need for the vessel to maneuver.
(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine mammals 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 when 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 will be kept for a period of 30 days following completion of a major training exercise.

(2) Navy's Measures for MFAS Operations:

(i) Personnel Training (for MFAS Operations):

(A) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training material prior to use of mid-frequency active sonar.

(B) All COs, XOs, and officers standing watch on the bridge shall have reviewed the Marine Species Awareness Training material prior to a training event employing the use of mid-frequency active sonar.

(C) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(D) 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). This does not forbid personnel being trained as lookouts from being counted as those listed in previous measures so long as supervisors monitor their progress and performance.

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

(ii) Lookout and Watchstander Responsibilities:

(A) On the bridge of surface ships, there shall always be at least three people on watch whose duties include observing the water surface around the vessel.

(B) All surface ships participating in ASW training events shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as marine mammal lookouts.

(C) Personnel on lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(D) On surface vessels equipped with mid-frequency active sonar, pedestal mounted “Big Eye” (20x110) binoculars shall be present and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

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

(F) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

(G) Personnel on lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine species that may need to be avoided as warranted.

(iii) Operating Procedures (for MFAS Operations):

(A) Navy will distribute final mitigation measures contained in the LOA
and the Incidental take statement of NMFS’ biological opinion to the Fleet.

(B) COs 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) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(D) During mid-frequency active sonar operations, personnel shall utilize all available sensor and optical systems (such as night vision goggles) to aid in the detection of marine mammals.

(E) 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.

(F) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yds (183 m) of the sonobuoy.

(G) 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.

(H) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that sonar transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1,000 yards (914 m) of the sonar dome (the bow). Sonar shall not resume until the animal has been seen to leave the 1,000-yd safety zone, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(I) Prior to start up or restart of active sonar, operators will check that the Safety Zone radius around the sound source is clear of marine mammals.

(J) Active sonar levels (generally)—Navy shall operate active sonar at the
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lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(K) Helicopters shall observe/survey the vicinity of an ASW training event for 10 minutes before the first deployment of active (dipping) sonar in the water.

(L) Helicopters shall not dip their active sonar within 200 yds (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yds of the sound source (183 m) after pinging has begun.

(M) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training events involving active mid-frequency sonar.

(N) Night vision goggles shall be available to all ships and air crews, for use as appropriate.

(3) Navy’s Measures for Underwater Detonations:

(i) Surface-to-Surface Gunnery (non-explosive rounds)

(A) A 200-yd (183 m) radius buffer zone shall be established around the intended target.

(B) From the intended firing position, trained lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable.

(C) If applicable, target towing vessels shall maintain a lookout. If a marine mammal is sighted in the vicinity of the exercise, the tow vessel shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(D) The exercise shall be conducted only if marine mammals are not visible within the buffer zone.

(ii) Surface-to-Air Gunnery (explsive and non-explosive rounds)

(A) Vessels shall orient the geometry of gunnery exercises in order to prevent debris from falling in the area of sighted marine mammals.

(B) Vessels will attempt to recover any parachute deploying aerial targets to the extent practicable (and their parachutes if feasible) to reduce the potential for entanglement of marine mammals.

(C) For exercises using targets towed by a vessel or aircraft, target towing vessel/aircraft shall maintain a lookout. If a marine mammal is sighted in the vicinity of the exercise, the tow aircraft shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(iii) Air-to-Surface At-sea Bombing Exercises (explosive and non-explosive):

(A) If surface vessels are involved, trained lookouts shall survey for floating kelp and marine mammals. Ordinance shall not be targeted to impact within 1,000 yds (914 m) of known or observed floating kelp or marine mammals.

(B) A 1,000 yd (914 m) radius buffer zone shall be established around the intended target.

(C) 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) 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. Survey aircraft should employ most effective search tactics and capabilities.

(D) The exercise will be conducted only if marine mammals are not visible within the buffer zone.

(iv) Air-to-Surface Missile Exercises (explosive and non-explosive):

(A) Ordinance shall not be targeted to impact within 1,800 yds (1646 m) of known or observed floating kelp.

(B) Aircraft shall visually survey the target area for marine mammals. Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) or lower, if safe to do so, and at slowest safe speed. Firing or range clearance aircraft must be able to actually see ordnance impact areas. Explosive ordnance shall not be targeted to impact within 1,800 yds (1646 m) of sighted marine mammals.

(v) Demolitions, Mine Warfare, and Mine Countermeasures (up to a 2.5-lb charge):

(A) Exclusion Zones—All Mine Warfare and Mine Countermeasures Operations involving the use of explosive charges must include exclusion zones
for marine mammals to prevent physical and/or acoustic effects to those species. These exclusion zones shall extend in a 700-yard arc radius around the detonation site.

(B) Pre-Exercise Surveys—For Demolition and Ship Mine Countermeasures Operations, pre-exercise surveys shall be conducted within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air, and personnel shall be alert to the presence of any marine mammal. Should such an animal be present within the survey area, the explosive event shall not be started until the animal voluntarily leaves the area. The Navy will ensure the area is clear of marine mammals for a full 30 minutes prior to initiating the explosive event. Personnel will record any marine mammal observations during the exercise as well as measures taken if species are detected within the exclusion zone.

(C) Post-Exercise Surveys—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

(D) Reporting—If there is evidence that a marine mammal may have been stranded, injured or killed by the action, Navy training activities shall be immediately suspended and the situation immediately reported by the participating unit to the Officer in Charge of the Exercise (OCE), who will follow Navy procedures for reporting the incident to Commander, Pacific Fleet, Commander, Navy Region Northwest, Environmental Director, and the chain-of-command. The situation shall also be reported to NMFS (see Stranding Plan for details).

(vi) Sink Exercise:

(A) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(B) An exclusion zone with a radius of 1.5 nm shall be established around each target. This 1.5 nm zone includes a buffer of 0.5 nm to account for errors, target drift, and animal movement. In addition to the 1.5 nm exclusion zone, a further safety zone, which extends from the exclusion zone at 1.5 nm out an additional 0.5 nm, shall be surveyed. Together, the zones extend out 2 nm (3.7 km) from the target.

(C) A series of surveillance overflights shall be conducted within the 2-nm zone around the target, prior to and during the exercise, when feasible. Survey protocol shall be as follows:

(1) Overflights within the 2-nm zone around the target shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy’s Search and Rescue Tactical Aid, which provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.

(2) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team is required to have completed the Navy’s marine mammal training program for lookouts.

(3) In addition to the overflights, the 2-nm zone around the target shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring would be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals (particularly sperm whales) in the vicinity of the exercise. The sonobuoys shall be re-seeded as necessary throughout the exercise. Additionally, if submarines are present, passive sonar onboard shall be utilized to detect any vocalizing marine mammals in the area. The OCE would be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

(4) On each day of the exercise, aerial surveillance of the 2-nm zone around the target shall commence 2 hours prior to the first firing.

(5) The results of all visual, aerial, and acoustic searches shall be reported immediately to the OCE. No weapons launches or firing may commence until
the OCE declares the 2-nm zone around the target free of marine mammals.

(6) If a marine mammal observed within the 2-nm zone around the target is diving, firing would be delayed until the animal is re-sighted outside the 2-nm zone around the target, or 30 minutes have elapsed. After 30 minutes, if the animal has not been re-sighted it would be assumed to have left the exclusion zone. The OCE would determine if the identified marine mammal is in danger of being adversely affected by commencement of the exercise.

(7) During breaks in the exercise of 30 minutes or more, the 2-nm zone around the target shall again be surveyed for any marine mammal. If marine mammals are sighted within 2-nm zone around the target, the OCE shall be notified, and the procedure described in (vi)(c)(1)–(6) would be followed.

(8) Upon sinking of the vessel, a final surveillance of the 2-nm zone around the target shall be monitored for 2 hours, or until sunset, to verify that no marine mammals were injured.

(D) Aerial surveillance shall be conducted using helicopters or other aircraft based on necessity and availability.

(E) Where practicable, the Navy shall conduct the exercise in sea states that are ideal for marine mammal sighting, i.e., Beaufort Sea State 3 or less. In the event of a Beaufort Sea State 4 or above, survey efforts shall be increased within the 2-nm zone around the target. This shall be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.

(F) The sink exercise shall not be conducted unless the 2-nm zone around the target could be adequately monitored visually.

(G) In the event that any marine mammals are observed to be harmed in the area, NMFS shall be notified as soon as feasible following the standing communication protocol. A detailed description of the animal shall be taken, the location noted, and if possible, photos taken. This information shall be provided to NMFS as soon as practicable via the Navy’s regional environmental coordinator for purposes of identification.

(H) An after action report detailing the exercise’s time line, the time the surveys commenced and terminated, amount, and types of all ordinance expended, and the results of survey efforts for each event shall be submitted to NMFS.

(vii) Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER):

(A) Crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search shall be conducted at an altitude below 457 m (500 yd) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft operations, crews are allowed to conduct area clearances utilizing more than one aircraft.

(B) For IEER (AN/SSQ–110A), crews shall conduct a minimum of 30 minutes of visual and aural monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(C) For any part of the intended sonobuoy pattern where a post (source/receiver sonobuoy pair) will be deployed within 914 m (1,000 yd) of observed marine mammal activity, the Navy shall deploy the receiver ONLY (i.e., not the source) and monitor while conducting a visual search. When marine mammals are no longer detected within 914 m (1,000 yd) of the intended post position, the source sonobuoy (AN/SSQ–110A/SSQ–125) will be co-located with the receiver.

(D) When operationally feasible, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This shall include monitoring of aircraft sensors from the time of the first sensor placement until the aircraft have left the area and are out of RF range of these sensors.

(E) Aural Detection—If the presence of marine mammals is detected aurally, then that shall cue the Navy aircrew to increase the vigilance of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multistatic active search.

(F) Visual Detection—If marine mammals are visually detected within 914 m (1,000 yd) of the explosive source
§218.115 Requirements for monitoring and reporting.

(a) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS is notified immediately (see Communication Plan) or as soon as clearance procedures allow if an injured, stranded, 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 will provide NMFS with the name of 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). In the event that an injured, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or during or shortly after, MFAS, HFAS, or underwater explosive detonations, the Navy will report the same information as listed above as soon as operationally feasible and clearance procedures allow.

(b) General Notification of Ship Strike—In the event of a ship strike by any Navy vessel, at any time or place, the Navy shall do the following:

(1) Immediately report to NMFS the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead (or unknown).

(2) Report to NMFS as soon as operationally feasible the size and length of animal, an estimate of the injury status (e.g., dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status.

(3) Report to NMFS the vessel length, speed, and heading as soon as feasible.

(4) Provide NMFS a photo or video, if equipment is available.

(c) Event Communication Plan—The Navy shall develop a communication plan that will include all of the communication protocols (phone trees, etc.) and associated contact information required for NMFS and the Navy to carry out the necessary expeditious communication required in the event of a stranding or ship strike, including as described in the proposed notification measures above.

(d) The Navy must conduct all monitoring and/or research required under the Letter of Authorization, including abiding by the annual NWTRC Monitoring Plan. (http://www.nmfs.noaa.gov/pr/permits/incidental.htm#Applications)
(e) The Navy shall comply with the 2009 Integrated Comprehensive Monitoring Program (ICMP) Plan and continue to improve the program in consultation with NMFS. Changes and improvements to the program made during 2010 (as prescribed in the 2009 ICMP and otherwise deemed appropriate by the Navy and NMFS) will be described in an updated 2010 ICMP and submitted to NMFS by October 31, 2010 for review. An updated 2010 ICMP will be finalized by December 31, 2010.

(f) Report on Monitoring required in paragraph (e) of this section—The Navy shall submit a report annually describing the implementation and results of the monitoring required in paragraph (d) of this section. The required submission date will be identified each year in the LOA. The Navy will standardize data collection methods across ranges to allow for comparison in different geographic locations.

(g) Annual NWTRC Report—The Navy will submit an Annual NWTRC Report every year. The required submission date will be identified each year in the LOA. This report shall contain the subsections and information indicated below.

(1) ASW Summary—This section shall include the following information as summarized from non-major training exercises (unit-level exercises, such as TRACKEXs and MIW):

(i) Total Hours—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 Impacts—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major training (i.e., ULT) utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across NWTRC. The Navy shall include (in the NWTRC 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.

(2) Sinking Exercises (SINKEXs)—This section shall include the following information for each SINKEX completed that year:

(i) Exercise Info:

(ii) Location;

(iii) Date and time exercise began and ended;

(iv) Total hours of observation by watchstanders before, during, and after exercise;

(v) Number and types of passive acoustic sources used in exercise;

(vi) Total hours of passive acoustic search time;

(vii) Number and types of vessels, aircraft, etc., participating in exercise;

(viii) Wave height in feet (high, low and average during exercise); and

(ix) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(2) Individual marine mammal observation during SINKEX (by Navy lookouts) information:

(i) Location of sighting;

(ii) Species (if not possible—indication of whale/dolphin/pinniped);

(iii) Number of individuals;

(iv) Initial detection sensor;

(v) Number and types of passive acoustic sources used in exercise;

(vi) Total hours of passive acoustic search time;

(vii) Number and types of vessels, aircraft, etc., participating in exercise;

(viii) Wave height in feet (high, low and average during exercise); and

(ix) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;

(x) Distance of marine mammal from actual detonations (or target spot if not yet detonated)—use four categories to define distance:

(A) the modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (662 m for SINKEX in NWTRC);

(B) the required exclusion zone (1 nm for SINKEX in NWTRC);

(C) the required observation distance (if different than the exclusion zone (2 nm for SINKEX in NWTRC)); and

(D) greater than the required observed distance. For example, in this
case, the observer would indicate if < 662 m, from 738 m–1 nm, from 1 nm–2 nm, and > 2 nm.  

(xii) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.  

(xiii) If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection.  

(i) Improved Extended Echo-Ranging System (IEER) Summary  
(1) Total number of IEER events conducted in NWTRC;  
(2) Total expended/detonated rounds (buoys); and  
(3) Total number of self-scuttled IEER rounds.  

(j) Explosives Summary—The Navy is in the process of improving the methods used to track explosive use to provide increased granularity. To the extent practicable, the Navy shall 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.  

(k) Total annual number of each type of explosive exercise (of those identified as part of the “specified activity” in this final rule) conducted in NWTRC; and  

(2) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.  

(l) NWTRC 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 NWTRC Exercise Reports and NWTRC Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (July 2014), covering activities that have occurred through February 1, 2014.  

(m) 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 Northwest Training Range Complex, the Southern California Range Complex, the Atlantic Fleet Active Sonar Training, the Hawaii Range Complex, the Marianas Islands Range Complex, and the Gulf of Alaska.  

(n) The Navy shall respond to NMFS comments and requests for additional information or clarification on the NWTRC Comprehensive Report, the Comprehensive National ASW report, the Annual NWTRC Exercise Report, or the Annual NWTRC 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.  

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

EDITORIAL NOTE: At 75 FR 69319, Nov. 10, 2010, subpart M was added; at that time, §218.115 was added without a paragraph (k)(1) designation.

To incidentally take marine mammals pursuant to these regulations, the U.S. Citizen (as defined by §216.103) conducting the activity identified in §218.110(c) (i.e., the Navy) must apply for and obtain either an initial Letter
of Authorization in accordance with §218.117 or a renewal under §218.118.

§ 218.117 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 §218.118 and the modification conditions in §218.119.

(b) Each Letter of Authorization shall 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 shall 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).


§ 218.118 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §§216.106 of this chapter and 218.117 for the activity identified in §218.110(c) will be renewed upon:
(1) Notification to NMFS that the activity described in the application submitted under §218.116 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;
(2) Receipt of the monitoring reports and notifications within the timeframes indicated in the previous LOA; and
(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §218.114 and the Letter of Authorization issued under §216.106 of this chapter and §218.117, 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 216.118 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.

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

(d) Adaptive Management—NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the Navy regarding the practicability of the modifications) 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 NWTRC Study Area or other locations).
(2) Findings of the Monitoring Workshop that the Navy will convene in 2011.
(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the Integrated Comprehensive Monitoring Plan).
(4) Results from specific stranding investigations (either from the NWTRC Study Area or other locations, and involving coincident MFAS/HFAS or explosives training or not involving coincident use).
(5) Results from the Long Term Prospective Study described in the preamble to these regulations.
(6) Results from general marine mammal and sound research (funded by the Navy or otherwise).
(7) Any information which reveals that marine mammals may have been taken in a manner, extent or number
§ 218.119 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 218.117 of this chapter and subject to the provisions of this subpart, shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.118, without modification (except for the period of validity), is not considered a substantive modification.

(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 §218.112(c), a Letter of Authorization issued pursuant to §§216.106 and 218.117 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart N—Taking and Importing Marine Mammals; Gulf of Alaska Temporary Maritime Activities Area (GoA TMAA)

SOURCE: 76 FR 25505, May 4, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 25505, May 4, 2011, subpart N was added, effective May 4, 2011 through May 4, 2016.

§ 218.120 Specified activity and geographical area.

(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 Gulf of Alaska Temporary Maritime Activities Area (GoA TMAA) (as depicted in Figure 1–1 in the Navy’s application for GoA TMAA), which is bounded by a hexagon with the following six corners: 57°30’ N. lat., 141°30’ W. long.; 59°36’ N. lat., 148°10’ W. long.; 58°57’ N. lat., 150°04’ W. long.; 58°20’ N. lat., 151°00’ W. long.; 57°16’ N. lat., 151°00’ W. long.; and 55°30’ N. lat., 142°00’ 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) sources, high-frequency active sonar (HFAS) sources, or similar sources for Navy training activities (estimated amounts below):

(i) AN/SQS–53 (hull-mounted active sonar)—up to 2,890 hours over the course of 5 years (an average of 578 hours per year);

(ii) AN/SQS–56 (hull-mounted active sonar)—up to 260 hours over the course of 5 years (an average of 52 hours per year);

(iii) AN/SSQ–62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 1,330 sonobuoys over the course of 5 years (an average of 266 sonobuoys per year);

(iv) AN/AQS–22 (helicopter dipping sonar)—up to 960 “dips” over the course of 5 years (an average of 192 “dips” per year);

(v) AN/BQQ–10 (submarine hull-mounted sonar)—up to 240 hours over the course of 5 years (an average of 48 hours per year);

(vi) MK–48 (torpedo)—up to 10 torpedoes over the course of 5 years (a maximum of 2 torpedoes per year);

(vii) AN/SSQ–110A (IEER)—up to 400 buoys deployed over the course of 5 years (an average of 80 per year maximum combined use of AN/SSQ–110A or AN/SSQ–125);

(viii) AN/SSQ–125 (MAC)—up to 400 buoys deployed over the course of 5 years (an average of 80 per year maximum combined use of AN/SSQ–110A or AN/SSQ–125);

(ix) Range Pingers—up to 400 hours over the course of 5 years (an average of 80 hours per year);
§ 218.121 Effective dates.

Amended regulations in this subpart are effective February 1, 2012, through May 4, 2016. 77 FR 4925, Feb. 1, 2012

§ 218.122 Permissible methods of taking.

(a) Under Letters ofAuthorization issued pursuant to §§216.106 and 218.127 of this chapter, the Holder of the Letter of Authorization (hereinafter "Navy") may incidentally, but not intentionally, take marine mammals within the area described in §218.120(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §218.120(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 §218.120(c) is limited to the species listed below in paragraphs (c)(4) and (5) of this section by the indicated method of take and the indicated number of times (estimated based on the authorized amounts of sound source operation), but with the following allowances for annual variation in activities:

(1) In any given year, annual take, by harassment, of any species of marine mammal may not exceed the amount indicated in paragraphs (c)(4) and (5) of this section, for that species by more than 25 percent (a post-calculation/estimation of which must be provided in the annual LOA application);

(2) In any given year, annual take by harassment of all marine mammal species combined may not exceed the estimated total of all species combined, indicated in paragraphs (c)(4) and (5) of this section, by more than 10 percent; and

(3) Over the course of the effective period of this subpart, total take, by harassment, of any species may not exceed the 5-year amounts indicated in paragraphs (c)(4) and (5) of this section by more than 10 percent. A running calculation/estimation of takes of each species over the course of the years...
covered by the rule must be maintained.

(4) Level B Harassment:
   (i) Mysticetes:
   (A) Humpback whale (Megaptera novaeangliae)—6,975 (an average of 1,395 annually);
   (B) Fin whale (Balaenoptera physalus)—55,185 (an average of 11,037 annually);
   (C) Blue whale (Balaenoptera musculus)—10 (an average of 2 annually);
   (D) Sei whale (Balaenoptera borealis)—40 (an average of 8 annually);
   (E) Minke whale (Balaenoptera acutorostrata)—3,405 (an average of 681 annually);
   (F) Gray whale (Eschrichtius robustus)—1,940 (an average of 388 annually); and
   (G) North Pacific right whale (Eubalaena japonica)—10 (an average of 2 annually).
   (ii) Odontocetes:
   (A) Sperm whales (Physeter macrocephalus)—1,645 (an average of 329 annually);
   (B) Killer whale (Orcinus orca)—53,245 (an average of 10,649 annually);
   (C) Harbor porpoise (Phocoena phocoena)—27,200 (an average of 5,440 annually);
   (D) Baird’s beaked whales (Berardius bairdii)—2,435 (an average of 487 annually);
   (E) Cuvier’s beaked whales (Ziphius cavirostris)—11,560 (an average of 2,312 annually);
   (F) Stejneger’s beaked whales (Mesoplodon stejnegeri)—11,565 (an average of 2,313 annually);
   (G) Pacific white-sided dolphin (Lagenorhynchus obliquidens)—84,955 (an average of 16,991 annually); and
   (H) Dall’s porpoise (Phocoenoides dalli)—1,031,870 (an average of 206,374 annually).
   (iii) Pinnipeds:
   (A) Steller sea lion (Eumetopias jubatus)—55,540 (an average of 11,108 annually);
   (B) California sea lion (Zalophus californianus)—10 (an average of 2 annually);
   (C) Harbor seal (Phoca vitulina richardsi)—10 (an average of 2 annually);
   (D) Northern elephant seal (Mirounga angustirostris)—10,345 (an average of 2,069 annually); and
   (E) Northern fur seal (Callorhinus ursinus)—771,010 (an average of 154,202 annually).

(5) Level A Harassment and/or mortality of no more than 15 beaked whales (total), of any of the species listed in §218.122(c)(1)(ii)(D) through (F) over the course of the 5-year regulations.

§ 218.123 Prohibitions.

No person in connection with the activities described in §218.120 may:

(a) Take any marine mammal not specified in §218.122(c);
(b) Take any marine mammal specified in §218.122(c) other than by incidental take as specified in §§218.122(c) other than by incidental take as specified in §§218.122(c)(1), (c)(2), and (c)(3);
(c) Take a marine mammal specified in §218.122(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 these regulations or a Letter of Authorization issued under §§216.106 and 218.127 of this chapter.

§ 218.124 Mitigation.

(a) When conducting training and utilizing the sound sources or explosives identified in §218.120(c), the mitigation measures contained in a Letter of Authorization issued under §§216.106 and 218.127 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) Personnel Training (for all Training Types):
   (i) All commanding officers (COs), executive officers (XOs), Lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-Submarine Warfare (ASW) helicopter crews shall complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge Lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel.
   (ii) Navy Lookouts shall undertake extensive training in order to qualify
as a watchstander in accordance with
the Lookout Training Handbook (Naval
Education and Training Command

(iii) Lookout training shall include
on-the-job instruction under the super-
vision of a qualified, experienced Look-
out. Following successful completion
of this supervised training period,
Lookouts shall complete the Personal
Qualification Standard Program, certi-
fying that they have demonstrated the
necessary skills (such as detection and
reporting of partially submerged ob-
jects). Personnel being trained as
Lookouts can be counted among re-
quired Lookouts as long as supervisors
monitor their progress and performance.

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

(v) All Lookouts onboard platforms
involved in ASW training events shall
review the NMFS-approved Marine
Species Awareness Training material
prior to use of mid-frequency active
sonar.

(vi) All COs, XOs, and officers stand-
ing watch on the bridge shall have re-
viewed the Marine Species Awareness
Training material prior to a training
event employing the use of MFAS/
HFAS.

(2) General Operating Procedures (for
all Training Types):

(i) 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 ma-
rine species protective measures.

(ii) COs shall make use of marine spe-
cies detection cues and information to
limit interaction with marine mam-
mals to the maximum extent possible
consistent with safety of the ship.

(iii) While underway, surface vessels
shall have at least two Lookouts with
binoculars; surfaced submarines shall
have at least one Lookout with bin-
oculars. Lookouts already posted for
safety of navigation and man-over-
board precautions may be used to fill
this requirement. As part of their reg-
ular duties, Lookouts shall watch for
and report to the OOD the presence of
marine mammals.

(iv) On surface vessels equipped with
mid-frequency active sonar, pedestal
mounted ‘‘Big Eye’’ (20x110) binoculars
shall be properly installed and in good
working order to assist in the detec-
tion of marine mammals in the vicin-
ity of the vessel.

(v) Personnel on Lookout shall em-
ploy visual search procedures employ-
ing a scanning methodology in accord-
ance with the Lookout Training Hand-

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

(vii) While in transit, naval vessels
shall be alert at all times, use extreme
cautions, and proceed at a ‘‘safe speed,’’
which means the speed at which the CO
can maintain crew safety and effective-
ness of current operational directives,
so that the vessel can take action to
avoid a collision with any marine
mammal.

(viii) When marine mammals have
been sighted in the area, Navy vessels
shall increase vigilance and take all
reasonable and practicable actions to
avoid collisions and activities that
might result in close interaction of
naval assets and marine mammals.
Such action may include changing
speed and/or direction and are dictated
by environmental and other conditions
(e.g., safety, weather).

(ix) Navy aircraft participating in ex-
ercises at sea shall conduct and main-
tain surveillance for marine mammals
as long as it does not violate safety
constraints or interfere with the ac-
complishment of primary operational
duties.

(x) All marine mammal detections
shall be immediately reported to as-
signed Aircraft Control Unit for fur-
ther dissemination to ships in the vi-
cinity of the marine species as appro-
priate when it is reasonable to con-
clude that the course of the ship will
likely result in a closing of the dis-
tance to the detected marine mammal.

(xi) Naval vessels shall maneuver to
keep at least 1,500 ft (500 yd or 457 m)
away from any observed whale in the
vessel’s path and avoid approaching whales head-on. These requirements do 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. Restricted maneuverability includes, but is not limited to, situations when vessels are engaged in dredging, submerged activities, launching and recovering aircraft or landing craft, minesweeping activities, replenishment while underway and towing activities that severely restrict a vessel’s ability to deviate course. Vessels shall take reasonable steps to alert other vessels in the vicinity of the whale. Given rapid swimming speeds and maneuverability of many dolphin species, naval vessels would maintain normal course and speed on sighting dolphins unless some condition indicated a need for the vessel to maneuver.

(3) Operating Procedures (for Anti-submarine Warfare (ASW) Operations):

(i) On the bridge of surface ships, there shall always be at least three people on watch whose duties include observing the water surface around the vessel.

(ii) All surface ships participating in ASW training events shall have, in addition to the three personnel on watch noted in paragraph (i), at least two additional personnel on watch as Lookouts at all times during the exercise.

(iii) Personnel on Lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(iv) Personnel on Lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine mammal that may need to be avoided as warranted.

(v) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(vi) During mid-frequency active sonar operations, personnel shall utilize all available sensor and optical systems (such as night vision goggles) to aid in the detection of marine mammals.

(vii) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yd (183 m) of the sonobuoy.

(viii) Helicopters shall observe/survey the vicinity of an ASW exercise for 10 minutes before the first deployment of active (dipping) sonar in the water.

(ix) Helicopters shall not dip their sonar within 200 yd (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yd (183 m) of the sound source after pinging has begun.

(x) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard Lookout, or acoustically) within 1,000 yd (914 m) of the sonar dome (the bow), the ship or submarine shall limit active transmission levels to at least 6 decibels (dB) below normal operating levels for that source (i.e., limit to at most 229 dB for AN/SQS–53 and 219 for AN/SQS–56, etc.).

(A) Ships and submarines shall continue to limit maximum transmission levels by this 6-dB factor until the animal has been seen to leave the 1,000-yd (914 m) exclusion zone, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1,829 m) beyond the location of the last detection.

(B) Should a marine mammal be detected within 500 yd (457 m) of the sonar dome, active sonar transmissions shall be limited to at least 10 dB below the equipment’s normal operating level (i.e., limit to at most 225 dB for AN/SQS–53 and 215 for AN/SQS–56, etc.). Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the animal has been seen to leave the 500-yd (457 m) safety zone (at which point the 6-dB powerdown applies until the animal leaves the 1,000-yd (914 m) safety zone), has not been detected for 30 minutes, or the vessel has transited more than.
2,000 yd (1,829 m) beyond the location of the last detection.

(C) Should the marine mammal be detected within 200 yd (183 m) of the sonar dome, active sonar transmissions shall cease. Sonar shall not resume until the animal has been seen to leave the 200-yd (183 m) safety zone (at which point the 10-dB or 6-dB powerdowns apply until the animal leaves the 500-yd (457 m) or 1,000-yd (914 m) safety zone, respectively), has not been detected for 30 minutes, or the vessel has transited more than 2,000 yd (1,829 m) beyond the location of the last detection.

(D) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the OOD concludes that dolphins or porpoises are deliberately closing to ride the vessel’s bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(xii) Prior to start up or restart of active sonar, operators shall check that the Safety Zone radius around the sound source is clear of marine mammals.

(xvii) Active sonar levels (generally)—Navy shall operate active sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(xviii) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training events involving MFAS.

NOTE TO PARAGRAPH (a)(3): If the need for power-down should arise (as detailed in 218.114(a)(3)(i)) when the Navy is operating a hull-mounted or sub-mounted source above 235 db (infrequent), the Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 dB active sonar was being operated).

(4) Sinking Exercise:

(i) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(ii) An exclusion zone with a radius of 1.0 nm (1.9 km) shall be established around each target. An additional buffer of 0.5 nm (0.9 km) will be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which will extend beyond the buffer zone by an additional 0.5 nm (0.9 km), shall be surveyed. Together, the zones extend out 2 nm (3.7 km) from the target.

(iii) A series of surveillance overflights shall be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol shall be as follows:

(A) Overflights within the exclusion zone shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy’s Search and Rescue Tactical Aid, which provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.

(B) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team shall have completed the Navy’s marine mammal training program for Lookouts.

(C) In addition to the overflights, the exclusion zone shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring shall be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals (particularly sperm whales) in the vicinity of the exercise. The sonobuoys shall be re-seeded as necessary throughout the exercise. Additionally, if submarines are present, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE shall be informed of any aural detection of marine mammals and shall include this information in the determination of when it is safe to commence the exercise.

(D) On each day of the exercise, aerial surveillance of the exclusion and
safety zones shall commence 2 hours prior to the first firing.

(E) The results of all visual, aerial, and acoustic searches shall be reported immediately to the OCE. No weapons launches or firing may commence until the OCE declares the safety and exclusion zones free of marine mammals.

(F) If a marine mammal is observed within the exclusion zone, firing shall be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes have elapsed. After 30 minutes, if the animal has not been re-sighted it can be assumed to have left the exclusion zone. The OCE shall determine if the marine mammal is in danger of being adversely affected by commencement of the exercise.

(G) During breaks in the exercise of 30 minutes or more, the exclusion zone shall again be surveyed for any marine mammal. If marine mammals are sighted within the exclusion zone or buffer zone, the OCE shall be notified, and the procedure described above shall be followed.

(H) Upon sinking of the vessel, a final surveillance of the exclusion zone shall be monitored for 2 hours, or until sunset, to verify that no marine mammals were harmed.

(iv) Aerial surveillance shall be conducted using helicopters or other aircraft based on necessity and availability.

(v) Where practicable, the Navy shall conduct the exercise in sea states that are ideal for marine mammal sighting, Beaufort Sea State 3 or less. In the event of a Beaufort Sea State 4 or above, survey efforts shall be increased within the zones. This shall be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.

(vi) The exercise shall not be conducted unless the exclusion zone can be adequately monitored visually.

(vii) In the event that any marine mammals are observed to be harmed in the area, NMFS shall be notified as soon as feasible following the stranding communication protocol. A detailed description of the animal shall be taken, the location noted, and if possible, photos taken of the marine mammal. This information shall be provided to NMFS via the Navy’s regional environmental coordinator for purposes of identification (see the draft Stranding Plan for detail).

(viii) An after action report detailing the exercise’s time line, the time the surveys commenced and terminated, amount, and types of all ordnance expended, and the results of survey efforts for each event shall be submitted to NMFS.

(5) Surface-to-Surface Gunnery (up to 5-inch Explosive Rounds):

(i) For exercises using targets towed by a vessel, target-towing vessels shall maintain a trained Lookout for marine mammals when feasible. If a marine mammal is sighted in the vicinity, the tow vessel shall immediately notify the firing vessel, which shall suspend the exercise until the area is clear.

(ii) A 600-yd (585 m) radius buffer zone shall be established around the intended target.

(iii) From the intended firing position, trained Lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable. Due to the distance between the firing position and the buffer zone, Lookouts are only expected to visually detect breaching whales, whale blows, and large pods of dolphins and porpoises.

(iv) The exercise shall be conducted only when the buffer zone is visible and marine mammals are not detected within it.

(6) Surface-to-Surface Gunnery (non-explosive rounds):

(i) A 200-yd (183 m) radius buffer zone shall be established around the intended target.

(ii) From the intended firing position, trained Lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable.

(iii) If available, target-towing vessels shall maintain a Lookout (unmanned towing vessels will not have a Lookout available). If a marine mammal is sighted in the vicinity of the exercise, the tow vessel shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(iv) The exercise shall be conducted only when the buffer zone is visible and marine mammals are not detected
within the target area and the buffer zone.

7. Surface-to-Air Gunnery (Explosive and Non-explosive Rounds):
   (i) Vessels shall orient the geometry of gunnery exercises in order to prevent debris from falling in the area of sighted marine mammals.
   (ii) Vessels shall expedite the attempt to recover any parachute deploying aerial targets to reduce the potential for entanglement of marine mammals.
   (iii) Target-towing aircraft shall maintain a Lookout if feasible. If a marine mammal is sighted in the vicinity of the exercise, the tow aircraft shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

8. Air-to-Surface Gunnery (Explosive and Non-explosive Rounds):
   (i) A 200-yd (183 m) radius buffer zone shall be established around the intended target.
   (ii) If surface vessels are involved, Lookout(s) shall visually survey the buffer zone for marine mammals prior to commencement and during the exercise.
   (iii) Aerial surveillance of the buffer zone for marine mammals shall be conducted prior to commencement of the exercise. Aerial surveillance altitude of 500 ft to 1,500 ft (152–456 m) is optimum. Aircraft crew/pilot shall maintain visual watch during exercises. Release of ordnance through cloud cover is prohibited; aircraft must be able to actually see ordnance impact areas.
   (iv) The exercise shall be conducted only if marine mammals are not visible within the buffer zone.

9. Small Arms Training (Grenades, Explosive and Non-explosive Rounds)—Lookouts shall visually survey for marine mammals. Weapons shall not be fired in the direction of known or observed marine mammals.

10. Air-to-Surface At-sea Bombing Exercises (explosive and non-explosive):
    (i) If surface vessels are involved, trained Lookouts shall survey for marine mammals. Ordnance shall not be targeted to impact within 1,000 yd (914 m) of known or observed marine mammals.
    (ii) A 1,000-yd (914 m) radius buffer zone shall be established around the intended target.
    (iii) 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) 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 see ordnance impact areas. Survey aircraft shall employ most effective search tactics and capabilities.
    (iv) The exercise shall be conducted only if marine mammals and are not visible within the buffer zone.

11. Air-to-Surface At-Sea Bombing Exercises (Non-explosive Bombs and Rockets):
    (i) If surface vessels are involved, trained Lookouts shall survey for marine mammals. Ordnance shall not be targeted to impact within 1,000 yd (914 m) of known or observed marine mammals.
    (ii) A 1,000-yd (914 m) radius buffer zone shall be established around the intended target.
    (iii) 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) 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. Survey aircraft shall employ most effective search tactics and capabilities.
    (iv) The exercise shall be conducted only if marine mammals and are not visible within the buffer zone.

12. Air-to-Surface Missile Exercises (explosive and non-explosive):
    (i) Aircraft shall visually survey the target area for marine mammals. Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) or lower, if safe to do so, and at the slowest safe speed. Firing or range clearance aircraft must be able to actually see ordnance impact areas.
    (ii) Explosive ordnance shall not be targeted to impact within 1,800 yd (1,646 m) of sighted marine mammals.
(13) Aircraft Training Activities Involving Non-Explosive Devices:
   (i) Non-explosive devices such as some sonobuoys and inert bombs involve aerial drops of devices that have the potential to hit marine mammals if they are in the immediate vicinity of a floating target. The exclusion zone (200 yd), therefore, shall be clear of marine mammals and around the target location.
   (ii) [Reserved]

(14) Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER):
   (i) Crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search shall be conducted at an altitude below 500 yd (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft operations, crews are allowed to conduct coordinated area clearances.
   (ii) Crews shall conduct a minimum of 30 minutes of visual and aural monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.
   (iii) For any part of the intended sonobuoy pattern where a post (source-receiver sonobuoy pair) shall be deployed within 1,000 yd (914 m) of observed marine mammal activity, the Navy shall deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yd (914 m) of the intended post position, the Navy shall collocate the explosive source sonobuoy (AN/SSQ–110A) (source) with the receiver.
   (iv) When operationally feasible, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of RF range of these sensors.
   (v) Aural Detection—If the presence of marine mammals is detected aurally, then that shall cue the Navy aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.
   (vi) Visual Detection—If marine mammals are visually detected within 1,000 yd (914 m) of the explosive source sonobuoy (AN/SSQ–110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 1,000-yd (914 m) safety buffer. Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000-yd (914 m) safety buffer.
   (vii) Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the “Payload 1 Release” command followed by the “Payload 2 Release” command. Aircrews shall refrain from using the “Scuttle” command when two payloads remain at a given post. Aircrews shall ensure that a 1,000-yd (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.
   (viii) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy shall self-scuttle using the secondary or tertiary method.
   (ix) The Navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ–110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.
   (x) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(15) The Navy shall abide by the letter of the “Stranding Response Plan for Major Navy Training Exercises in the GoA TMAA” (available at: http://www.nmfs.noaa.gov/pr/permits/incidental.htm), which is incorporated herein by reference, to include the following measures:
§ 218.125 Requirements for monitoring and reporting.

(a) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS is notified immediately ((see Communication Plan) or as soon as clearance procedures allow) if an injured, stranded, 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 the species or description of the animal(s), condition of the animal(s) including carcass condition if the animal(s) is/are dead, location, time of first discovery, observed behavior(s) (if alive), and photo or video of the animal(s) (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.

(b) [Reserved]

(ii) Within 72 hrs of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the GoA TMAA 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 hrs prior to the USE event. Information not initially available regarding the 80 nm (148 km) and 72 hrs 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.

(iii) Memorandum of Agreement (MOA)—The Navy and NMFS shall develop a MOA, or other mechanism, 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.
if the animal is dead), location, time of first discovery, observed behavior(s) (if alive), and photo or video of the animal(s) (if available). In the event that an injured, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or during or shortly after, MFAS, HFAS, or underwater explosive detonations, the Navy shall report the same information as listed above as soon as operationally feasible and clearance procedures allow.

(b) General Notification of Ship Strike—In the event of a ship strike by any Navy vessel, at any time or place, the Navy shall do the following:

(1) Immediately report to NMFS the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead, or whether its status is unknown.

(2) Report to NMFS as soon as operationally feasible the size and length of animal, an estimate of the injury status (e.g., dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status.

(3) Report to NMFS the vessel length, speed, and heading as soon as feasible.

(4) Provide NMFS a photo or video of the animal(s), if equipment is available.

(c) The Navy must conduct all monitoring and/or research required under the Letter of Authorization including abiding by the GoA TMAA Monitoring Plan. (http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications)

(d) Report on Monitoring required in paragraph (c) of this section—The Navy shall submit a report annually on December 15 describing the implementation and results (through October of the same year) of the monitoring required in paragraph (c) of this section. The Navy shall standardize data collection methods across ranges to allow for comparison in different geographic locations.

(e) 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 15 calendar days after the completion of any MTER indicating:

(1) Location of the exercise;
(2) Beginning and end dates of the exercise; and
(3) Type of exercise.

(f) Annual GoA TMAA Report—The Navy shall submit an Annual Exercise GoA TMAA Report on December 15 of every year (covering data gathered through October). This report shall contain the subsections and information indicated below.

(1) MFAS/HFAS Training Exercises—This section shall contain the following information for the following Coordinated and Strike Group exercises: Joint Multi-strike Group Exercises; Joint Expeditionary Exercises; and Marine Air Ground Task Force GoA TMAA:

(i) Exercise Information (for each exercise):

(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.)); and
(J) Wave height (high, low, and average during exercise).

(ii) Individual marine mammal sighting info (for each sighting in each exercise):

(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(s);
(H) Wave height (ft);
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(I) Visibility;
(J) Sonar source in use (y/n);
(K) Indication of whether animal is < 200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or > 2,000 yd from sonar source in (x) above;
(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 (x) 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); and
(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 exercises) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to MFAS. 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 non-major training exercises (unit-level exercises, such as TRACKEXs):

(i) Total Hours—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 Impacts—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting other training (i.e., Unit Level Training (ULT)) utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across the GoA TMAA. The Navy shall include (in the GoA TMAA 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) Sinking Exercises (SINKEXs)—This section shall include the following information for each SINKEX completed that year:

(i) Exercise info:
(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); and
(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 during SINKEX (by Navy Lookouts) information:
(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) Length of time observers maintained visual contact with marine mammal;
(G) Wave height (ft);
(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 (762 m for SINKEX in the GoA TMAA);
(2) The required exclusion zone (1 nm for SINKEX in the GoA TMAA);
(3) The required observation distance (if different than the exclusion zone (2 nm for SINKEX in the GoA TMAA); and
(4) Greater than the required observed distance. For example, in this case, the observer shall indicate if < 762 m, from 762 m–1 nm, from 1 nm–2 nm, and > 2 nm.

(K) 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.), 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 munitions type in use at time of marine mammal detection.

(4) Improved Extended Echo-Ranging System (IEER) Summary:

(i) Total number of IEER events conducted in the GoA TMAA;

(ii) Total expended/detonated rounds (buoys); and

(iii) Total number of self-scuttled IEER rounds.

(5) Explosives Summary—The Navy is in the process of improving the methods used to track explosive use to provide increased granularity. To the extent practicable, the Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall 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 exercise (of those identified as part of the “specified activity” in this final rule) conducted in the GoA TMAA; and

(ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(g) GoA TMAA 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 GoA TMAA Exercise Reports and GoA TMAA Monitoring Plan Reports). This report shall be submitted at the end of the fourth year of the rule (December 2014), covering activities that have occurred through October 2014.

(b) 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 Northwest Training Range Complex, the Southern California Range Complex, the Atlantic Fleet Active Sonar Training, the Hawaii Range Complex, the Mariana Islands Range Complex, and the Gulf of Alaska.

(i) The Navy shall comply with the Integrated Comprehensive Monitoring Program (ICMP) Plan and continue to improve the program in consultation with NMFS.

§ 218.126 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. Citizen (as defined by §216.103 of this chapter) conducting the activity identified in §218.120(c) (i.e., the Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.127 or a renewal under §218.128.


(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 (c) (i.e., the Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.127 or a renewal under §218.128.

(b) Each Letter of Authorization shall 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 shall be based on a
§ 218.128 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §216.106 of this chapter and §218.127 for the activity identified in §218.120(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under §218.126 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;

(2) Receipt of the monitoring reports and notifications within the indicated timeframes required under §218.125(b through j); and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §218.124 and the Letter of Authorization issued under §216.106 of this chapter and §218.127, 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 §§216.126 and 216.128 indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, 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) Adaptive Management—NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the Navy regarding the practicability of the modifications) 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 GoA TMAA or other locations).

2. Findings of the Monitoring Workshop that the Navy will convene in 2011.

3. Compiled results of Navy-funded research and development (R&D) studies (presented pursuant to the Integrated Comprehensive Monitoring Plan).

4. Results from specific stranding investigations (either from the GoA TMAA or other locations, and involving coincident MFAS/HFAS or explosives training or not involving coincident use).

5. Results from the Long Term Prospective Study described in the preamble to these regulations.

6. Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

(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 §218.120(b), a Letter of Authorization issued pursuant to §§216.126 and 218.127 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subparts O–Q [Reserved]

Subpart R—Taking Marine Mammals Incidental to U.S. Navy Research, Development, Test, and Evaluation Activities in the Naval Sea System Command (NAVSEA) Naval Undersea Warfare Center (NUWC) Keyport Range Complex and the Associated Proposed Extensions Study Area

SOURCE: 76 FR 20274, Apr. 12, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 20274, Apr. 12, 2011, subpart R was added, effective Apr. 11, 2011 through Apr. 11, 2016.

§218.170 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 occur 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) These regulations apply only to the taking of marine mammals by the Navy that occurs within the Keyport Range Complex Action Area, which includes the extended Keyport Range Site, the extended Dabob Bay Range Complex (DBRC) Site, and the extended Quinault Underwater Tracking Range (QUTR) Site, as presented in the Navy's LOA application. The NAVSEA NUWC Keyport Range Complex is divided into open ocean/offshore areas and in-shore areas:

1. Open Ocean Area—air, surface, and subsurface areas of the NAVSEA NUWC Keyport Range Complex Extension that lie outside of 12 nautical miles (nm) from land.
2. Offshore Area—air, surface, and subsurface ocean areas within 12 nm of the Pacific Coast.
3. In-shore—air, surface, and subsurface areas within the Puget Sound, Port Orchard Reach, Hood Canal, and Dabob Bay.

(c) These regulations apply only to the taking of marine mammals by the Navy if it occurs incidental to the following activities, or similar activities, and sources, or similar sources (estimate amounts of use below):

1. Range Activities Using Active Acoustic Devices:
   
   i. General range tracking: Narrow frequency output between 10 to 100 kHz with source levels (SL) between 195–203 dB re 1 microPa @ 1 m—up to 504.5 hours per year.
   
   ii. UUV Payloads: Operating frequency of 10 to 100 kHz with SLs less than 195 dB re 1 microPa @ 1 m at all range sites—up to 166 hours per year.
   
   iii. Torpedo Sonars: Operating frequency from 10 to 100 kHz with SL under 233 dB re 1 microPa @ 1 m—up to 21 hours per year.
   
   iv. Range Targets and Special Test Systems: 5 to 100 kHz frequency range with a SL less than 195 dB re 1 microPa @ 1 m at the Keyport Range Site and SL less than 238 dB re 1 microPa @ 1 m at the DBRC and QUTR sites—up to 9 hours per year.
   
   v. Special Sonars (non-Navy, shore/pire static testing, diver activities) and Fleet Aircraft (active sonobuoys and dipping sonars): Frequencies vary from 100 to 2,500 kHz with SL less than 235 dB re 1 microPa @ 1 m—up to 321 hours per year.
   
   vi. Side Scan Sonar: Multiple frequencies typically at 100 to 700 kHz with SLs less than 235 dB re 1 microPa @ 1 m—up to 166 hours per year.
   
   vii. Other Acoustic Sources:
   
   A. Acoustic Modems: Emit pulses at frequencies from 10 to 300 kHz with SLs less than 210 dB re 1 microPa @ 1 m—up to 166 hours per year.
   
   B. Sub-bottom Profilers: Operate at 2 to 7 kHz at SLs less than 210 dB re 1 microPa @ 1 m, and 35 to 45 kHz at SLs less than 220 dB re 1 microPa @ 1 m—up to 192 hours per year.
§ 218.171 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.176 of this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.170(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 218.170(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 § 218.170(c) is limited to the following species, by Level B harassment only and the indicated number of times:

1. Harbor porpoise (Phocoena phocoena)—56,415 (an average of 11,283 annually);
2. Northern fur seal (Callorhinus ursinus)—220 (an average of 44 annually);
§ 218.173 Mitigation.

When conducting RDT&E activities identified in §218.170(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §216.106 of this chapter and §218.176 must be implemented. These mitigation measures include, but are not limited to:

(a) Marine mammal observers training:
   (1) All range personnel shall be trained in marine mammal recognition.
   (2) Marine mammal observer training shall be conducted by qualified organizations approved by NMFS.
   (b) Lookouts onboard vessels:
   (1) Vessels on a range shall use lookouts during all hours of range activities.

(b) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§ 218.172 Prohibitions.

Notwithstanding takings contemplated in §218.171 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.176, no person in connection with the activities described in §218.170 may:

(a) Take any marine mammal not specified in §218.171(c);

(b) Take any marine mammal specified in §218.171(c) other than by incidental take as specified in §218.171(c);

(c) Take a marine mammal specified in §218.171(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 these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§ 218.173 Mitigation.

When conducting RDT&E activities identified in §218.170(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §216.106 of this chapter and §218.176 must be implemented. These mitigation measures include, but are not limited to:

(a) Marine mammal observers training:
   (1) All range personnel shall be trained in marine mammal recognition.
   (2) Marine mammal observer training shall be conducted by qualified organizations approved by NMFS.
   (b) Lookouts onboard vessels:
   (1) Vessels on a range shall use lookouts during all hours of range activities.

(b) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§ 218.172 Prohibitions.

Notwithstanding takings contemplated in §218.171 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.176, no person in connection with the activities described in §218.170 may:

(a) Take any marine mammal not specified in §218.171(c);

(b) Take any marine mammal specified in §218.171(c) other than by incidental take as specified in §218.171(c);

(c) Take a marine mammal specified in §218.171(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 these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§ 218.173 Mitigation.

When conducting RDT&E activities identified in §218.170(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §216.106 of this chapter and §218.176 must be implemented. These mitigation measures include, but are not limited to:

(a) Marine mammal observers training:
   (1) All range personnel shall be trained in marine mammal recognition.
   (2) Marine mammal observer training shall be conducted by qualified organizations approved by NMFS.
   (b) Lookouts onboard vessels:
   (1) Vessels on a range shall use lookouts during all hours of range activities.

(b) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§ 218.172 Prohibitions.

Notwithstanding takings contemplated in §218.171 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.176, no person in connection with the activities described in §218.170 may:

(a) Take any marine mammal not specified in §218.171(c);

(b) Take any marine mammal specified in §218.171(c) other than by incidental take as specified in §218.171(c);

(c) Take a marine mammal specified in §218.171(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 these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§ 218.173 Mitigation.

When conducting RDT&E activities identified in §218.170(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §216.106 of this chapter and §218.176 must be implemented. These mitigation measures include, but are not limited to:

(a) Marine mammal observers training:
   (1) All range personnel shall be trained in marine mammal recognition.
   (2) Marine mammal observer training shall be conducted by qualified organizations approved by NMFS.
   (b) Lookouts onboard vessels:
   (1) Vessels on a range shall use lookouts during all hours of range activities.

(b) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§ 218.172 Prohibitions.

Notwithstanding takings contemplated in §218.171 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.176, no person in connection with the activities described in §218.170 may:

(a) Take any marine mammal not specified in §218.171(c);

(b) Take any marine mammal specified in §218.171(c) other than by incidental take as specified in §218.171(c);

(c) Take a marine mammal specified in §218.171(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 these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§ 218.173 Mitigation.

When conducting RDT&E activities identified in §218.170(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §216.106 of this chapter and §218.176 must be implemented. These mitigation measures include, but are not limited to:

(a) Marine mammal observers training:
   (1) All range personnel shall be trained in marine mammal recognition.
   (2) Marine mammal observer training shall be conducted by qualified organizations approved by NMFS.
   (b) Lookouts onboard vessels:
   (1) Vessels on a range shall use lookouts during all hours of range activities.

(b) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§ 218.172 Prohibitions.

Notwithstanding takings contemplated in §218.171 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.176, no person in connection with the activities described in §218.170 may:

(a) Take any marine mammal not specified in §218.171(c);

(b) Take any marine mammal specified in §218.171(c) other than by incidental take as specified in §218.171(c);

(c) Take a marine mammal specified in §218.171(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 these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§ 218.173 Mitigation.

When conducting RDT&E activities identified in §218.170(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §216.106 of this chapter and §218.176 must be implemented. These mitigation measures include, but are not limited to:

(a) Marine mammal observers training:
   (1) All range personnel shall be trained in marine mammal recognition.
   (2) Marine mammal observer training shall be conducted by qualified organizations approved by NMFS.
   (b) Lookouts onboard vessels:
   (1) Vessels on a range shall use lookouts during all hours of range activities.

(b) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§ 218.172 Prohibitions.

Notwithstanding takings contemplated in §218.171 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.176, no person in connection with the activities described in §218.170 may:

(a) Take any marine mammal not specified in §218.171(c);

(b) Take any marine mammal specified in §218.171(c) other than by incidental take as specified in §218.171(c);

(c) Take a marine mammal specified in §218.171(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 these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§ 218.173 Mitigation.

When conducting RDT&E activities identified in §218.170(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §216.106 of this chapter and §218.176 must be implemented. These mitigation measures include, but are not limited to:

(a) Marine mammal observers training:
   (1) All range personnel shall be trained in marine mammal recognition.
   (2) Marine mammal observer training shall be conducted by qualified organizations approved by NMFS.
   (b) Lookouts onboard vessels:
   (1) Vessels on a range shall use lookouts during all hours of range activities.
§ 218.174 Requirements for monitoring and reporting

(a) The Holder of the Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.176 for activities described in § 218.170(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 218.170(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified or authorized in § 218.171(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the NAVSEA NUWC Keyport Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below:

(1) Visual Surveys:

(i) The Holder of this Authorization shall conduct a minimum of 2 special visual surveys per year to monitor HFAS and MFAS respectively at the DBRC Range site.

(ii) For specified events, shore-based and vessel surveys shall be used 1 day prior to and 1-2 days post activity.

(A) Shore-based Surveys:

(1) Shore-based monitors shall observe test events that are planned in advance to occur adjacent to near shore areas where there are elevated topography or coastal structures, and shall use binoculars or theodolite to augment other visual survey methods.

(2) Shore-based surveys of the test area and nearby beaches shall be conducted for stranded marine animals following nearshore events. If any distressed, injured or stranded animals are observed, an assessment of the animal’s condition (alive, injured, dead, or degree of decomposition) shall be reported immediately to the Navy and the information shall be transmitted immediately to NMFS through the appropriate chain of command.

(B) Vessel-based Surveys:

(1) Vessel-based surveys shall be designed to maximize detections of marine mammals near mission activity event.

(2) Post-analysis shall focus on how the location, speed and vector of the range craft and the location and direction of the sonar source (e.g. Navy surface vessel) relates to the animal.

(3) Any other vessels or aircraft observed in the area shall also be documented.

(ii) Surveys shall include the range site with special emphasis given to the particular path of the test run. When conducting a particular survey, the survey team shall collect the following information.

(A) Species identification and group size;

(B) Location and relative distance from the acoustic source(s);

(C) The behavior of marine mammals including standard environmental and oceanographic parameters;

(D) Date, time and visual conditions associated with each observation;
(E) Direction of travel relative to the active acoustic source; and
(F) Duration of the observation.
(iv) Animal sightings and relative distance from a particular active acoustic source shall be used post-survey to determine potential received energy (dB re 1 micro Pa-sec). This data shall be used, post-survey, to estimate the number of marine mammals exposed to different received levels (energy based on distance to the source, bathymetry, oceanographic conditions and the type and power of the acoustic source) and their corresponding behavior.

2) Passive Acoustic Monitoring (PAM):
   (i) The Navy shall deploy a hydrophone array in the Keyport Range Complex Study Area for PAM.
   (ii) The array shall be utilized during the two special monitoring surveys in DBRC as described in §218.174(c)(1)(i).
   (iii) The array shall have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes.
   (iv) Acoustic data collected from the PAM shall be used to detect acoustically active marine mammals as appropriate.

3) Marine Mammal Observers on range craft or Navy vessels:
   (i) Navy Marine mammal observers (NMMOs) may be placed on a range craft or Navy platform during the event being monitored.
   (ii) The NMMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.
   (iii) NMMOs may be placed alongside existing lookouts during the two specified monitoring events as described in §218.174(c)(1)(i).
   (iv) NMMOs shall inform the lookouts of any marine mammal sighting so that appropriate action may be taken by the chain of command. NMMOs shall schedule their daily observations to duplicate the lookouts’ schedule.
   (v) NMMOs shall observe from the same height above water as the lookouts, and they shall collect the same data collected by lookouts listed in §218.174(c)(1)(iii).

(d) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan 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.

(e) 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 activities utilizing sonar. 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).

(f) Annual Keyport Range Complex Monitoring Plan Report—The Navy shall submit a report annually by December 1 describing the implementation and results (through September 1 of the same year) of the Keyport 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 NMMOs collecting marine mammal data pursuant to the Keyport Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in §218.174(c).
The Keyport Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from Keyport Range Complex and multiple range complexes.

(g) Keyport Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft comprehensive report that analyzes and summarizes all of the multi-year marine mammal information gathered during tests involving active acoustic sources for which individual reports are required in §218.174 (d)–(f). This report will be submitted at the end of the fourth year of the rule (June 2013), covering activities that have occurred through September 1, 2013.

(h) The Navy shall respond to NMFS comments and requests for additional information or clarification on the Keyport Range Complex Extension Comprehensive Report, the Annual Keyport Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS’ comments, or three months after the submission of the draft if NMFS does not comment by then.

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

§218.175 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations for the activities identified in §218.170(c), the U.S. Navy must apply for and obtain either an initial Letter of Authorization in accordance with §218.176 or a renewal under §218.177.

§218.176 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in §218.177 and the modification conditions in §218.178.

(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).

§218.177 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §§216.106 of this chapter and 218.176 for the activity identified in §218.170(c) will be renewed upon:

1. Notification to NMFS that the activity described in the application submitted under §218.175 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;

2. Timely receipt of the monitoring reports required under §218.174(b); and

3. A determination by NMFS that the mitigation, monitoring and reporting measures required under §218.173 and the Letter of Authorization issued under §§216.106 of this chapter and §218.176, 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 218.176 indicates that a
substantial modification 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. Public 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 Keyport Range Complex Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 ($218.174(d)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP ($218.174(d)).

(4) Results from specific stranding investigations (either from the Keyport Range Complex Study Area or other locations).

(5) Results from the Long Term Prospective Study described in the preamble to these regulations.

(6) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

(7) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 218.178 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section and §218.177(d), no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §216.106 of this chapter and §218.176 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.177, without modification (except for the period of validity), is not considered a substantive modification.

(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 §218.171(b), a Letter of Authorization issued pursuant to §216.106 of this chapter and §218.176 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subpart S—Taking Marine Mammals Incidental to U.S. Navy Mission Activities in the Naval Surface Warfare Center Panama City Division

SOURCE: 75 FR 3410, Jan. 21, 2010, unless otherwise noted.

EFFECTIVE DATE NOTE: At 75 FR 3410, Jan. 21, 2010, §§218.180—218.188 (Subpart S) was added, effective January 21, 2010 through January 21, 2015.

§ 218.180 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
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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 NSWC PCD Study Area, which includes St. Andrew Bay (SAB) and military warning areas (areas within the GOM subject to military operations) W–151 (includes Panama City Operating Area), W–155 (includes Pensacola Operating Area), and W–470, as described in Figures 2–1 and 2–2 of the Navy’s application for the Letter of Authorization (LOA). The NSWC PCD Study Area includes a Coastal Test Area, a Very Shallow Water Test Area, and Target and Operational Test Fields. The NSWC PCD Research, Development, Test, and Evaluation (RDT&E) activities may be conducted anywhere within the existing military operating areas and SAB from the mean high water line (average high tide mark) out to 222 km (120 nm) offshore. The locations and environments include:

(1) Test area control sites adjacent to NSWC PCD.

(2) Wide coastal shelf 97 km (52 nm) distance offshore to 183 m (600 ft), including bays and harbors.

(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 mission activities in territorial waters (estimated amounts below):

(i) AN/SQS–53/56 Kingfisher—up to 15 hours over the course of 5 years (an average of 3 hours per year);

(ii) Sub-bottom profiler (2–9 kHz)—up to 166 hours over the course of 5 years (an average of 33 hours per year);

(iii) REMUS SAS–LF (center frequency 15 kHz)—up to 60 hours over the course of 5 years (an average of 12 hours per year);

(iv) REMUS Modem—up to 125 hours over the course of 5 years (an average of 25 hours per year).

(ii) Sub-bottom profiler (2–9 kHz)—up to 5 hours over the course of 5 years (an average of 1 hour per year);

(iii) REMUS Modem—up to 60 hours over the course of 5 years (an average of 12 hours per year).

(v) Sub-bottom profiler (2–16 kHz)—up to 120 hours over the course of 5 years (an average of 24 hours per year);

(vi) AN/SQQ–32—up to 150 hours over the course of 5 years (an average of 30 hours per year);

(vii) REMUS–SAS–LF (center frequency 20 kHz)—up to 100 hours over the course of 5 years (an average of 20 hours per year);

(viii) SAS–LF—up to 175 hours over the course of 5 years (an average of 35 hours per year);

(ix) AN/WLD–1 RMS–ACL—up to 105 hours over the course of 5 years (an average of 33.5 hours per year);

(x) BPAUV Sidescan (center frequency 75 kHz)—up to 125 hours over the course of 5 years (an average of 25 hours per year);

(xi) TVSS—up to 75 hours over the course of 5 years (an average of 15 hours per year);

(xii) F84Y—up to 75 hours over the course of 5 years (an average of 15 hours per year);

(xiii) BPAUV Sidescan (center frequency 102.5 kHz)—up to 125 hours over the course of 5 years (an average of 25 hours per year);

(xiv) REMUS–SAS–HF—up to 50 hours over the course of 5 years (an average of 10 hours per year);

(xv) SAS–HF—up to 58 hours over the course of 5 years (an average of 11.5 hours per year);

(xvi) AN/SQS–20—up to 2725 hours over the course of 5 years (an average of 545 hours per year);

(xvii) AN/WLD–11 RMS Navigation—up to 75 hours over the course of 5 years (an average of 15 hours per year); and

(xviii) BPAUV Sidescan (center frequency 120 kHz)—up to 150 hours over the course of 5 years (an average of 30 hours per year).

(2) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy mission activities in non-territorial waters (estimated amounts below):

(i) AN/SQS–53/56 Kingfisher—up to 5 hours over the course of 5 years (an average of 1 hour per year);

(ii) Sub-bottom profiler (2–9 kHz)—up to 5 hours over the course of 5 years (an average of 1 hour per year);

(iii) REMUS Modem—up to 60 hours over the course of 5 years (an average of 12 hours per year);

(iv) REMUS Modem—up to 5 hours over the course of 5 years (an average of 1 hour per year).

(v) Sub-bottom profiler (2–16 kHz)—up to 120 hours over the course of 5 years (an average of 24 hours per year);

(vi) AN/SQQ–32—up to 150 hours over the course of 5 years (an average of 30 hours per year);

(vii) REMUS–SAS–LF (center frequency 20 kHz)—up to 100 hours over the course of 5 years (an average of 20 hours per year);

(viii) SAS–LF—up to 175 hours over the course of 5 years (an average of 35 hours per year);

(ix) AN/WLD–1 RMS–ACL—up to 105 hours over the course of 5 years (an average of 33.5 hours per year);

(x) BPAUV Sidescan (center frequency 75 kHz)—up to 125 hours over the course of 5 years (an average of 25 hours per year);

(xi) TVSS—up to 75 hours over the course of 5 years (an average of 15 hours per year);

(xii) F84Y—up to 75 hours over the course of 5 years (an average of 15 hours per year);

(xiii) BPAUV Sidescan (center frequency 102.5 kHz)—up to 125 hours over the course of 5 years (an average of 25 hours per year);

(xiv) REMUS–SAS–HF—up to 50 hours over the course of 5 years (an average of 10 hours per year);

(xv) SAS–HF—up to 58 hours over the course of 5 years (an average of 11.5 hours per year);

(xvi) AN/SQS–20—up to 2725 hours over the course of 5 years (an average of 545 hours per year);

(xvii) AN/WLD–11 RMS Navigation—up to 75 hours over the course of 5 years (an average of 15 hours per year); and

(xviii) BPAUV Sidescan (center frequency 120 kHz)—up to 150 hours over the course of 5 years (an average of 30 hours per year).
Sub-bottom profiler (2–16 kHz)—up to 5 hours over the course of 5 years (an average of 1 hour per year);

(vi) SAS–LF—up to 75 hours over the course of 5 years (an average of 15 hours per year);

(vii) AN/WLD–1 RMS–ACL—up to 25 hours over the course of 5 years (an average of 5 hours per year);

(viii) BPAUV Sidescan (center frequency 75 kHz)—up to 190 hours over the course of 5 years (an average of 38 hours per year);

(ix) TVSS—up to 83 hours over the course of 5 years (an average of 16.5 hours per year);

(x) F84Y—up to 75 hours over the course of 5 years (an average of 15 hours per year);

(xi) REMUS–SAS–HF—up to 125 hours over the course of 5 years (an average of 25 hours per year);

(xii) SAS–HF—up to 75 hours over the course of 5 years (an average of 15 hours per year);

(xiii) AN/AQS–20—up to 75 hours over the course of 5 years (an average of 15 hours per year); and

(xiv) BPAUV Sidescan (center frequency 120 kHz)—up to 125 hours over the course of 5 years (an average of 25 hours per year).

(3) Ordnance operations, or similar operations, for Navy mission activities in territorial waters (estimated amounts below):

(i) Range 1 (0–10 lb)—up to 255 detonations over the course of 5 years (an average of 51 detonations per year);

(ii) Range 2 (11–75 lb)—up to 15 detonations over the course of 5 years (an average of 3 detonations per year); and

(iii) Line charges—up to 15 detonations over the course of 5 years (an average of 3 detonations per year).

(4) Ordnance operations, or similar operations, for Navy mission activities in non-territorial waters (estimated amounts below):

(i) 5 in. Naval gunfire—up to 300 rounds over the course of 5 years (an average of 60 rounds per year);

(ii) 40 mm rounds—up to 2,400 rounds over the course of 5 years (an average of 480 rounds per year);

(iii) 30 mm rounds—up to 3,000 rounds over the course of 5 years (an average of 600 rounds per year);

(iv) 20 mm rounds—up to 1,435 rounds over the course of 5 years (an average of 287 rounds per year);

(v) 76 mm rounds—up to 1,200 rounds over the course of 5 years (an average of 240 rounds per year); and

(vi) 25 mm rounds—up to 3,000 rounds over the course of 5 years (an average of 600 rounds per year).

(5) Projectile firing operations, or similar operations, for Navy mission activities in non-territorial waters (estimated amounts below):

(i) Range 3 (76–600 lb)—up to 80 detonations over the course of 5 years (an average of 16 detonations per year).

(ii) Reserved.

(5) Projectile firing operations, or similar operations, for Navy mission activities in non-territorial waters (estimated amounts below):

(i) 5 in. Naval gunfire—up to 300 rounds over the course of 5 years (an average of 60 rounds per year);

(ii) 40 mm rounds—up to 2,400 rounds over the course of 5 years (an average of 480 rounds per year);

(iii) 30 mm rounds—up to 3,000 rounds over the course of 5 years (an average of 600 rounds per year);

(iv) 20 mm rounds—up to 1,435 rounds over the course of 5 years (an average of 287 rounds per year);

(v) 76 mm rounds—up to 1,200 rounds over the course of 5 years (an average of 240 rounds per year); and

(vi) 25 mm rounds—up to 3,000 rounds over the course of 5 years (an average of 600 rounds per year).

(5) Projectile firing operations, or similar operations, for Navy mission activities in non-territorial waters (estimated amounts below):

(i) Range 3 (76–600 lb)—up to 80 detonations over the course of 5 years (an average of 16 detonations per year).

(ii) Reserved.
§ 218.182 Prohibitions.

Notwithstanding takings contemplated in §218.181 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.186, no person in connection with the activities described in §218.180 may:

(a) Take any marine mammal not specified in §218.181(b);

(b) Take any marine mammal specified in §218.181(b) other than by incidental take as specified in §218.181(b)(1) and (2);

(c) Take a marine mammal specified in §218.181(b) 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 these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.186.

§ 218.183 Mitigation.

When conducting RDT&E activities identified in §218.180(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §§216.106 of this chapter and §218.186 must be implemented. These mitigation measures include, but are not limited to:

(a) Mitigation Measures for HFAS/MFAS Operations: (i) Personnel Training: (i) All marine observers onboard platforms involved in NSWC PCD RDT&E activities shall complete Marine Species Awareness Training (MSAT).

(ii) Marine observers shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

(ii) Marine Observer Responsibilities:

(i) On the bridge of surface vessels, there shall always be at least one to three marine species awareness trained observer(s) on watch whose duties include observing the water surface around the vessel.

(A) For vessels with length under 65 ft (20 m), there shall always be at least one marine observer on watch.

(B) For vessels with length between 65–200 ft (20–61 m), there shall always be at least two marine observers on watch.

(C) For vessels with length above 200 ft (61 m), there shall always be at least three marine observers on watch.

(ii) Each marine observer shall have at their disposal at least one set of binoculars available to aid in the detection of marine mammals.

(iii) On surface vessels equipped with AN/SQQ-53C/56, pedestal mounted “Big Eye” (20 x 110) binoculars shall be present and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

(iv) Marine observers shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).
(v) Marine observers shall scan the water from the vessel to the horizon and be responsible for ensuring that all contacts in their sector follow the below protocols:

(A) In searching the assigned sector, the marine observer shall always start at the forward part of the sector and search aft (toward the back).

(B) To search and scan, the marine observer 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.

(C) The marine observer shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars.

(D) The marine observer shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view.

(E) At the end of the sector search, the glasses would be lowered to allow the eyes to rest for a few seconds, and then the marine observer shall search back across the sector with the naked eye.

(vi) After sunset and prior to sunrise, marine observers shall employ Night Lookout Techniques in accordance with the Lookout Training Handbook.

(vii) At night, marine observers 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, marine observers 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.

(viii) Marine observers shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Test Director or the Test Director’s designee.

(3) Operating Procedures:

(i) The Test Director or the Test Director’s designee shall maintain the logs and records documenting RDT&E activities should they be required for event reconstruction purposes. Logs and records will be kept for a period of 30 days following completion of a RDT&E mission activity.

(ii) A Record of Environmental Consideration shall be included in the Test Plan prior to the test event to further disseminate the personnel testing requirement and general marine mammal mitigation measures.

(iii) Test Directors 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 vessel.

(iv) All personnel engaged in passive acoustic sonar operation (including aircraft or surface vessels) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the Test Director or the Test Director’s designee for dissemination and appropriate action.

(v) During HFAS/MFAS mission activities, personnel shall utilize all available sensor and optical systems (such as Night Vision Goggles) to aid in the detection of marine mammals.

(vi) Navy aircraft participating in RDT&E activities at sea shall conduct and maintain surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(vii) Marine mammal detections shall be immediately reported to the Test Director or the Test Director’s designee for further dissemination to vessels in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the vessel will likely result in a closing of the distance to the detected marine mammal.

(viii) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard marine observer, or acoustically) the Navy will ensure that HFAS/MFAS transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1,000 yards (914 m) of the sonar source (the bow).

(A) Vessels shall continue to limit maximum HFAS/MFAS transmission levels by this 6-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m) beyond the location of the last detection.
(B) The Navy shall ensure that HFAS/MFAS transmissions will be limited to at least 10 dB below the equipment’s normal operating level if any detected animals are within 500 yards (457 m) of the sonar source. Vessels will continue to limit maximum ping levels by this 10-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m) beyond the location of the last detection.

(C) The Navy shall ensure that HFAS/MFAS transmissions are ceased if any detected marine mammals are within 200 yards (183 m) of the sonar source. HFAS/MFAS will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m) beyond the location of the last detection.

(D) Special conditions applicable for dolphins only: If, after conducting an initial maneuver to avoid close quarters with dolphins, the Officer of the Deck concludes that dolphins are deliberately closing to ride the vessel’s bow wave, no further mitigation actions are necessary while the dolphins continue to exhibit bow wave riding behavior.

(E) If the need for power-down should arise as detailed in “Safety Zones” above, Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 sonar was being operated).

(ix) Prior to start up or restart of active sonar, operators will check that the Safety Zone radius around the sound source is clear of marine mammals.

(x) Sonar levels (generally)—Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet RDT&E objectives.

(b) Mitigation Measures for Ordnance and Projectile Firing: (1) No detonations over 34 kg (75 lb) shall be conducted in territorial waters, except the line charge detonation, which is a 107 m (350 ft).

(2) The number of live mine detonations shall be minimized and the smallest amount of explosive material possible to achieve test objectives will be used.

(3) Activities shall be coordinated through the Environmental Help Desk to allow potential concentrations of detonations in a particular area over a short time to be identified and avoided.

(4) Visual surveys and aerial surveys of the clearance zones specified in §218.183(b)(6)(i) through (iii) shall be conducted in accordance with §218.184(c) for all test operations that involve detonation events with large net explosive weight (NEW). Any protected species sighted will be reported.

(5) Line charge tests shall not be conducted during the nighttime.

(6) Additional mitigation measures shall be determined through the NSWC PCD’s Environmental Review Process based on test activities including the size of detonations, test platforms, and environmental effects documented in the Navy’s EIS/OEIS. Clearance zones must be determined based on the upper limit of different ranges of net explosive weight (NEW) used in the tests, as listed below:

(i) NEW between 76–600 lb: clearance zone is 2,863 m (9,393 ft);

(ii) NEW between 11–75 lb: clearance zone is 997 m (2,865 ft); and

(iii) NEW less than 11 lb—clearance zone is 345 m (1,132 ft).

(c) Mitigation Measures for Surface Operations: (1) While underway, vessels shall have at least one to three marine species awareness trained observers (based on vessel length) with binoculars. As part of their regular duties, marine observers shall watch for and report to the Test Director or Test Director’s designee the presence of marine mammals.

(i) For vessels with length under 65 ft (20 m), there shall always be at least one marine observer on watch.

(ii) For vessels with length between 65–200 ft (20–61 m), there shall always be at least two marine observers on watch.

(iii) For vessels with length above 200 ft (61 m), there shall always be at least three marine observers on watch.

(2) Marine observers shall employ visual search procedures employing a scanning method in accordance with
the Lookout Training Handbook (NAVEDTRA 12968-D).

(3) 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.

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

(5) Naval vessels shall maneuver to keep at least 500 yd (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 Navy vessels in the vicinity of the whale.

(6) Where operationally feasible and safe, vessels shall avoid closing to within 200-yd (183 m) of marine mammals other than whales.

§ 218.184 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§ 216.106 and 218.186 for activities described in § 218.180(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 218.180(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified or authorized in § 218.181(b).

(c) The Holder of the Letter of Authorization must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the NSWC PCD Study Area Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below.

(1) Visual Surveys—Vessel, Aerial and Shore-based: The Holder of this Authorization shall visually survey a minimum of 2 HFAS/MFAS activities and 2 explosive events per year. If the 53C sonar was being operated, such activity must be monitored as one of the HFAS/MFAS activities. For explosive events, one of the monitoring measures shall be focused on a multiple detonation event.

(i) In accordance with all safety considerations, observations shall be maximized by working from all available platforms: Vessels, aircraft, land and/or in combination.

(ii) Vessel and aerial surveys shall be conducted two days before, during, and one to five days after the NSWC PCD mission activities on commercial vessels and aircraft.

(iii) Visual surveys shall be conducted during Navy mission activities that have been identified to provide the highest likelihood of success.

(iv) The visual survey team shall collect the same data that are collected by Navy marine observers, including but not limited to:

(A) Location of sighting;
(B) Species (or to the lowest taxa possible);
(C) Number of individuals;
(D) Number of calves present, if any;
(E) Duration of sighting;
(F) Behavior of marine animals sighted;
(G) Direction of travel;
(H) Environmental information associated with sighting event including Beaufort sea state, wave height, swell direction, wind direction, wind speed, glare, percentage of glare, percentage of cloud cover; and

(I) When in relation to Navy exercises did the sighting occur (before, during or after detonations/exercise).
(v) Animal sightings and relative distance from a particular activity site shall be used post survey to estimate the number of marine mammals exposed to different received levels (energy and pressure of discharge based on distance to the source, bathymetry, oceanographic conditions and the type and size of detonation) and their corresponding behavior.

(vi) Any digital photographs that are taken of marine mammals during visual surveys shall be provided to local researchers for their regional research.

(vii) The Holder of the Letter of Authorization shall, when conducting RDT&E activities in the NSWC PCD Study Area, implement the following monitoring methods:

(A) Aerial surveys:

(1) During NSWC PCD sonar related mission activities, an aerial survey team shall fly transects relative to a Navy surface vessel that is conducting the mission activities.

(2) The aerial survey team shall collect both visual sightings and behavioral observations of marine animals.

(3) These transect data shall provide an opportunity to collect data of marine mammals at different received levels and their behavioral responses and movement relative to the Navy vessel’s position.

(4) Aerial surveys shall include time with and without test events in order to compare density, geographical distribution and behavioral observations.

(5) Behavioral observation methods shall involve three professionally trained marine mammal observers and a pilot. Two observers shall observe behaviors, one with hand-held binoculars and one with the naked eye.

(B) Vessel Surveys:

(1) Vessel surveys shall be designed to maximize detections of any target species near mission activity event for focal follows.

(2) Systematic transects shall be used to locate marine mammals. In the course of conducting these surveys, the vessel(s) shall deviate from transect protocol to collect behavioral data particularly if a Navy vessel is visible on the horizon or closer.

(3) While the Navy vessels are within view, attempts shall be made to position the dedicated survey vessel in the best possible way to obtain focal follow data in the presence of the Navy mission activities. If Navy vessels are not in view, then the vessel shall begin a systematic line transect surveys within the area to assess marine mammal occurrence and observe behavior.

(4) Post-analysis shall focus on how the location, speed and vector of the survey vessel and the location and direction of the sonar source (e.g., Navy surface vessel) relates to the animal.

(C) Shore-based Surveys:

(1) Shore-based monitors shall observe explosive events that are planned in advance to occur adjacent to nearshore areas where there are elevated coastal structures (e.g., lookout tower at Eglin Air Force Base) or topography, and shall use binoculars or theodolite to augment other visual survey methods.

(2) Shore-based surveys of the detonation area and nearby beaches shall be conducted for stranded marine animals following nearshore events. If any distressed, injured or stranded animals are observed, an assessment of the animal’s condition (alive, injured, dead, or degree of decomposition) shall be reported immediately to the Navy for appropriate action and the information shall be transmitted immediately to NMFS.

(3) If animals are observed prior to or during an explosion, a focal follow of that individual or group shall be conducted to record behavioral responses.
(2) Passive Acoustic Monitoring (PAM): The Holder of this Authorization shall visually survey a minimum of 2 HFAS/MFAS activities and 2 explosive events per year. If the 53C sonar was being operated, such activity must be monitored as one of the HFAS/ MFAS activities. For explosive events, one of the monitoring measures shall be focused on a multiple detonation event.

(i) The Navy shall use towed or over-the-side passive acoustic monitoring device/hydrophone array when feasible in the NSWC PCD Study Area for PAM.

(ii) The array shall be deployed for each of the days the ship is at sea.

(iii) The array shall be able to detect low frequency vocalizations (less than 1,000 Hz) for baleen whales and relatively high frequency vocalizations (up to 30 kHz) for odontocetes.

(iv) These buoys shall be left in place for a long enough duration (e.g., months) that data are collected before, during and outside of mission activities.

(v) Acoustic data collected from the buoys shall be used in order to detect, locate, and potentially track calling whales/dolphins.

(3) Marine Mammal Observers (MMOs) on Navy vessels:

(i) Civilian MMOs aboard Navy vessels shall be used to research the effectiveness of Navy marine observers, as well as for data collection during other monitoring surveys.

(ii) MMOs shall be field-experienced observers that are Navy biologists or contracted observers.

(iii) MMOs shall be placed alongside existing Navy marine observers during a sub-set of RDT&E events.

(iv) MMOs shall inform the Navy marine observer of any marine mammal sighting so that appropriate action may be taken by the chain of command. For less biased data, it is recommended that MMOs schedule their daily observations to duplicate the marine observers' schedule.

(v) MMOs shall monitor for marine mammals from the same height above water as the Navy marine observers (e.g., bridge wings) and as all visual survey teams, and they shall collect the same data collected by Navy marine observers, including but not limited to:

(A) Location of sighting;

(B) Species;

(C) Number of individuals;

(D) Number of calves present, if any;

(E) Duration of sighting;

(F) Behavior of marine animals sighted;

(G) Direction of travel;

(H) Environmental information associated with sighting event including Beaufort sea state, wave height, swell direction, wind direction, wind speed, glare, percentage of glare, percentage of cloud cover; and

(I) When in relation to Navy RDT&E activities did the sighting occur (before, during or after detonations/exercise).

(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’s RDT&E activities utilizing 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).

(e) If there is clear evidence that a marine mammal is injured or killed as a result of the proposed Navy RDT&E activities (e.g., instances in which it is clear that munitions explosions caused the injury or death) the Naval activities shall be immediately suspended and the situation immediately reported by personnel involved in the activity to the Test Director or the Test Director’s designee, who will follow Navy procedures for reporting the incident to NMFS through the Navy’s chain-of-command.

(f) Annual NSWC PCD Report—The Navy shall submit a report annually on October 1 describing the RDT&E activities (e.g., instances in which it is clear that munitions explosions caused the injury or death) the Naval activities shall be immediately suspended and the situation immediately reported by personnel involved in the activity to the Test Director or the Test Director’s designee, who will follow Navy procedures for reporting the incident to NMFS through the Navy’s chain-of-command.

(f) Annual NSWC PCD Report—The Navy shall submit a report annually on October 1 describing the RDT&E activities conducted and implementation and results of the NSWC PCD Monitoring Plan (through August 1 of the same year) and RDT&E activities. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the NSWC
PCD Monitoring Plan shall, at a minimum, provide the same marine mammal observation data listed below.

1. RDT&E Information:
   (i) Date and time test began and ended;
   (ii) Location;
   (iii) Number and types of active sources used in the test;
   (iv) Number and types of vessels, aircraft, etc., participated in the test;
   (v) Number and types of underwater detonations;
   (vi) Total hours of observation effort (including observation time when sonar was not operating);
   (vii) Total hours of all active sonar source operation;
   (viii) Total hours of each active sonar source; and
   (ix) Wave height (high, low, and average during the test) in feet.

2. Individual Marine Mammal Sighting Info:
   (i) Location of sighting;
   (ii) Species;
   (iii) Number of individuals;
   (iv) Calves observed (y/n);
   (v) Initial detection sensor;
   (vi) Indication of specific type of platform observation made from;
   (vii) Length of time observers maintained visual contact with marine mammal(s);
   (viii) Wave height (in feet);
   (ix) Visibility;
   (x) Sonar source in use (y/n);
   (xi) Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from sonar source above;
   (xii) Mitigation implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was;
   (xiii) If the active MFAS in use is hullmounted, true bearing of animal from ship, true direction of ship’s travel, and estimation of animal’s motion relative to ship (opening, closing, parallel);
   (xiv) Observed behavior—Marine observers 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.); and
   (xv) An evaluation of the effectiveness of mitigation measures designed to avoid exposing marine mammals to HFAS/MFAS. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

3. NSWC PCD 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 sonar operations and underwater explosive events for which individual reports are required in §218.184 (d-f). This report will be submitted at the end of the fourth year of the rule (December 2013), covering activities that have occurred through July 1, 2013.

4. The Navy shall respond to NMFS comments and requests for additional information or clarification on the NSWC PCD Comprehensive Report and the Annual NSWC PCD Report if submitted within 3 months of receipt. The report 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.

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

§ 218.185 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103 of this chapter) conducting the activity identified in §218.180(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.186 or a renewal under §218.187.
§ 218.186 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 § 218.187 and the modification conditions in § 218.188.
(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).


§ 218.187 Renewal of Letters of Authorization and adaptive management.
(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.186 for the activity identified in § 218.180(c) will be renewed upon:
   (1) Notification to NMFS that the activity described in the application submitted under § 218.185 will be undertaken and will be undertaken during the upcoming period of validity;
   (2) Timely receipt of the monitoring reports required under § 218.184(b); and
   (3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.183 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.186 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 of this chapter and 218.187 indicates that a substantial modification 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 NSWC PCD Study Area or other locations).
   (2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§ 218.184(i)).
   (3) Compiled results of Navy-funded research and development (R&D) studies.
   (4) Results from specific stranding investigations (either from the NSWC PCD Study Area or other locations).
   (5) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).
   (6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 218.188 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §216.106 of this chapter and §218.186 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.187, without modification (except for the period of validity), is not considered a substantive modification.

(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 §218.181(b), a Letter of Authorization issued pursuant to §216.106 of this chapter and §218.186 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subparts T–W [Reserved]

Subpart X—Taking and Importing of Marine Mammals; Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

SOURCE: 77 FR 50316, Aug. 20, 2012, unless otherwise noted.


§ 218.230 Specified activity, level of taking, and species.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (a) of this section by the U.S. Navy, Department of Defense, while engaged in the operation of no more than four SURTASS LFA sonar systems conducting active sonar operations in areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§216.106 and 218.238, include the transmission of low frequency sounds from the SURTASS LFA sonar system and the transmission of high frequency sounds from the mitigation sonar described in §218.234 during routine training and testing as well as during military operations.

(a) The incidental take, by Level A and Level B harassment, of marine mammals from the activity identified in this section may be authorized in certain areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea, as specified in a Letter of Authorization.

(b) The incidental take, by Level A and Level B harassment, of marine mammals from the activity identified in this section is limited to the following species and species groups:

(1) *Mysticetes*—blue whale (*Balaenoptera musculus*), bowhead whale (*Balaena mysticetus*), Bryde’s whale (*Balaenoptera edeni*), fin whale (*Balaenoptera physalus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), North Atlantic right whale (*Eubalaena glacialis*), North Pacific right whale (*Eubalaena japonica*), pygmy right whale (*Caperamarginata*), sei whale (*Balaenoptera borealis*), southern right whale (*Eubalaena australis*),

(2) *Odontocetes*—Andrew’s beaked whale (*Mesoplodon bowdoini*), Arnoux’s beaked whale (*Berardius arnuxii*), Atlantic spotted dolphin (*Stenella frontalis*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), Baird’s beaked whale (*Berardius arnuxii*), Beluga whale (*Delphinapterus leucas*), Blainville’s beaked whale (*Mesoplodon densirostris*), Chilean dolphin (*Cephalorhynchus eutropia*), Clymene dolphin (*Stenella clymene*), Commerson’s dolphin (*Cephalorhynchus commersonii*), common bottlenose dolphin (*Tursiops truncatus*), Cuvier’s beaked whale (*Ziphius cavirostris*), Dall’s porpoise (*Phocoenoides dalli*), Dusky dolphin (*Lagenorhynchus obscurus*), dwarf sperm and pygmy sperm whales (*Kogia simus* and *K. breviceps*), false killer whale (*Pseudorca crassidens*), Fraser’s dolphin (*Lagenodelphis hosei*),
§ 218.232 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.238 of this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment within the areas described in § 218.230(a), provided that the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The Holder of the Letter of Authorization must conduct the activities identified in § 218.230 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 § 218.230 is limited to the species listed in § 218.230(b)(1) through (3) annually over the course of the five-
§ 218.233 Prohibitions.

No person in connection with the activities described in §218.230 may:

(a) Take any marine mammal not specified in §218.230(b);

(b) Take any marine mammal specified in §218.230 other than by incidental take as specified in §218.232(c)(2) through (5);

(c) Take any marine mammal specified in §218.230 if NMFS makes a determination that 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, any of the terms, conditions, or requirements of these regulations or a Letter of Authorization issued under §§216.106 and 218.238 of this chapter.

§ 218.234 Mitigation.

When conducting operations identified in §218.230, the mitigation measures described in this section and in any Letter of Authorization issued under §§216.106 and 218.238 must be implemented.

(a) Personnel Training—Lookouts: (1) The Navy shall train the lookouts in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of protective measures if they spot marine mammals.

(2) The Navy will hire one or more marine mammal biologists qualified in conducting at-sea marine mammal visual monitoring from surface vessels to train and qualify designated ship personnel to conduct at-sea visual monitoring.

(b) General Operating Procedures: (1) Prior to SURTASS LFA sonar operations, the Navy will promulgate executive guidance for the administration, execution, and compliance with these regulations and any Letters of Authorization issued.

(2) The Holder of a Letter of Authorization will not transmit the SURTASS LFA sonar signal at a frequency greater than 500 Hertz (Hz).

(c) LFA Sonar Mitigation Zone and 1-km Buffer Zone; Suspension and Delay:

(1) Prior to commencing and during SURTASS LFA sonar transmissions, the Holder of a Letter of Authorization will determine the propagation of LFA sonar signals in the ocean and the distance from the SURTASS LFA sonar source to the 180-decibel (dB) re: 1 μPa isopleth.

(2) The Holder of a Letter of Authorization will establish a 180-dB LFA sonar mitigation zone around the surveillance vessel that is equal in size to the 180-dB re: 1 μPa isopleth (i.e., the volume subjected to sound pressure levels of 180 dB or greater) as well as a one-kilometer (1-km) buffer zone around the LFA sonar mitigation zone.

(3) If a marine mammal is detected, through monitoring required under §218.235, within or about to enter the LFA sonar mitigation zone or the 1-km buffer zone, the Holder of the Letter of Authorization will immediately delay or suspend SURTASS LFA sonar transmissions.

(d) Resumption of SURTASS LFA sonar transmissions: (1) The Holder of a Letter of Authorization will not resume SURTASS LFA sonar transmissions earlier than 15 minutes after:

(i) All marine mammals have left the area of the SURTASS LFA sonar mitigation and buffer zones; and

(ii) There is no further detection of any marine mammal within the LFA sonar mitigation and buffer zones as determined by the visual, passive, and high frequency monitoring described in §218.235.

(e) Ramp-up Procedures for the high-frequency marine mammal monitoring (HF/M3) sonar required under §218.233:

(1) The Holder of a Letter of Authorization will ramp up the HF/M3 sonar...
power level beginning at a maximum source sound pressure level of 180 dB re: 1 μPa at 1 meter in 10-dB increments to operating levels over a period of no less than five minutes:

(i) At least 30 minutes prior to any SURTASS LFA sonar transmissions;

(ii) Prior to any SURTASS LFA sonar calibrations or testing that are not part of regular SURTASS LFA sonar transmissions described in §218.230; and

(iii) Anytime after the HF/M3 active sonar source has been powered down for more than two minutes.

(2) The Holder of a Letter of Authorization will not increase the HF/M3 active sonar system’s sound pressure level once a marine mammal is detected; ramp-up may resume once marine mammals are no longer detected.

(i) Geographical Restrictions on the SURTASS LFA Sonar Field: (1) The Holder of a Letter of Authorization will not operate the SURTASS LFA sonar such that:

(i) The SURTASS LFA sonar sound field exceeds 180 dB re: 1 μPa (rms) at a distance less than 12 nautical miles (nm) (22 kilometers (km)) from any coastline, including offshore islands;

(ii) The SURTASS LFA sonar sound field exceeds 180 dB re: 1 μPa (rms) at a distance less than 1 km (0.5 nm) seaward of the outer perimeter of any offshore biologically important area designated in §218.234(f)(2) during the period specified.

(2) The Offshore Biologically Important Areas (OBIAs) for marine mammals (with specified periods) for SURTASS LFA sonar operations are the following:

<table>
<thead>
<tr>
<th>Name of area</th>
<th>Location of area</th>
<th>Months of importance</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Georges Bank</td>
<td>40°00’ N, 72°30’ W; 39°37’ N, 72°09’ W; 39°54’ N, 71°43’ W; 40°02’ N, 71°20’ W; 40°08’ N, 71°01’ W; 40°04’ N, 70°44’ W; 40°00’ N, 69°24’ W; 40°16’ N, 68°27’ W; 40°34’ N, 67°15’ W; 40°01’ N, 66°24’ W; 41°52’ N, 65°47’ W; 42°20’ N, 66°06’ W; 42°18’ N, 67°23’ W.</td>
<td>Year-round.</td>
</tr>
<tr>
<td>(ii) Roseway Basin Right Whale Conservation Area.</td>
<td>43°05’ N, 65°40’ W; 43°05’ N, 65°03’ W; 42°45’ N, 65°40’ W; 42°45’ N, 65°03’ W.</td>
<td>June through December, annually.</td>
</tr>
<tr>
<td>(iv) Southeastern U.S. Right Whale Seasonal Habitat.</td>
<td>Critical Habitat Boundaries are coastal waters between 31°15’ N and 30°15’ N from the coast out 15 nautical miles (nm); and the coastal waters between 30°15’ N and 28°00’ N from the coast out 5 nmi. (50 CFR §226.13(c)); OBIA Boundaries are coastal waters between 31°15’ N and 30°15’ N from 12 to 15 nm.</td>
<td>November 15 to April 15, annually.</td>
</tr>
<tr>
<td>(v) North Pacific Right Whale Critical Habitat.</td>
<td>57°03’ N, 153°00’ W; 57°18’ N, 151°30’ W; 57°00’ N, 151°30’ W; 56°45’ N, 153°00’ W.</td>
<td>March through August, annually.</td>
</tr>
<tr>
<td>(vi) Silver Bank and Navidad Bank</td>
<td>Silver Bank: ________________________________</td>
<td>December through April, annually.</td>
</tr>
<tr>
<td>Name of area</td>
<td>Location of area</td>
<td>Months of importance</td>
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<tr>
<td>Coastal waters off Madagascar</td>
<td>20°38.899′ N, 69°23.640′ W; 20°55.706′ N, 69°57.984′ W; 20°25.221′ N, 70°00.387′ W; 20°12.833′ N, 69°40.604′ W; 20°13.918′ N, 69°31.518′ W; 20°28.680′ N, 69°31.900′ W. Navidad Bank: 20°15.596′ N, 68°47.967′ W; 20°11.971′ N, 68°54.810′ W; 19°52.514′ N, 69°00.443′ W; 19°54.957′ N, 68°51.430′ W; 19°51.513′ N, 68°41.399′ W.</td>
<td>June through October, annually.</td>
</tr>
<tr>
<td>Coastal waters of Gabon, Congo and Equatorial Guinea</td>
<td>An exclusion zone following the 500-m isobath extending from 3°31.055′ N, 9°12.226′ E in the north offshore of Malabo southward to 8°57.470′ S, 12°55.873′ E offshore of Luanda.</td>
<td>Year-round.</td>
</tr>
<tr>
<td>Patagonian Shelf Break</td>
<td>Between 200- and 2000-m isobaths and the following latitudes: 35°00′ S, 39°00′ S, 40°40′ S, 42°30′ S, 46°00′ S, 48°50′ S.</td>
<td>May through December, annually.</td>
</tr>
<tr>
<td>Southern Right Whale Seasonal Habitat</td>
<td>Coastal waters between 42°00′ S and 43°00′ S from 12 to 15 km including the enclosed bays of Golfo Nuevo, Golfo San Jose, and San Matias, Golfo So San Jose and San Nuevo are within 22 km (14 mi; 12 nm) coastal exclusion zone.</td>
<td>June through November, annually.</td>
</tr>
<tr>
<td>Central California National Marine Sanctuaries</td>
<td>Single stratum boundary created from the Cordell Bank (15 CFR 922.10), Gulf of the Farallones (15 CFR 922.80), and Monterey Bay (15 CFR 922.30) NMS legal boundaries. Monterey Bay NMS includes the Davidson Seamount Management Zone</td>
<td>June through November, annually.</td>
</tr>
<tr>
<td>Antarctic Convergence Zone</td>
<td>30° E to 80° E, 45° S; 80° E to 150° E, 55° S; 150° E to 50° W, 60° S; 50° W to 30° E, 50° S.</td>
<td>October through March, annually.</td>
</tr>
<tr>
<td>Pitun and Cheyvo offshore feeding grounds in the Sea of Okhotsk</td>
<td>54°08.436′ N, 143°47.408′ W; 54°09.436′ N, 143°17.354′ W; 54°01.161′ N, 143°17.354′ W; 53°53.580′ N, 143°13.398′ W; 53°26.963′ N, 143°08.236′ W; 53°07.013′ N, 143°35.481′ W; 52°48.709′ N, 143°38.447′ W; 52°32.077′ N, 143°27.788′ W; 52°21.605′ N, 143°34.162′ W; 52°09.470′ N, 143°26.582′ W; 51°57.686′ N, 143°30.208′ W; 51°36.033′ N, 143°42.794′ W, 51°08.682′ N, 143°31.501′ W; 51°08.082′ N, 144°16.742′ W; 51°24.514′ N, 144°11.139′ W; 51°48.116′ N, 144°10.802′ W; 52°03.194′ N, 144°20.363′ W; 52°23.235′ N, 144°10.150′ W; 52°28.674′ N, 144°12.787′ W; 52°42.523′ N, 144°10.150′ W, 53°12.972′ N, 143°55.648′ W; 53°18.505′ N, 143°56.637′ W; 53°23.041′ N, 143°53.011′ W, 53°28.250′ N, 143°53.341′ W; 53°44.039′ N, 143°49.056′ W; 53°53.207′ N, 143°50.045′ W; 53°59.819′ N, 143°48.067′ W.</td>
<td>June through November, annually.</td>
</tr>
<tr>
<td>Coastal waters off Madagascar</td>
<td>16°03′55.04″ S, 50°27′12.59″ E; 16°12′23′03″ S, 51°03′37′38″ E; 24°30′45.06″ S, 48°26′00′44″ E; 24°15′28′07″ S, 47°46′51′16″ E; 22°18′00′74″ S, 48′14′33′52″ E; 20°52′24′12″ S, 48′43′13′49″ E; 19°22′33′24″ S, 49°15′45′47″ E; 18°29′46′08″ S, 49°37′32′25″ E; 17°38′27′89″ S, 49°44′27′17″ E; 17°24′39′12″ S, 49°39′17′03″ E; 17°19′25′34″ S, 49°54′23′82″ E; 16°45′41′71″ S, 50°15′05′35″ E.</td>
<td>July through September, annually for humpback whale breeding and November through December, annually for migrating blue whales.</td>
</tr>
<tr>
<td>Name of area</td>
<td>Location of area</td>
<td>Months of importance</td>
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<td>------------------------------------------------------------------------------</td>
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</tbody>
</table>
(g) **Operational Exception for the SURTASS LFA Sonar Sound Field.** During military operations SURTASS LFA sonar transmissions may exceed 180 dB re: 1 μPa (rms) within the boundaries of a SURTASS LFA sonar OBIA when: operationally necessary to continue tracking an existing underwater contact; or operationally necessary to detect a new underwater contact within the OBIA. This exception does not apply to routine training and testing with the SURTASS LFA sonar system.

§ 218.235 **Requirements for monitoring.**

(a) The Holder of a Letter of Authorization issued pursuant to §§ 216.106 and 216.238 must:

1. Conduct visual monitoring from the ship's bridge during daylight hours (30 minutes before sunrise until 30 minutes after sunset) during operations that employ SURTASS LFA sonar in the active mode. The SURTASS vessels shall have lookouts to maintain a topside watch with standard binoculars (7x) and with the naked eye.

2. Use low frequency passive SURTASS sonar to listen for vocalizing marine mammals; and

3. Use the HF/M3 active sonar to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array, subject to the ramp-up requirements in §216.234(e).

<table>
<thead>
<tr>
<th>Name of area</th>
<th>Location of area</th>
<th>Months of importance</th>
</tr>
</thead>
<tbody>
<tr>
<td>(ix) Bonney Upwelling on the south coast of Australia.</td>
<td>37°12′20.038″ S, 139°31′17.703″ E; 37°33′33.815″ S, 139°42′42.508″ E; 38°10′36.144″ S, 140°22′57.345″ E; 38°44′30.558″ S, 141°33′30.342″ E; 39°07′04.125″ S, 141°11′00.733″ E; 37°28′33.179″ S, 139°10′52.263″ E.</td>
<td>December through May, annually.</td>
</tr>
<tr>
<td>(x) Northern Bay of Bengal and Head of Swatch-of-No-Ground.</td>
<td>20°58′73.5″ N, 89°07′87.5″ E; 20°55′49.4″ N, 89°09′48.4″ E; 20°52′58.3″ N, 89°12′70.4″ E; 20°55′27.5″ N, 89°18′13.3″ E; 21′04′55.8″ N, 89°25′29.4″ E; 21′12′65.5″ N, 89°25′35.4″ E; 21′13′27.9″ N, 89°16′83″ E; 21′06′34.7″ N, 89°15′01″ E.</td>
<td>Year-round.</td>
</tr>
<tr>
<td>(xxii) Abrolhos Bank</td>
<td>48°30′01.995″ N, 125°58′38.786″ W; 48°16′55.605″ N, 125°52′52.052″ W; 48°23′07.353″ N, 125°71′10.935″ W; 48°12′36.241″ N, 125°16′42.339″ W; 47°58′20.361″ N, 125°31′14.517″ W; 47°58′20.361″ N, 126°06′16.322″ W; 48°05′46.665″ N, 126°25′48.756″ W.</td>
<td>August through November, annually.</td>
</tr>
<tr>
<td>(xxi) Olympic Coast NMS and Prairie, Barkley Canyon, and Ninast Canyon.</td>
<td>48°30′01.995″ N, 125°58′38.786″ W; 48°16′55.605″ N, 125°52′52.052″ W; 48°23′07.353″ N, 125°71′10.935″ W; 48°12′36.241″ N, 125°16′42.339″ W; 47°58′20.361″ N, 125°31′14.517″ W; 47°58′20.361″ N, 126°06′16.322″ W; 48°05′46.665″ N, 126°25′48.756″ W.</td>
<td>The Prairie, Barkley Canyon, and Ninast Canyon: June through September, annually.</td>
</tr>
</tbody>
</table>
(b) Monitoring under paragraph (a) of this section must:
(1) Commence at least 30 minutes before the first SURTASS LFA sonar transmission;
(2) Continue between transmission pings; and
(3) Continue either for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise or, if marine mammals are exhibiting unusual changes in behavioral patterns, for a period of time until behavior patterns return to normal or conditions prevent continued observations.

(c) Holders of Letters of Authorization for activities described in §218.230 are required to cooperate with the National Marine Fisheries Service and any other federal agency for monitoring the impacts of the activity on marine mammals.

(d) Holders of Letters of Authorization must designate qualified on-site individuals to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization.

(e) Holders of Letters of Authorization will continue to assess data from the Marine Mammal Monitoring Program and work toward making some portion of that data, after appropriate security reviews, available to scientists with appropriate clearances. Any portions of the analyses conducted by these scientists based on these data that are determined to be unclassified will be made publically available.

(f) Holders of Letters of Authorization will continue to explore the feasibility of coordinating with other fleet assets and/or range monitoring programs to include the use of SURTASS towed horizontal line arrays to augment the collection of marine mammal vocalizations before, during, and after designated exercises.

(g) Holders of Letters of Authorization will collect ambient noise data and will explore the feasibility of declassifying and archiving the ambient noise data for incorporation into appropriate ocean noise budget efforts.

(h) Holders of Letters of Authorization will convene a Scientific Advisory Group (SAG) to analyze different types of monitoring/research that could increase the understanding of the potential effects of low-frequency active sonar transmissions on beaked whales and/or harbor porpoises.

(i) Holders of Letters of Authorization must conduct all monitoring required under the Letter of Authorization.

§218.236 Requirements for reporting.

(a) The Holder of the Letter of Authorization must submit classified and unclassified quarterly mission reports to the Director, Office of Protected Resources, NMFS, no later than 30 days after the end of each quarter beginning on the date of effectiveness of a Letter of Authorization or as specified in the appropriate Letter of Authorization. Each quarterly mission report will include all active-mode missions completed during that quarter. At a minimum, each classified mission report must contain the following information:

(1) Dates, times, and location of each vessel during each mission;

(2) Information on sonar transmissions during each mission;

(3) Results of the marine mammal monitoring program specified in the Letter of Authorization; and

(4) Estimates of the percentages of marine mammal species and stocks affected (both for the quarter and cumulatively for the year) covered by the Letter of Authorization.

(b) The Holder of a Letter of Authorization must submit an unclassified annual report to the Director, Office of Protected Resources, NMFS, no later than 45 days after the expiration of a Letter of Authorization. The reports must contain all the information required by the Letter of Authorization.

(c) A final comprehensive report must be submitted to the Director, Office of Protected Resources, NMFS, at least 240 days prior to expiration of these regulations. In addition to containing all the information required by any final year Letter of Authorization, this report must contain an unclassified analysis of new passive sonar technologies and an assessment of whether such a system is feasible as an alternative to SURTASS LFA sonar.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. Navy authority conducting the activity identified in §218.230 must apply for and obtain a Letter of Authorization in accordance with §216.106.

(b) The application for a Letter of Authorization must be submitted to the Director, Office of Protected Resources, NMFS, at least 60 days before the date that either the vessel is scheduled to begin conducting SURTASS LFA sonar operations or the previous Letter of Authorization is scheduled to expire.

(c) All applications for a Letter of Authorization must include the following information:

(1) The date(s), duration, and the area(s) where the vessel’s activity will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each area;

(3) The type of incidental taking authorization requested (i.e., take by Level A and/or Level B harassment);

(4) The estimated percentage and numbers of marine mammal species/stocks potentially affected in each area for the period of effectiveness of the Letter of Authorization; and

(5) The means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on marine mammal populations.

(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with §216.104(b) and, if adequate and complete, issue a Letter of Authorization.

§ 218.238 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed one year, but may be renewed annually subject to renewal conditions in §218.239.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic areas for incidental takings;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking, their habitat, and the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting incidental take.

(c) Issuance of a letter of authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(d) Notice of issuance or denial of an application for a Letter of Authorization will be published in the Federal Register within 30 days of a determination.

§ 218.239 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued for the activity identified in §218.230 may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under §218.237 will be undertaken and that there will not be a substantial modification to the described
activity, mitigation or monitoring undertaken during the upcoming period;
(2) Notification to NMFS of the information identified in §218.237(c);
(3) Timely receipt of the monitoring reports required under §218.236, which have been reviewed by NMFS and determined to be acceptable;
(4) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§218.234, 218.235, and 218.236 and the previous Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and
(5) A determination by NMFS that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(b) If a request for a renewal of a Letter of Authorization indicates that a substantial modification to the described work, mitigation, or monitoring will occur, or if NMFS proposes a substantial modification to the Letter of Authorization, NMFS will provide a period of 30 days for public review and comment on the proposed modification. Amending the areas for upcoming SURTASS LFA sonar operations is not considered a substantial modification.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the Federal Register within 30 days of a determination.

§218.240 Modifications to Letters of Authorization.
(a) Except as provided in paragraph (b) of this section, no substantial modification (including withdrawal or suspension) to a Letter of Authorization subject to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization, without modification, except for the period of validity and a listing of planned operating areas, or for moving the authorized SURTASS LFA sonar system from one ship to another, is not considered a substantial modification.

(b) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §218.230(b)(1), (2), or (3), NMFS may modify a Letter of Authorization without prior notice and opportunity for public comment. Notification will be published in the Federal Register within 30 days of the action.

§218.241 Adaptive management.
NMFS may modify (including through addition or deletion) or augment the existing mitigation or monitoring measures (after consulting with the Navy regarding the practicability of the modifications) 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. NMFS will provide a period of 30 days for public review and comment if such modifications are substantial. NMFS and the Navy will meet annually (if deemed necessary by either agency) to discuss the monitoring reports, Navy research and development outcomes, current science, and determine whether mitigation or monitoring modifications are appropriate. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:
(a) Results from the Navy’s monitoring from the previous year’s operation of SURTASS LFA sonar.
(b) Compiled results of Navy-funded research and development studies.
(c) Results from specific stranding investigations.
(d) Results from general marine mammal and sound research funded by the Navy or other sponsors.
(e) Any information that reveals marine mammals may have been taken in a manner, extent or number not anticipated by these regulations or subsequent Letters of Authorization.

PARTS 219–220 [RESERVED]
PART 221—PRESCRIPTIONS IN FERC HYDROPOWER LICENSES

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Authority: 16 U.S.C. 797(e), 811, 823d.

Source: 70 FR 69840, Nov. 17, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 221.1 What is the purpose of this part, and to what license proceedings does it apply?

(a) Hearing process. (1) The regulations in subparts A and B of this part contain rules of practice and procedure applicable to hearings on disputed issues of material fact with respect to
mandatory prescriptions that the Department of Commerce, acting through the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NMFS) may develop for inclusion in a hydropower license issued by the Federal Energy Regulatory Commission (FERC) under subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791 et seq. The authority to develop these prescriptions is granted by FPA section 18, 16 U.S.C. 811, which authorizes the Secretary of Commerce to prescribe fishways.

(2) The hearing process under this part does not apply to recommendations that the Department of Commerce may submit to FERC under FPA section 10(a) or (j), 16 U.S.C. 803(a), (j).

(3) The FPA also grants the Department of Agriculture and Interior the authority to develop mandatory conditions, and the Department of the Interior the authority to develop mandatory prescriptions, for inclusion in a hydropower license. Where the Department of Commerce and either or both of these other Departments develop conditions or prescriptions to be included in the same hydropower license and where the Departments agree to consolidate the hearings under §221.23:

(i) A hearing conducted under this part will also address disputed issues of material fact with respect to any condition or prescription developed by one of the other Departments; or

(ii) A hearing requested under this part will be conducted by one of the other Departments, pursuant to 7 CFR 1.601 et seq. or 43 CFR 45.1 et seq., as applicable.

(4) The regulations in subparts A and B of this part will be construed and applied to each hearing process to achieve a just and speedy determination, consistent with adequate consideration of the issues involved and the provisions of §221.60(a).

(b) Alternatives process. The regulations in subparts A and C of this part contain rules of procedure applicable to the submission and consideration of alternative prescriptions under FPA section 33, 16 U.S.C. 823d. That section allows any party to the license proceeding to propose an alternative to a fishway prescribed by NMFS under section 18.

(c) Reservation of authority. Where NMFS notifies FERC that it is reserving its authority to develop one or more prescriptions during the term of the license, the hearing and alternatives processes under this part for such prescriptions will be available if and when NMFS exercises its reserved authority. NMFS will consult with FERC and notify the license parties regarding how to initiate the hearing process and alternatives process at that time.

(d) Applicability. (1) This part applies to any hydropower license proceeding for which the license has not been issued as of November 17, 2005 and for which one or more preliminary prescriptions or prescriptions have been or are filed with FERC.

(2) If NMFS has already filed one or more preliminary prescriptions or prescriptions as of November 17, 2005, the special applicability provisions of §221.4 also apply.

§ 221.2 What terms are used in this part?

As used in this part:

ALJ means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under subpart B of this part.

Alternative means a prescription that a license party other than NMFS or another Department develops as an alternative to a preliminary prescription from NMFS or another Department, under FPA sec. 33, 16 U.S.C. 823d.

Condition means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

Day means a calendar day.

Department means the Department of Agriculture, Department of Commerce, or Department of the Interior.

Department of Commerce’s designated ALJ office means the ALJ office that is assigned to preside over the hearings process for NMFS.

Discovery means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

Ex parte communication means an oral or written communication to the ALJ
that is made without providing all parties reasonable notice and an opportunity to participate.

FERC means the Federal Energy Regulatory Commission.


Intervention means a process by which a person who did not request a hearing under §221.21 can participate as a party to the hearing under §221.22.

License party means a party to the license proceeding, as that term is defined at 18 CFR 385.102(c).

License proceeding means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR parts 4 or 5.

Material fact means a fact that, if proved, may affect a Department’s decision whether to affirm, modify, or withdraw any condition or prescription.

NEPA document means an environmental assessment or environmental impact statement issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.

NMFS means the National Marine Fisheries Service, a constituent agency of the Department of Commerce, acting by and through the Assistant Administrator for Fisheries or one of NMFS’s six Regional Administrators, as appropriate.


Representative means a person who:

(1) Is authorized by a party to represent the party in a hearing process under this subpart; and

(2) Has filed an appearance under §221.10.

Secretary means the Secretary of Commerce or his or her designee.

Senior Department employee has the same meaning as the term “senior employee” in 5 CFR 2637.211(a).

You refers to a party other than a Department.

§ 221.3 How are time periods computed?

(a) General. Time periods are computed as follows:

(1) The day of the act or event from which the period begins to run is not included.

(2) The last day of the period is included.

(i) If that day is a Saturday, Sunday, or federal holiday, the period is extended to the next business day.

(ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.

(3) If the period is less than 7 days, any Saturday, Sunday, or federal holiday that falls within the period is not included.
§ 221.10 Who may represent a party, and what requirements apply to a representative?

(a) Individuals. A party who is an individual may either represent himself or herself in the hearing process under this subpart or authorize an attorney to represent him or her.

(b) Organizations. A party that is an organization or other entity may authorize one of the following to represent it:

(1) An attorney;
(2) A partner, if the entity is a partnership;
(3) An officer or full-time employee, if the entity is a corporation, association, or unincorporated organization;
(4) A receiver, administrator, executor, or similar fiduciary, if the entity is a receivership, trust, or estate; or
(5) An elected or appointed official or an employee, if the entity is a federal,
§ 221.11 What are the form and content requirements for documents under this subpart?

(a) Form. Each document filed in a case under this subpart must:

(1) Measure 8½ by 11 inches, except that a table, chart, diagram, or other attachment may be larger if folded to 8½ by 11 inches and attached to the document;

(2) Be printed on just one side of the page;

(3) Be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(4) Use 10 point font size or larger;

(5) Be double-spaced except for footnotes and long quotations, which may be single-spaced;

(6) Have margins of at least 1 inch; and

(7) Be bound on the left side, if bound.

(b) Caption. Each document filed under this subpart must begin with a caption that sets forth:

(1) The name of the case under this subpart and the docket number, if one has been assigned;

(2) The name and docket number of the license proceeding to which the case under this subpart relates; and

(3) A descriptive title for the document, indicating the party for whom it is filed and the nature of the document.

(c) Signature. The original of each document filed under this subpart must be signed by the representative of the person for whom the document is filed. The signature constitutes a certification by the representative that he or she has read the document; that to the best of his or her knowledge, information, and belief, the statements made in the document are true; and that the document is not being filed for the purpose of causing delay.

(d) Contact information. Below the representative’s signature, the document must provide the representative’s name, mailing address, street address (if different), telephone number, facsimile number (if any), and electronic mail address (if any).

§ 221.12 Where and how must documents be filed?

(a) Place of filing. Any documents relating to a case under this subpart must be filed with the appropriate office, as follows:

(1) Before NMFS refers a case for docketing under §221.25, any documents must be filed with the Office of Habitat Conservation. The Office of Habitat Conservation’s address, telephone number, and facsimile number are set forth in §221.2.

(2) NMFS will notify the parties of the date on which it refers a case for docketing under §221.25. After that date, any documents must be filed with:

(i) The Department of Commerce’s designated ALJ office. The name, address, telephone number, and facsimile number of the Department of Commerce’s designated ALJ office will be provided in the referral notice from NMFS; or

(ii) The hearings component of or used by another Department, if that Department will be conducting the hearing under §221.25. The name, address, telephone number, and facsimile number of the appropriate hearings component will be provided in the referral notice from NMFS.
(b) Method of filing. (1) A document must be filed with the appropriate office under paragraph (a) of this section using one of the following methods:
   (i) By hand delivery of the original document;
   (ii) By sending the original document by express mail or courier service for delivery on the next business day; or
   (iii) By sending the document by facsimile if:
       (A) The document is 20 pages or less, including all attachments;
       (B) The sending facsimile machine confirms that the transmission was successful; and
       (C) The original of the document is sent by regular mail on the same day.

(2) Parties are encouraged, but not required to supplement any original document by providing the appropriate office with an electronic copy of the document on compact disc.

(c) Date of filing. A document under this subpart is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(d) Nonconforming documents. If any document submitted for filing under this subpart does not comply with the requirements of this subpart or any applicable order, it may be rejected. If the defect is minor, the party may be notified of the defect and given a chance to correct it.

§ 221.13 What are the requirements for service of documents?

(a) Filed documents. Any document related to a case under this subpart must be served at the same time the document is delivered or sent for filing. Copies must be served as follows:

(1) A complete copy of any request for a hearing under §221.21 must be served on FERC and each license party, using one of the methods of service in paragraph (c) of this section.

(2) A complete copy of any notice of intervention and response under §221.22 must be:

   (i) Served on FERC, the license applicant, any person who has filed a request for hearing under §221.21, and NMFS, using one of the methods of service in paragraph (c) of this section; and

   (ii) Sent to any other license party using regular mail.

(3) A complete copy of any other filed document must be served on each party, using one of the methods of service in paragraph (c) of this section.

(b) Documents issued by the ALJ. A complete copy of any notice, order, decision, or other document issued by the ALJ under this subpart must be served on each party, using one of the methods of service in paragraph (c) of this section.

(c) Method of service. Service must be accomplished by one of the following methods:

(1) By hand delivery of the document;

(2) By sending the document by express mail or courier service for delivery on the next business day;

(3) By sending the document by facsimile if:

   (i) The document is 20 pages or less, including all attachments;

   (ii) The sending facsimile machine confirms that the transmission was successful; and

   (iii) The document is sent by regular mail on the same day;

(4) By sending the document, including all attachments, by electronic mail if:

   (i) A copy of the document is sent by regular mail on the same day; and

   (ii) The party acknowledges receipt of the document by close of the next business day.

(d) Acknowledgment of service. Any party who receives a document under this subpart by electronic mail must promptly send a reply electronic mail message acknowledging receipt.

(e) Certificate of service. A certificate of service must be attached to each document filed under this subpart. The certificate must be signed by the party’s representative and include the following information:

(1) The name, address, and other contact information of each party’s representative on whom the document was served;

(2) The means of service, including information indicating compliance with paragraph (c)(3) or (c)(4) of this section, if applicable; and

(3) The date of service.
§ 221.20 What supporting information must NMFS provide with its preliminary prescriptions?

(a) Supporting information. (1) When NMFS files a preliminary prescription with FERC, it must include a rationale for the prescription and an index to NMFS’s administrative record that identifies all documents relied upon.

(2) If any of the documents relied upon are not already in the license proceeding record, NMFS must:

(i) File them with FERC at the time it files the preliminary prescription; and

(ii) Provide copies to the license applicant.

(b) Service. NMFS will serve a copy of its preliminary prescription on each license party.

§ 221.21 How do I request a hearing?

(a) General. To request a hearing on disputed issues of material fact with respect to any prescription filed by NMFS, you must:

(1) Be a license party; and

(2) File with the Office of Habitat Conservation a written request for a hearing within 30 days after the deadline for the Departments to file preliminary prescriptions with FERC.

(b) Content. Your hearing request must contain:

(1) A numbered list of the factual issues that you allege are in dispute, each stated in a single, concise sentence; and

(2) The following information with respect to each issue:

(i) The specific factual statements made or relied upon by [the bureau] under § 221.20(a) that you dispute;

(ii) The basis for your opinion that those factual statements are unfounded or erroneous;

(iii) The basis for your opinion that any factual dispute is material; and

(iv) With respect to any scientific studies, literature, and other documented information supporting your opinions under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, specific citations to the information relied upon. If any such document is not already in the license proceeding record, you must provide a copy with the request.

(c) Witnesses and exhibits. Your hearing request must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) Page limits. (1) For each disputed factual issue, the information provided under paragraph (b)(2) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 221.22 How do I file a notice of intervention and response?

(a) General. (1) To intervene as a party to the hearing process, you must:

(i) Be a license party; and

(ii) File with the Office of Habitat Conservation a notice of intervention and a written response to any request for a hearing within 15 days after the date of service of the request for a hearing.

(2) A license party filing a notice of intervention and response may not raise issues of material fact beyond those raised in the hearing request.

(b) Content. In your notice of intervention and response you must explain your position with respect to the issues of material fact raised in the hearing request under § 221.21(b).

(1) If you agree with the information provided by NMFS under § 221.20(a) or by the requester under § 221.21(b), your response may refer to NMFS’s explanation or the requester’s hearing request for support.

(2) If you wish to rely on additional information or analysis, your response must provide the same level of detail with respect to the additional information or analysis as required under § 221.21(b).

(c) Witnesses and exhibits. Your response and notice must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.
§ 221.24 How will NMFS respond to any hearing requests?

(a) General. NMFS will determine whether to file an answer to any hearing request under §221.21.

(b) Content. If NMFS files an answer:

(1) For each of the numbered factual issues listed under §221.21(b)(1), the answer must explain NMFS’s position with respect to the issues of material fact raised by the requester, including one or more of the following statements as appropriate:

(i) That NMFS is willing to stipulate to the facts as alleged by the requester;

(ii) That NMFS believes the issue listed by the requester is not a factual issue, explaining the basis for such belief;

(iii) That NMFS believes the issue listed by the requester is not material, explaining the basis for such belief; or

(iv) That NMFS agrees that the issue is factual, material, and in dispute.

(2) The answer must also indicate whether the hearing request will be consolidated with one or more other hearing requests under §221.23 and, if so:

(i) Identify any other hearing request that will be consolidated with this hearing request; and

(ii) State which Department will conduct the hearing and provide contact information for the appropriate Department hearings component.

(c) Witnesses and exhibits. NMFS’s answer must also list the witnesses and exhibits that it intends to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, NMFS must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, NMFS must specify whether it is in the license proceeding record.
§ 221.25 What will NMFS do with any hearing requests?

(a) Case referral. Within 50 days after the deadline in §221.21(a), NMFS will refer the case for a hearing as follows:

(1) If the hearing is to be conducted by NMFS, NMFS will refer the case to the Department of Commerce’s designated ALJ office.

(2) If the hearing is to be conducted by another Department, NMFS will refer the case to the Department’s Office of Hearings and Appeals.

(b) Content. The case referral will consist of the following:

(1) A copy of any preliminary prescription under §221.20;

(2) The original of any hearing request under §221.21;

(3) The original of any notice of intervention and response under §221.22;

(4) The original of any answer under §221.24; and

(5) An original referral notice under paragraph (c) of this section.

(c) Notice. At the time NMFS refers the case for a hearing, it must provide a referral notice that contains the following information:

(1) The name, address, telephone number, and facsimile number of the Department hearings component that will conduct the hearing;

(2) The name, address, and other contact information for the representative of each party to the hearing process;

(3) An identification of any other hearing request that will be consolidated with this hearing request; and

(4) The date on which NMFS is referring the case for docketing.

(d) Page limits. (1) For each disputed factual issue, the information provided under paragraph (b)(1) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

(e) Notice in lieu of answer. If NMFS elects not to file an answer to a hearing request:

(1) NMFS is deemed to agree that the issues listed by the requester are factual, material, and in dispute;

(2) NMFS may file a list of witnesses and exhibits with respect to the request only as provided in §221.42(b); and

(3) NMFS must file a notice containing the information required by paragraph (b)(2) of this section, if the hearing request will be consolidated with one or more other hearing requests under §221.23.

§ 221.26 What regulations apply to a case referred for a hearing?

(a) If NMFS refers the case to the Department of Commerce’s designated ALJ office, the regulations in this subpart will continue to apply to the hearing process.

(b) If NMFS refers the case to the United States Department of Agriculture’s Office of Administrative Law Judges, the regulations at 7 CFR 1.601 et seq. will apply from that point on.

(c) If NMFS refers the case to the Department of the Interior’s Office of Hearings and Appeals, the regulations at 43 CFR 45.1 et seq. will apply from that point on.

GENERAL PROVISIONS RELATED TO HEARINGS

§ 221.30 What will the Department of Commerce’s designated ALJ office do with a case referral?

Within 5 days after issuance of the referral notice under §221.25(c), 7 CFR 1.625(c), or 43 CFR 45.25(c):

(a) The Department of Commerce’s designated ALJ office must:

(1) Docket the case;

(2) Assign an ALJ to preside over the hearing process and issue a decision; and

(3) Issue a docketing notice that informs the parties of the docket number and the ALJ assigned to the case; and

(b) The ALJ must issue a notice setting the time, place, and method for conducting an initial prehearing conference under §221.40. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.
§ 221.31 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process, consistent with the requirements of § 221.60(a), including the powers to:

(a) Administer oaths and affirmations;
(b) Issue subpoenas to the extent authorized by law;
(c) Rule on motions;
(d) Authorize discovery as provided for in this subpart;
(e) Hold hearings and conferences;
(f) Regulate the course of hearings;
(g) Call and question witnesses;
(h) Exclude any person from a hearing or conference for misconduct or other good cause;
(i) Issue a decision consistent with § 221.60(b) regarding any disputed issues of material fact relating to any Department’s condition or prescription that has been referred to the ALJ for hearing; and
(j) Take any other action authorized by law.

§ 221.32 What happens if the ALJ becomes unavailable?

(a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 221.31, the Department of Commerce’s designated ALJ office shall designate a successor.

(b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 221.33 Under what circumstances may the ALJ be disqualified?

(a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.

(b) At any time before issuance of the ALJ’s decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.

(1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.

(2) The party must file with the motion an affidavit or declaration setting forth the facts or other reasons in detail.

(c) The ALJ must rule upon the motion, stating the grounds for the ruling:

(1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.

(2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with the hearing process and issue a decision.

§ 221.34 What is the law governing ex parte communications?

(a) Ex parte communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).

(b) This section does not prohibit ex parte inquiries concerning case status or procedural requirements, unless the inquiry involves an area of controversy in the hearing process.

§ 221.35 What are the requirements for motions?

(a) General. Any party may apply for an order or ruling on any matter related to the hearing process by presenting a motion to the ALJ. A motion may be presented any time after the Department of Commerce’s designated ALJ office issues a docketing notice under § 221.30.

(1) A motion made at a hearing may be stated orally on the record, unless the ALJ directs that it be reduced to writing.

(2) Any other motion must:

(i) Be in writing;

(ii) Comply with the requirements of this subpart with respect to form, content, filing, and service; and

(iii) Not exceed 10 pages.

(b) Content. (1) Each motion must state clearly and concisely:

(i) Its purpose and the relief sought;

(ii) The facts constituting the grounds for the relief sought; and

(iii) Any applicable statutory or regulatory authority.

(2) A proposed order must accompany the motion.
§ 221.40 What are the requirements for prehearing conferences?

(a) Initial prehearing conference. The ALJ will conduct an initial prehearing conference with the parties at the time specified in the docketing notice under §221.30, on or about the 20th day after issuance of the referral notice under §221.25(c).

(1) The initial prehearing conference will be used:

(i) To identify, narrow, and clarify the disputed issues of material fact and exclude issues that do not qualify for review as factual, material, and disputed;

(ii) To consider the parties' motions for discovery under §221.41 and to set a deadline for the completion of discovery;

(iii) To discuss the evidence on which each party intends to rely at the hearing;

(iv) To set the deadline for submission of written testimony under §221.52; and

(v) To set the date, time, and place of the hearing.

(2) The initial prehearing conference may also be used:

(i) To discuss limiting and grouping witnesses to avoid duplication;

(ii) To discuss stipulations of fact and of the content and authenticity of documents;

(iii) To consider requests that the ALJ take official notice of public records or other matters;

(iv) To discuss the submission of written testimony, briefs, or other documents in electronic form; and

(v) To consider any other matters that may aid in the disposition of the case.

(b) Other conferences. The ALJ may in his or her discretion direct the parties to attend one or more other prehearing conferences, if consistent with the need to complete the hearing process within 90 days. Any party may by motion request a conference.

(c) Notice. The ALJ must give the parties reasonable notice of the time and place of any conference. A conference will ordinarily be held by telephone, unless the ALJ orders otherwise.

(d) Preparation. (1) Each party’s representative must be fully prepared for a discussion of all issues properly before the conference, both procedural and substantive. The representative must be authorized to commit the party that he or she represents respecting those issues.

(2) Before the date set for the initial prehearing conference, the parties’ representatives must make a good faith effort:

(i) To meet in person, by telephone, or by other appropriate means; and

(ii) To reach agreement on discovery and the schedule of remaining steps in the hearing process.

(e) Failure to attend. Unless the ALJ orders otherwise, a party that fails to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in the conference and to any consequent orders or rulings.

(f) Scope. During a conference, the ALJ may dispose of any procedural matters related to the case.

(g) Order. Within 2 days after the conclusion of each conference, the ALJ must issue an order that recites any agreements reached at the conference and any rulings made by the ALJ during or as a result of the conference.
§ 221.41 How may parties obtain discovery of information needed for the case?

(a) General. By agreement of the parties or with the permission of the ALJ, a party may obtain discovery of information to assist the party in preparing or presenting its case. Available methods of discovery are:

(1) Written interrogatories;
(2) Depositions as provided in paragraph (h) of this section; and
(3) Requests for production of designated documents or tangible things or for entry on designated land for inspection or other purposes.

(b) Criteria. Discovery may occur only as agreed to by the parties or as authorized by the ALJ in a written order or during a prehearing conference. The ALJ may authorize discovery only if the party requesting discovery demonstrates:

(1) That the discovery will not unreasonably delay the hearing process;
(2) That the information sought:
   (i) Will be admissible at the hearing or appears reasonably calculated to lead to the discovery of admissible evidence;
   (ii) Is not already in the license proceeding record or otherwise obtainable by the party;
   (iii) Is not cumulative or repetitious; and
   (iv) Is not privileged or protected from disclosure by applicable law;
(3) That the scope of the discovery is not unduly burdensome;
(4) That the method to be used is the least burdensome method available;
(5) That any trade secrets or proprietary information can be adequately safeguarded; and
(6) That the standards for discovery under paragraphs (f) through (h) of this section have been met, if applicable.

(c) Motions. A party may initiate discovery:

(1) Pursuant to an agreement of the parties; or
(2) By filing a motion that:
   (i) Briefly describes the proposed method(s), purpose, and scope of the discovery;
   (ii) Explains how the discovery meets the criteria in paragraphs (b)(1) through (b)(6) of this section; and
   (iii) Attaches a copy of any proposed discovery request (written interrogatories, notice of deposition, or request for production of designated documents or tangible things or for entry on designated land).

(d) Timing of motions. A party must file any discovery motion under paragraph (c)(2) of this section within 7 days after issuance of the referral notice under §221.25(c).

(e) Objections. (1) A party must file any objections to a discovery motion or to specific portions of a proposed discovery request within 7 days after service of the motion.

(2) An objection must explain how, in the objecting party’s view, the discovery sought does not meet the criteria in paragraphs (b)(1) through (b)(6) of this section.

(f) Materials prepared for hearing. A party generally may not obtain discovery of documents and tangible things otherwise discoverable under paragraph (b) of this section if they were prepared in anticipation of or for the hearing by or for another party’s representative (including the party’s attorney, expert, or consultant).

(1) If a party wants to discover such materials, it must show:
   (i) That it has substantial need of the materials in preparing its own case; and
   (ii) That the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(2) In ordering discovery of such materials when the required showing has been made, the ALJ must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

(g) Experts. Unless restricted by the ALJ, a party may discover any facts known or opinions held by an expert concerning any relevant matters that are not privileged. Such discovery will be permitted only if:

(1) The expert is expected to be a witness at the hearing; or
(2) The expert is relied on by another expert who is expected to be a witness at the hearing, and the party shows:
   (i) That it has a compelling need for the information; and
§ 221.42 When must a party supplement or amend information it has previously provided?

(a) Discovery. A party must promptly supplement or amend any prior response to a discovery request if it learns that the response:

(1) Was incomplete or incorrect when made; or

(2) Though complete and correct when made, is now incomplete or incorrect in any material respect.

(b) Witnesses and exhibits. (1) Within 5 days after the date set for completion of discovery, each party must file an updated version of the list of witnesses and exhibits required under §§ 221.21(c), 221.22(c), or 221.24(c).

(2) If a party wishes to include any new witness or exhibit on its updated list, it must provide an explanation of why it was not feasible for the party to include the witness or exhibit on its list under §§ 221.21(c), 221.22(c), or 221.24(c).

(c) Failure to disclose. (1) A party that fails to disclose information required under §§ 221.21(c), 221.22(c), or 221.24(c), or paragraphs (a) or (b) of this section, will not be permitted to introduce as evidence at the hearing testimony from a witness or other information that it failed to disclose.

(2) Paragraph (c)(1) of this section does not apply if the failure to disclose was substantially justified or is harmless.

(3) Before or during the hearing, a party may object to the admission of evidence under paragraph (c)(1) of this section.

(4) The ALJ will consider the following in determining whether to exclude evidence under paragraphs (c)(1) through (c)(3) of this section:

(i) The prejudice to the objecting party;

(ii) The ability of the objecting party to cure any prejudice;

(iii) The extent to which presentation of the evidence would disrupt the orderly and efficient hearing of the case;

(iv) The importance of the evidence; and

(v) The reason for the failure to disclose, including any bad faith or willfulness regarding the failure.

§ 221.43 What are the requirements for written interrogatories?

(a) Motion. Except upon agreement of the parties, a party wishing to propound interrogatories must file a motion under § 221.41(c).

(b) ALJ order. During or promptly after the initial prehearing conference, the ALJ will issue an order under § 221.41(b) with respect to any discovery motion requesting the use of written interrogatories. The order will:

(1) Grant the motion and approve the use of some or all of the proposed interrogatories; or

(2) Deny the motion.

(c) Answers to interrogatories. Except upon agreement of the parties, the party to whom the proposed interrogatories are directed must file its answers to any interrogatories approved by the ALJ within 15 days after issuance of the order under paragraph (b) of this section.
(1) Each approved interrogatory must be answered separately and fully in writing.
(2) The party or its representative must sign the answers to interrogatories under oath or affirmation.
(d) Access to records. A party’s answer to an interrogatory is sufficient when:
   (1) The information may be obtained from an examination of records, or from a compilation, abstract, or summary based on such records;
   (2) The burden of obtaining the information from the records is substantially the same for all parties;
   (3) The answering party specifically identifies the individual records from which the requesting party may obtain the information and where the records are located; and
   (4) The answering party provides the requesting party with reasonable opportunity to examine the records and make a copy, compilation, abstract, or summary.

§ 221.44 What are the requirements for depositions?
(a) Motion and notice. Except upon agreement of the parties, a party wishing to take a deposition must file a motion under §221.41(c). Any notice of deposition filed with the motion must state:
   (1) The time and place that the deposition is to be taken;
   (2) The name and address of the person before whom the deposition is to be taken;
   (3) The name and address of the witness whose deposition is to be taken; and
   (4) Any documents or materials that the witness is to produce.
(b) ALJ order. During or promptly after the initial prehearing conference, the ALJ will issue an order under §221.41(b) with respect to any discovery motion requesting the taking of a deposition. The order will:
   (1) Grant the motion and approve the taking of the deposition, subject to any conditions or restrictions the ALJ may impose; or
   (2) Deny the motion.
(c) Arrangements. If the parties agree to or the ALJ approves the taking of the deposition, the party requesting the deposition must make appropriate arrangements for necessary facilities and personnel.
   (1) The deposition will be taken at the time and place agreed to by the parties or indicated in the ALJ’s order.
   (2) The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.
   (3) Any party that objects to the taking of a deposition because of the disqualification of the person before whom it is to be taken must do so:
      (i) Before the deposition begins; or
      (ii) As soon as the disqualification becomes known or could have been discovered with reasonable diligence.
   (4) A deposition may be taken by telephone conference call, if agreed to by the parties or approved in the ALJ’s order.
   (d) Testimony. Each witness deposed must be placed under oath or affirmation, and the other parties must be given an opportunity for cross-examination.
   (e) Representation of witness. The witness being deposed may have counsel or another representative present during the deposition.
   (f) Recording and transcript. Except as provided in paragraph (g) of this section, the deposition must be stenographically recorded and transcribed at the expense of the party that requested the deposition.
      (1) Any other party may obtain a copy of the transcript at its own expense.
      (2) Unless waived by the deponent, the deponent will have 3 days after receiving the transcript to read and sign it.
      (3) The person before whom the deposition was taken must certify the transcript following receipt of the signed transcript from the deponent or expiration of the 3-day review period, whichever occurs first.
   (g) Video recording. The testimony at a deposition may be recorded on videotape, subject to any conditions or restrictions that the parties may agree to or the ALJ may impose, at the expense of the party requesting the recording.
      (1) The video recording may be in conjunction with an oral examination
§ 221.45 What are the requirements for requests for documents or tangible things or entry on land?

(a) Motion. Except upon agreement of the parties, a party wishing to request the production of designated documents or tangible things or entry on designated land must file a motion under §221.41(c). A request may include any of the following that are in the possession, custody, or control of another party:

(1) The production of designated documents for inspection and copying, other than documents that are already in the license proceeding record;

(2) The production of designated tangible things for inspection, copying, testing, or sampling; or

(3) Entry on designated land or other property for inspection and measuring, surveying, photographing, testing, or sampling either the property or any designated object or operation on the property.

(b) ALJ order. During or promptly after the initial prehearing conference, the ALJ will issue an order under §221.41(b) with respect to any discovery motion requesting the production of documents or tangible things or entry on land for inspection, copying, or other purposes. The order will:

(1) Grant the motion and approve the use of some or all of the proposed requests; or

(2) Deny the motion.

(c) Compliance with order. Except upon agreement of the parties, the party to whom any approved request for production is directed must permit the approved inspection and other activities within 15 days after issuance of the order under paragraph (a) of this section.

§ 221.46 What sanctions may the ALJ impose for failure to comply with discovery?

(a) Upon motion of a party, the ALJ may impose sanctions under paragraph (b) of this section if any party:

(1) Fails to comply with an order approving discovery; or

(2) Fails to supplement or amend a response to discovery under §221.42(a).

(b) The ALJ may impose one or more of the following sanctions:

(1) Infer that the information, testimony, document, or other evidence withheld would have been adverse to the party;

(2) Order that, for the purposes of the hearing, designated facts are established;

(3) Order that the party not introduce into evidence, or otherwise rely on to support its case, any information, testimony, document, or other evidence:

(i) That the party improperly withheld; or

(ii) That the party obtained from another party in discovery;

(4) Allow another party to use secondary evidence to show what the information, testimony, document, or other evidence withheld would have shown; or

(5) Take other appropriate action to remedy the party’s failure to comply.

§ 221.47 What are the requirements for subpoenas and witness fees?

(a) Request for subpoena. (1) Except as provided in paragraph (a)(2) of this section, any party may file a motion requesting the ALJ to issue a subpoena to the extent authorized by law for the attendance of a person, the giving of testimony, document, or other evidence withheld would have been adverse to the party;

(2) Order that, for the purposes of the hearing, designated facts are established;

(3) Order that the party not introduce into evidence, or otherwise rely on to support its case, any information, testimony, document, or other evidence withheld would have shown; or

(4) Allow another party to use secondary evidence to show what the information, testimony, document, or other evidence withheld would have shown; or

(5) Take other appropriate action to remedy the party’s failure to comply.
§ 221.52 What are the requirements for presenting testimony?

(a) Written direct testimony. Unless otherwise ordered by the ALJ, all direct hearing testimony must be prepared and submitted in written form.

(1) Prepared written testimony must:

(i) Have line numbers inserted in the left-hand margin of each page;

(ii) Be authenticated by an affidavit or declaration of the witness;

(iii) Be filed within 5 days after the date set for completion of discovery, unless the ALJ sets a different deadline; and

(iv) Be offered as an exhibit during the hearing.

(2) Any witness submitting written testimony must be available for cross-examination at the hearing.

(b) Oral testimony. Oral examination of a witness in a hearing, including on
cross-examination or redirect, must be conducted under oath and in the presence of the ALJ, with an opportunity for all parties to question the witness.

(c) Telephonic testimony. The ALJ may by order allow a witness to testify by telephonic conference call.

(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.

(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.

(3) The ALJ may issue a subpoena under §221.47 directing a witness to testify by telephonic conference call.

§ 221.53 How may a party use a deposition in the hearing?

(a) In general. Subject to the provisions of this section, a party may use in the hearing any part or all of a deposition taken under §221.44 against any party who:

(1) Was present or represented at the taking of the deposition; or

(2) Had reasonable notice of the taking of the deposition.

(b) Admissibility. (1) No part of a deposition will be included in the hearing record, unless received in evidence by the ALJ.

(2) The ALJ will exclude from evidence any question and response to which an objection:

(i) Was noted at the taking of the deposition; and

(ii) Would have been sustained if the witness had been personally present and testifying at a hearing.

(3) If a party offers only part of a deposition in evidence:

(i) An adverse party may require the party to introduce any other part that ought in fairness to be considered with the part introduced; and

(ii) Any other party may introduce any other parts.

(c) Videotaped deposition. If the deposition was recorded on videotape and is admitted into evidence, relevant portions will be played during the hearing and transcribed into the record by the reporter.

§ 221.54 What are the requirements for exhibits, official notice, and stipulations?

(a) General. (1) Except as provided in paragraphs (b) through (e) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Each exhibit offered by a party must be marked for identification.

(3) Any party who seeks to have an exhibit admitted into evidence must provide:

(i) The original of the exhibit to the reporter, unless the ALJ permits the substitution of a copy; and

(ii) A copy of the exhibit to the ALJ.

(b) Material not offered. If a document offered as an exhibit contains material not offered as evidence:

(1) The party offering the exhibit must:

(i) Designate the matter offered as evidence;

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable; and

(iii) Provide copies of the entire document to the other parties appearing at the hearing.

(2) The ALJ must give the other parties an opportunity to inspect the entire document and offer in evidence any other portions of the document.

(c) Official notice. (1) At the request of any party at the hearing, the ALJ may take official notice of any matter of which the courts of the United States may take judicial notice, including the public records of NMFS and any other Department party.

(2) The ALJ must give the other parties an opportunity to show the contrary of an officially noticed fact.

(3) Any party requesting official notice of a fact after the conclusion of the hearing must show good cause for its failure to request official notice during the hearing.

(d) Stipulations. (1) The parties may stipulate to any relevant facts or to the authenticity of any relevant documents.

(2) If received in evidence at the hearing, a stipulation is binding on the stipulating parties.

(3) A stipulation may be written or made orally at the hearing.
§ 221.55  What evidence is admissible at the hearing?

(a) General. (1) Subject to the provisions of § 221.42(b), the ALJ may admit any written, oral, documentary, or demonstrative evidence that is:
   (i) Relevant, reliable, and probative; and
   (ii) Not privileged or unduly repetitious or cumulative.

   (2) The ALJ may exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, or delay.

   (3) Hearsay evidence is admissible. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

   (4) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the ALJ and the parties in interpreting and applying the provisions of this section.

(b) Objections. Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on every objection must appear in the record.

§ 221.56  What are the requirements for transcription of the hearing?

(a) Transcript and reporter’s fees. The hearing will be transcribed verbatim.

   (1) The Department of Commerce’s designated ALJ office will secure the services of a reporter and pay the reporter’s fees to provide an original transcript to the Department of Commerce’s designated ALJ office on an expedited basis.

   (2) Each party must pay the reporter for any copies of the transcript obtained by that party.

   (b) Transcript Corrections. (1) Any party may file a motion proposing corrections to the transcript. The motion must be filed within 5 days after receipt of the transcript, unless the ALJ sets a different deadline.

   (2) Unless a party files a timely motion under paragraph (b)(1) of this section, the transcript will be presumed to be correct and complete, except for obvious typographical errors.

   (3) As soon as practicable after the close of the hearing and after consideration of any motions filed under paragraph (b)(1) of this section, the ALJ will issue an order making any corrections to the transcript that the ALJ finds are warranted.

§ 221.57  What is the standard of proof?

The standard of proof is a preponderance of the evidence.

§ 221.58  When will the hearing record close?

(a) The hearing record will close when the ALJ closes the hearing, unless he or she directs otherwise.

(b) Evidence may not be added after the hearing record is closed, but the transcript may be corrected under § 221.56(b).

§ 221.59  What are the requirements for post-hearing briefs?

(a) General. (1) Each party may file a post-hearing brief within 10 days after the close of the hearing, unless the ALJ sets a different deadline.

   (2) A party may file a reply brief only if requested by the ALJ. The deadline for filing a reply brief, if any, will be set by the ALJ.

   (3) The ALJ may limit the length of the briefs to be filed under this section.

   (b) Content. (1) An initial brief must include:

      (i) A concise statement of the case;
      (ii) A separate section containing proposed findings regarding the issues of material fact, with supporting citations to the hearing record;
      (iii) Arguments in support of the party’s position; and
      (iv) Any other matter required by the ALJ.

   (2) A reply brief, if requested by the ALJ, must be limited to any issues identified by the ALJ.

   (c) Form. (1) An exhibit admitted in evidence or marked for identification in the record may not be reproduced in the brief.

      (i) Such an exhibit may be reproduced, within reasonable limits, in an appendix to the brief.
      (ii) Any pertinent analysis of an exhibit may be included in a brief.

      (2) If a brief exceeds 20 pages, it must contain:

         (i) A table of contents and of points made, with page references; and
         (ii) An alphabetical list of citations to legal authority, with page references.
§ 221.60 What are the requirements for the ALJ’s decision?

(a) Timing. The ALJ must issue a decision within the shorter of the following time periods:

(1) 30 days after the close of the hearing under § 221.58; or
(2) 90 days after issuance of the referral notice under § 221.25(c), 7 CFR 1.625(c), or 43 CFR 45.25(c).

(b) Content. (1) The decision must contain:

(i) Findings of fact on all disputed issues of material fact;
(ii) Conclusions of law necessary to make the findings of fact (such as rulings on materiality and on the admissibility of evidence); and
(iii) Reasons for the findings and conclusions.

(2) The ALJ may adopt any of the findings of fact proposed by one or more of the parties.

(3) The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be adopted or rejected.

(c) Service. Promptly after issuing his or her decision, the ALJ must:

(1) Serve the decision on each party to the hearing; and
(2) Forward a copy of the decision to FERC, along with the complete hearing record, for inclusion in the license proceeding record.

(d) Finality. The ALJ’s decision under this section will be final, with respect to the disputed issues of material fact, for NMFS and any other Department involved in the hearing. To the extent the ALJ’s decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 825j(b).

Subpart C—Alternatives Process

§ 221.70 How must documents be filed and served under this subpart?

(a) Filing. (1) A document under this subpart must be filed using one of the methods set forth in § 221.12(b).
(2) A document is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.
(b) Service. (1) Any document filed under this subpart must be served at the same time the document is delivered or sent for filing. A complete copy of the document must be served on each license party and FERC, using:

(i) One of the methods of service in § 221.13(c); or
(ii) Regular mail.
(2) The provisions of § 221.13(d) and (e) regarding acknowledgment and certificate of service apply to service under this subpart.

§ 221.71 How do I propose an alternative?

(a) General. To propose an alternative, you must:

(1) Be a license party; and
(2) File a written proposal with the Office of Habitat Conservation within 30 days after the deadline for NMFS to file preliminary prescriptions with FERC.
(b) Content. Your proposal must include:

(1) A description of the alternative, in an equivalent level of detail to NMFS’s preliminary prescription;
(2) An explanation of how the alternative will be no less protective than the fishway prescribed by NMFS;
(3) An explanation of how the alternative, as compared to the preliminary prescription, will:

(i) Cost significantly less to implement; or
(ii) Result in improved operation of the project works for electricity production;
(4) An explanation of how the alternative will affect:

(i) Energy supply, distribution, cost, and use;
(ii) Flood control;
(iii) Navigation;
(iv) Water supply;
(v) Air quality; and
(vi) Other aspects of environmental quality; and
(5) Specific citations to any scientific studies, literature, and other documented information relied on to support your proposal, including any assumptions you are making (e.g., regarding the cost of energy or the rate of inflation). If any such document is
§ 221.72 What will NMFS do with a proposed alternative?

If any license party proposes an alternative to a preliminary prescription under §221.71(a)(1), NMFS must do the following within 60 days after the deadline for filing comments to FERC’s NEPA document under 18 CFR 5.25(c):

(a) Analyze the alternative under §221.73; and

(b) File with FERC:

(1) Any prescription that NMFS adopts as its modified prescription; and

(2) Its analysis of the modified prescription and any proposed alternatives under §221.73(c).

§ 221.73 How will NMFS analyze a proposed alternative and formulate its modified prescription?

(a) In deciding whether to adopt a proposed alternative, NMFS must consider evidence and supporting material provided by any license party or otherwise available to NMFS including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on NMFS’s preliminary prescription;

(3) Any ALJ decision on disputed issues of material fact issued under §221.60 with respect to the preliminary prescription;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party’s proposal under §221.71.

(b) NMFS must adopt a proposed alternative if NMFS determines, based on substantial evidence provided by any license party or otherwise available to NMFS, that the alternative will be no less protective than NMFS’s preliminary prescription and will, as compared to NMFS’s preliminary prescription:

(1) Cost significantly less to implement; or

(2) Result in improved operation of the project works for electricity production.

(c) When NMFS files with FERC the prescription that NMFS adopts as its modified prescription under §§221.72(b), it must also file:

(1) A written statement explaining:

(i) The basis for the adopted prescription; and

(ii) If NMFS is not adopting any alternative, its reasons for not doing so; and

(2) Any study, data, and other factual information relied on that is not already part of the licensing proceeding record.

(d) The written statement under paragraph (c)(1) of this section must demonstrate that NMFS gave equal consideration to the effects of the prescription adopted and any alternative prescription not adopted on:

(1) Energy supply, distribution, cost, and use;

(2) Flood control;

(3) Navigation;

(4) Water supply;

(5) Air quality; and

(6) Preservation of other aspects of environmental quality.

§ 221.74 Has OMB approved the information collection provisions of this subpart?

Yes. This rule contains provisions that would collect information from the public. It therefore requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. (PRA). According to the PRA, a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number that indicates OMB approval. OMB has reviewed the information collection in this rule and approved it under OMB control number 1094-0001.

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

Subpart A—Introduction and General Provisions

Sec.
222.101 Purpose and scope of regulations.
222.102 Definitions.
222.103 Federal/state cooperation in the conservation of endangered and threatened species.
§ 222.101 Purpose and scope of regulations.

(a) The regulations of parts 222, 223, and 224 of this chapter implement the Endangered Species Act (Act), and govern the taking, possession, transportation, sale, purchase, barter, exportation, importation of, and other requirements pertaining to wildlife and plants under the jurisdiction of the Secretary of Commerce and determined to be threatened or endangered pursuant to section 4(a) of the Act. These regulations are implemented by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. This part pertains to general provisions and definitions. Specifically, parts 223 and 224 pertain to provisions to threatened species and endangered species, respectively. Part 226 enumerates designated critical habitat for endangered and threatened species. Certain of the endangered and threatened marine species enumerated in §§224.102 and 223.102 are included in Appendix I or II to the Convention on International Trade of Endangered Species of Wild Fauna and Flora. The importation, exportation, and re-exportation of such species are subject to additional regulations set forth at 50 CFR part 23, chapter I.

(b) For rules and procedures relating to species determined to be threatened or endangered under the jurisdiction of the Secretary of the Interior, see 50 CFR parts 10 through 17. For rules and procedures relating to the general implementation of the Act jointly by the Departments of the Interior and Commerce and for certain species under the joint jurisdiction of both the Secretaries of the Interior and Commerce, see 50 CFR Chapter IV. Marine mammals listed as endangered or threatened and subject to these regulations may also be subject to additional requirements pursuant to the Marine Mammal Protection Act (for regulations implementing that act, see 50 CFR part 216).

(c) No statute or regulation of any state shall be construed to relieve a person from the restrictions, conditions, and requirements contained in parts 222, 223, and 224 of this chapter. In addition, nothing in parts 222, 223, and 224 of this chapter, including any permit issued pursuant thereto, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any state or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or any other National Marine Fisheries Service enforced statutes or regulations.
§ 222.102 Definitions.

Accelerator funnel means a device used to accelerate the flow of water through a shrimp trawl net.


Adequately covered means, with respect to species listed pursuant to section 4 of the Act, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act for the species covered by the plan and, with respect to unlisted species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act that would otherwise apply if the unlisted species covered by the plan were actually listed.

For the Services to cover a species under a conservation plan, it must be listed on the section 10(a)(1)(B) permit.

Alaska Regional Administrator means the Regional Administrator for the Alaska Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Alaska Regional Administrator should be addressed: Alaska Regional Administrator, F/AK, Alaska Regional Office, National Marine Fisheries Service, NOAA, P.O. Box 21668 Juneau, AK 99802–1668.

Approved turtle excluder device (TED) means a device designed to be installed in a trawl net forward of the cod end for the purpose of excluding sea turtles from the net, as described in 50 CFR 223.207.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or his authorized representative. Mail sent to the Assistant Administrator should be addressed: Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910.

Atlantic Area means all waters of the Atlantic Ocean south of 36°33′08.8″ N. lat. (the line of the North Carolina/Virginia border) and adjacent seas, other than waters of the Gulf Area, and all waters shoreward thereof (including ports).

Atlantic Shrimp Fishery—Sea Turtle Conservation Area (Atlantic SFSTCA) means the inshore and offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Georgia and South Carolina from the Georgia-Florida border (defined as the line along 30°42′45.6″ N. lat.) to the North Carolina-South Carolina border (defined as the line extending in a direction of 135°34′55″ from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 078°32′32.6″ W. long.).

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;
(2) Any special agent or enforcement officer of the National Marine Fisheries Service;
(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the Coast Guard to enforce the provisions of the Act; or
(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Bait shrimper means a shrimp trawler that fishes for and retains its shrimp catch alive for the purpose of selling it for use as bait.

Beam trawl means a trawl with a rigid frame surrounding the mouth that is towed from a vessel by means of one or more cables or ropes.

Certificate of exemption means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends or renews any certificate of exemption.

Chain mat means a device designed to be installed in a scallop dredge forward of the sweep, as described in 50 CFR 223.206, for the purpose of excluding sea turtles from the dredge.

Changed circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and NMFS.
and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

**Commercial activity** means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: Provided, however, that it does not include the exhibition of commodities by museums or similar cultural or historical organizations.

**Conservation plan** means the plan required by section 10(a)(2)(A) of the Act that an applicant must submit when applying for an incidental take permit. Conservation plans also are known as "habitat conservation plans" or "HCPs."

**Conserved habitat areas** means areas explicitly designated for habitat restoration, acquisition, protection, or other conservation purposes under a conservation plan.

**Cooperative Agreement** means an agreement between a state(s) and the National Marine Fisheries Service, NOAA, Department of Commerce, which establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened pursuant to section 6(c)(1) of the Endangered Species Act.

**Diamonds**, with respect to dredge or dredge gear as defined in this section, means the triangular shaped portions of the ring bag on the "dredge bottom" as defined in 50 CFR 648.2.

**Dredge or dredge gear**, with respect to the fishery operating under the Atlantic Sea Scallop Fishery Management Plan, means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of sea scallops.

**Fishing**, or to fish, means:

1. The catching, taking, or harvesting of fish or wildlife;
2. The attempted catching, taking, or harvesting of fish or wildlife;
3. Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish or wildlife; or
4. Any operations on any waters in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

**Footrope** means a weighted rope or cable attached to the lower lip (bottom edge) of the mouth of a trawl net along the forward-most webbing.

**Footrope length** means the distance between the points at which the ends of the footrope are attached to the trawl net, measured along the forward-most webbing.

**Foreign commerce** includes, among other things, any transaction between persons within one foreign country, or between persons in two or more foreign countries, or between a person within the United States and a person in one or more foreign countries, or between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

**Four-seam, straight-wing trawl** means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two side panels of webbing. The upper and lower edges of the side panels of webbing are parallel over the entire length.

**Four-seam, tapered-wing trawl** means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two side panels of webbing. The upper and lower edges of the side panels of webbing converge toward the rear of the trawl.

**Gillnet** means a panel of netting, suspended vertically in the water by floats along the top and weights along the bottom, to entangle fish that attempt to pass through it.

**Gulf Area** means all waters of the Gulf of Mexico west of 81° W. long. (the line at which the Gulf Area meets the Atlantic Area) and all waters shoreward thereof (including ports).

**Gulf Shrimp Fishery-Sea Turtle Conservation Area (Gulf SFSTCA)** means the offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Texas and Louisiana from the South Pass of the Mississippi River (west of 89°08.5′ W. long.) to the U.S.-Mexican border.

**Habitat restoration activity** means an activity that has the sole objective of
restoring natural aquatic or riparian habitat conditions or processes.

Harm in the definition of “take” in the Act means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.

Headrope means a rope that is attached to the upper lip (top edge) of the mouth of a trawl net along the forward-most webbing.

Headrope length means the distance between the points at which the ends of the headrope are attached to the trawl net, measured along the forward-most webbing.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

Inshore means marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Modified pound net leader means a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that: The mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; at any particular point along the leader the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; the mesh is held in place by vertical lines that extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line.

Northeast Regional Administrator means the Regional Administrator for the Northeast Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Northeast Regional Administrator should be addressed: Northeast Regional Administrator, F/NE, Northeast Regional Office, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298.

Northwest Regional Administrator means the Regional Administrator for the Northwest Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Northwest Regional Administrator should be addressed: Northwest Regional Administrator, F/NW, Northwest Regional Office, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

Office of Enforcement means the national fisheries enforcement office of the National Marine Fisheries Service. Mail sent to the Office of Enforcement should be addressed: Office of Enforcement, F/EN, National Marine Fisheries Service, NOAA, 8484 Suite 415, Georgia Ave., Silver Spring, MD 20910.

Office of Protected Resources means the national program office of the endangered species and marine mammal programs of the National Marine Fisheries Service. Mail sent to the Office of Protected Resources should be addressed: Office of Protected Resources, F/PR, National Marine Fisheries Service, NOAA, 1315 East West Highway, Silver Spring, MD 20910.

Offshore means marine and tidal waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea,
Operating conservation program means those conservation management activities which are expressly agreed upon and described in a Conservation Plan or its Implementing Agreement. These activities are to be undertaken for the affected species when implementing an approved Conservation Plan, including measures to respond to changed circumstances.

Permit means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends, or renews any permit.

Person means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal government of any state or political subdivision thereof or of any foreign government.

Possession means the detention and control, or the manual or ideal custody of anything that may be the subject of property, for one’s use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one’s place and name. Possession includes the act or state of possessing and that condition of facts under which persons can exercise their power over a corporeal thing at their pleasure to the exclusion of all other persons. Possession includes constructive possession that which means not an actual but an assumed existence one claims to hold by virtue of some title, without having actual custody.

Pound net leader means a long straight net that directs the fish offshore towards the pound, an enclosure that captures the fish. Some pound net leaders are all mesh, while others have stringers and mesh. Stringers are vertical lines in a pound net leader that are spaced a certain distance apart and are not crossed by horizontal lines to form mesh. An offshore pound net leader refers to a leader with the inland end set greater than 10 horizontal feet (3 m) from the mean low water line. A nearshore pound net leader refers to a leader with the inland end set 10 horizontal feet (3 m) or less from the mean low water line.

Pound Net Regulated Area I means Virginia waters of the mainstem Chesapeake Bay, south of 37°19.0’ N. lat., and west of 76°13.0’ W. long., and all waters south of 37°13.0’ N. lat. to the Chesapeake Bay Bridge Tunnel (extending from approximately 37°05’ N. lat., 75°39’ W. long. to 36°55’ N. lat., 76°08’ W. long.) at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I-64; approximately 36°59.55’ N. lat., 76°18.64’ W. long.) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37°14.55’ N. lat., 76°30.40’ W. long.)

Pound Net Regulated Area II means Virginia waters of the Chesapeake Bay outside of Pound Net Regulated Area I defined above, extending to the Maryland-Virginia State line (approximately 37°55’ N. lat., 76°35’ W. long.), the Great Wicomico River downstream of the Jessie Dupont Memorial Highway Bridge (Route 200; approximately 37°50.84’ N. lat., 76°22.09’ W. long.), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37°37.44’ N. lat., 76°25.40’ W. long.), and the Piankatank River downstream of the Route 3 Bridge (approximately 37°30.62’ N. lat., 76°25.19’ W. long.) to the COLREGS line at the mouth of the Chesapeake Bay.

Pre-Act endangered species part means any sperm whale oil, including derivatives and products thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

Properly implemented conservation plan means any conservation plan, implementing agreement, or permit whose commitments and provisions have been or are being fully implemented by the permittee.
Pusher-head trawl (chopsticks) means a trawl that is spread by two poles suspended from the bow of the trawler in an inverted “V” configuration.

Resident species means, for purposes of entering into cooperative agreements with any state pursuant to section 6(c) of the Act, a species that exists in the wild in that state during any part of its life.

Right whale means, as used in §224.103(c), any whale that is a member of the western North Atlantic population of the northern right whale species (Eubalaena glacialis).

Roller trawl means a variety of beam trawl that is used, usually by small vessels, for fishing over uneven or vegetated sea bottoms.

Scrimshaw product means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from any bone or tooth of any marine mammal of the order Cetacea. For purposes of this part, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

Secretary means the Secretary of Commerce or an authorized representative.

Shrimp means any species of marine shrimp (Order Crustacea) found in the Atlantic Area or the Gulf Area, including, but not limited to:

(1) Brown shrimp (Penaeus aztecus).
(2) White shrimp (Penaeus setiferus).
(3) Pink shrimp (Penaeus duorarum).
(4) Rock shrimp (Sicyonia brevirostris).
(5) Royal red shrimp (Hymenopenaeus robustus).
(6) Seabob shrimp (Xiphopenaeus kroyeri).

Shrimp trawler means any vessel that is equipped with one or more trawl nets and that is capable of, or used for, fishing for shrimp, or whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Skimmer trawl means a trawl that is fished along the side of the vessel and is held open by a rigid frame and a lead weight. On its outboard side, the trawl is held open by one side of the frame extending downward and, on its inboard side, by a lead weight attached by cable or rope to the bow of the vessel.

Southeast Regional Administrator means the Regional Administrator for the Southeast Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Southeast Regional Administrator should be addressed: Southeast Regional Administrator, F/SE, Southeast Regional Office, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432.

Southwest Regional Administrator means the Regional Administrator for the Southwest Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Southwest Regional Administrator should be addressed: Southwest Regional Administrator, F/SW, Southwest Regional Office, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

Stretched mesh size means the distance between the centers of the two opposite knots in the same mesh when pulled taut.

Summer flounder means the species Paralichthys dentatus.

Summer flounder fishery-sea turtle protection area means all offshore waters, bounded on the north by a line along 37°05’ N. lat. (Cape Charles, VA) and bounded on the south by a line extending in a direction of 135°34’55” from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33°51’07.9” N. lat., 078°32’32.6” W. long.(the North Carolina-South Carolina border).

Summer flounder trawler means any vessel that is equipped with one or more bottom trawl nets and that is capable of, or used for, fishing for flounder or whose on-board or landed catch of flounder is more than 100 lb (45.4 kg).

Sweep, with respect to dredge or dredge gear as defined in this section, means a chain extending, usually in an arc, from one end of the dredge frame.
to the other to which the ring bag, including the diamonds, is attached. The sweep forms the edge of the opening of the dredge bag.

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

Taper, in reference to the webbing used in trawls, means the angle of a cut used to shape the webbing, expressed as the ratio between the cuts that reduce the width of the webbing by cutting into the panel of webbing through one row of twine (bar cuts) and the cuts that extend the length of the panel of webbing by cutting straight aft through two adjoining rows of twine (point cuts). For example, sequentially cutting through the lengths of twine on opposite sides of a mesh, leaving an uncut edge of twines all lying in the same line, produces a relatively strong taper called "all-bars"; making a sequence of 4-bar cuts followed by 1-point cut produces a more gradual taper called "4 bars to 1 point" or "4b1p"; similarly, making a sequence of 2-bar cuts followed by 1-point cut produces a still more gradual taper called "2b1p"; and making a sequence of cuts straight aft does not reduce the width of the panel and is called a "straight" or "all-points" cut.

Taut means a condition in which there is no slack in the net webbing.

Test net, or try net, means a net pulled for brief periods of time just before, or during, deployment of the primary net(s) in order to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses, etc.).

Tongue means any piece of webbing along the top, center, leading edge of a trawl, whether lying behind or ahead of the headrope, to which a towing bridle can be attached for purposes of pulling the trawl net and/or adjusting the shape of the trawl.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Triple-wing trawl means a trawl with a tongue along the bottom, center, leading edge of the trawl and an additional tongue along the bottom, center, leading edge of the trawl.

Two-seam trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top and a bottom panel of webbing that are directly attached to each other down the sides of the trawl.

Underway with respect to a vessel, means that the vessel is not at anchor, or made fast to the shore, or aground.

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and NMFS at the time of the conservation plan’s negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

Vessel means a vehicle used, or capable of being used, as a means of transportation on water which includes every description of watercraft, including nondisplacement craft and seaplanes.

Vessel restricted in her ability to maneuver has the meaning specified for this term at 33 U.S.C. 2003(g).

Wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreements), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Wing net (butterfly trawl) means a trawl that is fished along the side of the vessel and that is held open by a four-sided, rigid frame attached to the outrigger of the vessel.
§ 222.103 Federal/state cooperation in the conservation of endangered and threatened species.

(a) Application for and renewal of cooperative agreements. (1) The Assistant Administrator may enter into a Cooperative Agreement with any state that establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened. In order for a state program to be deemed an adequate and active program, the Assistant Administrator must find, and annually reconfirm that the criteria of either sections 6(c)(1) (A) through (E) or sections 6(c)(1) (i) and (ii) of the Act have been satisfied.

(2) Following receipt of an application by a state for a Cooperative Agreement with a copy of a proposed state program, and a determination by the Assistant Administrator that the state program is adequate and active, the Assistant Administrator shall enter into an Agreement with the state.

(3) The Cooperative Agreement, as well as the Assistant Administrator's finding upon which it is based, must be reconfirmed annually to ensure that it reflects new laws, species lists, rules or regulations, and programs and to demonstrate that it is still adequate and active.

(b) Allocation and availability of funds. (1) The Assistant Administrator shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various states using the following as the basis for the determination:

(i) The international commitments of the United States to protect endangered or threatened species;

(ii) The readiness of a state to proceed with a conservation program consistent with the objectives and purposes of the Act;

(iii) The number of federally listed endangered and threatened species within a state;

(iv) The potential for restoring endangered and threatened species within a state; and

(v) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

(2) Funds allocated to a state are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. Obligation of allocated funds occurs when an award or contract is signed by the Assistant Administrator.

(c) Financial assistance and payments. (1) A state must enter into a Cooperative Agreement before financial assistance is approved by the Assistant Administrator for endangered or threatened species projects. Specifically, the Agreement must contain the actions that are to be taken by the Assistant Administrator and/or by the state, the benefits to listed species expected to be derived from these actions, and the estimated cost of these actions.

(2) Subsequent to such Agreement, the Assistant Administrator may further agree with a state to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an application for Federal assistance and an award or a contract. The availability of Federal funds shall be contingent upon the continued existence of the Cooperative Agreement and compliance with all applicable Federal regulations for grant administration and cost accounting principles.

(3)(i) The payment of the Federal share of costs incurred when conducting activities included under a contract or award shall not exceed 75 percent of the program costs as stated in the agreement. However, the Federal share may be increased to 90 percent when two or more states having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such states, jointly enter into an agreement with the Assistant Administrator.

(ii) The state share of program costs may be in the form of cash or in-kind contributions, including real property, subject to applicable Federal regulations.
§ 222.201 Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all necessary or required documents are first submitted to and approved by the Assistant Administrator. Payments shall only be made for expenditures reported and certified by the state agency. Payments shall be made only to the state office or official designated by the state agency and authorized under the laws of the state to receive public funds for the state.

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

§ 222.201 General requirements.

(a) The Assistant Administrator may exempt any pre-Act endangered species part from the prohibitions of sections 9(a)(1)(A), 9(a)(1)(E), or 9(a)(1)(F) of the Act.

(1) No person shall engage in any activities identified in such sections of the Act that involve any pre-Act endangered species part without a valid Certificate of Exemption issued pursuant to this subpart B.

(2) No person may export, deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless that person has been issued a valid Certificate of Exemption and the product or the raw material for such product was held by such certificate holder on October 13, 1982.

(3) Any person engaged in activities otherwise prohibited under the Act or regulations shall bear the burden of proving that the exemption or certificate is applicable, was granted, and was valid and in force at the time of the otherwise prohibited activity.

(b) Certificates of Exemption issued under this subpart are no longer available to new applicants. However, the Assistant Administrator may renew or modify existing Certificates of Exemptions as authorized by the provisions set forth in this subpart.

(c) Any person granted a Certificate of Exemption, including a renewal, under this subpart, upon a sale of any exempted pre-Act endangered species part, must provide the purchaser in writing with a description (including full identification number) of the part sold and must inform the purchaser in writing of the purchaser’s obligation under paragraph (b) of this section, including the address given in the certificate to which the purchaser’s report is to be sent.

(d) Any purchaser of pre-Act endangered species parts included in a valid Certificate of Exemption, unless an ultimate user, within 30 days after the receipt of such parts, must submit a written report to the address given in the certificate. The report must specify the quantity of such parts or products received, the name and address of the seller, a copy of the invoice or other document showing the serial numbers, weight, and descriptions of the parts or products received, the date on which such parts or products were received, and the intended use of such parts by the purchaser. The term “ultimate user”, for purposes of this paragraph, means any person who acquired such endangered species part or product for his or her own consumption or for other personal use (including gifts) and not for resale.

§ 222.202 Certificate renewal.

(a) Any person to whom a Certificate of Exemption has been issued by the National Marine Fisheries Service may apply to the Assistant Administrator for renewal of such certificate. Any person holding a valid Certificate of Exemption which was renewed after October 13, 1982, and was in effect on March 31, 1986, may apply to the Secretary for one renewal for a period not to exceed 5 years.

(b) The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of paragraph (c) of this section. At least 30 days should be allowed for processing. When an application for a renewal has been received and deemed sufficient, the Assistant Administrator shall issue a Certificate of Renewal to the applicant as soon as practicable.

(c) The following information will be used as the basis for determining
whether an application for renewal of a Certificate of Exemption is complete:

(1) Title: Application for Renewal of Certificate of Exemption.

(2) The date of application.

(3) The identity of the applicant, including complete name, original Certificate of Exemption number, current address, and telephone number. If the applicant is a corporation, partnership, or association, set forth the details.

(4) The period of time for which a renewal of the Certificate of Exemption is requested. However, no renewal of Certificate of Exemption, or right claimed thereunder, shall be effective after the close of the 5-year period beginning on the date of the expiration of the previous renewal of the certificate of exemption.

(5)(i) A complete and detailed updated inventory of all pre-Act endangered species parts for which the applicant seeks exemption. Each item on the inventory must be identified by the following information: A unique serial number; the weight of the item to the nearest whole gram; and a detailed description sufficient to permit ready identification of the item. Small lots, not exceeding five pounds (2,270 grams), of scraps or raw material, which may include or consist of one or more whole raw whale teeth, may be identified by a single serial number and total weight. All finished scrimshaw items subsequently made from a given lot of scrap may be identified by the lot serial number plus additional digits to signify the piece number of the individual finished item. Identification numbers will be in the following format: 00-000000-0000. The first two digits will be the last two digits of the appropriate certificate of exemption number; the next six digits, the serial number of the individual piece or lot of scrap or raw material; and the last four digits, where applicable, the piece number of an item made from a lot of scrap or raw material. The serial numbers for each certificate holder's inventory must begin with 000001, and piece numbers, where applicable, must begin with 0001 for each separate lot.

(ii) Identification numbers may be affixed to inventory items by any means, including, but not limited to, etching the number into the item, attaching a label or tag bearing the number to the item, or sealing the item in a plastic bag, wrapper or other container bearing the number. The number must remain affixed to the item until the item is sold to an ultimate user, as defined in §222.201(d).

(iii) No renewals will be issued for scrimshaw products in excess of any quantities declared in the original application for a Certificate of Exemption.

(6) A Certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a renewal of my Certificate of Exemption under the Endangered Species Act, as amended, and the Department of Commerce regulations issued thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties under the Act.

(7) Signature of the applicant.

§ 222.203 Modification, amendment, suspension, and revocation of certificates.

(a) When circumstances have changed so that an applicant or certificate holder desires to have any material, term, or condition of the application or certificate modified, the applicant or certificate holder must submit in writing full justification and supporting information in conformance with the provisions of this part.

(b) All certificates are issued subject to the condition that the Assistant Administrator reserves the right to amend the provisions of a Certificate of Exemption for just cause at any time. Such amendments take effect on the date of notification, unless otherwise specified.
§ 222.204 Administration of certificates.

(a) The Certificate of Exemption covers the business or activity specified in the Certificate of Exemption at the address described therein. No Certificate of Exemption is required to cover a separate warehouse facility used by the certificate holder solely for storage of pre-Act endangered species parts, if the records required by this subpart are maintained at the address specified in the Certificate of Exemption served by the warehouse or storage facility.

(b) Certificates of Exemption issued under this subpart are not transferable. However, in the event of the lease, sale, or other transfer of the operations or activity authorized by the Certificate of Exemption, the successor is not required to obtain a new Certificate of Exemption prior to commencing such operations or activity. In such case, the successor will be treated as a purchaser and must comply with the record and reporting requirements set forth in §222.201(d).

(c) The Certificate of Exemption holder must notify the Assistant Administrator, in writing, of any change in address, in trade name of the business, or in activity specified in the certificate. The Assistant Administrator must be notified within 10 days of a change of address, and within 30 days of a change in trade name. The certificate with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended certificate to the person to whom it was issued. A certificate holder who seeks amendment of a certificate may continue all authorized activities while awaiting action by the Assistant Administrator.

(d) A Certificate of Exemption issued under this subpart confers no right or privilege to conduct a business or an activity contrary to state or other law. Similarly, compliance with the provisions of any state or other law affords no immunity under any Federal laws or regulations of any other Federal agency.

(e) Any person authorized to enforce the Act may enter the premises of any Certificate of Exemption holder or of any purchaser during business hours, including places of storage, for the purpose of inspecting or of examining any records or documents and any endangered species parts.

(f) The records pertaining to pre-Act endangered species parts prescribed by this subpart shall be in permanent form and shall be retained at the address shown on the Certificate of Exemption or at the principal address of a purchaser in the manner prescribed by this subpart.

(g)(1) Holders of Certificates of Exemption must maintain records of all pre-Act endangered species parts they receive, sell, transfer, distribute or dispose of otherwise. Purchasers of pre-Act endangered species parts, unless ultimate users, as defined in §222.201(d), must similarly maintain records of all such parts or products they receive.

(2) Such records referred to in paragraph (g)(1) of this section may consist of invoices or other commercial records, which must be filed in an orderly manner separate from other commercial records maintained and be readily available for inspection. Such records must show the name and address of the purchaser, seller, or other transferor; show the type, quantity, and identity of the part or product; show the date of such sale or transfer; and be retained, in accordance with the requirements of this subpart, for a period of not less than 3 years following the date of sale or transfer. Each pre-Act endangered species part will be identified by its number on the updated inventory required to renew a Certificate of Exemption.

(i) Each Certificate of Exemption holder must submit a quarterly report (to the address given in the certificate) containing all record information required by paragraph (g)(2) of this section, on all transfers of pre-Act endangered species parts made in the previous calendar quarter, or such other
record information the Assistant Administrator may specify from time to time.

(ii) Quarterly reports are due on January 15, April 15, July 15, and October 15.

(3) The Assistant Administrator may authorize the record information to be submitted in a manner other than that prescribed in paragraph (g)(2) of this section when the record holder demonstrates that an alternate method of reporting is reasonably necessary and will not hinder the effective administration or enforcement of this subpart.

§ 222.205 Import and export requirements.

(a) Any fish and wildlife subject to the jurisdiction of the National Marine Fisheries Service and is intended for importation into or exportation from the United States, shall not be imported or exported except at a port(s) designated by the Secretary of the Interior. Shellfish and fishery products that are neither endangered nor threatened species and that are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes are excluded from this requirement. The Secretary of the Interior may permit the importation or exportation at non-designated ports in the interest of the health or safety of the species for other reasons if the Secretary deems it appropriate and consistent with the purpose of facilitating enforcement of the Act and reducing the costs thereof. Importers and exporters are advised to see 50 CFR part 14 for importation and exportation requirements and information.

(b) No pre-Act endangered species part shall be imported into the United States. A Certificate of Exemption issued in accordance with the provisions of this subpart confers no right or privilege to import into the United States any such part.

(c)(1) Any person exporting from the United States any pre-Act endangered species part must possess a valid Certificate of Exemption issued in accordance with the provisions of this subpart. In addition, the exporter must provide to the Assistant Administrator, in writing, not less than 10 days prior to shipment, the following information: The name and address of the foreign consignee, the intended port of exportation, and a complete description of the parts to be exported. No shipment may be made until these requirements are met by the exporter.

(2) The exporter must send a copy of the Certificate of Exemption, and any endorsements thereto, to the District Director of Customs at the port of exportation, which must precede or accompany the shipment in order to permit the appropriate inspection prior to lading. Upon receipt, the District Director may order such inspection, as deemed necessary; the District will clear the merchandise for export, prior to the lading of the merchandise. If they are satisfied that the shipment is proper and complies with the information contained in the certificate and any endorsement thereto. The certificate, and any endorsements, will be forwarded to the Chief of the Office of Enforcement for NMFS.

(3) No pre-Act endangered species part in compliance with the requirements of this subpart may be exported except at a port or ports designated by the Secretary of the Interior, pursuant to §222.103.

(4) Notwithstanding any provision of this subpart, it shall not be required that the Assistant Administrator authorizes the transportation in interstate or foreign commerce of pre-Act endangered species parts.

EFFECTIVE DATE NOTE: At 64 FR 14054, Mar. 23, 1999, part 222 was revised, effective Mar. 23, 1999, with the exception of §222.205, paragraphs (c)(1) and (2), which contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart C—General Permit Procedures

§ 222.301 General requirements.

(a)(1) The regulations in this subpart C provide uniform rules and procedures for application, issuance, renewal, conditions, and general administration of permits issuable pursuant to parts 222, 223, and 224 of this chapter. While this
section provides generic rules and procedures applicable to all permits. Other sections may provide more specific rules and procedures with respect to certain types of permits. In such cases, the requirements in all applicable sections must be satisfied. (2) Notwithstanding paragraph (a)(1) of this section, the Assistant Administrator may approve variations from the requirements of parts 222, 223, and 224 of this chapter when the Assistant Administrator finds that an emergency exists and that the proposed variations will not hinder effective administration of those parts and will not be unlawful. Other sections within parts 222, 223, and 224 of this chapter may allow for a waiver or variation of specific requirements for emergency situations, upon certain conditions. In such cases, those conditions must be satisfied in order for the waiver or variation to be lawful.

(b) No person shall take, import, export or engage in any other prohibited activity involving any species of fish or wildlife under the jurisdiction of the Secretary of Commerce that has been determined to be endangered under the Act, or that has been determined to be threatened and for which the prohibitions of section 9(a)(1) of the Act have been applied by regulation, without a valid permit issued pursuant to these regulations. The permit shall entitle the person to whom it is issued to engage in the activity specified in the permit, subject to the limitations of the Act and the regulations in parts 222, 223, and 224 of this chapter, for the period stated on the permit, unless sooner modified, suspended or revoked.

(c) Each person intending to engage in an activity for which a permit is required by parts 222, 223, and 224 of this chapter or by the Act shall, before commencing such activity, obtain a valid permit authorizing such activity. Any person who desires to obtain permit privileges authorized by parts 222, 223, and 224 of this chapter must apply for such permit in accordance with the requirements of these sections. If the information required for each specific, permitted activity is included, one application may be accepted for all permits required, and a single permit may be issued.

(d)(1) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or of an agent of such person) while any animal subject to the permit is in the possession of such person or agent. Specifically, a person or his/her agent must be in possession of a permit during the time of the authorized taking, importation, exportation, or of any other act and during the period of any transit incident to such taking, importation, exportation, or to any other act. The permit shall be displayed for inspection, upon request, to an authorized officer, or to any other person relying upon its existence.

(e) The authorizations on the face of a permit setting forth specific times, dates, places, methods of taking, numbers and kinds of fish or wildlife, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

(f) Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid.

(g) Any permit issued under parts 222, 223, and 224 of this chapter shall be displayed for inspection, upon request, to an authorized officer, or to any other person relying upon its existence.

(h) Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of parts 222, 223, or 224 of this chapter or the provisions of the permit set forth other reporting requirements.

(i) From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of fish or wildlife pursuant to such permit. Such records shall be
§ 222.303 Issuance of permits.

(a)(1) No permit may be issued prior to the receipt of a written application unless an emergency pursuant to § 222.301(a)(2) exists, and a written variation from the requirements is recorded by the National Marine Fisheries Service.

(2) No representation of an employee or agent of the United States shall be construed as a permit unless it meets the requirements of a permit defined in § 222.102.

(b) Applications must be received by the Assistant Administrator at least 90 calendar days prior to the date on which the applicant desires to have the permit made effective, unless otherwise specified in the regulations or guidelines pertaining to a particular permit. The National Marine Fisheries Service will attempt to process applications deemed sufficient in the shortest possible time, but does not guarantee that the permit will be issued 90 days after notice of receipt of the application is published in the Federal Register.

(c)(1) Upon receipt of an insufficiently or improperly executed application, the applicant shall be notified of the deficiency in the application. If the applicant fails to supply the deficient information or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned.

(2) The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of this part. The Assistant Administrator, however, may waive any requirement for information or require any elaboration or further information deemed necessary.
paragraph (b) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the Federal Register not less than 15 days in advance of such hearing. Any interested person may appear at the hearing in person or through a representative and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(d) Except as provided in subpart D to 15 CFR part 904, as soon as practicable but not later than 30 days after the close of the hearing. If no hearing is held, as soon as practicable but not later than 30 days from the publication of the notice in the Federal Register, the Assistant Administrator shall issue or deny issuance of the permit. Notice of the decision of the Assistant Administrator shall be published in the Federal Register within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(e)(1) The Assistant Administrator shall issue the permit unless:

(i) Denial of the permit has been made pursuant to subpart D to 15 CFR part 904;

(ii) The applicant has failed to disclose material or information required, or has made false statements as to any material fact, in connection with the application;

(iii) The applicant has failed to demonstrate a valid justification for the permit or a showing of responsibility;

(iv) The authorization requested potentially threatens a fish or wildlife population; or

(v) The Assistant Administrator finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(2) The applicant shall be notified in writing of the denial of any permit request, and the reasons thereof. If authorized in the notice of denial, the applicant may submit further information or reasons why the permit should not be denied. Such further information shall not be considered a new application. The final action by the Assistant Administrator shall be considered the final administrative decision of the Department of Commerce.

(f) If a permit is issued under § 222.308, the Assistant Administrator shall publish notice thereof in the Federal Register, including the Assistant Administrator’s finding that such permit—

(1) Was applied for in good faith;

(2) Will not operate to the disadvantage of such endangered species; and

(3) Will be consistent with the purposes and policy set forth in section 2 of the Act.

(g) The Assistant Administrator may waive the 30-day period in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published by the Assistant Administrator in the Federal Register within 10 days following the issuance of the permit.

§ 222.304 Renewal of permits.

When the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, the permittee shall, unless otherwise notified in writing by the Assistant Administrator, file a request for permit renewal, together with a certified statement, verifying that the information in the original application is still currently correct. If the information is incorrect the permittee shall file a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of the permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by the expired permit until the renewal application is acted upon.

§ 222.305 Rights of succession and transfer of permits.

(a)(1) Except as otherwise provided in this section, permits issued pursuant to parts 222, 223, and 224 of this chapter are not transferable or assignable. In the event that a permit authorizes certain business activities in connection
with a business or commercial enterprise, which is then subject to any subsequent lease, sale, or transfer, the successor to that enterprise must obtain a permit prior to continuing the permitted activity, with the exceptions provided in paragraphs (a)(2) and (a)(3) of this section.

(2) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit, provided that they furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity. Such persons are the following:

(i) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee, and

(ii) The receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(3) Incidental take permits issued under §222.307, and enhancement permits issued under §222.308, as part of a Safe Harbor Agreement with Assurances or Candidate Conservation Agreement with Assurances, may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee’s legal representative and the proposed transferee, provided NMFS determines in writing that:

(i) The proposed transferee meets all of the qualifications under parts 222, 223, or 224 (as applicable) for holding a permit;

(ii) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or other agreement or plan associated with the permit and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(iii) The proposed transferee has provided such other information as NMFS determines is relevant to process the transfer.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.


EFFECTIVE DATE NOTE: At 64 FR 14054, Mar. 23, 1999, part 222 was revised, effective Mar. 23, 1999, with the exception of §222.305, paragraph (a), which contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§222.306 Modification, amendment, suspension, cancellation, and revocation of permits.

(a) When circumstances have changed so that an applicant or a permittee desires to have any term or condition of the application or permit modified, the applicant or permittee must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as original applications.

(b) Notwithstanding the requirements of paragraph (a) of this section, a permittee may change the mailing address or trade name under which business is conducted without obtaining a new permit or being subject to the same issuance criteria as original permits. The permittee must notify the Assistant Administrator, in writing within 30 days, of any change in address or of any change in the trade name for the business or activity specified in the permit. The permit with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended permit to the person to whom it was issued.

(c) All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

(d) When any permittee discontinues the permitted activity, the permittee shall, within 30 days thereof, mail the
permit and a request for cancellation to the issuing officer, and the permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made when the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

(e) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a term or condition of the permit may subject the permittee to both the penalties provided in the Act and suspension, revocation, or amendment of the permit, as provided in subpart D to 15 CFR part 904.

§ 222.307 Permits for incidental taking of species.

(a) Scope. (1) The Assistant Administrator may issue permits to take endangered and threatened species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Act. The regulations in this section apply to all endangered species, and those threatened species for which the prohibitions of section 9(a)(1) of the Act, under the jurisdiction of the Secretary of Commerce, apply.

(2) If the applicant represents an individual or a single entity, such as a corporation, the Assistant Administrator will issue an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on listed species for which a permit is required, the Assistant Administrator will issue a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of this section.

(b) Permit application procedures. Applications should be sent to the Assistant Administrator. The Assistant Administrator shall determine the sufficiency of the application in accordance with the requirements of this section. At least 120 days should be allowed for processing. Each application must be signed and dated and must include the following:

(1) The type of application, either:

(i) Application for an Individual Incidental Take Permit under the Act; or

(ii) Application for a General Incidental Take Permit under the Act;

(2) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity or is representing a group or an organization, the applicable details;

(3) The species or stocks, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of the affected species or stocks;

(4) A detailed description of the proposed activity, including the anticipated dates, duration, and specific location. If the request is for a general incidental take permit, an estimate of the total level of activity expected to be conducted;

(5) A conservation plan, based on the best scientific and commercial data available, which specifies the following:

(i) The anticipated impact (i.e., amount, extent, and type of anticipated taking) of the proposed activity on the species or stocks;

(ii) The anticipated impact of the proposed activity on the habitat of the species or stocks and the likelihood of restoration of the affected habitat;

(iii) The steps (specialized equipment, methods of conducting activities, or other means) that will be taken to monitor, minimize, and mitigate such impacts, and the funding available to implement such measures;

(iv) The alternative actions to such taking that were considered and the reasons why those alternatives are not being used; and

(v) A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.

(c) Issuance criteria. (1) In determining whether to issue a permit, the Assistant Administrator will consider the following:

(i) The status of the affected species or stocks;
(ii) The potential severity of direct, indirect, and cumulative impacts on the species or stocks and habitat as a result of the proposed activity;

(iii) The availability of effective monitoring techniques;

(iv) The use of the best available technology for minimizing or mitigating impacts; and

(v) The views of the public, scientists, and other interested parties knowledgeable of the species or stocks or other matters related to the application.

(2) To issue the permit, the Assistant Administrator must find that—

(i) The taking will be incidental;

(ii) The applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking;

(iii) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(iv) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and

(v) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

(d) Permit conditions. In addition to the general conditions set forth in this part, every permit issued under this section will contain such terms and conditions as the Assistant Administrator deems necessary and appropriate, including, but not limited to the following:

(1) Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with;

(2) The species and number of animals covered;

(3) The authorized method of taking;

(4) The procedures to be used to handle or dispose of any animals taken; and

(5) The payment of an adequate fee to the National Marine Fisheries Service to process the application.

(e) Duration of permits. The duration of permits issued under this section will be such as to provide adequate assurances to the permit holder to commit funding necessary for the activities authorized by the permit, including conservation activities. In determining the duration of a permit, the Assistant Administrator will consider the duration of the proposed activities, as well as the possible positive and negative effects on listed species associated with issuing a permit of the proposed duration, including the extent to which the conservation plan is likely to enhance the habitat of the endangered species or to increase the long-term survivability of the species.

(f) Certificates of inclusion. (1) Any individual who wishes to conduct an activity covered by a general incidental take permit must apply to the Assistant Administrator for a Certificate of Inclusion. Each application must be signed and dated and must include the following:

(i) The general incidental take permit under which the applicant wants coverage;

(ii) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity, the applicable details;

(iii) A description of the activity the applicant seeks to have covered under the general incidental take permit, including the anticipated dates, duration, and specific location; and

(iv) A signed certification that the applicant has read and understands the general incidental take permit and the conservation plan, will comply with their terms and conditions, and will fund and implement applicable measures of the conservation plan.

(2) To issue a Certificate of Inclusion, the Assistant Administrator must find that:

(i) The applicant will be engaged in the activity covered by the general permit, and

(ii) The applicant has made adequate assurances that the applicable measures of the conservation plan will be funded and implemented.

(g) Assurances provided to permittee in case of changed or unforeseen circumstances. The assurances in this paragraph (g) apply only to incidental take permits issued in accordance with paragraph (c) of this section where the
conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised as a result of this rulemaking.

(1) Changed circumstances provided for in the plan. If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan’s operating conservation program, the permittee will implement the measures specified in the plan.

(2) Changed circumstances not provided for in the plan. If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan’s operating conservation program, NMFS will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(3) Unforeseen circumstances. (i) In negotiating unforeseen circumstances, NMFS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented. However, such additional measures are limited to modifications within any conserved habitat areas or to the conservation plan’s operating conservation program for the affected species. The original terms of the conservation plan will be maintained to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(iii) NMFS has the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will consider, but not be limited to, the following factors:

(A) Size of the current range of the affected species;

(B) Percentage of range adversely affected by the conservation plan;

(C) Percentage of range conserved by the conservation plan;

(D) Ecological significance of that portion of the range affected by the conservation plan;

(E) Level of knowledge about the affected species and the degree of specificity of the species’ conservation program under the conservation plan; and

(F) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(b) Nothing in this rule will be construed to limit or constrain the Assistant Administrator, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at his or her own expense to protect or conserve a species included in a conservation plan.

§222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.

(a) Scope. The Assistant Administrator may issue permits for scientific purposes or for the enhancement of the propagation or survival of the affected endangered or threatened species in accordance with the regulations in parts 222, 223, and 224 of this chapter and under such terms and conditions as the
Assistant Administrator may prescribe, authorizing the taking, importation, or other acts otherwise prohibited by section 9 of the Act. Within the jurisdiction of a State, more restrictive state laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable state laws will be required before a permit will be issued.

(b) Application procedures. Any person desiring to obtain such a permit may make application therefor to the Assistant Administrator. Permits for marine mammals shall be issued in accordance with the provisions of part 216, subpart D of this chapter. Permits relating to sea turtles may involve the Fish and Wildlife Service, in which case the applicant shall follow the procedures set out in §222.309. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or for enhancement of propagation or survival of the affected species should be issued by the Assistant Administrator. An application for a permit shall provide the following information and such other information that the Assistant Administrator may require:

(1) Title, as applicable, either—
   (i) Application for permit for scientific purposes under the Act; or
   (ii) Application for permit for the enhancement of the propagation or survival of the endangered species under the Act.

(2) The date of the application.

(3) The identity of the applicant including complete name, address, and telephone number. If the applicant is a partnership or a corporate entity, set forth the details. If the endangered species is to be utilized by a person other than the applicant, set forth the name of that person and such other information as would be required if such person were an applicant.

(4) A description of the purpose of the proposed acts, including the following:
   (i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and
   (ii) A detailed description of how the species will be used.

   (5) A detailed description of the project, or program, in which the endangered species is to be used, including the following:
      (i) The period of time over which the project or program will be conducted;
      (ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;
      (iii) A copy of the formal research proposal or contract if one has been prepared;
      (iv) A statement of whether the proposed project or program has broader significance than the individual researcher’s goals. For example, does the proposed project or program respond directly or indirectly to recommendation of any national or international scientific body charged with research or management of the endangered species? If so, how?; and
      (v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains in a museum or other institutional collection for the continued benefit to science.

(6) A description of the endangered species which is the subject of the application, including the following:
   (i) A list of each species and the number of each, including the common and scientific name, the subspecies (if applicable), population group, and range;
   (ii) A physical description of each animal, including the age, size, and sex;
   (iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit for each animal and the location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;
   (iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;
   (v) A description of the manner of taking for each animal, including the gear to be used;
   (vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals; and
   (vii) If the capture or other taking is to be done by a contractor, a statement
as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompanying such statement shall be a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise take the animals, should a permit be granted.

(7) A description of the manner of transportation for any live animal taken, imported, exported, or shipped in interstate commerce, including the following:
   (i) Mode of transportation;
   (ii) Name of transportation company;
   (iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;
   (iv) Length of time in transit for any planned future move or transfer of the animals;
   (v) The qualifications of the common carrier or agent used for transportation of the animals;
   (vi) A description of the pen, tank, container, cage, cradle, or other devices used to hold the animal at both the capture site and during transportation;
   (vii) Special care before and during transportation, such as salves, antibiotics, moisture; and
   (viii) A statement as to whether the animals will be accompanied by a veterinarian or by another similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any live animals sought, including a complete description of the facilities where any such animals will be maintained including:
   (i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;
   (ii) The water supply, amount, and quality;
   (iii) The diet, amount and type, for all animals;
   (iv) Sanitation practices used;
   (v) Qualifications and experience of the staff;
   (vi) A written certification from a licensed veterinarian or from a recognized expert who are knowledgeable on the species (or related species) or group covered in the application. The certificate shall verify that the veterinarian has personally reviewed the amendments for transporting and maintaining the animal(s) and that, in the veterinarian's opinion, they are adequate to provide for the well-being of the animal; and
   (vii) The availability in the future of a consulting expert or veterinarian meeting paragraph requirements of (b)(8)(vi) in this section.

(9) A statement of willingness to participate in a cooperative breeding program and maintain or contribute data to a stud book.

(10) A statement of how the applicant’s proposed project or program will enhance or benefit the wild population.

(11) For the 5 years preceding the date of application, the applicant shall provide a detailed description of all mortalities involving species under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:
   (i) A list of all endangered species and related species that are the subject of this application that have been captured, transported, maintained, or utilized by the applicant for scientific purposes or for the enhancement of propagation or survival of the affected species, and/or of related species that are captured, transported, maintained, or utilized by the applicant for scientific purposes or for enhancement of propagation or survival of the affected species;
   (ii) The numbers of mortalities among such animals by species, by date, by location of capture, i.e., from which population, and the location of such mortalities;
   (iii) The cause(s) of any such mortality; and
   (iv) The steps which have been taken by applicant to avoid or decrease any such mortality.

(12) A certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act, as
amended, and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Act.

(13) The applicant and/or an officer thereof must sign the application.

(14) Assistance in completing this application may be obtained by writing Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or calling the Office of Protected Resources at 301-713-1401. Allow at least 90 days for processing.

(c) Issuance criteria. In determining whether to issue a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species, the Assistant Administrator shall specifically consider, among other application criteria, the following:

(1) Whether the permit was applied for in good faith;
(2) Whether the permit, if granted and exercised, will not operate to the disadvantage of the endangered species;
(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;
(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;
(5) The status of the population of the requested species and the effect of the proposed action on the population, both direct and indirect;
(6) If a live animal is to be taken, transported, or held in captivity, the applicant’s qualifications for the proper care and maintenance of the species and the adequacy of the applicant’s facilities;
(7) Whether alternative non-endangered species or population stocks can and should be used;
(8) Whether the animal was born in captivity or was (or will be) taken from the wild;
(9) Provision for disposition of the species if and when the applicant’s project or program terminates;
(10) How the applicant’s needs, program, and facilities compare and relate to proposed and ongoing projects and programs;
(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application; and
(12) Opinions or views of scientists or other persons or organizations knowledgeable about the species which is the subject of the application or of other matters germane to the application.

(d) Terms and conditions. Permits applied for under this section shall contain terms and conditions as the Assistant Administrator may deem appropriate, including but not limited to the following:

(1) The number and kind of species covered;
(2) The location and manner of taking;
(3) Port of entry or export;
(4) The methods of transportation, care, and maintenance to be used with live species;
(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;
(6) The transferability or assignability of the permit;
(7) The sale or other disposition of the species, its progeny, or the species product; and
(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the service.

§ 222.309 Permits for listed species of sea turtles involving the Fish and Wildlife Service.

(a) This section establishes specific procedures for issuance of the following permits: scientific purposes or to enhance the propagation or survival of endangered or threatened species of sea turtles.
§ 222.310 Permit authority for designated agents and employees of specified Federal and state agencies.

(a) This section constitutes a programmatic permit, pursuant to 16 U.S.C. 1539(a)(1)(A), that authorizes activities by agents and employees of Federal and state agencies, as described in paragraph (b) of this section, to aid stranded endangered sea turtles, and to salvage, collect data from, and dispose of, dead carcasses of endangered sea turtles in the marine environment. For purposes of this section, "stranded" means endangered sea turtles, in the marine environment, that are alive but sick, injured, or entangled.

(b) For permits relating to any activity in the marine environment exclusively, permit applicants and permittees must comply with the regulations in parts 222, 223, and 224 of this chapter.

(c) For permits relating to any activity in the land environment exclusively, permit applicants must submit applications to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either 50 CFR 17.22(a), if the species is endangered, or 50 CFR 17.32(a), if the species is threatened.

(d) For permits relating to any activity in both the land and marine environments, applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing, after which WPO will issue either a permit or a letter of denial in accordance with its own regulations.

(e) For permits relating to any activity in a marine environment and that also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (TIAES 8249, July 1, 1975) (50 CFR part 23), applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing, after which WPO will issue a combination ESA/CITES permit or a letter of denial.

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(c) Every action shall be reported in writing to the Assistant Administrator, or authorized representative, via the agency or institution designated by the state to record such events. Reports shall contain the following information:

(1) Name and position of the official or employee involved;

(2) Description of the sea turtle(s) involved including species and condition of the animal;

(3) When applicable, description of entangling gear, its location on the turtle, and the amount of gear left on the turtle at release;

(4) Method, date and location of disposal of the sea turtle(s), including, if applicable, where the sea turtle(s) has been retained in captivity; and

(5) Such other information as the Assistant Administrator, or authorized representative, may require.

[70 FR 42509, July 25, 2005]

Subpart D—Observer Requirement

SOURCE: 72 FR 43185, Aug. 3, 2007, unless otherwise noted.

§222.401 Observer requirement.

Any United States fishing vessel, either commercial or recreational, which operates within the territorial seas or exclusive economic zone of the United States or on the high seas, or any fishing vessel that is otherwise subject to the jurisdiction of the United States, operating in a fishery that is identified through the annual determination process specified in §222.402 must carry aboard a NMFS-approved observer upon request by the NMFS Assistant Administrator, in consultation with NMFS Regional Administrators and Science Center Directors, as appropriate. NMFS and/or interested cooperating entities will pay direct costs for the observer. Owners and operators must comply with observer safety requirements specified at 50 CFR 600.725 and 50 CFR 600.746 and the terms and conditions specified in the written notification.

§222.402 Annual determination of fisheries to be observed; notice and comment.

(a) The Assistant Administrator, in consultation with Regional Administrators and Science Center Directors, will make an annual determination identifying which fisheries the agency intends to observe. This determination will be based on the extent to which:

(1) The fishery operates in the same waters and at the same time as sea turtles are present;

(2) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

(b) The Assistant Administrator shall publish the proposed determination and any final determination in the FEDERAL REGISTER. Public comment will be sought at the time of publication of the proposed determination. In addition, a written notification of the final determination will be sent to the address specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or such notification will be otherwise served on the owners or operator of the vessel. Additionally, NMFS will notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and any other means as appropriate. The proposed and any final determinations will include, to the extent practicable, information on fishing sector, targeted gear type, target fishery, temporal and geographic scope of coverage, or other information, as appropriate.

(c) Fisheries listed on the most recent annual Marine Mammal Protection Act List of Fisheries in any given year, in accordance with 16 U.S.C. 1387, will serve as the comprehensive set of commercial fisheries to be considered for inclusion in the annual determination. Recreational fisheries may also be included in the annual determination.
(d) Publication of the proposed and final determinations should be coordinated to the extent possible with the annual Marine Mammal Protection Act List of Fisheries process as specified at 50 CFR 229.8.

(e) Inclusion of a fishery in a proposed or final determination does not constitute a conclusion by NMFS that those participating in the fishery are illegally taking sea turtles.

§ 222.403 Duration of selection; effective date.

(a) Fisheries included in the final annual determination in a given year will remain eligible for observer coverage under this rule for five years, without need for NMFS to include the fishery in the intervening proposed annual determinations, to enable the design of an appropriate sampling program and to ensure collection of scientific data. If NMFS wishes to continue observations beyond the fifth year, NMFS must include the fishery in the proposed annual determination and seek comment, prior to the expiration of the fifth year.

(b) A 30-day delay in effective date for implementing observer coverage will follow the annual notification, except for those fisheries that were included in a previous determination within the preceding five years or where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective without a 30-day delay.

§ 222.404 Observer program sampling.

(a) During the program design, NMFS would be guided by the following standards in the distribution and placement of observers among fisheries and vessels in a particular fishery:

(1) The requirements to obtain the best available scientific information;

(2) The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

(b) Consistent with 16 U.S.C. 1881(b), vessels where the facilities for accommodating an observer or carrying out observer functions are so inadequate or unsafe (due to size or quality of equipment, for example) that the health or safety of the observer or the safe operation of the vessel would be jeopardized, would not be required to take observers under this rule.

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

Subpart A—General Provisions

Sec.
223.101 Purpose and scope.
223.102 Enumeration of threatened marine and anadromous species.

Subpart B—Restrictions Applicable to Threatened Marine and Anadromous Species

223.201 Guadalupe fur seal.
223.202 Steller sea lion.
223.203 Anadromous fish.
223.204 Tribal plans.
223.205 Sea turtles.
223.206 Exceptions to prohibitions relating to sea turtles.
223.207 Approved TEDs.
223.208 Corals.
223.209 [Reserved]
223.210 North American green sturgeon.
223.211 Southern DPS of spotted seal.

Figures 1–2 to Part 223 [Reserved]
Figure 3 to Part 223—Matagorda TED
Figure 4 to Part 223—Georgia TED
Figure 5 to Part 223—Net Diagram for the Excluder Panel of the Parker Soft TED
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Figure 10 to Part 223—Flounder TED
Figure 11 to Part 223—Modified Flounder TED
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Figure 14b to Part 223—Maximum Angle of Deflector Bars With Bent Bars Attached to the Bottom of the Frame
Figure 15 to Part 223—Weedless TED Brace Bar Description
National Marine Fisheries Service/NOAA, Commerce

§ 223.102

(a) The regulations contained in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to governing activities involving the species.

(b) The regulations contained in this part apply only to the threatened species enumerated in §223.102.

(c) The provisions of this part are in addition to, and not in lieu of, other regulations of parts 222 through 226 of this chapter which prescribe additional restrictions or conditions governing threatened species.

[64 FR 14068, Mar. 23, 1999]

§ 223.102 Enumeration of threatened marine and anadromous species.

The species determined by the Secretary of Commerce to be threatened pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are listed in the table below. The table lists the common and scientific names of threatened species, the locations where they are listed, and the Federal Register citations for the listings and critical habitat designations.

<table>
<thead>
<tr>
<th>Species 1</th>
<th>Common name</th>
<th>Where listed</th>
<th>Citation(s) for listing determination(s)</th>
<th>Citation(s) for critical habitat designation(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Marine Mammals</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Guadalupe fur seal</td>
<td>Arctocephalus townsendi</td>
<td>Wherever found U.S.A. (Farallon Islands of CA) south to Mexico (Islas Revillagigedo)</td>
<td>50 FR 51252; Dec 16, 1985</td>
<td>NA</td>
</tr>
<tr>
<td>(2) Steller sea lion</td>
<td>Eumetopias jubatus</td>
<td>Eastern population, which consists of all Steller sea lions from breeding colonies located east of 144° W. longitude</td>
<td>55 FR 13488; Apr 10, 1990 55 FR 50006; Dec 4, 1990 62 FR 30772; Jun 5, 1997</td>
<td>58 FR 45278; Aug 27, 1993 64 FR 14067; Mar 23, 1999</td>
</tr>
<tr>
<td>(3) Southern DPS—Spotted Seal</td>
<td>Phoca largha</td>
<td>The southern DPS includes all breeding populations of spotted seals south of 43 degrees north latitude in the Pacific Ocean</td>
<td>75 FR 65248; Oct 22, 2010</td>
<td>NA</td>
</tr>
<tr>
<td>(b) Sea Turtles</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Green sea turtle</td>
<td>Chelonia mydas</td>
<td>Wherever found, except where listed as endangered under §224.101(c); circumglobal in tropical and temperate seas and oceans</td>
<td>43 FR 32800; Jul 28, 1978 63 FR 46693; Sep 2, 1998, 64 FR 14052; Mar 23, 1999</td>
<td></td>
</tr>
<tr>
<td>(2) Loggerhead sea turtle—Northwest Atlantic Ocean DPS 2</td>
<td>Caretta caretta</td>
<td>Northwest Atlantic Ocean north of the equator, south of 60° N. Lat., and west of 40° W. Long</td>
<td>76 FR 58951, Sept. 22, 2011</td>
<td>NA</td>
</tr>
<tr>
<td>(3) Loggerhead sea turtle—South Atlantic Ocean DPS 2</td>
<td>Caretta caretta</td>
<td>South Atlantic Ocean south of the equator, north of 60° S. Lat., west of 20° E. Long., and east of 67° W. Long</td>
<td>76 FR 58951, Sept. 22, 2011</td>
<td>NA</td>
</tr>
</tbody>
</table>

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### § 223.102

<table>
<thead>
<tr>
<th>Species</th>
<th>Common name</th>
<th>Scientific name</th>
<th>Where listed</th>
<th>Citation(s) for listing determination(s)</th>
<th>Citation(s) for critical habitat designation(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(4) Loggerhead sea turtle—Southeast Indo-Pacific Ocean DPS ²</td>
<td>Caretta caretta</td>
<td>Southeast Indian Ocean south of the equator, north of 60° S. Lat., and east of 80° E. Long.; South Pacific Ocean south of the equator, north of 60° S. Lat., and west of 141° E. Long</td>
<td>76 FR 58951, Sept. 22, 2011</td>
<td>NA.</td>
<td></td>
</tr>
<tr>
<td>(5) Loggerhead sea turtle—Southwest Indian Ocean DPS ²</td>
<td>Caretta caretta</td>
<td>Southwest Indian Ocean north of the equator, south of 30° N. Lat., west of 20° E. Long., and east of 80° E. Long</td>
<td>76 FR 58951, Sept. 22, 2011</td>
<td>NA.</td>
<td></td>
</tr>
<tr>
<td>(6) Olive ridley sea turtle ²</td>
<td>Lepidochelys olivacea</td>
<td>Wherever found, except where listed as endangered under §224.101(c); circumglobal in tropical and temperate seas</td>
<td>43 FR 32800; Jul 28, 1978</td>
<td>NA.</td>
<td></td>
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<tr>
<td>(c) Fishes</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>(1) Green sturgeon - southern DPS</td>
<td>Acipenser medirostris</td>
<td>U.S.A., CA. The southern DPS includes all spawning populations of green sturgeon south of the Eel River (exclusive), principally including the Sacramento River green sturgeon spawning population.</td>
<td>71 FR 17757; April 7, 2006; 71 FR 19241; April 13, 2006</td>
<td></td>
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</tr>
<tr>
<td>(2) Gulf sturgeon</td>
<td>Acipenser oxyrinchus desotoi</td>
<td>Wherever found.</td>
<td>56 FR 49653; Sep 30, 1991</td>
<td>68 FR 13370; Mar 19, 2003.</td>
<td></td>
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<tr>
<td>(3) Ozette Lake sockeye</td>
<td>Oncorhynchus nerka</td>
<td>U.S.A.- WA, including all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington, as well as two artificial propagation programs: the Umbrella Creek and Big River sockeye hatchery programs.</td>
<td>64 FR 14528; Mar 25, 1999; 70 FR 37160; Jun 28, 2005</td>
<td>70 FR 52630; Sep 2, 2005.</td>
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<tr>
<td>(4) Central Valley spring-run Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A.- CA, including all naturally spawned populations of spring-run Chinook salmon in the Sacramento River and its tributaries in California, including the Feather River, as well as the Feather River Hatchery spring-run Chinook program.</td>
<td>64 FR 50394; Sep 16, 1999; 70 FR 37160; Jun 28, 2005</td>
<td>70 FR 52488; Sep 2, 2005.</td>
<td></td>
</tr>
<tr>
<td>(5) California Coastal Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A.-CA, including all naturally spawned populations of Chinook salmon from rivers and streams south of the Klamath River to the Russian River, California, as well as seven artificial propagation programs: the Humboldt Fish Action Council (Freshwater Creek), Yager Creek, Redwood Creek, Hollow Tree, Van Arsdale Fish Station, Mattole Salmon Group, and Mad River Hatchery fall-run Chinook hatchery programs.</td>
<td>64 FR 50394; Sep 16, 1999; 70 FR 37160; Jun 28, 2005</td>
<td>70 FR 52488; Sep 2, 2005.</td>
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<tr>
<td>(6) Upper Willamette River Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A.- OR, including all naturally spawned populations of spring-run Chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls, Oregon, as well as seven artificial propagation programs: the McKenzie River Hatchery (Oregon Department of Fish and Wildlife (ODFW) stock #24), Marion Forks/North Fork Santiam River (ODFW stock #21), South Santiam Hatchery (ODFW stock #23) in the South Fork Santiam River, South Santiam Hatchery in the Cispus River, South Santiam Hatchery in the Clackamas River, Willamette Hatchery (ODFW stock #22), and Clackamas hatchery (ODFW stock #11)</td>
<td>64 FR 14308; Mar. 24, 1999 70 FR 37160; Jun 28, 2005</td>
<td>70 FR 52630; Sep 2, 2005.</td>
<td></td>
</tr>
<tr>
<td>(7) Lower Columbia River Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A.- OR, WA, including all naturally spawned populations of Chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon, exclusive of spring-run Chinook salmon in the Clackamas River, as well as seventeen artificial propagation programs: the Sea Resources Tule Chinook Program, Big Creek Tule Chinook Program, Astoria High School (STEP) Tule Chinook Program, Warrenton High School (STEP) Tule Chinook Program, Elochoman River Tule Chinook Program, Cowlitz Tule Chinook Program, North Fork Toutle Tule Chinook Program, Kalama Tule Chinook Program, Washougal River Tule Chinook Program, Spring Creek NFI Tule Chinook Program, Cowlitz spring Chinook Program in the Upper Cowlitz River and the Cispus River, Friends of the Cowlitz spring Chinook Program, Kalama River spring Chinook Program, Lewis River spring Chinook Program, Fish First spring Chinook Program, and the Sandy River Hatchery (ODFW stock #11)</td>
<td>64 FR 14308; Mar. 24, 1999 70 FR 37160; Jun 28, 2005</td>
<td>70 FR 52630; Sep 2, 2005.</td>
<td></td>
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<tr>
<td>Species</td>
<td>Common name</td>
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<td>Where listed</td>
<td>Citation(s) for listing determination(s)</td>
<td>Citation(s) for critical habitat designation(s)</td>
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<td>-----------------------------------------------</td>
</tr>
<tr>
<td>(8) Puget Sound Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A.- WA, including all naturally spawned populations of Chinook salmon from rivers and streams flowing into Puget Sound including the Strats of Juan De Fuca from the Elwha River, eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington, as well as twenty-six artificial propagation programs: the Kendal Creek Hatchery, Marblemount Hatchery (fall, spring yearlings, spring subyearlings, and summer run), Harvey Creek Hatchery, Whitehorse Springs Pond, Wallace River Hatchery (yearlings and subyearlings), Tulalip Bay, Issaquah Hatchery, Soos Creek Hatchery, Icy Creek Hatchery, Keta Creek Hatchery, White River Hatchery, White Acclimation Pond, Hupp Springs Hatchery, Voights Creek Hatchery, Dru Creek, Clear Creek, Kalama Creek, George Adams Hatchery, Rick’s Pond Hatchery, Hamma Hamma Hatchery, Dungeness/ Hurd Creek Hatchery, Elewa Channel Hatchery Chinook hatchery programs.</td>
<td>64 FR 14308; Mar. 24, 1999 70 FR 37160; Jun 28, 2005</td>
<td>70 FR 52630; Sep 2, 2005.</td>
<td></td>
</tr>
<tr>
<td>(9) Snake River fall-run Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A.- OR, WA, ID, including all naturally spawned populations of fall-run Chinook salmon in the mainstem Snake River below Hells Canyon Dam, and in the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River, as well as four artificial propagation programs: the Lyons Ferry Hatchery, Fall Chinook Acclimation Ponds Program, Nez Perce Tribal Hatchery, and Oxbow Hatchery fall-run Chinook hatchery programs.</td>
<td>57 FR 14653; Apr 22, 1992 57 FR 23458; Jun 3, 1992 70 FR 37160; Jun 28, 2005</td>
<td>58 FR 68543; Dec 28, 1993.</td>
<td></td>
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<tr>
<td>Species ¹</td>
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</tr>
<tr>
<td>(11) Southern Oregon/Northern California Coast coho</td>
<td>Oncorhynchus kisutch</td>
<td>U.S.A.- CA, OR, including all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California, as well three artificial propagation programs: the Cole Rivers Hatchery (ODFW stock # 52), Trinity River Hatchery, and Iron Gate Hatchery coho hatchery programs.</td>
<td>62 FR 24588; May 6, 1997 70 FR 37160; Jun 28, 2005</td>
<td>64 FR 24049; May 5, 1999.</td>
<td></td>
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<tr>
<td>Species ¹</td>
<td>Common name</td>
<td>Scientific name</td>
<td>Where listed</td>
<td>Citation(s) for listing determination(s)</td>
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</tr>
<tr>
<td>(12) Lower Columbia River coho</td>
<td>Oncorhynchus kisutch</td>
<td>U.S.A.- OR, WA, including all naturally spawned populations of coho salmon in the Columbia River and its tributaries in Washington and Oregon, from the mouth of the Columbia up to and including the Big White Salmon and Hood Rivers, and includes the Willamette River to Willamette Falls, Oregon, as well as twenty-five artificial propagation programs: the Grays River, Sea Resources Hatchery, Peterson Coho Project, Big Creek Hatchery, Astoria High School (STEP) Coho Program, Warrenton High School (STEP) Coho Program, Elochoman Type-S Coho Program, Elochoman Type-N Coho Program, Cathlamet High School FFA Type-N Coho Program, Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers, Cowlitz Game and Anglers Coho Program, Friends of the Cowlitz Coho Program, North Fork Toutle River Hatchery, Kalama River Type-N Coho Program, Kalama River Type-S Coho Program, Lewis River Type-N Coho Program, Lewis River Type-S Coho Program, Fish First Wild Coho Program, Fish First Type-N Coho Program, Syverson Project Type-N Coho Program, Eagle Creek National Fish Hatchery, Sandy Hatchery, and the Bonneville/Cascade/Oxbow complex coho hatchery programs.</td>
<td>70 FR 37160; Jun 28, 2005</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>(13) Columbia River chum</td>
<td>Oncorhynchus keta</td>
<td>U.S.A.- OR, WA, including all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon, as well as three artificial propagation programs: the Chinook River (Sea Resources Hatchery), Grays River, and Washougal River/Duncan Creek chum hatchery programs.</td>
<td>64 FR 14508; Mar. 25, 1999 70 FR 37160; Jun 28, 2005 70 FR 52630; Sep 2, 2006</td>
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### National Marine Fisheries Service/NOAA, Commerce § 223.102

<table>
<thead>
<tr>
<th>Species</th>
<th>Common name</th>
<th>Where listed</th>
<th>Citation(s) for listing determination(s)</th>
<th>Citation(s) for critical habitat designation(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(14) Hood Canal summer-run chum</td>
<td>Oncorhynchus keta</td>
<td>U.S.A.- WA, including all naturally spawned populations of summer-run chum salmon in Hood Canal and its tributaries as well as populations in Olympic Peninsula rivers between Hood Canal and Dungeness Bay, Washington, as well as eight artificial propagation programs: the Quilcene NFH, Lilliwaup Creek Fish Hatchery, Union River/Tahuya, Big Beef Creek Fish Hatchery, Salmon Creek Fish Hatchery, Chimacum Creek Fish Hatchery, and the Jimmycomelately Creek Fish Hatchery summer-run chum hatchery programs.</td>
<td>64 FR 14508; Mar. 25, 1999 70 FR 37160; Jun 28, 2005</td>
<td>70 FR 52630; Sep 2, 2005</td>
</tr>
<tr>
<td>(15) South-Central California Coast Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Pajaro River (inclusive), located in Santa Cruz County, California, to (but not including) the Santa Maria River.</td>
<td>62 FR 43937; Aug 18, 1997 71 FR 834; Jan 5, 2006</td>
<td>70 FR 52488; Sep 2, 2005</td>
</tr>
<tr>
<td>(16) Central California Coast Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Russian River to Aptos Creek, Santa Cruz County, California (inclusive), and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), Napa County, California. Excludes the Sacramento-San Joaquin River Basin of the Central Valley of California.</td>
<td>62 FR 43937; Aug 18, 1997 71 FR 834; Jan 5, 2006</td>
<td>70 FR 52488; Sep 2, 2005</td>
</tr>
<tr>
<td>(17) California Central Valley Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in the Sacramento and San Joaquin Rivers and their tributaries, excluding steelhead from San Francisco and San Pablo Bays and their tributaries.</td>
<td>63 FR 13347; Mar. 19, 1998 71 FR 834; Jan 5, 2006</td>
<td>70 FR 52488; Sep 2, 2005</td>
</tr>
<tr>
<td>(18) Northern California Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in California coastal river basins from Redwood Creek in Humboldt County, California, to the Gualala River, inclusive, in Mendocino County, California.</td>
<td>65 FR 36074; June 7, 2000 71 FR 834; Jan 5, 2006</td>
<td>70 FR 52488; Sep 2, 2005</td>
</tr>
<tr>
<td>(19) Upper Willamette River Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A.- OR, including all naturally spawned populations of winter-run steelhead in the Willamette River, Oregon, and its tributaries upstream from Willamette Falls to the Calapooia River, inclusive.</td>
<td>62 FR 43937; Aug 18, 1997 71 FR 834; Jan 5, 2006</td>
<td>70 FR 52630; Sep 2, 2005</td>
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</tr>
<tr>
<td>(20) Lower Columbia River Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A. - OR, WA, including all naturally spawned populations of steelhead (and their progeny) in streams and tributaries to the Columbia River between the Cowlitz and Wind Rivers, Washington, inclusive, and the Willamette and Hood Rivers, Oregon, inclusive. Excluded are steelhead in the upper Willamette River Basin above Willamette Falls, Oregon, and from the Little and Big White Salmon Rivers, Washington.</td>
<td>63 FR 13347; Mar 19, 1998; 71 FR 834; Jan 5, 2006</td>
<td>70 FR 52630; Sep 2, 2005</td>
</tr>
<tr>
<td>(21) Middle Columbia River Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A. - OR, WA, including all naturally spawned populations of steelhead in streams from above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to, and including, the Yakima River, Washington. Excluded are steelhead from the Snake River Basin.</td>
<td>57 FR 14517; Mar 25, 1999; 71 FR 834; Jan 5, 2006</td>
<td>70 FR 52630; Sep 2, 2005</td>
</tr>
<tr>
<td>(22) Snake River Basin Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A. - OR, WA, ID, including all naturally spawned populations of steelhead (and their progeny) in streams in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho.</td>
<td>62 FR 43937; Aug 18, 1997; 71 FR 834; Jan 5, 2006</td>
<td>70 FR 52630; Sep 2, 2005</td>
</tr>
<tr>
<td>(23) Puget Sound Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A., WA, Distinct Population Segment including all naturally spawned anadromous O. mykiss (steelhead) populations, from streams in the river basins of the Strait of Juan de Fuca, Puget Sound, and Hood Canal, Washington, bounded to the west by the Elwha River (inclusive) and to the north by the Nooksack River and Dakota Creek (inclusive), as well as the Green River natural and Hama Hama winter-run steelhead hatchery stocks.</td>
<td>72 FR 26722; May 11, 2007</td>
<td>NA</td>
</tr>
<tr>
<td>(24) Oregon Coast Coho salmon</td>
<td>Oncorhynchus kisutch</td>
<td>U.S.A., OR, all naturally spawned populations of coho salmon in Oregon coastal streams south of the Columbia River and north of Cape Blanco, including the Cow Creek (ODFW stock #37) coho hatchery program</td>
<td>73 FR 7816; Feb 11, 2008; 76 FR 35771, June 20, 2011; June 16, 2011</td>
<td>73 FR 7816; Feb 11, 2008; 76 FR 35771; June 16, 2011; 73 FR 7816; Feb 11, 2008.</td>
</tr>
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<td>Species</td>
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<tr>
<td>(29) Atlantic Sturgeon—Gulf of Maine DPS.</td>
<td><em>Acipenser oxyrinchus oxyrinchus</em></td>
<td>Gulf of Maine Distinct Population Segment. The GOM DPS includes the following: All anadromous Atlantic sturgeon that are spawned in the watersheds from the Maine/Canadian border and extending southward to include all associated watersheds draining into the Gulf of Maine as far south as Chatham, MA, as well as wherever these fish occur in coastal bays and estuaries and the marine environment. Within this range, Atlantic sturgeon have been documented from the following rivers: Penobscot, Kennebec, Androscoggin, Sippscot, Saco, Piscataqua, Presumpscot, and Merrimack. The marine range of Atlantic sturgeon from the GOM DPS extends from Hamilton Inlet, Labrador, Canada to Cape Canaveral, FL. The GOM DPS also includes Atlantic sturgeon held in captivity (e.g., hatcheries, scientific institutions) and which are identified as fish belonging to the GOM DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the GOM DPS, or is the progeny of any fish that originated from a river within the range of the GOM DPS.</td>
<td>77 FR 5880; 2/6/12</td>
<td>NA.</td>
</tr>
</tbody>
</table>
Subpart B—Restrictions Applicable to Threatened Marine and Anadromous Species

§ 223.201 Guadalupe fur seal.  

(a) Prohibitions. The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Guadalupe fur seal except as provided in paragraph (b) of this section.  

(b) Exceptions. (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section in accordance with the subject to the provisions of part 222 subpart C—General Permit Procedures.  

(2) Any Federal, State or local government official, employee, or designated agent may, in the course of official duties, take a stranded Guadalupe fur seal without a permit if such taking:  

(i) Is accomplished in a humane manner;  

(ii) Is for the protection or welfare of the animal, is for the protection of the public health or welfare, or is for the salvage or disposal of a dead specimen; and  

(iii) Includes steps designed to ensure the return of the animal to its natural habitat, if feasible; and  

(iv) Is reported within 30 days to the Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.  

(3) Any animal or specimen taken under paragraph (b)(2) of this section may only be retained, disposed of, or
No approach in buffer areas. Except as provided in paragraph (b) of this section, no person subject to the jurisdiction of the United States may discharge a firearm at or within 100 yards (91.4 meters) of a Steller sea lion. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(2) No approach in buffer areas. Except as provided in paragraph (b) of this section:

(a) General prohibitions. The prohibitions of section 9 of the Act (16 U.S.C. 1538) and the following regulatory provisions shall apply to the eastern population of Steller sea lions:

(i) No discharge of firearms. Except as provided in paragraph (b) of this section, whichever is greater, except on Marmot Island; and

(ii) No person may approach on land not privately owned within one-half statutory miles (2.4 kilometers) or within sight of a Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater.

(3) Listed sea lion rookery sites. Listed Steller sea lion rookery sites consist of the rookeries in the Aleutian Islands and the Gulf of Alaska listed in Table 1.

Table 1 to §223.202—Listed Steller Sea Lion Rookery Sites

<table>
<thead>
<tr>
<th>Island</th>
<th>Lat. From</th>
<th>Long. From</th>
<th>Lat. To</th>
<th>Long. To</th>
<th>NOAA chart</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Outer I.</td>
<td>59°20.5'N</td>
<td>150°23.0'W</td>
<td>59°21.0'N</td>
<td>150°24.5'W</td>
<td>16681</td>
<td>S quadrant.</td>
</tr>
<tr>
<td>2. Sugarloaf I.</td>
<td>58°53.0'N</td>
<td>152°02.0'W</td>
<td>58°53.0'N</td>
<td>152°02.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>3. Marmot I.</td>
<td>58°14.5'N</td>
<td>151°47.5'W</td>
<td>58°10.0'N</td>
<td>151°51.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>4. Chirikof I.</td>
<td>55°46.5'N</td>
<td>159°39.5'W</td>
<td>55°46.5'N</td>
<td>159°43.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>5. Chowiet I.</td>
<td>56°00.5'N</td>
<td>156°41.5'W</td>
<td>56°05.0'N</td>
<td>156°42.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>6. Atkins I.</td>
<td>55°03.5'N</td>
<td>159°18.5'W</td>
<td>55°03.5'N</td>
<td>159°18.5'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>7. Chemnabua I.</td>
<td>54°47.5'N</td>
<td>159°31.0'W</td>
<td>54°45.5'N</td>
<td>159°33.5'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>8. Semisopochnoi</td>
<td>55°40.0'N</td>
<td>161°46.0'W</td>
<td>55°40.0'N</td>
<td>161°46.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>9. Clubbing Rks (N)</td>
<td>54°43.0'N</td>
<td>162°26.5'W</td>
<td>54°43.0'N</td>
<td>162°26.5'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>10. Sea Lion Rks</td>
<td>55°29.0'N</td>
<td>163°12.0'W</td>
<td>55°29.0'N</td>
<td>163°12.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>11. Ugama I.</td>
<td>54°14.0'N</td>
<td>164°48.0'W</td>
<td>54°13.0'N</td>
<td>164°48.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>12. Akun I.</td>
<td>54°18.0'N</td>
<td>165°32.5'W</td>
<td>54°18.0'N</td>
<td>165°31.5'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>13. Akutan I.</td>
<td>54°03.5'N</td>
<td>166°00.0'W</td>
<td>54°05.5'N</td>
<td>166°05.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>14. Bogoslof I.</td>
<td>53°56.0'N</td>
<td>168°02.0'W</td>
<td>53°56.0'N</td>
<td>168°02.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>15. Ophul I.</td>
<td>53°00.0'N</td>
<td>168°24.0'W</td>
<td>53°00.0'N</td>
<td>168°24.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>16. Adakag I.</td>
<td>52°55.0'N</td>
<td>169°10.5'W</td>
<td>52°55.0'N</td>
<td>169°10.5'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>17. Yunaska I.</td>
<td>52°42.0'N</td>
<td>170°38.5'W</td>
<td>52°41.0'N</td>
<td>170°34.5'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>18. Seguam I.</td>
<td>52°21.0'N</td>
<td>172°35.0'W</td>
<td>52°21.0'N</td>
<td>172°33.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>19. Agigadak I.</td>
<td>52°06.5'N</td>
<td>172°54.0'W</td>
<td>52°05.0'N</td>
<td>172°53.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>20. Kasatochi I.</td>
<td>52°10.0'N</td>
<td>175°31.5'W</td>
<td>52°10.0'N</td>
<td>175°29.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>21. Adak I.</td>
<td>51°36.5'N</td>
<td>176°59.0'W</td>
<td>51°38.0'N</td>
<td>176°59.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>22. Gramp rock</td>
<td>51°29.0'N</td>
<td>178°20.5'W</td>
<td>51°29.0'N</td>
<td>178°20.5'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>23. Tag I.</td>
<td>51°33.5'N</td>
<td>178°34.5'W</td>
<td>51°33.5'N</td>
<td>178°34.5'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>24. Ulak I.</td>
<td>51°20.0'N</td>
<td>178°57.0'W</td>
<td>51°18.5'N</td>
<td>178°59.5'W</td>
<td>16660</td>
<td>SE quadrant.</td>
</tr>
<tr>
<td>25. Semisopochnoi</td>
<td>51°56.5'N</td>
<td>179°45.5'W</td>
<td>51°57.0'N</td>
<td>179°46.0'W</td>
<td>16640</td>
<td>E quadrant.</td>
</tr>
<tr>
<td>26. Amchitka I.</td>
<td>51°22.5'N</td>
<td>179°28.0'E</td>
<td>51°21.5'N</td>
<td>179°25.0'E</td>
<td>16640</td>
<td>East Cape.</td>
</tr>
<tr>
<td>27. Chirikof I.</td>
<td>51°32.5'N</td>
<td>178°49.5'E</td>
<td>51°32.5'N</td>
<td>178°49.5'E</td>
<td>16640</td>
<td>Column Rock.</td>
</tr>
<tr>
<td>28. Ayuagadak Pt.</td>
<td>51°45.5'N</td>
<td>178°24.5'E</td>
<td>51°45.5'N</td>
<td>178°24.5'E</td>
<td>16640</td>
<td>Column Rock.</td>
</tr>
<tr>
<td>29. Kiska I.</td>
<td>51°57.5'N</td>
<td>177°21.0'E</td>
<td>51°56.5'N</td>
<td>177°20.0'E</td>
<td>16640</td>
<td>Cape St. Stephen.</td>
</tr>
<tr>
<td>30. Kiska I.</td>
<td>51°52.5'N</td>
<td>177°13.0'E</td>
<td>51°53.5'N</td>
<td>177°12.0'E</td>
<td>16640</td>
<td>Cape St. Stephen.</td>
</tr>
<tr>
<td>31. Walrus I.</td>
<td>57°11.0'N</td>
<td>169°56.0'W</td>
<td>57°11.0'N</td>
<td>169°56.0'W</td>
<td>16680</td>
<td>Whole island.</td>
</tr>
<tr>
<td>32. Bulti I.</td>
<td>52°20.5'N</td>
<td>175°57.0'E</td>
<td>52°23.5'N</td>
<td>175°51.0'E</td>
<td>16620</td>
<td>Whole island.</td>
</tr>
<tr>
<td>33. Agattu I.</td>
<td>52°24.0'N</td>
<td>173°21.5'E</td>
<td>52°22.0'N</td>
<td>173°41.0'E</td>
<td>16620</td>
<td>Whole island.</td>
</tr>
<tr>
<td>34. Agattu I.</td>
<td>52°23.5'N</td>
<td>172°43.5'E</td>
<td>52°22.0'N</td>
<td>173°41.0'E</td>
<td>16620</td>
<td>Whole island.</td>
</tr>
</tbody>
</table>
TABLE 1 TO § 223.202—LISTED STELLER SEA LION ROOKERY SITES ¹—Continued

<table>
<thead>
<tr>
<th>Island</th>
<th>From Lat.</th>
<th>Long.</th>
<th>To Lat.</th>
<th>Long.</th>
<th>NOAA chart</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>35. Attu I.</td>
<td>52°54.5 N</td>
<td>172°28.5 E</td>
<td>52°57.5 N</td>
<td>172°31.5 E</td>
<td>16681</td>
<td>S Quadrant.</td>
</tr>
</tbody>
</table>

¹ Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.
Chirikof Island Rookery

Chart 16580

156°00'W  155°30'  155°00'

3 Mile buffer zone
(4) Commercial Fishing Operations. The incidental mortality and serious injury of endangered and threatened Steller sea lions in commercial fisheries can be authorized in compliance with sections 101(a)(5) and 118 of the Marine Mammal Protection Act.

(b) Exceptions—(1) Permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under paragraph (a) of this section in accordance with and subject to the provisions of part 222, subpart C—General Permit Procedures.
§ 223.203  Anadromous fish.

Available guidance documents cited in the regulatory text are listed in Appendix A to this section.

(a) Prohibitions. The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to fish with an intact adipose fin that are part of the threatened species of salmonids listed in §223.102(c)(3) through (c)(25).

(b) Limits on the prohibitions. The limits to the prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(c)(3) through (c)(25) are described in the following paragraphs (b)(1) through (b)(13):

(1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter implementing such exceptions, also apply to the threatened species of salmonids listed in §223.102(a).

(2) The prohibitions of paragraph (a) of this section relating to threatened Puget Sound steelhead listed in §223.102(c)(23) do not apply to:

(1) Activities specified in an application for a permit for scientific purposes...
or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than November 14, 2008. The prohibitions of this section apply to these activities upon the AA’s rejection of the application as insufficient, upon issuance or denial of a permit, or June 1, 2009, whichever occurs earliest, or

(ii) Steelhead harvested in tribal or recreational fisheries prior to June 1, 2009, so long as the harvest is authorized by the State of Washington or a tribe with jurisdiction over steelhead harvest. If NMFS does not receive a fishery management plan for Puget Sound steelhead by November 14, 2008, subsequent take by harvest will be subject to the take prohibitions.

(3) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game (IDFG), Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to:

(i) Aid a sick, injured, or stranded salmonid,

(ii) Dispose of a dead salmonid, or

(iii) Salvage a dead salmonid which may be useful for scientific study.

(iv) Each agency acting under this limit on the take prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency or other co-manager has authorized in writing to perform the listed functions.

(4) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to fishery harvest activities provided that:

(i) Fisheries are managed in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a letter of concurrence from NMFS. NMFS will approve an FMEP only if it clearly defines its intended scope and area of impact and sets forth the management objectives and performance indicators for the plan. The plan must adequately address the following criteria:

(A) Define populations within affected listed ESUs, taking into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiably unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the listed ESU. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units, describe how the management units are defined, given biological and life history traits, so as to maximize consideration of the important biological diversity contained within the listed ESU, respond to the scale and complexity of the ESU, and help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

(B) Utilize the concepts of “viable” and “critical” salmonid population thresholds, consistent with the concepts contained in the technical document entitled “Viable Salmonid Populations (NMFS, 2000b).” The VSP paper provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and ensuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with viable and critical population threshold states and respond accordingly to minimize the long-term risks to population persistence. Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or
management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population’s achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population’s achievement of viable function, unless the plan demonstrates that the likelihood of survival and recovery of the entire ESU in the wild would not be appreciably reduced by greater risks to that individual population.

(C) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status and on a harvest program that assures that those rates or objectives are not exceeded. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations.

(D) Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations.

(E) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics, such as age, fecundity, size and sex data, and migration timing.

(F) Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

(G) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(H) Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions.

(I) Be consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on a regular basis, as defined in NMFS’ letter of concurrence for the FMEP, a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP.

(iii) The state confers with NMFS on its fishing regulation changes affecting listed ESUs to ensure consistency with the approved FMEP. Prior to approving a new or amended FMEP, NMFS will publish notification in the FEDERAL REGISTER announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days.

(iv) NMFS provides written concurrence of the FMEP which specifies the implementation and reporting requirements. NMFS’ approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate. On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit for activities associated with that FMEP. Such an announcement will provide for
a comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that the prohibitions would then apply to those fishery harvest activities. A template for developing FMEPs is available from NMFS Northwest Region’s website (www.nwr.noaa.gov).

(v) The prohibitions of paragraph (a) of this section relating to threatened species of steelhead listed in §223.102 (a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to activities managed solely by the states of Oregon, Washington, Idaho, and California until January 8, 2001.

(5) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to activity associated with artificial propagation programs provided that:

(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria:

(A) The HGMP has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet conservation objectives, contribute to the ultimate sustainability of natural spawning populations, and/or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program that will be used to measure the program’s success or failure.

(B) The HGMP utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in the technical document entitled “Viable Salmonid Populations” (NMFS, 2000b). Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population.

(C) Taking into account health, abundances, and trends in the donor population, broodstock collection programs reflect appropriate priorities. The primary purpose of broodstock collection programs of listed species is to reestablish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitat. After the species’ conservation needs are met and when consistent with survival and recovery of the ESU, broodstock collection programs may be authorized by NMFS such for secondary purposes, as to sustain tribal, recreational, and commercial fisheries.

(D) The HGMP includes protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

(E) The HGMP evaluates, minimizes, and accounts for the propagation program’s genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by the straying of hatchery fish.

(F) The HGMP describes interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. For programs whose purpose is to sustain fisheries, HGMPs must not compromise the ability of FMEPs or other management plans to conserve listed salmonids.

(G) Adequate artificial propagation facilities exist to properly rear progeny of naturally spawned broodstock, to maintain population health and diversity, and to avoid hatchery-influenced selection or domestication.

(H) Adequate monitoring and evaluation exist to detect and evaluate the success of the hatchery program and
any risks potentially impairing the recovery of the listed ESU.

(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed;

(J) NMFS provides written concurrence of the HGMP which specifies the implementation and reporting requirements. For Federally operated or funded hatcheries, the ESA section 7 consultation will achieve this purpose.

(K) The HGMP is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on a regular basis a report summarizing this information, and the implementation and effectiveness of the HGMP as defined in NMFS' letter of concurrence. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP.

(iii) The state confers with NMFS on a regular basis regarding intended collections of listed broodstock to ensure congruity with the approved HGMP.

(iv) Prior to final approval of an HGMP, NMFS will publish notification in the FEDERAL REGISTER announcing its availability for public review and comment for a period of at least 30 days.

(v) NMFS' approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level of salmonid productivity commensurate with the conservation of the listed salmonids. If the HGMP is not effective, the NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit on activities associated with that program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions, like all other activity not within a limit, would then apply to that program. A template for developing HGMPs is available from NMFS Northwest Region's website (www.nwr.noaa.gov).

(6) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington, Oregon and/or Idaho and the Tribes (joint plan) within the continuing jurisdiction of United States v. Washington or United States v. Oregon, the on-going Federal court proceedings to enforce and implement reserved treaty fishing rights, provided that:

(i) The Secretary has determined pursuant to 50 CFR 223.209 and the government-to-government processes therein that implementing and enforcing the joint tribal/state plan will not appreciably reduce the likelihood of survival and recovery of affected threatened ESUs.

(ii) The joint plan will be implemented and enforced within the parameters set forth in United States v. Washington or United States v. Oregon.

(iii) In making that determination for a joint plan, the Secretary has taken comment on how any fishery management plan addresses the criteria in §223.203(b)(4), or on how any hatchery and genetic management plan addresses the criteria in §223.203(b)(5).

(iv) The Secretary shall publish notice in the FEDERAL REGISTER of any determination whether or not a joint plan, will appreciably reduce the likelihood of survival and recovery of affected threatened ESUs, together with a discussion of the biological analysis underlying that determination.

(v) On a regular basis, NMFS will evaluate the effectiveness of the joint plan in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If the plan is not effective, then NMFS will identify to the
jurisdiction ways in which the joint plan needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the Federal Register announcing its intention to withdraw the limit on activities associated with that joint plan. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions would then apply to that joint plan as to all other activity not within a limit.

(7) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to scientific research activities provided that:

(i) Scientific research activities involving purposeful take is conducted by employees or contractors of the ODFW, WDFW (Agencies), IDFG, or CDFG (Agencies), or as a part of a monitoring and research program overseen by or coordinated with that Agency.

(ii) The Agencies provide for NMFS’ review and approval a list of all scientific research activities involving direct take from planned for the coming year, including an estimate of the total direct take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(iii) The Agencies annually provide to NMFS the results of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by agency personnel, or are in accord with a permit issued by the Agency.

(v) The Agencies provide NMFS annually, for its review and approval, a report listing all scientific research activities it conducts or permits that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year’s scientific research activities and a summary of the results of such research.

(vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accordance with NMFS “Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act” (NMFS, 2000a).

(vii) NMFS’ approval of a research program shall be a written approval by NMFS Northwest or Southwest Regional Administrator.

(8) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iv) of this section, provided that the activity is part of a watershed conservation plan, and:

(i) The watershed conservation plan has been certified by the State of Washington, Oregon, Idaho, or California (State) to be consistent with the state’s watershed conservation plan guidelines.

(ii) The State’s watershed conservation plan guidelines have been found by NMFS to provide for plans that:

(A) Take into account the potential severity of direct, indirect, and cumulative impacts of proposed activities in light of the status of affected species and populations.

(B) Will not reduce the likelihood of either survival or recovery of listed species in the wild.

(C) Ensure that any taking will be incidental.

(D) Minimize and mitigate any adverse impacts.

(E) Provide for effective monitoring and adaptive management.

(F) Use the best available science and technology, including watershed analysis.

(G) Provide for public and scientific review and input.

(H) Include any measures that NMFS determines are necessary or appropriate.

(I) Include provisions that clearly identify those activities that are part of plan implementation.
(J) Control risk to listed species by ensuring funding and implementation of the above plan components.

(iii) NMFS will periodically review state certifications of Watershed Conservation Plans to ensure adherence to approved watershed conservation plan guidelines.

(iv) “Habitat restoration activity” is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. “Primary purpose” means the activity would not be undertaken but for its restoration purpose.

(v) Prior to approving watershed conservation plan guidelines under paragraph (b)(8)(ii) of this section, NMFS will publish notification in the Federal Register announcing the availability of the proposed guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of no less than 30 days.

(9) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to the physical diversion of water from a stream or lake, provided that:

(i) NMFS’ engineering staff or any resource agency or tribe NMFS designates (authorized officer) has agreed in writing that the diversion facility is screened, maintained, and operated in compliance with Juvenile Fish Screen Criteria, National Marine Fisheries Service, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996, or in California with NMFS’ Southwest Region “Fish Screening Criteria for Anadromous Salmonids, January 1997” or with any subsequent revision.

(ii) The owner or manager of the diversion allows any NMFS engineer or authorized officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria.

(iii) On a case by case basis, NMFS or an Authorized Officer will review and approve a juvenile fish screen design and construction plan and schedule that the water diverter proposes for screen installation. The plan and schedule will describe interim operation measures to avoid take of threatened salmonids. NMFS may require a commitment of compensatory mitigation if implementation of the plan and schedule is terminated prior to completion. If the plan and schedule are not met, or if a schedule modification is made that is not approved by NMFS or Authorized Officer, or if the screen installation deviates from the approved design, the water diversion will be subject to take prohibitions and mitigation.

(iv) This limit on the prohibitions of paragraph (a) of this section does not encompass any impacts of reduced flows resulting from the diversion or impacts caused during installation of the diversion device. These impacts are subject to the prohibition on take of listed salmonids.

(10) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to routine road maintenance activities provided that:

(i) The activity results from routine road maintenance activity conducted by ODOT employees or agents that complies with ODOT’s Transportation Maintenance Management System Water Quality and Habitat Guide (July, 1999); or by employees or agents of a state, county, city or port that complies with a program substantially similar to that contained in the ODOT Guide that is determined to meet or exceed the protections provided by the ODOT Guide; or by employees or agents of a state, county, city or port that complies with a routine road maintenance program that meets proper functioning habitat conditions as described further in subparagraph (ii) following, NMFS’ approval of state, city, county, or port programs that are equivalent to the ODOT program, or of any amendments, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. Any jurisdiction desiring its routine road maintenance activities to be within this limit must first commit in writing to apply management practices that result in protections equivalent to or better than those provided by the ODOT Guide, detailing how it will assure adequate training, tracking, and reporting, and
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National Marine Fisheries Service/NOAA, Commerce

(i) Prior to approving any state, city, county, or port program as within this limit, or approving any substantive change in a program within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of not less than 30 days.

(v) Pesticide and herbicide spraying is not included within this limit, even if in accord with the ODOT guidance.

(11) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to activities within the City of Portland, Oregon Parks and Recreation Department's (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy updated December 1, 1999, provided that:

(i) Use of only the following chemicals is included within this limit on the take prohibitions: Round Up, Rodeo, Garlon 3A, Surfactant LI–700, Napropamide, Cutrine Plus, and Aquashade.

(ii) Any chemical use is initiated in accord with the priorities and decision processes of the Department’s Pest Management Policy, including the Waterways Pest Management Policy, updated December 1, 1999.

(iii) Any chemical use within a 25 ft. (7.5 m) buffer complies with the buffer application constraints contained in PP&R’s Waterways Pest Management Policy (update December 1, 1999).

(iv) Prior to implementing any changes to this limit, the PP&R provides NMFS with a copy of the proposed change for review and approval as within this limit.

(v) Prior to approving any substantive change in a program within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

(vi) NMFS’ approval of amendments shall be a written approval by NMFS Northwest Regional Administrator.
(vii) NMFS finds the PP&R Pest Management Program activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of a watershed's natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate the effectiveness of an approved program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(12) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

(i) Such development occurs pursuant to city, county, or regional government ordinances or plans that NMFS has determined are adequately protective of listed species; or within the jurisdiction of the Metro regional government in Oregon and pursuant to ordinances that Metro has found comply with its Urban Growth Management Functional Plan (Functional Plan) following a determination by NMFS that the Functional Plan is adequately protective. NMFS approval or determinations about any MRCI development ordinances or plans, including the Functional Plan, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. NMFS will apply the following 12 evaluation considerations when reviewing MRCI development ordinances or plans to assess whether they adequately conserve listed salmonids by maintaining and restoring properly functioning habitat conditions:

(A) MRCI development ordinance or plan ensures that development will avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(B) MRCI development ordinance or plan adequately avoids stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed, including peak and base flows of perennial streams.

(C) MRCI development ordinance or plan provides adequately protective riparian area management requirements to attain or maintain PFC around all rivers, estuaries, streams, lakes, deepwater habitats, and intermittent streams. Compensatory mitigation is provided, where necessary, to offset unavoidable damage to PFC due to MRCI development impacts to riparian management areas.

(D) MRCI development ordinance or plan avoids stream crossings by roads, utilities, and other linear development wherever possible, and, where crossings must be provided, minimize impacts through choice of mode, sizing, and placement.

(E) MRCI development ordinance or plan adequately protects historical stream meander patterns and channel migration zones and avoids hardening of stream banks and shorelines.
(F) MRCI development ordinance or plan adequately protects wetlands and wetland functions, including isolated wetlands.

(G) MRCI development ordinance or plan adequately preserves the hydrologic capacity of permanent and intermittent streams to pass peak flows.

(H) MRCI development ordinance or plan includes adequate provisions for landscaping with native vegetation to reduce need for watering and application of herbicides, pesticides, and fertilizer.

(I) MRCI development ordinance or plan includes adequate provisions to prevent erosion and sediment run-off during construction.

(J) MRCI development ordinance or plan ensures that water supply demands can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(K) MRCI development ordinance or plan provides necessary enforcement, funding, reporting, and implementation mechanisms and formal plan evaluations at intervals that do not exceed 5 years.

(L) MRCI development ordinance and plan complies with all other state and Federal environmental and natural resource laws and permits.

(ii) The city, county or regional government provides NMFS with annual reports regarding implementation and effectiveness of the ordinances, including: any water quality monitoring information the jurisdiction has available; aerial photography (or some other graphic display) of each MRCI development or MRCI expansion area at sufficient detail to demonstrate the width and vegetation condition of riparian set-backs; information to demonstrate the success of stormwater management and other conservation measures; and a summary of any flood damage, maintenance problems, or other issues.

(iii) NMFS finds the MRCI development activity to be consistent with the conservation of listed salmonids’ habitat when it contributes to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed’s habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iv) Prior to approving any city, county, or regional government ordinances or plans as within this limit, or approving any substantive change in an ordinance or plan within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the ordinance or plan or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

(13) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to non-Federal
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Forest management activities conducted in the State of Washington provided that:

(i) The action is in compliance with forest practice regulations adopted and implemented by the Washington Forest Practices Board that NMFS has found are at least as protective of habitat functions as are the regulatory elements of the Forests and Fish Report dated April 29, 1999, and submitted to the Forest Practices Board by a consortium of landowners, tribes, and state and Federal agencies.

(ii) All non-regulatory elements of the Forests and Fish Report are being implemented.

(iii) Actions involving use of herbicides, pesticides, or fungicides are not included within this limit.

(iv) Actions taken under alternative plans are included in this limit provided that the Washington Department of Natural Resources (WDNR) finds that the alternate plans protect physical and biological processes at least as well as the state forest practice rules and provided that NMFS, or any resource agency or tribe NMFS designates, has the opportunity to review the plan at every stage of the development and implementation. A plan may be excluded from this limit if, after such review, WDNR determines that the plan is not likely to adequately protect listed salmon.

(v) Prior to determining that regulations adopted by the Forest Practice Board are at least as protective as the elements of the Forests and Fish Report, NMFS will publish notification in the Federal Register announcing the availability of the Report and regulations for public review and comment.

(vi) NMFS finds the activities to be consistent with the conservation of listed salmonids’ habitat by contributing to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed’s natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Programs must meet this biological standard in order for NMFS to find they qualify for a habitat-related limit. NMFS uses the best available science to make these determinations. NMFS may review and revise previous findings as new scientific information becomes available. NMFS will evaluate the effectiveness of the program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. If the program is not adequate, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If Washington does not make changes to respond adequately to the new information, NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) take prohibitions.

(vii) NMFS approval of regulations shall be a written approval by NMFS Northwest Regional Administrator.

(c) Affirmative Defense. In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened species of salmonids listed in §223.102(a), any person claiming the benefit of any limit listed in paragraph (b) of this section or §223.204(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

(d) Severability. The provisions of this section and the various applications
thereof are distinct and severable from one another. If any provision or the application thereof to any person or circumstances is stayed or determined to be invalid, such stay or invalidity shall not affect other provisions, or the application of such provisions to other persons or circumstances, which can be given effect without the stayed or invalid provision or application.

APPENDIX A TO §223.203—LIST OF GUIDANCE DOCUMENTS

The following is a list of documents cited in the regulatory text. Copies of these documents may be obtained upon request from the Northwest or Southwest Regional Administrators (see Table 1 in §600.502 of this title).


§ 223.204 Tribal plans.

(a) Limits on the prohibitions. The prohibitions of §223.203(a) of this subpart relating to threatened species of salmonids listed in §223.102 do not apply to any activity undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in compliance with a Tribal resource management plan (Tribal Plan), provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the listed salmonids. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan’s impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary’s trust responsibilities to tribes.

(b) Consideration of a Tribal Plan. (1) A Tribal Plan may include but is not limited to plans that address fishery harvest, artificial production, research, or water or land management, and may be developed by one tribe or jointly with other tribes. The Secretary will consult on a government-to-government basis with any tribe that so requests and will provide to the maximum extent practicable technical assistance in examining impacts on listed salmonids and other salmonids as tribes develop Tribal resource management plans that meet the management responsibilities and needs of the tribes. A Tribal Plan must specify the procedures by which the tribe will enforce its provisions.

(2) Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal Plan, the plan may be developed and implemented within the ongoing Federal Court proceeding. In such circumstances, compliance with the Tribal Plan’s terms shall be determined within that Federal Court proceeding.

(3) The Secretary shall seek comment from the public on the Secretary’s pending determination whether or not implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed salmonids.

(4) The Secretary shall publish notification in the Federal Register of any determination regarding a Tribal Plan and the basis for that determination.

[65 FR 42485, July 10, 2000. Redesignated at 70 FR 37203, June 28, 2005]

§ 223.205 Sea turtles.

(a) The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species of sea turtle, except as provided in §223.206.

(b) Except as provided in §223.206, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) Own, operate, or be on board a vessel, except if that vessel is in compliance with all applicable provisions of §223.206(d);

(2) Fish for, catch, take, harvest, or possess, fish or wildlife while on board
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a vessel, except if that vessel is in compliance with all applicable provisions of §223.206(d);  

(3) Fish for, catch, take, harvest, or possess, fish or wildlife contrary to any notice of tow-time or other restriction specified in, or issued under, §223.206(d)(3) or (d)(4);  

(4) Possess fish or wildlife taken in violation of paragraph (b) of this section;  

(5) Fail to follow any of the sea turtle handling and resuscitation requirements specified in §223.206(d)(1);  

(6) Possess a sea turtle in any manner contrary to the handling and resuscitation requirements of §223.206(d)(1);  

(7) Fail to comply immediately, in the manner specified at §600.730 (b) through (d) of this Title, with instructions and signals to haul back a net for inspection;  

(8) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;  

(9) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in contravention of directions from the officer;  

(10) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;  

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by this section;  

(12) Resist a lawful arrest for an act prohibited by this section;  

(13) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 223;  

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED;  

(15) Fail to comply with the restrictions set forth in §223.206(d)(10) regarding pound net leaders;  

(16) Set, use, or fail to remove a pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15 that does not meet the leader construction specifications described in 50 CFR 223.206(d)(10) and 50 CFR 222.102;  

(17) Set, use, or haul a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II defined in 50 CFR 222.102 and referenced in 50 CFR 223.206(d)(10) at any time from May 6 through July 15 unless that leader has been inspected and tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) prior to deploying the leader;  

(18) Alter or replace any portion of a pound net leader that has been previously tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) so that the altered or replaced portion is no longer consistent with the modified pound net leader definition in 50 CFR 222.102, unless that altered or replaced portion is inspected and tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) prior to deploying the leader;  

(19) Remove, transfer, sell, purchase, affix, or tamper with any tags used by NMFS to mark pound net leaders;  

(20) Fish, use, or haul a modified pound net leader at any time from May 6 through July 15 unless the fisherman has on board the vessel a letter issued by NMFS indicating that the leader has passed inspection;  

(21) Fail to comply with the restrictions set forth in §223.206(d)(11) regarding sea scallop dredges; or  

(22) Attempt to do, solicit another to do, or cause to be done, any of the foregoing;  

(c) In connection with any action alleging a violation of this section, any
person claiming the benefit of any exemption, exception, or permit under this subpart B has the burden of proving that the exemption, exception, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation. Further, any person claiming that a modification made to a TED that is the subject of such an action complies with the requirements of §223.207 (c) or (d) has the burden of proving such claim.


§ 223.206 Exceptions to prohibitions relating to sea turtles.

(a) Permits—(1) Scientific research, education, zoological exhibition, or species enhancement permits. The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under §223.205(a) for scientific or educational purposes, for zoological exhibition, or to enhance the propagation or survival of threatened species of sea turtles, in accordance with and subject to the conditions of part 222, subpart C—General Permit Procedures.

(2) Incidental-take permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under §223.205(a) in accordance with section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to, the implementing regulations in part 222 of this chapter. Such permits may be issued for the incidental taking of threatened and endangered species of sea turtles.

(b) Exception for injured, dead, or stranded specimens. If any member of any threatened species of sea turtle is found injured, dead, or stranded, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such specimens without a permit if such taking is necessary to aid a sick, injured, or stranded specimen or dispose of a dead specimen or salvage a dead specimen which may be useful for scientific study. Whenever possible, live specimens shall be returned to their aquatic environment as soon as possible. Every action shall be reported in writing to the Assistant Administrator within 30 days, and reports of further occurrence shall be made as deemed appropriate by the Assistant Administrator until the specimen is either returned to its environment or disposed of. Reports shall be mailed by registered or certified mail, return receipt requested, to the Assistant Administrator and shall contain the following information:

(1) Name and position of the official or employee involved;
(2) Description of the specimen(s) involved;
(3) Date and location of disposal;
(4) Circumstances requiring the action;
(5) Method of disposal;
(6) Disposition of the specimen(s), including, where the specimen(s) has been retained in captivity, a description of the place and means of confinement, and the measures taken for its maintenance and care; and
(7) Such other information as the Assistant Administrator may require.

(c) Exception for research or conservation. Any employee or agent of the National Marine Fisheries Service, the Fish and Wildlife Service, or a state fish and wildlife agency operating a conservation program pursuant to the terms of a Cooperative Agreement with the National Marine Fisheries Service or the Fish and Wildlife Service in accordance with section 6(c) of the Act, designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take any threatened species to carry out scientific research or conservation programs. All such takings shall be reported within 30 days of the taking to the Assistant Administrator who may request additional reports of the taking and research at the Assistant Administrator’s discretion.

(d) Exception for incidental taking. The prohibitions against taking in
§ 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed towards such member) during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs (d)(1) through (d)(11) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

(1) Handling and resuscitation requirements.

(i) Any specimen taken incidentally during the course of fishing or scientific research activities must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are actively moving or determined to be dead as described in paragraph (d)(1)(i)(C) of this section must be released over the stern of the boat. In addition, they must be released only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose, or inactive, as determined in paragraph (d)(1) of this section, by:

(1) Placing the turtle on its bottom shell (plastron) so that the turtle is right side up and elevating its hindquarters at least 6 inches (15.2 cm) for a period of 4 up to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Periodically, rock the turtle gently left to right and right to left by holding the outer edge of the shell (carapace) and lifting one side about 3 inches (7.6 cm) then alternate to the other side. Gently touch the eye and pinch the tail (reflex test) periodically to see if there is a response.

(2) Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance be placed into a container holding water. A water-soaked towel placed over the head, carapace, and flippers is the most effective method in keeping a turtle moist.

(ii) In addition to the provisions of paragraph (d)(1)(i) of this section, a person aboard a vessel in the Atlantic, including the Caribbean Sea and the Gulf of Mexico, that has pelagic or bottom longline gear on board and that has been issued, or is required to have, a limited access permit for highly migratory species under § 635.4 of this title, must comply with the handling and release requirements specified in § 635.21 of this title.

(iii) Any specimen taken incidentally during the course of fishing or scientific research activities must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

(2) Gear requirements for shrimp trawlers—(i) TED requirement for shrimp trawlers. Any shrimp trawler that is in the Atlantic Area or Gulf Area must have an approved TED installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the shrimp trawler. Exceptions to the TED requirement for shrimp trawlers are provided in paragraph (d)(2)(ii) of this section.

(ii) Exemptions from the TED requirement—(A) Alternative tow-time restrictions. A shrimp trawler is exempt from the TED requirements of paragraph (d)(2)(i) of this section if it complies with the alternative tow-time restrictions in paragraph (d)(3)(i) of this section and if it:

(3) Sea turtles that revive and become active must be released over the stern of the boat only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Sea turtles that fail to respond to the reflex test or fail to move within 4 hours (up to 24, if possible) must be returned to the water in the same manner as that for actively moving turtles.

(C) A turtle is determined to be dead if the muscles are stiff (rigor mortis) and/or the flesh has begun to rot; otherwise the turtle is determined to be comatose or inactive and resuscitation attempts are necessary.

(ii) In addition to the provisions of paragraph (d)(1)(i) of this section, a person aboard a vessel in the Atlantic, including the Caribbean Sea and the Gulf of Mexico, that has pelagic or bottom longline gear on board and that has been issued, or is required to have, a limited access permit for highly migratory species under § 635.4 of this title, must comply with the handling and release requirements specified in § 635.21 of this title.

(iii) Any specimen taken incidentally during the course of fishing or scientific research activities must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

(ii) Exemptions from the TED requirement—(A) Alternative tow-time restrictions. A shrimp trawler is exempt from the TED requirements of paragraph (d)(2)(i) of this section if it complies with the alternative tow-time restrictions in paragraph (d)(3)(i) of this section and if it:
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(1) Has on board no power or mechanical-advantage trawl retrieval system (i.e., any device used to haul any part of the net aboard);

(2) Is a bait shrimper that retains all live shrimp on board with a circulating seawater system, if it does not possess more than 32 lb. (14.5 kg) of dead shrimp on board, if it has a valid original state bait-shrimp license, and if the state license allows the licensed vessel to participate in the bait shrimp fishery exclusively;

(3) Has only a pusher-head trawl, skimmer trawl, or wing net rigged for fishing;

(4) Is in an area during a period for which tow-time restrictions apply under paragraphs (d)(3)(ii) or (iii) of this section, if it complies with all applicable provisions imposed under those paragraphs; or

(5) Is using a single test net (try net) with a headrope length of 12 ft (3.6 m) or less and with a footrope length of 15 ft (4.5 m) or less, if it is pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net, in which case the exemption under this paragraph (d)(2)(ii)(A) applies to the test net.

(B) Exempted gear or activities. The following fishing gear or activities are exempted from the TED requirements of paragraph (d)(2)(i) of this section:

(1) A beam or roller trawl, if the frame is outfitted with rigid vertical bars, and if none of the spaces between the bars, or between the bars and the frame, exceeds 4 inches (10.2 cm); and

(2) A shrimp trawler fishing for, or possessing, royal red shrimp, if royal red shrimp constitutes at least 90 percent (by weight) of all shrimp either found on board, or offloaded from that shrimp trawler.

(iii) Gear requirement—summer flounder trawlers—(A) TED requirement. (1) Any summer flounder trawler in the summer flounder fishery—sea turtle protection area must have an approved TED installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the summer flounder trawler. Exceptions to the TED requirement for summer flounder trawlers are provided in paragraph (d)(2)(ii)(B) of this section.

(2) Any approved hard TED or special TED installed in a summer flounder trawl must be installed in a TED extension. The TED extension is a cylindrical piece of webbing distinct from the main trawl's body, wings, codend, and any other net extension(s). The TED extension must be constructed of webbing no larger than 3.5 inch (8.9 cm) stretched mesh. The TED extension must extend at least 24 inches (61.0 cm) but not more than 36 inches (91.4 cm) forward of the leading edge of the TED and aft of the trailing edge of the grid.

(B) Exemptions from the TED requirement. Any summer flounder trawler north of 35°46.1’ N. lat. (Oregon Inlet, NC) from January 15 through March 15 annually is exempt from the TED requirement of paragraph (d)(2)(ii)(A) of this section, unless the Assistant Administrator determines that TED use is necessary to protect sea turtles or ensure compliance, pursuant to the procedures of paragraph (d)(4) of this section.

(C) Monitoring. Summer flounder trawlers must carry onboard a NMFS-approved observer if requested by the Southeast Regional Administrator or the Northeast Regional Administrator. A written notification will be sent to the address specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or upon written notification otherwise served on the owner or operator of the vessel. Owners and operators must comply with the terms and conditions specified in such written notification. All NMFS-approved observers will report any violations of this section, or other applicable regulations and laws. Information collected by observers may be used for enforcement purposes.

(D) Additional sea turtle conservation measures. The Assistant Administrator may impose other such restrictions upon summer flounder trawlers as the Assistant Administrator deems necessary or appropriate to protect sea
turtles and ensure compliance, pursuant to the procedures of paragraph (d)(4) of this section. Such measures may include, but are not limited to, a requirement to use TEDs in areas other than summer flounder fishery-sea turtle protection area, a requirement to use limited tow-times, and closure of the fishery.

(3) Tow-time restrictions—(i) Duration of tows. If tow-time restrictions are utilized pursuant to paragraph (d)(2)(ii), (d)(3)(ii), or (d)(3)(iii) of this section, a shrimp trawler must limit tow times. The tow time is measured from the time that the trawl door enters the water until it is removed from the water. For a trawl that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water. Tow times may not exceed:

(A) 55 minutes from April 1 through October 31; and

(B) 75 minutes from November 1 through March 31.

(ii) Alternative—special environmental conditions. The Assistant Administrator may allow compliance with tow-time restrictions, as an alternative to the TED requirement of paragraph (d)(2)(i) of this section, if the Assistant Administrator determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable.

(iii) Substitute—ineffectiveness of TEDs. The Assistant Administrator may require compliance with tow-time restrictions, as a substitute for the TED requirement of paragraph (d)(2)(i) of this section, if the Assistant Administrator determines that TEDs are ineffective in protecting sea turtles.

(iv) Notice; applicability; conditions. The Assistant Administrator will publish notification concerning any tow-time restriction imposed under paragraph (d)(3)(ii) or (iii) of this section in the Federal Register and will announce it in summary form on channel 16 of the marine VHF radio. A notification of tow-time restrictions will include findings in support of these restrictions as an alternative to, or as substitute for, the TED requirements. The notification will specify the effective dates, the geographic area where tow-time restrictions apply, and any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance, including, but not limited to, a requirement to carry observers, to register vessels in accordance with procedures at paragraph (d)(5) of this section, or for all shrimp trawlers in the area to synchronize their tow times so that all trawl gear remains out of the water during certain times. A notification withdrawing tow-time restrictions will include findings in support of that action.

(v) Procedures. The Assistant Administrator will consult with the appropriate fishery officials (state or Federal) where the affected shrimp fishery is located in issuing a notification concerning tow-time restrictions. An emergency notification can be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each if the Assistant Administrator finds that the conditions necessitating the imposition of tow-time restrictions continue to exist. The Assistant Administrator may invite comments on such an action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent tow-time restriction through rulemaking.

(4) Limitations on incidental takings during fishing activities—(i) Limitations. The exemption for incidental takings of sea turtles in paragraph (d) of this section does not authorize incidental takings during fishing activities if the takings:

(A) Would violate the restrictions, terms, or conditions of an incidental take statement or biological opinion;

(B) Would violate the restrictions, terms, or conditions of an incidental take permit; or

(C) May be likely to jeopardize the continued existence of a species listed under the Act.

(ii) Determination; restrictions on fishing activities. The Assistant Administrator may issue a determination that incidental takings during fishing activities are unauthorized. Pursuant thereto, the Assistant Administrator
may restrict fishing activities in order to conserve a species listed under the Act, including, but not limited to, restrictions on the fishing activities of vessels subject to paragraph (d)(2) of this section. The Assistant Administrator will take such action if the Assistant Administrator determines that restrictions are necessary to avoid unauthorized takings that may be likely to jeopardize the continued existence of a listed species. The Assistant Administrator may withdraw or modify a determination concerning unauthorized takings or any restriction on fishing activities if the Assistant Administrator determines that such action is warranted.

(iii) Notice; applicability; conditions. The Assistant Administrator will publish a notification of a determination concerning unauthorized takings or a notification concerning the restriction of fishing activities in the FEDERAL REGISTER. The Assistant Administrator will provide as much advance notice as possible, consistent with the requirements of the Act, and will announce the notification in summary form on channel 16 of the marine VHF radio. Notification of a determination concerning unauthorized takings will include findings in support of that determination; specify the fishery, including the target species and gear used by the fishery, the area, and the times, for which incidental takings are not authorized; and include such other conditions and restrictions as the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Notification of restriction of fishing activities will include findings in support of the action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent determination or restriction through rulemaking.

(iv) Procedures. The Assistant Administrator will consult with the appropriate fisheries officials (state or Federal) where the fishing activities are located in issuing notification of a determination concerning unauthorized takings or notification concerning the restriction of fishing activities. An emergency notification will be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each, except that emergency placement of observers will be effective for a period of up to 180 days and may be renewed for an additional period of 60 days. The Assistant Administrator may invite comments on such action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent determination or restriction through rulemaking.

(5)–(6) [Reserved]

(7) Restrictions applicable to gillnet fisheries in North Carolina. No person may fish with gillnet fishing gear which has a stretched mesh size larger than 4 ¼ inches (10.8 cm), annually from September 1 through December 15, in the inshore waters of Pamlico Sound, North Carolina, and all contiguous tidal waters, bounded on the north by 35°46.3′ N. lat., on the south by 35°00′ N. lat., and on the west by 76°30′ W. long.

(8) Restrictions applicable to large mesh gillnet fisheries in the mid-Atlantic region. No person may fish with or possess on board a boat, any gillnet with a stretched mesh size 7-inches (17.8 cm) or larger, unless such gillnets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or the rail, and all buoys larger than 6-inches (15.2 cm) in diameter, high flyers, and anchors are disconnected. This restriction applies in the Atlantic Exclusive Economic Zone (as defined in 50 CFR 600.10) during the following time periods and in the following area:
(i) Waters north of 33° 51.6' N. (North Carolina/South Carolina border at the coast) and south of 35° 46.0' N. (Oregon Inlet) at any time;

(ii) Waters north of 35° 46.0' N. (Oregon Inlet) and south of 3° 22.5' N. (Currituck Beach Light, NC) from March 16 through January 14;

(iii) Waters north of 36° 22.5' N. (Currituck Beach Light, NC) and south of 37° 34.6' N. (Wachapreague Inlet, VA) from April 1 through January 14; and

(iv) Waters north of 37° 34.6' N. (Wachapreague Inlet, VA) and south of 37° 56.0' N. (Chincoteague, VA) from April 16 through January 14.

(9) Restrictions applicable to Pacific pelagic longline vessels. In addition to the general prohibitions specified in §600.725 of chapter VI of this title, it is unlawful for any person who is not operating under a western Pacific longline permit under §665.801 of this title to do any of the following on the high seas of the Pacific Ocean east of 150° W. long. and north of the Equator (0° N. lat.):

(i) Direct fishing effort toward the harvest of swordfish (Xiphias gladius) using longline gear.

(ii) Possess a light stick on board a longline vessel. A light stick as used in this paragraph is any type of light emitting device, including any fluorescent glow bead, chemical, or electrically powered light that is affixed underwater to the longline gear.

(iii) An operator of a longline vessel subject to this section may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing east of 150° W. long. and north of the equator (0° N. lat.).

(iv) Fail to employ basket-style longline gear such that the mainline is deployed slack when fishing.

(v) When a conventional monofilament longline is deployed by a vessel, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats.

(vi) Longline gear must be deployed such that the deepest point of the main longline between any two floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

(10) Restrictions applicable to pound nets in Virginia—(i) Offshore pound net leaders in Pound Net Regulated Area I. During the time period of May 6 through July 15 each year, any offshore pound net leader in Pound Net Regulated Area I must meet the definition of a modified pound net leader. Any offshore pound net leader in Pound Net Regulated Area I that does not meet the definition of a modified pound net leader must be removed from the water prior to May 6 and may not be reset until July 16.

(ii) Nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II. During the time period of May 6 to July 15 each year, any nearshore pound net leader in Pound Net Regulated Area I and any pound net leader in Pound Net Regulated Area II must have only mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers. Any nearshore pound net leader in Pound Net Regulated Area I or any pound net leader in Pound Net Regulated Area II with stretched mesh measuring 12 inches (30.5 cm) or greater, or with stringers, must be removed from the water prior to May 6 and may not be reset until July 16. A pound net leader is exempt from these measures only if it meets the definition of a modified pound net leader.

(iii) Protocol for measuring mesh size. This protocol applies to measuring mesh size in leaders described in 50 CFR 223.206(d)(10)(i) and 223.206(d)(10)(i). Mesh sizes are measured by a wedge-shaped gauge having a taper of 0.79 in. (2 cm) in 3.15 in. (8 cm) and a thickness of 0.09 in. (2.3 mm) inserted into the meshes under a pressure or pull of 11.02 lb. (5 kg). The mesh size is the average of the measurement of any series of 20 consecutive meshes. The mesh in the leader is measured at or near the horizontal and vertical center of a leader panel.

(iv) Reporting requirement. At any time during the year, if a sea turtle is taken live and uninjured in a pound net operation, the operator of the vessel must report the incident to the NMFS Northeast Regional Office, (978) 281-
9328 or fax (978) 281-9394, within 24 hours of returning from the trip in which the incidental take was discovered. The report shall include a description of the sea turtles condition at the time of release and the measures taken as required in paragraph (d)(1) of this section. At any time during the year, if a sea turtle is taken in a pound net operation, and is determined to be injured, or if a turtle is captured dead, the operator of the vessel shall immediately notify NMFS Northeast Regional Office and the appropriate rehabilitation or stranding network, as determined by NMFS Northeast Regional Office.

(v) Monitoring. Owners or operators of pound net fishing operations must allow access to the pound net gear so it may be observed by a NMFS-approved observer if requested by the Northeast Regional Administrator. All NMFS-approved observers will report any violations of this section, or other applicable regulations and laws. Information collected by observers may be used for law enforcement purposes.

(vi) Expedited modification of restrictions and effective dates. From May 6 to July 15 of each year, if NMFS receives information that one sea turtle is entangled alive or that one sea turtle is entangled dead, and NMFS determines that the entanglement contributed to its death, in pound net leaders that are in compliance with the restrictions described in paragraph (d)(10)(ii) of this section, NMFS may issue a final rule modifying the restrictions on pound net leaders as necessary to protect threatened sea turtles. Such modifications may include, but are not limited to, reducing the maximum allowable mesh size of pound net leaders and prohibiting the use of pound net leaders regardless of mesh size. In addition, if information indicates that a significant level of sea turtle entanglements, impingements or strandings will likely continue beyond July 15, NMFS may issue a final rule extending the effective date of the restrictions, including any additional restrictions imposed under this paragraph (d)(10)(vi), for an additional 15 days, but not beyond July 30, to protect threatened sea turtles.

(vii) Modified leader inspection program. Any fisherman planning to use a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15 must make his/her leader available for inspection and tagging by NMFS according to the following procedures. At least 72 hours prior to deploying a modified pound net leader, the fisherman or his/her representative must call NMFS at 757-414-0128 between 7:00 a.m. and 5:00 p.m. local time and arrange for a mutually agreeable meeting date, time, and place. The fisherman must meet NMFS at such location at the designated time and allow NMFS to examine his or her gear to help ensure the leader is in compliance with the definition of a modified pound net leader. NMFS will ascertain whether the leader meets the following four criteria taken from that definition: (1) the lower portion of the leader is mesh and the upper portion consists of only vertical lines; (2) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (3) the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at least every 2 feet (61 cm); and (4) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line. NMFS will also measure the height of the mesh in relation to the height of the entire leader. During the inspection, the fisherman must provide accurate and specific latitude and longitude coordinates of the location at which the leader will be deployed, as well as information on the low water depth at each end of the modified leader at the site at which it will be set. If the leader meets the four criteria previously described, the measurement of the height of the mesh in relation to the total height of the leader is recorded, and the low water depth and latitude and longitude coordinates of the specific location at which the leader will be deployed are provided and recorded, the leader will pass inspection. If it passes inspection, NMFS will tag the leader with one or more
tamperproof tags. Removing or tampering with any tag placed on the leader by NMFS is prohibited. If a tag is damaged, destroyed, or lost due to any cause, the fisherman must call NMFS at 757-414-0128 within 48 hours of discovery to report this incident. After the leader is determined to have passed inspection, NMFS will issue a letter to the fisherman indicating that the leader passed inspection. The fisherman must retain that letter on board his/her vessel tending the inspected leader at all times it is deployed. Modified pound net leaders must pass inspection prior to being used at any time during the time period from May 6 through July 15 of each year.

(11) Restrictions applicable to sea scallop dredges in the mid-Atlantic—(i) Gear Modification. During the time period of May 1 through November 30, any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, that enters waters south of 41°9.0′ N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat described as follows. The chain mat must be composed of horizontal (“tickler”) chains and vertical (“up-and-down”) chains that are configured such that the openings formed by the intersecting chains have no more than 4 sides. The vertical and horizontal chains must be hung to cover the opening of the dredge bag such that the vertical chains extend from the back of the cutting bar to the sweep. The horizontal chains must intersect the vertical chains such that the length of each side of the openings formed by the intersecting chains is less than or equal to 14 inches (35.5 cm) with the exception of the side of any individual opening created by the sweep. The chains must be connected to each other with a shackle or link at each intersection point. The measurement must be taken along the chain, with the chain held taut, and include one shackle or link at the intersection point and all links in the chain up to, but excluding, the shackle or link at the other intersection point.

(ii) Any vessel that enters the waters described in paragraph (d)(11)(i) of this section and that is required to have a Federal Atlantic sea scallop fishery permit must have the chain mat configuration installed on all dredges for the duration of the trip.

(iii) Vessels subject to the requirements in paragraphs (d)(11)(i) and (d)(11)(ii) of this section transiting waters south of 41°9.0′ N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone, will be exempted from the chain-mat requirements provided the dredge gear is stowed in accordance with §648.23(b) and there are no scallops on-board.

[64 FR 14070, Mar. 23, 1999]

EDITORIAL NOTE: For Federal Register citations affecting §223.206, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EFFECTIVE DATE NOTES: 1. At 64 FR 14070, Mar. 23, 1999, newly redesignated §223.206 was revised. Paragraph (d)(5) contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 67 FR 41203, June 17, 2002, §223.206 was amended by adding paragraph (d)(2)(v). Paragraph (d)(2)(v)(C) contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 223.207 Approved TEDs.

Any netting, webbing, or mesh that may be measured to determine compliance with this section is subject to measurement, regardless of whether it is wet or dry. Any such measurement will be of the stretched mesh size.

(a) Hard TEDs. Hard TEDs are TEDs with rigid deflector grids and are categorized as “hooped hard TEDs” and “single-grid hard TEDs” such as the Matagorda and Georgia TED (Figures 3 & 4 to this part). Hard TEDs complying with the following generic design criteria are approved TEDs:

(1) Construction materials—(i) Single-grid and inshore hooped hard TED. A single-grid hard TED or an inshore hooped hard TED must be constructed of one or a combination of the following materials, unless otherwise specifically restricted below, with minimum dimensions as follows:
(A) Solid steel rod with a minimum outside diameter of 1/4 inch (0.64 cm);
(B) Fiberglass or aluminum rod with a minimum outside diameter of 1/2 inch (1.27 cm); or
(C) Steel or aluminum round, oval, or rectangular tubing with a minimum outside diameter or width of 1/2 inch (1.27 cm) and a minimum wall thickness of 1/8 inch (0.32 cm; also known as schedule 40 tubing).

(D) Steel or aluminum flat bar with dimensions no less than 1/4 inch (0.64 cm) in thickness by 11/2 inches (3.85 cm) in depth. For flat bar less than 3/8 inch (0.95 cm) in thickness, a horizontal brace bar to reinforce the deflector bars must be permanently attached to the frame and the rear face of each of the deflector bars within 4 inches (10.2 cm) of the midpoint of the TED frame. The horizontal brace bar must be constructed of approved material consistent with paragraph (a)(1)(i) of this section. The horizontal brace bar may be offset behind the deflector bars, using spacer bars, not to exceed 5 inches (12.7 cm) in length and constructed of the same size or larger flat bar as the deflector bars.

(2) Offshore hooped hard TED. An offshore hooped hard TED must be constructed of aluminum, with minimum dimensions as follows:
(A) Solid rod with a minimum outside diameter of 5/8 inch (1.59 cm); or
(B) Tubing with a minimum outside diameter of 1 inch (2.54 cm) and a minimum wall thickness of 1/8 inch (0.32 cm).

(3) Method of attachment. A hard TED must be sewn into the trawl around the entire circumference of the TED with heavy twine.

(4) Angle of deflector bars. (i) The angle of the deflector bars must be between 30° and 55° from the normal, horizontal flow through the interior of the trawl, except as provided in paragraph (a)(3)(ii) of this section.

(ii) For any shrimp trawler fishing in the Gulf SFSTCA or the Atlantic SFSTCA, a hard TED with the position of the escape opening at the bottom of the net when the net is in its deployed position, the angle of the deflector bars from the normal, horizontal flow through the interior of the trawl, at any point, must not exceed 55°, and the angle of the bottom-most 4 inches (10.2 cm) of each deflector bar, measured along the bars, must not exceed 45° (Figures 14a and 14b to this part).

(5) Space between bars. The space between deflector bars and the deflector bars and the TED frame must not exceed 4 inches (10.2 cm).

(6) Direction of bars. The deflector bars must run from top to bottom of the TED, as the TED is positioned in the net, except that up to four of the bottom bars and two of the top bars, including the frame, may run from side to side of the TED. The deflector bars must be permanently attached to the TED frame or to the horizontal bars, if used, at both ends.

(7) Position of the escape opening. The escape opening must be made by removing a rectangular section of webbing from the trawl, except for a TED with an escape opening size described at paragraph (a)(7)(ii)(A) for which the escape opening may alternatively be made by making a horizontal cut along the same plane as the TED. The escape opening must be centered on and immediately forward of the frame at either the top or bottom of the net when the net is in the deployed position. The escape opening must be at the top of the net when the slope of the deflector bars from forward to aft is upward, and must be at the bottom when such slope is downward. The passage from the mouth of the trawl through the escape opening must be completely clear of any obstruction or modification, other than those specified in paragraph (d) of this section.

(A) Inshore hooped hard TED escape opening. The inshore hooped hard TED escape opening must have a horizontal measurement of no less than 35 inches (89 cm) wide and a forward measurement of no less than 27 inches (69 cm). A hinged door frame may be used to partially cover the escape opening as provided in paragraph (d)(7) of this section. Alternatively, a webbing flap may be used as provided in paragraph (d)(3)(i) of this section. The resultant opening with a webbing flap must be a minimum width of 35 inches (89 cm) and a minimum height of 27 inches (69 cm).
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of 20 inches (51 cm), with each measurement taken simultaneously. This opening may only be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina.

(B) Escape opening for offshore hooped hard TED. The offshore hooped hard TED escape opening must have a horizontal measurement of no less than 40 inches (102 cm) wide and a forward measurement of no less than 35 inches (89 cm). A hinged door frame may be used to partially cover the escape opening as provided in paragraph (d)(7) of this section. Alternatively, a webbing flap may be used as provided in paragraph (d)(3)(ii) of this section. The resultant escape opening with a webbing flap must have a stretched mesh circumference of no less than 142 inches (361 cm).

(ii) Single-grid hard TEDs. On a single-grid hard TED, the horizontal cut(s) for the escape opening may not be narrower than the outside width of the TED frame minus 4 inches (10.2 cm) on both sides of the grid, when measured as a straight line width. Fore-and-aft cuts to remove a rectangular piece of webbing must be made from the ends of the horizontal cuts along a single row of meshes along each side. The overall size of the escape opening must match one of the following specifications:

(A) 44-inch inshore opening. The escape opening must have a minimum width of 44 inches (112 cm) and a minimum height of 20 inches (51 cm) with each measurement taken separately. A webbing flap, as described in paragraph (d)(3)(i) of this section, may be used with this escape hole, so long as this minimum opening size is achieved. This opening may only be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina.

(B) The 71-inch offshore opening: The two forward cuts of the escape opening must not be less than 26 inches (66 cm) long from the points of the cut immediately forward of the TED frame. The resultant length of the leading edge of the escape opening cut must be no less than 56 inches (142 cm) (Figure 16 to this part illustrates the dimensions of these cuts). A webbing flap, as described in paragraph (d)(3)(iii) of this section, may be used with this escape hole. Either this opening or the one described in paragraph (a)(7)(ii)(B) of this section must be used in all offshore waters but also in all inshore waters in Georgia and South Carolina, and may be used in other inshore waters.

(D) Boone Wedge Cut opening. (Figure 17 to this part). The escape opening is made by making two cuts in the TED extension; one cut is fore and aft (i.e., along the length of the extension) and the other cut is horizontal to the extension. The horizontal cut is 50 meshes long and begins at a point 4 inches (10.2 cm) inward from the outside edge of the grid on one side and runs to the same point on the opposite side of the grid. The fore and aft cut begins in the middle of the horizontal cut and runs forward 49.5 inches (125.7 cm) toward the front edge of the TED extension. The added wedge of webbing is attached along its two leading edges to the edges of the fore and aft cut. The webbing wedge is made of 17⁄8 inch (4.8 cm) webbing and must have at least 41 meshes measuring at least 72 inches wide (182.9 cm) along its base (aft edge). The height of the wedge must measure at least 48.5 inches (123 cm). The top of the wedge is two bars across the leading edge then cut with a 1 point then 6 bar taper. A webbing flap, as described in paragraph (d)(3)(iv) of this section, may be used with this escape opening, so long as the minimum opening size is achieved.
(E) Large TED openings. (Figures 18a, 18b, and 18c to this part). Large TED escape openings may be utilized in the following configurations:

(1) A triangular cut (Figure 18a to this part), where the base of the triangle is defined by a straight-line measurement of the opening between the webbing attachment points on the TED frame that is no less than 40 inches (102 cm). The two side cuts of the triangle must be an all-bar taper from the point at which the webbing attaches to the TED frame to the apex of the triangle cut. Each side cut of the triangle must measure no less than 53 inches (135 cm). The sum of the straight-line base measurement and two side cuts must be no less than 147 inches (373 cm). The side cuts of the triangular opening may be reinforced using rib lines attached from the TED frame to the apex of the opening. A webbing flap, as described in either paragraph (d)(3)(ii) or (d)(3)(iii) of this section, may be used with this escape opening, so long as the minimum opening size is achieved.

(2) All-bar or all-points side cuts and a horizontal leading edge cut (Figures 18b and 18c to this part), where the straight-line measurement of the opening between the webbing attachment points on the TED frame may not be less than 40 inches (102 cm), and the two side cuts of the escape opening must not be less than 26 inches (66 cm) long from the points of the cut immediately forward of the TED frame. Only all-bar or all-points side cuts may be used; no combination tapers may be used when making the side cuts. The sum of the straight-line base measurement and the stretched measurements of the side cuts and leading edge cut must be no less than 147 inches (373 cm). A webbing flap, as described in either paragraph (d)(3)(i) or (d)(3)(ii) of this section, may be used with this escape opening, so long as the minimum opening size is achieved.

(B) Offshore hooped hard TED. The front hoop on an offshore hooped hard TED must have an inside horizontal measurement of at least 40 inches (102 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 20 inches (51 cm).

(C) Single-grid hard TED. A single-grid hard TED must have a minimum outside horizontal and vertical measurement of 32 inches (81 cm). The required outside measurements must be at the mid-point of the deflector grid.

(9) Flotation. Floats must be attached to the top one-half of all hard TEDs with bottom escape openings. The floats may be attached either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface of the TED. Floats must be attached with heavy twine or rope. Floats must be constructed of aluminum, hard plastic, expanded polyvinyl chloride, or expanded ethylene vinyl acetate unless otherwise specified. The requirements of this paragraph may be satisfied by compliance with either the dimension requirements of paragraph (a)(9)(i) of this section, or the buoyancy requirements of paragraph (a)(9)(ii) of this section, or the buoyancy-dimension requirements of paragraph (a)(9)(iii) of this section. If roller gear is used pursuant to paragraph (d)(5) of this section, the roller gear must be included in the circumference measurement of the TED or the total weight of the TED.

(i) Float dimension requirements. (A) For hard TEDs with a circumference of 120 inches (304.8 cm) or more, a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches (25.0 cm) in diameter, or two expanded polyvinyl chloride or expanded ethylene vinyl acetate floats, each no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(B) Inshore hooped hard TED—(A) Inshore hooped hard TED. The front hoop on an inshore hooped hard TED must have an inside horizontal measurement of at least 35 inches (89 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 20 inches (51 cm).
§ 223.207  Float buoyancy and size requirements

(a) General. (1) TEDs must be attached to the trawl grid. (2) TEDs must be attached to the trawl grid such that the combined buoyancy equals or exceeds the weight of the TED. (3) Floats must be attached to the TED in a manner that permits the TED toceb clearly marked on the floats and the TED as follows:

(B) TED weight markings. The markings must be made by the original TED manufacturer and must be permanent and clearly legible. The marking must identify the in-air, dry weight of the TED, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the weight in English units. The marked weight must represent the actual weight of the individual TED as manufactured. Previously manufactured TEDs may be marked upon return to the original manufacturer. Where a TED is comprised of multiple detachable components, the weight of each component must be separately marked.

(iii) Buoyancy-dimension requirements. Floats of any size and in any combination, provided that they are marked pursuant to paragraph (a)(9)(ii)(A) of this section, must be attached such that the combined buoyancy of the floats equals or exceeds the following values:

(A) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is 120 inches (304.8 cm) or more, the combined buoyancy must equal or exceed 20 lb (9.1 kg); or

(C) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is less than 120 inches (304.8 cm), the combined buoyancy must equal or exceed 10 lb (4.5 kg).

(b) Special Hard TEDs. Special hard TEDs are hard TEDs which do not meet all of the design and construction criteria of the generic standards specified in paragraph (a) of this section. The following special hard TEDs are approved TEDs:

(1) Flounder TED. (Figure 10 to this part). The Flounder TED is approved for use only in the Atlantic summer flounder bottom trawl fishery. The Flounder TED is not an approved TED for use by shrimp trawlers. The Flounder TED must be constructed of at least 1 1/4 inch (3.2 cm) outside diameter aluminum or steel pipe with a wall thickness of at least 1/4 inch (0.3 cm). It must have a rectangular frame with outside dimensions which can be no less than 51 inches (129.5 cm) in length and 32 inches (81.3 cm) in width. It must have at least five vertical deflector bars, with bar spacings of no more than 4 inches (10.2 cm). The vertical bars must be connected to the top of the frame and to a single horizontal bar near the bottom. The horizontal bar must be connected at both ends to the sides of the frame and parallel to the bottom bar of the frame. There must be a space no larger than 10 inches (25.4 cm) between the horizontal bar and the bottom bar of the frame. One or more additional vertical bars running from the bottom bar to the horizontal bar must divide the opening at the bottom into two or more rectangles, each with a maximum height of 10 inches (25.4 cm) and a maximum width of 14 1/2 inches (36.8 cm). This TED must comply with paragraph (a)(2) of this section. The angle of the deflector bars must be between 30 and 55 from the normal, horizontal flow through the interior of the trawl. The entire width of
the escape opening from the trawl must be centered on and immediately forward of the frame at the top of the net when the net is in its deployed position. The escape opening must be cut horizontally along the same plane as the TED, and may not be cut in a fore-and-aft direction. The cut in the trawl webbing for the escape opening cannot be narrower than the outside width of the grid minus 4 inches (10.2 cm) on both sides of the grid, when measured as a straight line width. The resulting escape opening in the net webbing must measure at least 35 inches (88.9 cm) in horizontal taut length and, simultaneously, 12 inches (30.5 cm) in vertical taut height. The vertical measurement must be taken at the midpoint of the horizontal measurement. This TED may not be configured with a bottom escape opening. Installation of an accelerator funnel is not permitted with this TED.

(2) Weedless TED. The weedless TED must meet all the requirements of paragraph (a) of this section for single-grid hard TEDs, with the exception of paragraphs (a)(1) and (a)(5) of this section. The weedless TED must be constructed of at least 1–1/4 inch (3.2 cm) outside diameter aluminum with a wall thickness of at least 1/8 inch (0.3 cm). The deflector bars must run from top to bottom of the TED, as the TED is positioned in the net. The ends of the undeflector bars on the side of the frame opposite to the escape opening must be permanently attached to the frame. The ends of the undeflector bars nearest the escape opening are not attached to the frame and must lie entirely forward of the leading edge of the outer frame. The ends of the unattached deflector bars must be no more than 4 inches (10.2 cm) from the frame and may not extend past the frame. A horizontal brace bar to reinforce the deflector bars, constructed of the same size or larger pipe as the deflector bars, must be permanently attached to the frame and the rear face of each of the deflector bars with 4 inches (10.2 cm) of the midpoint of the TED frame. The horizontal brace bar may be offset behind the deflector bars, using spacer bars, not to exceed 5 inches (12.7 cm) in length and constructed of the same size or larger pipe as the deflector bars. See Figure 15.

(3) Boone Big Boy TED. The Boone Big Boy TED is a single-grid hard TED with a minimum outside horizontal and vertical measurement of 36.5 inches (92.7 cm) and 48 inches (121.9 cm), respectively. The frame must be constructed of steel rod with a minimum outside diameter of 3/8 inch (0.95 cm). The deflector bars must be constructed of steel rod with a minimum outside diameter of 1/4 inch (0.64 cm). The space between the deflector bars must not exceed 4 inches (10.2 cm). A horizontal brace bar constructed of at least 1/4-inch (0.64-cm) steel rod must be permanently attached to the frame and the rear face of each of the deflector bars within 4 inches (10.2 cm) of the midpoint of the TED frame. The horizontal brace bar may be offset behind the deflector bars, using spacer bars, not to exceed 5 inches (12.7 cm) in length and must be constructed of the same size or larger material as the deflector bars. The Boone Big Boy TED must be used with the Boone Wedge Cut escape opening specified in (a)(7)(i)(D) of this section. The angle of the deflector bars must be between 30° and 55° from the normal, horizontal flow through the interior of the trawl. The Boone Big Boy TED is exempt from the requirements of paragraph (a)(3)(ii) of this section, and may be installed at 55° when fishing in the Gulf SFSTCA or the Atlantic SFSTCA.

(4) Modified flounder TED. (Figure 11 to this part). The modified flounder TED is approved for use only in the Atlantic summer flounder bottom trawl fishery. The modified flounder TED is not an approved TED for use by shrimp trawlers. The modified flounder TED incorporates two separate grid frames that are attached together. The frames of the grids must be constructed of at least 1/2 inch (3.2 cm) outside diameter aluminum or steel pipe with a wall thickness of at least 1/8 inch (0.32 cm). Each of the two grids of the modified flounder TED must have outside dimensions of at least 36 inches (91.4 cm) in height and at least 48 inches (121.9 cm) in width. The upper grid is...
equipped with vertical deflector bars, which must be constructed of aluminum or steel flat bar with a minimum depth of 1 1/4 inches (3.2 cm) and a minimum thickness of 3/8 inch (0.95 cm). Vertical deflector bars must be connected to the top and bottom of the upper grid. The space between the deflector bars of the upper grid must not exceed 4 inches (10.2 cm). The lower grid is fabricated with both horizontal and vertical deflector bars, creating four narrow horizontal openings at the top, and three large rectangular openings along the bottom of the grid. The lower grid must have at least three horizontal deflector bars, constructed of aluminum or steel flat bar with a minimum depth of 1 1/2 inches (3.8 cm) and a minimum thickness of 3/8 inch (0.95 cm), which are connected to each side of the grid and angled at 30° from the horizontal plane. Below this, a fourth horizontal deflector bar must be constructed of aluminum or steel pipe with a wall thickness of at least 1/8 inch (0.32 cm) and with a 1 1/4 inch (3.2 cm) outside diameter. These horizontal deflector bars must yield maximum spacings of 4 1/2 inches (11.4 cm), 5 1/2 inches (14.0 cm), 5 1/2 inches (14.0 cm), and 4 1/2 inches (11.4 cm), as constructed from top to bottom and measured between the leading edges of adjacent deflector bars. There must be a maximum 10-inch (25.4 cm) space between the bottom-most horizontal deflector pipe bar and the grid frame bottom. Two additional vertical pipe sections running from the bottom of the grid frame to the bottom-most horizontal deflector pipe bar must divide the opening at the bottom into three rectangles, each with a maximum height of 10 inches (25.4 cm) and a maximum width of 14 inches (35.6 cm). This TED must comply with paragraph (a)(2) of this section. The upper and lower grids of this TED must be laced together with heavy twine no less than 3/4 inch (0.64 cm) in diameter in order to maintain a consistent angle in both sections. There may be a gap between the two sections not to exceed 1 inch (2.54 cm). The angle of the entire TED frame must be between 30° and 45° from the normal, horizontal flow through the interior of the trawl. The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at the top of the net when the net is in its deployed position. The slope of the grids and the vertical deflector bars from forward to aft is upward. The modified flounder TED must use an escape opening consistent with paragraph (a)(7)(ii)(B), (C), (D), or (E) of this section. A webbing flap, as described in paragraphs (d)(3)(ii), (iii), or (iv) of this section, may be used with this escape opening, so long as the minimum opening size is achieved. This TED may not be configured with a bottom escape opening. Installation of an accelerator funnel is not permitted with this TED.

(c) Soft TEDs. Soft TEDs are TEDs with deflector panels made from polypropylene or polyethylene netting. The following soft TEDs are approved TEDs:

(1) Parker TED. The Parker TED is a soft TED, consisting of a single triangular panel, composed of webbing of two different mesh sizes, that forms a complete barrier inside a trawl and that angles toward an escape opening in the top of the trawl.

(i) Excluder Panel. (Figure 5 to this part) The excluder panel of the Parker TED must be constructed of a single triangular piece of 8-inch (20.3 cm) stretched mesh webbing and two trapezoidal pieces of 4-inch (10.2-cm) stretched mesh webbing. The webbing must consist of number 48 (3-mm thick) or larger polypropylene or polyethylene webbing that is heat-set knotted or braided. The leading edge of the 8-inch (20.3-cm) mesh panel must be 36 meshes wide. The 8-inch (20.3-cm) mesh panel must be tapered on each side with all-bar cuts to converge on an apex, such that the length of each side is 36 bars. The leading edges of the 4-inch (10.2-cm) mesh panels must be 8 meshes wide. The edges of the 4-inch (10.2-cm) mesh panels must be cut with all-bar cuts running parallel to each other, such that the length of the inner edge is 72 bars and the length of the outer edge is 89 bars and the resulting fore-and-aft edge is 8 meshes deep. The two 4-inch (10.2-cm) mesh panels must be sewn to the 8-inch (20.3-cm) mesh panel to create a single triangular excluder panel. The 72-bar edge of each 4-
inch (10.2-cm) mesh panel must be securely joined with twine to one of the 36-bar edges of the 8-inch (20.3-cm) mesh panel, tied with knots at each knot of the 4-inch (10.2-cm) webbing and at least two wraps of twine around each bar of 4-inch (10.2-cm) mesh and the adjoining bar of the 8-inch (20.3-cm) mesh. The adjoining fore-and-aft edges of the two 4-inch (10.2-cm) mesh panels must be sewn together evenly.

(ii) Limitations on which trawls may have a Parker TED installed. The Parker TED must not be installed or used in a two-seam trawl with a tongue, nor in a triple-wing trawl (a trawl with a tongue along the headrope and a second tongue along the footrope). The Parker TED may be installed and used in any other trawl if the taper of the body panels of the trawl does not exceed 4° and if it can be properly installed in compliance with paragraph (c)(1)(iii) of this section.

(iii) Panel installation—(A) Leading edge attachment. The leading edge of the excluder panel must be attached to the inside of the bottom of the trawl across a straight row of meshes. For a two-seam trawl or a four-seam, tapered-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel, from seam to seam. For a four-seam, straight-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel and half the height of each wing panel of the trawl. Every mesh of the leading edge of the excluder panel must be evenly sewn to this row of meshes; meshes may not be laced to the trawl. The row of meshes for attachment to the trawl must contain the following number of meshes, depending on the stretched mesh size used in the trawl:

1. For a mesh size of 2 1/4 inches (5.7 cm), 152–168 meshes;
2. For a mesh size of 2 1/8 inches (5.4 cm), 161–178 meshes;
3. For a mesh size of 2 inches (5.1 cm), 171–189 meshes;
4. For a mesh size of 1 7/8 inches (4.8 cm), 182–202 meshes;
5. For a mesh size of 1 3/4 inches (4.4 cm), 196–216 meshes;
6. For a mesh size of 1 5/8 inches (4.1 cm), 211–233 meshes;
7. For a mesh size of 1 1/2 inches (3.8 cm), 228–252 meshes;
8. For a mesh size of 1 3/8 inches (3.5 cm), 249–275 meshes; and
9. For a mesh size of 1 1/4 inches (3.2 cm), 274–302 meshes.

(B) Apex attachment. The apex of the triangular excluder panel must be attached to the inside of the top body panel of the trawl at the centerline of the trawl. The distance, measured aft along the centerline of the top body panel from the same row of meshes for attachment of the excluder panel to the bottom body panel of the trawl, to the apex attachment point must contain the following number of meshes, depending on the stretched mesh size used in the trawl:

1. For a mesh size of 2 1/4 inches (5.7 cm), 78–83 meshes;
2. For a mesh size of 2 1/8 inches (5.4 cm), 83–88 meshes;
3. For a mesh size of 2 inches (5.1 cm), 87–93 meshes;
4. For a mesh size of 1 7/8 inches (4.8 cm), 93–99 meshes;
5. For a mesh size of 1 3/4 inches (4.4 cm), 100–106 meshes;
6. For a mesh size of 1 5/8 inches (4.1 cm), 107–114 meshes;
7. For a mesh size of 1 1/2 inches (3.8 cm), 114–124 meshes;
8. For a mesh size of 1 3/8 inches (3.5 cm), 127–135 meshes; and
9. For a mesh size of 1 1/4 inches (3.2 cm), 137–146 meshes.

(C) Side attachment. The sides of the excluder panel must be attached evenly to the inside of the trawl from the outside attachment points of the excluder panel's leading edge to the apex of the excluder panel. Each side must be sewn with the same sewing sequence, and, if the sides of the excluder panel cross rows of bars in the trawl, the crossings must be distributed evenly over the length of the side attachment.

(iv) Escape opening. The escape opening for the Parker soft TED must match one of the following specifications:

(A) Inshore opening. This opening is the minimum size opening that may be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina, in which a larger minimum opening is required. A slit at least 56 inches (1.4 m) in taut
length must be cut along the centerline of the top body panel of the trawl net immediately forward of the apex of the panel webbing. The slit must not be covered or closed in any manner. The edges and end points of the slit must not be reinforced in any way; for example, by attaching additional rope or webbing or by changing the orientation of the webbing.

(B) Offshore opening. A horizontal cut extending from the attachment of one side of the deflector panel to the trawl to the attachment of the other side of the deflector panel to the trawl must be made in a single row of meshes across the top of the trawl and measure at least 96 inches (243.8 cm) in taut width. All trawl webbing above the deflector panel between the 96-inch (243.8-cm) cut and edges of the deflector panel must be removed. A rectangular flap of nylon webbing not larger than 2-inch (5.1-cm) stretched mesh may be sewn to the forward edge of the escape opening. The width of the flap must not be larger than the width of the forward edge of the escape opening. The flap must not extend more than 12 inches (30.5 cm) beyond the rear point of the escape opening. The sides of the flap may be attached to the top of the trawl but must not be attached farther aft than the row of meshes through the rear point of the escape opening. One row of steel chain not larger than 1⁄4 inch (0.64 cm) may be sewn evenly to the back edge of the flap. The stretched length of the chain must not exceed 96 inches (244 cm). A Parker TED using the escape opening described in this paragraph meets the requirements of §223.206(d)(2)(iv)(B). This opening or one that is larger must be used in all offshore waters and in the inshore waters of Georgia and South Carolina. It also may be used in other inshore waters.

(2) [Reserved]

(d) Allowable modifications to hard TEDs and special hard TEDs. Unless otherwise prohibited in paragraph (b) of this section, only the following modifications may be made to an approved hard TED or an approved special hard TED:

(1) Floats. In addition to floats required pursuant to paragraph (a)(9) of this section, floats may be attached to the top one-half of the TED, either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface at the top of the TED.

(2) Accelerator funnel. An accelerator funnel may be installed in the trawl, if it is made of net webbing material with a stretched mesh size of not greater than 1¾ inches (4 cm), if it is inserted in the net immediately forward of the TED, and if its rear edge does not extend past the bars of the TED. The trailing edge of the accelerator funnel may be attached to the TED on the side opposite the escape opening if not more than one-third of the circumference of the funnel is attached, and if the inside horizontal opening as described above is maintained. In a bottom opening TED only the top one-third of the circumference of the funnel may be attached to the TED. In a top opening TED only the bottom one-third of the circumference of the funnel may be attached to the TED.

(i) In inshore waters, other than the inshore waters of Georgia and South Carolina in which a larger opening is required, the inside horizontal opening of the accelerator funnel must be at least 44 inches (112 cm).

(ii) In offshore waters and the inshore waters of Georgia and South Carolina, the inside horizontal opening of the accelerator funnel must be at least 71 inches (180 cm).

(3) Webbing flap. A webbing flap may be used to cover the escape opening under the following conditions: No device holds it closed or otherwise restricts the opening; it is constructed of webbing with a stretched mesh size no larger than 2 inches (5.1 cm); it lies on the outside of the trawl; it is attached along its entire forward edge forward of the escape opening; it is not attached on the sides beyond the row of meshes that lies 6 inches (15.2 cm) behind the posterior edge of the grid; the sides of the flap are sewn on the same row of meshes fore and aft; and the flap does not overlap the escape hole cut by more than 5 inches (12.7 cm) on either side.

(i) 44-inch inshore TED flap. This flap may not extend more than 24 inches (61 cm) beyond the posterior edge of the grid.
(ii) 71-inch offshore TED Flap. The flap must be a 133-inch (338-cm) by 52-inch (132-cm) piece of webbing. The 133-inch (338-cm) edge of the flap is attached to the forward edge of the opening (71-inch (180-cm) edge). The flap may extend no more than 24 inches (61 cm) behind the posterior edge of the grid (Figure 12 to this part illustrates this flap).

(iii) Double cover offshore TED flap. This flap must be composed of two equal size rectangular panels of webbing. Each panel must be no less than 58 inches (147.3 cm) wide and may overlap each other no more than 15 inches (38.1 cm). The panels may only be sewn together along the leading edge of the cut. The trailing edge of each panel must not extend more than 24 inches (61 cm) past the posterior edge of the grid (Figure 16 to this part). Each panel may be sewn down the entire length of the outside edge of each panel. Paragraph (d)(3) of this section notwithstanding, this flap may be installed on either the outside or inside of the TED extension. For interior installation, the flap may be sewn to the interior of the TED extension along the leading edge and sides to a point intersecting the TED frame; however, the flap must be sewn to the exterior of the TED extension from the point at which it intersects the TED frame to the trailing edge of the flap. Chafing webbing described in paragraph (d)(4) of this section may not be used with this type of flap.

(iv) Boone Wedge Cut opening flap. (Figure 17 to this part). This escape opening flap is attached to the trailing edge of the horizontal cut and the wedge. The flap is made from a piece of 1½ inch (4.8 cm) webbing that is trapezoid in shape. The leading edge must be at least 94 meshes wide, stretching to at least 164.5 inches (417.8 cm). The trailing edge is at least 87 meshes wide and at least 152 inches (386.1 cm). The two sides are at least 6 meshes long and at least 15 inches (38.1 cm). The escape opening flap is attached only to the leading edge of the escape opening cut and is not attached along its sides.

(A) Edge lines. Optional edge lines can be used in conjunction with this flap. The line must be made of polyethylene with a maximum diameter of ¼ inches (95 cm). A single length of line must be used for each flap panel. The line must be sewn evenly to the unattached, inside edges and trailing edges, of each flap panel. When edge lines are installed, the outside edge of each flap panel must be attached along the entire length of the flap panel.

(B) [Reserved]

(4) Chafing webbing. A single piece of nylon webbing, with a twine size no smaller than size 36 (2.46 mm in diameter), may be attached outside of the escape opening webbing flap to prevent chafing on bottom opening TEDs. This webbing may be attached along its leading edge only. This webbing may not extend beyond the trailing edge or sides of the existing escape opening webbing flap, and it must not interfere or otherwise restrict the turtle escape opening.

(5) Roller gear. Roller gear may be attached to the bottom of a TED to prevent chafing on the bottom of the TED and the trawl net. When a webbing flap is used in conjunction with roller gear, the webbing flap must be of a length such that no part of the webbing flap can touch or come in contact with any part of the roller gear assembly or the means of attachment of the roller gear assembly to the TED, when the trawl net is in its normal, horizontal position. Roller gear must be constructed according to one of the following design criteria:

(i) A single roller consisting of hard plastic shall be mounted on an axle rod, so that the roller can roll freely about the axle. The maximum diameter of the roller shall be 6 inches (15.24 cm), and the maximum width of the axle rod shall be 12 inches (30.4 cm). The axle rod must be attached to the TED by two support rods. The maximum clearance between the roller and the TED shall not exceed 1 inch (2.5 cm) at the center of the roller. The support rods and axle rod must be made from solid steel or solid aluminum rod no larger than ½ inch (1.28 cm) in diameter. The attachment of the support rods to the TED shall be such that there are no protrusions (lips, sharp edges, burrs, etc.) on the front face of the grid. The axle rod and support rods must lie entirely behind the plane of the face of the TED grid.
(ii) A single roller consisting of hard plastic tubing shall be tightly tied to the back face of the TED grid with rope or heavy twine passed through the center of the roller tubing. The roller shall lie flush against the TED. The maximum outside diameter of the roller shall be 3 1/2 inches (8.0 cm), the minimum outside diameter of the roller shall be 2 inches (5.1 cm), and the maximum length of the roller shall be 12 inches (30.4 cm). The roller must lie entirely behind the plane of the face of the grid.

(6) Water deflector fin for hooped hard TEDs. On a hooped hard TED, a water deflector fin may be welded to the forward edge of the escape opening. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to 4 inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus one inch (2.5 cm). The fin must project aft into the TED with an angle between 5° and 45° from the normal, horizontal plane of the trawl. On an inshore hooped hard TED, the clearance between the deflector bars and the posterior edge of the deflector fin must be at least 20 inches (51 cm) for inshore and 23 1/4 inches (59 cm) for offshore hooped hard TED. The hinged door frame may not be used in combination with a webbing flap specified at paragraph (d)(3) of this section or with a water deflection fin specified at paragraph (d)(6) of this section.

(7) Hinged door frame for hooped hard TEDs. A hinged door frame may be attached to the forward edge of the escape opening on a hooped hard TED. The door frame must be constructed of materials specified at paragraphs (a)(1)(i) or (a)(1)(ii) of this section for inshore and offshore hooped hard TEDs, respectively. The door frame may be covered with a single panel of mesh webbing that is taut and securely attached with twine to the perimeter of the door frame, with a mesh size not greater than that used for the TED extension webbing. The door frame must be at least as wide as the TED escape opening. The door frame may be a maximum of 24 inches (61 cm) long. The door frame must be connected to the forward edge of the escape opening by a hinge device that allows the door to open outwards freely. The posterior edge of the door frame, in the closed position, must lie at least 12 inches (30 cm) forward of the posterior edge of the escape opening. A water deflector fin may be welded to the posterior edge of the hinged door frame. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to four inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus one inch (2.5 cm). The fin must project aft into the TED with an angle between 5° and 45° from the normal, horizontal plane of the trawl, when the door is in the closed position. The clearance between the posterior edge of the escape opening and the posterior edge of the door frame or the posterior edge of the water deflector fin, if installed, must be no less than 12 inches (30 cm), when the door is in the closed position. Two stopper ropes or a hinge limiter may be used to limit the maximum opening height of the hinged door frame, as long as they do not obstruct the escape opening in any way or restrict the free movement of the door to its fully open position. When the door is in its fully open position, the minimum clearance between any part of the deflector bars and any part of the door, including a water deflector fin if installed, must be at least 20 inches (51 cm) for inshore hooped hard TED and at least 23 1/4 inches (59 cm) for offshore hooped hard TED. The hinged door frame may not be used in combination with a webbing flap specified at paragraph (d)(3) of this section or with a water deflection fin specified at paragraph (d)(6) of this section.

(8) Chauvin shrimp deflector. (Figures 19a and 19b to this part). The Chauvin shrimp deflector may be used on any approved TED design, but its installation must not reduce the minimum stretched measurements of the TED opening. The Chauvin shrimp deflector may not be installed with a bottom escape opening. The Chauvin shrimp deflector is constructed from a single piece of 3-inch (7.6-cm) inside diameter PVC pipe which measures 30 inches (76.2 cm) in length; the ends of the PVC pipe are left uncapped. A webbing or mesh bag is made and is used to encase the PVC pipe (Figure 19a to this part). The mesh bag is created using a single piece of 1 1/4 inch (4.1 cm) stretched-mesh webbing made of nylon or polyethylene with dimensions 57 meshes...
wide by 10 meshes deep. The leading edge of the 57-mesh piece of webbing is attached around the PVC pipe and back to the row of meshes located 7 meshes down the 10-mesh length. The ends of the webbing are sewn together on each end forming a webbing bag to assure the PVC pipe remains encased in the webbing. This leaves a 3-mesh tail hanging from the encased PVC pipe. The 3-mesh tail of the encased PVC pipe is then sewn to a single row of meshes on the inside of the trawl along the 57-mesh edge, 3 meshes ahead of the forward cut of the TED escape opening. This would allow a 3-mesh overlap to the left and right of the forward cut (Figure 19b to this part).

(9) Brace bar. (Figure 14a of this part). A horizontal brace bar may be added to a TED if the brace bar is constructed of aluminum or steel rod or tubing specified in 50 CFR 223.207(a)(1)(i)(A) through (C), or flat bar ⅜-inch (0.95 cm) or more in thickness, and is permanently attached to the rear of the outer frame; for TEDs constructed of flat bar less than ⅜-inch (0.95 cm) in thickness, the regulations specified in 50 CFR 223.207(a)(1)(i)(D) apply. The horizontal brace bar may be permanently secured to the rear face of each of the deflector bars. The horizontal brace bar may be offset behind the deflector bars, using spacer bars attached to the rear face of each of the deflector bars, not to exceed 5 inches (12.7 cm) in length, and must be constructed of the same size or larger material as the deflector bars.

(e) Revision of generic design criteria, and approval of TEDs, of allowable modifications of hard TEDs, and of special hard TEDs. (1) The Assistant Administrator may revise the generic design criteria for hard TEDs set forth in paragraph (a) of this section, may approve special hard TEDs in addition to those listed in paragraph (b) of this section, may approve allowable modifications to hard TEDs in addition to those authorized in paragraph (d) of this section, or may approve other TEDs, by regulatory amendment, if, according to a NMFS-approved scientific protocol, the TED demonstrates a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate). Two such protocols have been published by NMFS (52 FR 24362, June 29, 1987; and 55 FR 41092, October 9, 1990) and will be used only for testing relating to hard TED designs. Testing under any protocol must be conducted under the supervision of the Assistant Administrator, and shall be subject to all such conditions and restrictions as the Assistant Administrator deems appropriate. Any person wishing to participate in such testing should contact the Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Dr., Miami, FL 33149–1003.

(2) Upon application, the Assistant Administrator may issue permits, subject to such conditions and restrictions as the Assistant Administrator deems appropriate, authorizing public or private experimentation aimed at improving shrimp retention efficiency of existing approved TEDs and at developing additional TEDs, or conducting fishery research, that would otherwise be subject to §223.206(d)(2). Applications should be made to the Southeast Regional Administrator (see §222.102 definition of “Southeast Regional Administrator”).


EFFECTIVE DATE NOTE: At 64 FR 14073, Mar. 23, 1999, §223.207 was added. Paragraphs (a)(9)(ii)(A) and (B) contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 223.208 Corals.

(a) Prohibitions. (1) The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to elkhorn (Acropora palmata) and staghorn (A. cervicornis) corals listed as threatened in §223.102(d), except as provided in §223.102(c).

(2) It is unlawful for any person subject to the jurisdiction of the United States to do any of the following: (1) Fail to comply immediately, in the manner specified at §600.730 (b) through (d) of this title, with instructions and signals specified therein
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issued by an authorized officer, including instructions and signals to haul back a net for inspection;  

(ii) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;  

(iii) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in contravention of directions from the officer;  

(iv) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;  

(v) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by this section;  

(vi) Resist a lawful arrest for an act prohibited by this section;  

(vii) Make a false statement, oral or written, to an authorized officer or to the agency concerning applicability of the exceptions enumerated in paragraph (c) of this section relating to elkhorn and staghorn corals;  

(viii) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 223; or  

(ix) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.  

(b) Affirmative defense. In connection with any action alleging a violation of this section, any person claiming the benefit of any exception, exemption, or permit under this section has the burden of proving that the exception, exemption, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation, and that the person fully complied with the exception, exemption, or permit.  

(c) Exceptions. Exceptions to the prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) applied in paragraph (a) of this section relating to elkhorn and staghorn corals are described in the following paragraphs (1) through (6):  

(1) Permitted scientific research and enhancement. Any export or take of elkhorn or staghorn corals resulting from conducting scientific research or enhancement directed at elkhorn and staghorn corals is excepted from the prohibitions in ESA sections 9(a)(1)(A), (B) and (C) provided a valid research or enhancement permit has been obtained from one of the following Federal or state agencies: NOAA National Ocean Service National Marine Sanctuary Program, National Park Service, U.S. Fish and Wildlife Service, Florida Fish and Wildlife Conservation Commission, Puerto Rico Department of Natural and Environmental Resources, or the U.S. Virgin Islands Department of Planning and Natural Resources. The exportation or take must be in compliance with the applicable terms and conditions of the applicable research or enhancement permit, and the permit must be in the possession of the permittee while conducting the activity. Export of elkhorn or staghorn corals from the United States to conduct excepted research or enhancement activities requires a CITES export permit from the U.S. Fish and Wildlife Service in addition to the research permit for collection. Import of elkhorn or staghorn corals into the United States to conduct excepted research or enhancement activities must be in compliance with the provisions of section 9(c) of the ESA.  

(2) Restoration activities. Any agent or employee of governmental agencies listed in Table 1 may take listed elkhorn or staghorn corals without a permit, when acting in the course of conducting a restoration activity directed at elkhorn or staghorn coral which is authorized by an existing authority (see Table 1 to this section). Take of elkhorn or staghorn corals during such restoration activity is excepted from
the prohibitions in ESA sections 9(a)(1)(B) and (C). An excepted restoration activity is defined as the methods and processes used to provide aid to injured individual elkhorn or staghorn coral.

(3) Section 10 scientific and enhancement permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under §223.208(a) for scientific purposes or to enhance the propagation or survival of elkhorn or staghorn corals, in accordance with and subject to the conditions of part 222, subpart C-General Permit Procedures.

(4) Section 10 incidental take permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under §223.208(a) in accordance with section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to the conditions of part 222 of this chapter. Such permits may be issued for the incidental taking of elkhorn and staghorn corals.

(5) Section 7 Interagency consultation. Any incidental taking that is in compliance with the terms and conditions specified in a written statement provided under section 7(b)(4)(C) of the ESA (16 U.S.C. 1536(b)(4)(C)) shall not be considered a prohibited taking of elkhorn and staghorn corals pursuant to paragraph (o)(2) of section 7 of the ESA (16 U.S.C. 1536(o)(2)).

(6) Importation under the Convention on International Trade of Endangered Species. Any importation of elkhorn or staghorn corals in compliance with the provisions of section 9(c) of the ESA (16 U.S.C. 1538(c)) shall not be considered a violation of any provision of the ESA or any regulation issued pursuant to the ESA.

**TABLE 1 TO §223.208. AGENCIES AND AUTHORIZING STATUTES WHOSE CORAL RESTORATION ACTIVITIES ARE EXCEPTED FROM CERTAIN PROHIBITIONS IN PARAGRAPH (a) OF THIS SECTION.**

<table>
<thead>
<tr>
<th>FEDERAL:</th>
<th>Agency/Person</th>
<th>Statute and Specific Provision(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NOAA, NOS</td>
<td>Coral Reef Conservation Act 16 U.S.C. 6406</td>
</tr>
<tr>
<td></td>
<td>Commandant, U.S. Coast Guard (USCG), Authorized representatives of States or Indian Tribes.</td>
<td>“Oil Pollution Act” 33 U.S.C. 2702</td>
</tr>
<tr>
<td></td>
<td>Designated Federal, State or Indian tribal natural resources trustees, including NOAA, Department of Interior (DOI), Florida Department of Environmental Protection (FDEP), Puerto Rico Department of Natural and Environmental Resources (DNER), and U.S. Virgin Islands Department of Planning and Natural Resources (DPNR)</td>
<td>33 U.S.C. 2706</td>
</tr>
<tr>
<td></td>
<td>Administrator, Environmental Protection Agency (EPA) or Commandant, USCG; Authorized representatives of States.</td>
<td>“Clean Water Act” 33 U.S.C. 1321</td>
</tr>
<tr>
<td></td>
<td>Designated Federal, State or Indian tribal natural resources trustees, including NOAA, DOI, FDEP, DNER, and DPNR.</td>
<td>“Superfund Act” (CERCLA) 42 U.S.C. 9604</td>
</tr>
<tr>
<td></td>
<td>Administrator of the EPA; States or Indian Tribes in cooperative agreements with EPA; Heads of other Federal agencies where release is from vessel or facility solely under their control.</td>
<td>42 U.S.C. 9606</td>
</tr>
<tr>
<td></td>
<td>Designated Federal, State or Indian tribal natural resources trustees, including NOAA, DOI, FDEP, DNER, and DPNR.</td>
<td>42 U.S.C. 9607</td>
</tr>
<tr>
<td></td>
<td>DOI</td>
<td>National Wildlife Refuge System Administration Act, 16 U.S.C. 668</td>
</tr>
</tbody>
</table>
### Table 1 to § 223.208. Agencies and Authorizing Statutes Whose Coral Restoration Activities Are Excepted From Certain Prohibitions in Paragraph (a) of This Section.—Continued

<table>
<thead>
<tr>
<th>FEDERAL:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency/Person</td>
<td>Statute and Specific Provision(s)</td>
<td></td>
</tr>
<tr>
<td><strong>FLORIDA:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Board of Trustees of the Internal Improvement Trust Fund</td>
<td>State Lands; Board of Trustees to Administer FL Statute § 253.03 Duty of Board to Protect, etc. FL Statute. § 253.04 FDEP.</td>
<td></td>
</tr>
<tr>
<td>Governor and Cabinet; FDEP</td>
<td>Land Acquisition for Conservation or Recreation; Conservation and Recreation Lands Trust Fund FL Statute § 259.032</td>
<td></td>
</tr>
<tr>
<td>FDEP</td>
<td>Pollutant Discharge Prevention and Removal; Liability for Damage to Natural Resources FL Statute § 376.121</td>
<td></td>
</tr>
<tr>
<td>FDEP</td>
<td>Land and Water Management; Coral Reef Restoration FL Statute § 390.0568</td>
<td></td>
</tr>
<tr>
<td>Florida Fish and Wildlife Conservation Commission</td>
<td>Fish and Wildlife Conservation Commission FL Statute § 20.331</td>
<td></td>
</tr>
<tr>
<td><strong>U.S. VIRGIN ISLANDS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DPNR</td>
<td>DPNR: Powers and Duties of Department 3 V.I.C. § 401</td>
<td></td>
</tr>
<tr>
<td>DPNR</td>
<td>Conservation; Croix East End Marine Park Established; 12 V.I.C. § 98</td>
<td></td>
</tr>
<tr>
<td><strong>PUERTO RICO:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DNER</td>
<td>Conservation; Protection, Conservation and Management of Coral Reefs 12 L.P.R.A. §§ 241-241g et seq.</td>
<td></td>
</tr>
<tr>
<td>DNER</td>
<td>Conservation; Natural Patrimony Program 12 L.P.R.A. § 1225 et seq.</td>
<td></td>
</tr>
<tr>
<td>DNER</td>
<td>Conservation; Natural Resources; Declarations of Marine Reserves (and other protected areas) containing elkhorn and staghorn corals 12 L.P.R.A.; Subtitle 6A; Chapter 252; §§ 5011 et seq.</td>
<td></td>
</tr>
</tbody>
</table>

[73 FR 64276, Oct. 29, 2008]

### § 223.209 [Reserved]

### § 223.210 North American green sturgeon.

(a) **Prohibitions.** The prohibitions of section 9(a)(1)(A) through 9(a)(1)(G) of the ESA (16 U.S.C. 1538) relating to endangered species apply to the threatened Southern Distinct Population Segment (DPS) of North American green sturgeon listed in § 223.102(c)(1).

(b) **Exceptions.** Exceptions to the take prohibitions described in section 9(a)(1)(B) and (C) of the ESA (16 U.S.C. 1538(a)(1)(B) and (C)) applied in paragraph (a) of this section to the threatened Southern DPS listed in section 223.102(c) are described in the following paragraphs (b)(1) through (b)(3).

1. **Scientific Research and Monitoring Exceptions.** The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102(c)(1) do not apply to ongoing or future Federal, state, or private-sponsored scientific research or monitoring activities if:
(i) The scientific research or monitoring activity complies with required state reviews or permits;
(ii) The research or monitoring activity is directed at the Southern DPS and is not incidental to research or monitoring of another species;
(iii) Take of live mature adults in the lower Feather River from the confluence with the Sacramento River to the Oroville Dam (rkm 116), the lower Yuba River from the confluence with the Feather River to the Daguerre Dam (rkm 19), or Suisun, San Pablo, and San Francisco Bays or the Sacramento-San Joaquin Delta from the Golden Gate Bridge up into the Sacramento River to Keswick Dam (rkm 483) occurs from July 1 through March 1 so as to substantially increase the likelihood that uninterrupted upstream spawning migrations of adults will occur;
(iv) Take is non-lethal;
(v) Take involving the removal of any life stage of the Southern DPS from the wild does not exceed 60 minutes;
(vi) Take does not involve artificial spawning or enhancement activities;
(vii) A description of the study objectives and justification, a summary of the study design and methodology, estimates of the total non-lethal take of Southern DPS fish anticipated, estimates of incidental take of other ESA listed species anticipated and proof that those takes have been authorized by NMFS or the USFWS, identification of funding sources, and a point of contact is reported to the NMFS Southwest Regional Office in Long Beach at least 60 days prior to the start of the study, or by August 31, 2010 for ongoing studies;
(viii) Reports that include the total number of Southern DPS and any other ESA listed species taken, information that supports that take was non-lethal, and a summary of the project results is submitted to the NMFS Southwest Regional Office in Long Beach on a schedule to be determined by NMFS; and
(ix) Research or monitoring that involves action, permitting, or funding by a Federal agency still complies with the requirements of ESA section 7(a)(2) in order to ensure that the action will not jeopardize the continued existence of the threatened Southern DPS.

(2) Enforcement Exception. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in §223.102(c)(1) do not apply to any employee of NMFS, when the employee, acting in the course of his or her official duties, takes the Southern DPS listed in §223.102(c)(1) without a permit, if such action is necessary for purposes of enforcing the ESA or its implementing regulations.

(3) Emergency Fish Rescue and Salvage Exceptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in §223.102(c)(1) do not apply to emergency fish rescue and salvage activities that include aiding sick, injured, or stranded fish, disposing of dead fish, or salvaging dead fish for use in scientific studies, if:
(i) The activity complies with required state or other Federal reviews or permits;
(ii) The activity is conducted by an employee or designee of NMFS or the U.S. Fish and Wildlife Service (USFWS), any Federal land management agency, or California Department of Fish and Game, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, or Alaska Department of Fish and Game;
(iii) The activity benefits the Southern DPS; and
(iv) Those carrying out the activity submit a report to the NMFS Southwest Regional Office in Long Beach that includes, at a minimum, the number and status of fish handled, the location of rescue and/or salvage operations, and the potential causes(s) of the emergency situation within 10 days after conducting the emergency rescue.

(4) Habitat Restoration Exceptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in §223.102(c)(1) do not apply to habitat restoration activities including barrier removal or modification to restore water flows, riverine or estuarine bed restoration, natural bank stabilization, restoration of native vegetation, removal of non-native species, or removal of contaminated
§ 223.210

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sediments, that reestablish self-sustaining habitats for the Southern DPS, if:

(i) The activity complies with required state and Federal reviews and permits;

(ii) Those carrying out the activity submit a detailed description of the restoration activity to the NMFS Southwest Regional Office in Long Beach at least 60 days prior to the start of the restoration project, or, for ongoing studies, by August 31, 2010, which includes: the geographic area affected; when activities will occur; how they will be conducted; and the severity of direct, indirect, and cumulative impacts of activities on the Southern DPS; identification of funding sources; demonstration that all state and Federal regulatory requirements have been met; a description of methods used to ensure that the likelihood of survival or recovery of the listed species is not reduced; a plan for minimizing and mitigating any adverse impacts to Southern DPS spawning or rearing habitat; an estimate of the amount of incidental take of the listed species that may occur and a description of how that estimate was made; a plan for conducting restoration activities; and a point of contact;

(iii) Those carrying out the activity submit progress reports that include the total number of Southern DPS fish taken, information regarding whether the take was lethal or non-lethal, a summary of the status of the project, and any changes in the methods being used, to the NMFS Southwest Regional Office in Long Beach on a schedule to be determined by NMFS; and

(iv) An activity that involves action, permitting, or funding by a Federal agency complies with the requirements of ESA section 7(a)(2) in order to ensure that the action will not jeopardize the continued existence of the threatened Southern DPS.

(c) Exemptions via ESA 4(d) Program Approval. Exemptions from the take prohibitions described in section 9(a)(1)(B) and (C) of the ESA (16 U.S.C. 1539(a)(1)(B) and (C)) applied in paragraph (a) of this section to the threatened Southern DPS listed in § 223.102(c) are described in paragraphs (c)(1) through (c)(3) of this section.

1. Scientific Research and Monitoring Exemptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102(c)(1) do not apply to ongoing or future state-sponsored scientific research or monitoring activities that are part of a NMFS-approved, ESA-compliant state 4(d) research program conducted by, or in coordination with, state fishery management agencies (California Department of Fish and Game, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, Alaska Department of Fish and Game), or as part of a monitoring and research program overseen by, or coordinated by, one of these agencies. State 4(d) research programs must meet the following criteria:

(i) Descriptions of the ongoing and future 4(d) research or monitoring activity, as described in paragraph (c)(1)(i) of this section, must be received by the NMFS Southwest Regional Office in Long Beach during the mid-September through mid-October 2010 application period. This exception to the section 9 take prohibitions expires if the proposal is rejected as insufficient or is denied. If the state 4(d) research program package is received during the mid-September to mid-October application period, ongoing state-supported research activities may continue until NMFS issues a written decision of approval or denial. If approved, the state 4(d) program authorization will cover one calendar year and state-supported researchers would have to renew authorizations annually during subsequent application periods.

(ii) Descriptions of ongoing and future state-supported scientific research activities may continue until NMFS issues a written decision of approval or denial. If approved, the state 4(d) program authorization will cover one calendar year and state-supported researchers would have to renew authorizations annually during subsequent application periods.

(iii) NMFS will provide written approval of a state 4(d) research program.
(iv) The State agency will provide an annual report to NMFS that, at a minimum, summarizes the number of Southern DPS green sturgeon taken directly or incidentally, and summarizes the results of the project.

(2) Fisheries Exemptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in §223.102(c)(1) do not apply to fisheries activities that are conducted in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP). If NMFS finds that an FMEP meets the criteria listed below, a letter of concurrence which sets forth the terms of the FMEP’s implementation and the duties of the parties pursuant to the FMEP, will be issued to the applicant.

(i) An FMEP must prohibit retention of green sturgeon (i.e., zero bag limit); set maximum incidental take levels, include restrictions to minimize incidental take of the green sturgeon (e.g., temporal/spatial restrictions, size of fish, gear used); provide a biologically based rationale demonstrating that the incidental take management strategy will not significantly reduce the likelihood of survival or recovery of the Southern DPS; include effective monitoring and evaluation plans; provide for evaluating monitoring data and making revisions to the FMEP; provide for effective enforcement and education; provide a timeframe for FMEP implementation; and report the amount of incidental take and summarize the effectiveness of the FMEP to NMFS on a biannual basis.

(ii) The ESA section 9(a)(1)(B) and (a)(1)(C) take prohibitions will not apply to commercial and recreational fisheries activities until September 30, 2010 if a letter of intent to develop an FMEP that is protective of green sturgeon has been received by NMFS by July 2, 2010. The exemption will expire if the letter of intent is rejected without further review of a FMEP. If the letter of intent is received by August 31, 2010, a draft FMEP must be received by NMFS within 6 months from the date of receipt of the letter of intent. A final FMEP must be received by NMFS within 3 months from the date of receipt of NMFS’ comments on the draft FMEP. Ongoing commercial and recreational fisheries activities may continue until NMFS issues a letter of concurrence or denial for final FMEPs.

(iii) NMFS will provide a public comment period (≥30 days) before approval of new or amended FMEPs; provide a letter of concurrence for approved FMEPs that specifies the implementation and reporting requirements; evaluate FMEPs every 5 years and identify changes that would improve their effectiveness; and provide a public comment period (≥30 days) before withdrawing approval of an FMEP.

(3) Tribal Exemptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in §223.102(c)(1) do not apply to fishery harvest or other activities undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in Willapa Bay, WA, Grays Harbor, WA, Coos Bay, OR, Winchester Bay, OR, Humboldt Bay, CA, and any other area where tribal treaty fishing occurs, if those activities are compliant with a tribal resource management plan (Tribal Plan), provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the Southern DPS. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan’s impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary’s trust responsibilities to tribes.

(i) A Tribal Plan may include, but is not limited to, plans that address fishery harvest, artificial production, research, or water or land management, and may be developed by one tribe or jointly with other tribes. The Secretary will consult on a government-to-government basis with any tribe that so requests and will provide, to the maximum extent practicable, technical assistance in examining impacts on the Southern DPS as tribes develop Tribal Plans. A Tribal Plan must specify the procedures by which the tribe will enforce its provisions.
§ 223.211  Southern DPS of spotted seal.


[75 FR 65248, Oct. 22, 2010]

FIGURES 1–2 TO PART 223 [RESERVED]
FIGURE 3 TO PART 223—MATAGORDA TED

FIGURE 4 TO PART 223—GEORGIA TED
The side panels are composed from 4-inch stretched mesh polyethylene or polypropylene webbing with No. 48 twine size (3mm). The main panel is composed of 8-inch stretched mesh polyethylene or polypropylene webbing with No. 48 twine size (3mm).
FIGURE 6 TO PART 223—TED EXTENSION IN SUMMER FLounder TrawL

TED flap webbing no larger than 1-5/8 " stretched mesh.

TED extension webbing no larger than 3.5 " stretched mesh.

[64 FR 55864, Oct. 15, 1999]

FIGURES 7-9b TO PART 223 [RESERVED]
FIGURE 10 TO PART 223—FLOUNDER TED

FLOUNDER TED

[58 FR 54069, Oct. 20, 1993]
All pipe must be a minimum of 1.25” O.D.; horizontal flat bars shall be a minimum of 1.5” x 0.375”; vertical flat bars shall be a minimum of 1.25” x 0.375”.

A – Space between edge of round bar and the leading edge of the adjacent bar is 4.5”

B – Space between leading edge of one bar and the leading edge of the adjacent bar is 5.5”
FIGURE 12 TO PART 223—ESCAPE OPENING & COVER DIMENSIONS FOR 71-INCH TED

The exit hole cover is made by cutting a 133-inch (338-cm) by 52-inch (132-cm) piece of webbing no smaller than 1%4-inch (4-cm) stretched mesh and no larger than 1-5/8 inch (4.2-cm) stretched mesh.

The 133-inch (338-cm) edge of the cover is attached to the forward edge of the opening (71-inch (180-cm) edge). The cover should overlap the exit hole on each side by no more than 5-inches (13-cm).

The cover may extend no more than 24-inches (61-cm) behind the posterior edge of the TED frame.

Attach the side of the exit hole cover, maintaining the 5-inch (13-cm) overlap, to the side of the escape opening by sewing 28-inches (71-cm) of the cover to 24-inches (66-cm) of the opening forward of the TED frame. Behind the TED frame, sew an additional 15-inches (38-cm) of the cover to 15-inches (38-cm) of the extension.
FIGURE 13 TO PART 223—SINGLE GRID HARD TED ESCAPE OPENING

Max. Escape Opening Width = Max. Frame Width Minus 8"

Min. Escape Opening Width = Max. Frame Width Minus 8"

Extension Webbing

Max. Width

Outer TED Frame

Escape Opening

(60 FR 15520, Mar. 24, 1995)
FIGURES 14a AND 14b TO PART 223—MAXIMUM ANGLE OF DEFLECTOR BARS WITH STRAIGHT BARS ATTACHED TO THE BOTTOM OF THE FRAME AND MAXIMUM ANGLE OF DEFLECTOR BARS WITH BENT BARS ATTACHED TO THE BOTTOM OF THE FRAME

[61 FR 66946, Dec. 19, 1996]
Figure 15 to Part 223—Weedless TED Brace Bar Description

The horizontal brace bar must be attached to each deflector bar within an area defined by the mid point of the outer frame and the unattached ends of the deflector bars.

Mid point of outer frame

Area of brace bar installation

The horizontal brace bar may be offset from the deflector bars using spacers. Spacers may not exceed 5-inches in length. Brace bar must be installed on the back side of TED frame, (trailing edge).

Spacer

Figure 15 to Part 223
(68 FR 8469, Feb. 21, 2003)
FIGURE 16 TO PART 223—ESCAPE OPENING AND FLAP DIMENSIONS FOR THE DOUBLE COVER FLAP TED

Flaps may be attached on the sides along entire length

Greater than or equal to 58-inches

No greater than 15-inch overlap

No more than 24-inches

Flap Sections

Greater than or equal to 58-inches

Greater than or equal to 58-inches

[69 FR 31037, June 2, 2004]
FIGURE 17 TO PART 223—BOONE WEDGE CUT ESCAPE OPENING

**Escape Opening Cut Dimensions**

- Cut slit in extension (Wedge Added Here)
- Horizontal cut shall not be narrower than the outside width of grid minus 8 inches
- 49.5 in (125.7 cm)

**Webbing Wedge Dimensions**

- Webbing wedge sewn into slit in extension webbing
- 48.5 in (123 cm) stretched mesh length
- 72 in (182.9 cm) stretched mesh length

**Escape Opening Flap Dimensions**

- Leading Edge Width - 164.5 inches (417.8 cm) stretched (94 meshes of 1-7/8 in. (48 mm) webbing)
- Depth - 15 inches (38 cm) stretched (8 meshes of 1-7/8 in. (48 mm) webbing)
- Width Trailing Edge - 152 inches stretched (87m of 1-7/8")

**Escape Opening Flap Attachment**

- Wedge
- Escape opening flap

*Note: Flap is attached along leading edge only, not attached along sides*
FIGURES 18A, 18B AND 18C TO PART 223—
LARGE FRAME TED ESCAPE OPENING; MINIMUM DIMENSIONS USING ALL-BAR CUTS (TRIANGULAR CUT); LARGE FRAME TED ESCAPE OPENING; MINIMUM DIMENSIONS USING ALL-BAR CUTS AND LEADING EDGE CUT; LARGE FRAME TED ESCAPE OPENING; MINIMUM DIMENSIONS USING ALL-POINTS SIDE CUTS (RECTANGULAR CUT)

FIGURES 19A AND 19B TO PART 223—
CHAUVIN SHRIMP DEFLECTOR INSTALLATION DETAILS
FIGURES 19a AND 19b TO PART 223. CHAUVIN SHRIMP DEFLECTOR INSTALLATION DETAILS
## PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

### Sec. 224.101 Enumeration of endangered marine and anadromous species.

The marine and anadromous species determined by the Secretary of Commerce to be endangered pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are the following:

- **Marine and anadromous fish.**

<table>
<thead>
<tr>
<th>Species</th>
<th>Common name</th>
<th>Scientific name</th>
<th>Where listed</th>
<th>Citation(s) for listing determination(s)</th>
<th>Citation for critical habitat designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shortnose sturgeon</td>
<td>Acipenser brevirostrum</td>
<td></td>
<td>Everywhere</td>
<td>32 FR 4001, Mar. 11, 1967</td>
<td>NA</td>
</tr>
<tr>
<td>Smalltooth sawfish</td>
<td>Pristis pectinata</td>
<td>U.S.A.</td>
<td></td>
<td>68 FR 15674, Apr. 1, 2003</td>
<td>NA</td>
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<tr>
<td>Totoaba</td>
<td>Cynoscion macdonaldi</td>
<td>Everywhere</td>
<td></td>
<td>74 FR 29344, June 19, 2009</td>
<td>NA</td>
</tr>
</tbody>
</table>

### § 224.102 Permits for endangered marine and anadromous species.

Permits for the taking, possessing, selling, or otherwise disposing of an endangered marine or anadromous species pursuant to section 10(a) of the Act may only be issued for the purpose of scientific research or for purposes of genetic resource recovery as provided for in section 10(c) of the Act. Such permits may only be issued if the applicant can demonstrate to the satisfaction of the Secretary that: (a) He or she is qualified to conduct the proposed activity; (b) the activity will not result in unnecessary destruction of the species; and (c) the activity has been determined to be of national importance.

### § 224.103 Special prohibitions for endangered marine mammals.

### § 224.104 Special requirements for fishing activities to protect endangered sea turtles.

### § 224.105 Speed restrictions to protect North Atlantic Right Whales.


**SOURCE:** 64 FR 14066, Mar. 23, 1999, unless otherwise noted.

**§ 224.101** Enumeration of endangered marine and anadromous species.

The marine and anadromous species determined by the Secretary of Commerce to be endangered pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are the following:

- **Marine and anadromous fish.** The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.
<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
<th>Where listed</th>
<th>Citation(s) for listing determination(s)</th>
<th>Citation for critical habitat designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upper Columbia spring-run Chinook.</td>
<td>Oncorhynchus tshawytscha.</td>
<td>U.S.A., WA, including all naturally spawned populations of Chinook salmon in all river reaches accessible to Chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Cettopi jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, as well as six artificial propagation programs: the Twisp River, Chewuch River, Methow Composite, Winthrop NFH, Chiwawa River, and White River spring-run Chinook hatchery programs.</td>
<td>64 FR 14308, June 28, 2005.</td>
<td>NA. (vacated 9/28/03; 68 FR 55900).</td>
</tr>
<tr>
<td>Central California Coast coho.</td>
<td>Oncorhynchus kisutch.</td>
<td>U.S.A., including all naturally spawning populations of coho salmon from Punta Gorda in northern California south to and including Aptos Creek in central California, as well as populations in tributaries to San Francisco Bay, excluding the Sacramento-San Joaquin River system, as well as three artificial propagation programs: the Don Clausen Fish Hatchery Captive Broodstock Program, Scott Creek/King Fisher Plats Conservation Program, and the Scott Creek Captive Broodstock Program.</td>
<td>77 FR 19562, April 2, 2012.</td>
<td>64 FR 24049; May 5, 1999.</td>
</tr>
<tr>
<td>Largetooth Sawfish.</td>
<td>Pristis perrottetii</td>
<td>Everywhere ........................................................................................................................................................................................................................................</td>
<td>76 FR 40835, July 12, 2011.</td>
<td>NA.</td>
</tr>
<tr>
<td>Species ¹</td>
<td>Where listed</td>
<td>Citation(s) for listing determination(s)</td>
<td>Citation for critical habitat designation</td>
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</tr>
<tr>
<td>-----------</td>
<td>------------------------------------------------------------------------------</td>
<td>------------------------------------------</td>
<td>--------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Atlantic Sturgeon—New York Bight DPS.</td>
<td>Acipenser oxyrinchus oxyrinchus. New York Bight Distinct Population Segment. The NYB DPS includes the following: all anadromous Atlantic sturgeon that are spawned in the watersheds that drain into coastal waters, including Long Island Sound, the New York Bight, and Delaware Bay, from Chatham, MA to the Delaware-Maryland border on Fenwick Island. Within this range, Atlantic sturgeon have been documented from the Hudson and Delaware rivers as well as at the mouth of the Connecticut and Taunton rivers, and throughout Long Island Sound. The marine range of Atlantic sturgeon from the NYB DPS extends from Labrador Inlet, Labrador, Canada to Cape Canaveral, FL. The NYB DPS also includes Atlantic sturgeon held in captivity (e.g., hatcheries, scientific institutions) and which are identified as fish belonging to the NYB DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the NYB DPS, or is the progeny of any fish that originated from a river within the range of the NYB DPS.</td>
<td>77 FR 5880; 2/6/12.</td>
<td>NA.</td>
<td></td>
</tr>
<tr>
<td>Atlantic Sturgeon—Chesapeake Bay DPS.</td>
<td>Acipenser oxyrinchus oxyrinchus. Chesapeake Bay Distinct Population Segment. The CB DPS includes the following: all anadromous Atlantic sturgeon that are spawned in the watersheds that drain into the Chesapeake Bay and into coastal waters from the Delaware-Maryland border on Fenwick Island to Cape Henry, VA, as well as wherever these fish occur in coastal bays and estuaries and the marine environment. Within this range, Atlantic sturgeon have been documented from the James, York, Potomac, Rappahannock, Pocomoke, Choptank, Little Choptank, Patapsco, Nanticoke, Honga, and South rivers as well as the Susquehanna Flats. The marine range of Atlantic sturgeon from the CB DPS extends from Labrador Inlet, Labrador, Canada to Cape Canaveral, FL. The CB DPS also includes Atlantic sturgeon held in captivity (e.g., hatcheries, scientific institutions) and which are identified as fish belonging to the CB DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the CB DPS, or is the progeny of any fish that originated from a river within the range of the CB DPS.</td>
<td>77 FR 5880; 2/6/12.</td>
<td>NA.</td>
<td></td>
</tr>
</tbody>
</table>
Atlantic Sturgeon—Carolina DPS.
Acipenser oxyrinchus oxyrinchus.
The Carolina DPS includes all Atlantic sturgeon that spawn or are spawned in the watersheds (including all rivers and tributaries) from Albemarle Sound southward along the southern Virginia, North Carolina, and South Carolina coastal areas to Charleston Harbor. The marine range of Atlantic sturgeon from the Carolina DPS extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. The Carolina DPS also includes Atlantic sturgeon held in captivity (e.g., aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the Carolina DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the Carolina DPS, or is the progeny of any fish that originated from a river within the range of the Carolina DPS.

Atlantic Sturgeon—South Atlantic DPS.
Acipenser oxyrinchus oxyrinchus.
The South Atlantic DPS includes all Atlantic sturgeon that spawn or are spawned in the watersheds (including all rivers and tributaries) of the ACE (Ashepoo, Combahee, and Edisto) Basin southward along the South Carolina, Georgia, and Florida coastal areas to the St. Johns River, Florida. The marine range of Atlantic sturgeon from the South Atlantic DPS extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. The South Atlantic DPS also includes Atlantic sturgeon held in captivity (e.g., aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the South Atlantic DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the South Atlantic DPS, or is the progeny of any fish that originated from a river within the range of the South Atlantic DPS.

(b) Marine mammals. Beluga whale (Delphinapterus leucas), Cook Inlet distinct population segment; Blue whale (Balaenoptera musculus); Bowhead whale (Balaena mysticetus); Chinese river dolphin (Lipotes vexillifer); Cochito (Phocoena sinus); Fin or finback whale (Balaenoptera physalus); Hawaiian monk seal (Monachus schauinslandi); Humpback whale (Megaptera novaeangliae); Indus River dolphin (Platanista minor); Killer whale (Orcinus orca), Southern Resident distinct population segment, which consists of whales from J, K and L pods, wherever they are found in the wild, and not including Southern Resident killer whales placed in captivity prior to listing or their captive born progeny; Mediterranean monk seal (Monachus monachus); North Atlantic right whale (Eubalaena glacialis); North Pacific right whale (Eubalaena japonica); Southern right whale (Eubalaena australis); Saimaa seal (Phoca hispida saimensis); Sei whale (Balaenoptera borealis); Sperm whale (Physeter catodon); Western North Pacific (Korean) gray whale (Eschrichtius robustus); Steller sea lion, western population, (Eumetopias jubatus), which consists of Steller sea lions from breeding colonies located west of 144° W. longitude.

(c) Sea turtles. The following table lists the common and scientific names of endangered sea turtles, the locations where they are listed, and the citations

<table>
<thead>
<tr>
<th>Species ¹</th>
<th>Common name</th>
<th>Scientific name</th>
<th>Where listed</th>
<th>Citation(s) for listing determination(s)</th>
<th>Citation for critical habitat designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlantic Sturgeon—Carolina DPS.</td>
<td>Acipenser oxyrinchus oxyrinchus</td>
<td>The Carolina DPS includes all Atlantic sturgeon that spawn or are spawned in the watersheds (including all rivers and tributaries) from Albemarle Sound southward along the southern Virginia, North Carolina, and South Carolina coastal areas to Charleston Harbor. The marine range of Atlantic sturgeon from the Carolina DPS extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. The Carolina DPS also includes Atlantic sturgeon held in captivity (e.g., aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the Carolina DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the Carolina DPS, or is the progeny of any fish that originated from a river within the range of the Carolina DPS.</td>
<td>77 FR 5914; 2/6/12.</td>
<td>NA.</td>
<td></td>
</tr>
<tr>
<td>Atlantic Sturgeon—South Atlantic DPS.</td>
<td>Acipenser oxyrinchus oxyrinchus</td>
<td>The South Atlantic DPS includes all Atlantic sturgeon that spawn or are spawned in the watersheds (including all rivers and tributaries) of the ACE (Ashepoo, Combahee, and Edisto) Basin southward along the South Carolina, Georgia, and Florida coastal areas to the St. Johns River, Florida. The marine range of Atlantic sturgeon from the South Atlantic DPS extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. The South Atlantic DPS also includes Atlantic sturgeon held in captivity (e.g., aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the South Atlantic DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the South Atlantic DPS, or is the progeny of any fish that originated from a river within the range of the South Atlantic DPS.</td>
<td>77 FR 5914; 2/6/12.</td>
<td>NA.</td>
<td></td>
</tr>
</tbody>
</table>

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).
for the listings and critical habitat designations. Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

<table>
<thead>
<tr>
<th>Species</th>
<th>Where listed</th>
<th>Citation(s) for listing determination(s)</th>
<th>Citation(s) for critical habitat designation(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green sea turtle</td>
<td>Breeding colony populations in Florida and on the Pacific coast of Mexico</td>
<td>43 FR 32800; Jul 28, 1978</td>
<td>NA.</td>
</tr>
<tr>
<td>Leatherback sea turtle</td>
<td>Wherewith found; tropical, temperate, and subpolar seas</td>
<td>35 FR 8491; Jun 2, 1970</td>
<td>43 FR 32800; Jul 28, 1978</td>
</tr>
<tr>
<td>Loggerhead sea turtle—Mediterranean Sea DPS.</td>
<td>Mediterranean Sea east of 5°36’ W Long</td>
<td>76 FR 58951, Sept. 22, 2011</td>
<td>NA.</td>
</tr>
<tr>
<td>Loggerhead sea turtle—North Indian Ocean DPS.</td>
<td>North Indian Ocean north of the equator and south of 30° N Lat.</td>
<td>76 FR 58951, Sept. 22, 2011</td>
<td>NA.</td>
</tr>
<tr>
<td>Loggerhead sea turtle—North Pacific Ocean DPS.</td>
<td>North Pacific north of the equator and south of 60° N Lat.</td>
<td>76 FR 58951, Sept. 22, 2011</td>
<td>NA.</td>
</tr>
<tr>
<td>Loggerhead sea turtle—Northeast Atlantic Ocean DPS.</td>
<td>Northeast Atlantic Ocean north of the equator, south of 60° N Lat., and east of 40° W Long., except in the vicinity of the Strait of Gibraltar where the eastern boundary is 5°36’ W Long</td>
<td>76 FR 58951, Sept. 22, 2011</td>
<td>NA.</td>
</tr>
<tr>
<td>Loggerhead sea turtle—South Pacific Ocean DPS.</td>
<td>South Pacific south of the equator, north of 60° S Lat., west of 67° W Long., and east of 141° E Long</td>
<td>76 FR 58951, Sept. 22, 2011</td>
<td>NA.</td>
</tr>
<tr>
<td>Sea turtle, olive ridley.</td>
<td>Breeding colony populations on the Pacific coast of Mexico</td>
<td>43 FR 32800; Jul 28, 1978</td>
<td>NA.</td>
</tr>
</tbody>
</table>

1 Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

(d) Marine invertebrates. The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.

<table>
<thead>
<tr>
<th>Species</th>
<th>Where Listed</th>
<th>Citation(s) for Listing Determinations</th>
<th>Citations(s) for Critical Habitat Designations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black abalone</td>
<td>USA, CA. From Crescent City, California, USA to Cape San Lucas, Baja California, Mexico, including all offshore islands.</td>
<td>74 FR 1937; January 14, 2009</td>
<td>N/A</td>
</tr>
</tbody>
</table>
§ 224.102 Permits for endangered marine and anadromous species.

No person shall take, import, export, or engage in any activity prohibited by section 9 of the Act involving any marine species that has been determined to be endangered under the Endangered Species Conservation Act of 1969 or the Act, and that is under the jurisdiction of the Secretary, without a valid permit issued pursuant to part 222, subpart C of this chapter.

§ 224.103 Special prohibitions for endangered marine mammals.

(a) Approaching humpback whales in Hawaii. Except as provided in part 222, subpart C, of this chapter (General Permit Procedures), it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of the Islands of Hawaii, any of the following acts with respect to humpback whales (Megaptera novaeangliae):

1. Operate any aircraft within 1,000 feet (300 m) of any humpback whale;
2. Approach, by any means, within 100 yard (90 m) of any humpback whale;
3. Cause a vessel or other object to approach within 100 yard (90 m) of a humpback whale; or
4. Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of breeding, nursing, or resting activities; attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movement; or the abandonment of a previously frequented area.

(b) Approaching humpback whales in Alaska—(1) Prohibitions. Except as provided under paragraph (b)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of Alaska, or within inland waters of the state, any of the acts in paragraphs (b)(1)(i) through (b)(1)(iii) of this section with respect to humpback whales (Megaptera novaeangliae):

(i) Approach, by any means, including by interception (i.e., placing a vessel in the path of an oncoming humpback whale so that the whale surfaces within 100 yards (91.4 m) of the vessel), within 100 yards (91.4 m) of any humpback whale;
(ii) Cause a vessel or other object to approach within 100 yards (91.4 m) of a humpback whale; or
(iii) Disrupt the normal behavior or prior activity of a whale by any other act or omission, as described in paragraph (a)(4) of this section.

(2) Exceptions. The following exceptions apply to this paragraph (b), but any person who claims the applicability of an exception has the burden of proving that the exception applies:

(i) Paragraph (b)(1)(i) of this section does not apply if an approach is authorized by the National Marine Fisheries Service through a permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.
(ii) Paragraph (b)(2)(i) of this section does not apply to the extent that a vessel is restricted in her ability to maneuver and, because of the restriction, cannot comply with paragraph (b)(1)(i) of this section.
(iii) Paragraph (b)(1)(ii) of this section does not apply to commercial fishing vessels lawfully engaged in actively setting, retrieving or closely tending commercial fishing gear. For purposes of this paragraph (b), commercial fishing means taking or harvesting fish or fishery resources to sell, barter, or
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trade. Commercial fishing does not include commercial passenger fishing operations (i.e. charter operations or sport fishing activities).

(iv) Paragraph (b)(1) of this section does not apply to state, local, or Federal government vessels operating in the course of official duty.

(v) Paragraph (b)(1) of this section does not affect the rights of Alaska Natives under 16 U.S.C. 1539(e).

(vi) These regulations shall not take precedence over any more restrictive conflicting Federal regulation pertaining to humpback whales, including the regulations at 36 CFR 13.65 that pertain specifically to the waters of Glacier Bay National Park and Preserve.

3. General measures. Notwithstanding the prohibitions and exceptions in paragraphs (b)(1) and (2) of this section, to avoid collisions with humpback whales, vessels must operate at a slow, safe speed when near a humpback whale. “Safe speed” has the same meaning as the term is defined in 33 U.S.C. 2006 and the International Regulations for Preventing Collisions at Sea 1972 (see 33 U.S.C. 1602), with respect to avoiding collisions with humpback whales.

(c) Approaching right whales—(1) Prohibitions. Except as provided under paragraph (c)(3) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, to solicit another to commit, or cause to be committed any of the following acts:

(i) Approach (including by interception) within 500 yards (460 m) of a right whale by vessel, aircraft, or any other means;

(ii) Fail to undertake required right whale avoidance measures specified under paragraph (c)(2) of this section.

(2) Right whale avoidance measures. Except as provided under paragraph (c)(3) of this section, the following avoidance measures must be taken if within 500 yards (460 m) of a right whale:

(i) If underway, a vessel must steer a course away from the right whale and immediately leave the area at a slow safe speed.

(ii) An aircraft must take a course away from the right whale and immediately leave the area at a constant airspeed.

(3) Exceptions. The following exceptions apply to this section, but any person who claims the applicability of an exception has the burden of proving that the exception applies:

(i) Paragraphs (c)(1) and (c)(2) of this section do not apply if a right whale approach is authorized by the National Marine Fisheries Service through a permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.

(ii) Paragraphs (c)(1) and (c)(2) of this section do not apply where compliance would create an imminent and serious threat to a person, vessel, or aircraft.

(iii) Paragraphs (c)(1) and (c)(2) of this section do not apply when approaching to investigate a right whale entanglement or injury, or to assist in the disentanglement or rescue of a right whale, provided that permission is received from the National Marine Fisheries Service or designee prior to the approach.

(iv) Paragraphs (c)(1) and (c)(2) of this section do not apply to an aircraft unless the aircraft is conducting whale watch activities.

(v) Paragraph (c)(2) of this section does not apply to the extent that a vessel is restricted in her ability to maneuver and, because of the restriction, cannot comply with paragraph (c)(2) of this section.

(d) Special prohibitions relating to endangered Steller sea lion protection. The regulatory provisions set forth in part 223 of this chapter, which govern threatened Steller sea lions, which consists of all Steller sea lions from breeding colonies located west of 144° W. long.

(e) Protective regulations for killer whales in Washington—(1) Applicability. The following restrictions apply to all motorized and non-motorized vessels in inland waters of the United States east of a line connecting Cape Flattery, Washington (48°23′10″ N./124°43′32″ W.), Tatoosh Island, Washington (48°23′30″ N./124°44′12″ W.), and Bonilla Point, British Columbia (48°35′30″ N./124°43′00″ W.) and south of the U.S./Canada international boundary. The shoreline
boundary is the charted mean high water line cutting across the mouths of all rivers and streams.

(2) **Prohibitions.** Except as provided in paragraph (e)(3) of this section, it is unlawful for any person subject to the jurisdiction of the United States to:

(i) Cause a vessel to approach, in any manner, within 200 yards (182.9 m) of any killer whale.

(ii) Position a vessel to be in the path of any killer whale at any point located within 400 yards (365.8 m) of the whale. This includes intercepting a killer whale by positioning a vessel so that the prevailing wind or water current carries the vessel into the path of the whale.

(3) **Exceptions.** The following exceptions apply to this section:

(i) The prohibitions of paragraph (e)(2) of this section do not apply to:

(A) Federal Government vessels operating in the course of their official duty or state and local government vessels when engaged in official duties involving law enforcement, search and rescue, or public safety.

(B) Vessels participating with a Vessel Traffic Service (VTS) and following a Traffic Separation Scheme or complying with a VTS Measure of Direction. This also includes support vessels escorting ships in the traffic lanes, such as tug boats.

(C) Vessels engaged in an activity, such as scientific research, authorized through a permit issued by the National Marine Fisheries Service under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar National Marine Fisheries Service authorization.

(D) Vessels lawfully engaged in commercial or treaty Indian fishing that are actively setting, retrieving, or closely tending fishing gear.

(E) Vessel operations necessary to avoid an imminent and serious threat to a person, vessel or the environment, including when necessary for overall safety of navigation and to comply with the Navigation Rules.

(ii) [Reserved]

(4) **Affirmative defense.** In connection with any action alleging a violation of the prohibitions of paragraph (e)(2) of this section, any person claiming the benefit of any exception listed in paragraph (e)(3) of this section has the burden of raising, pleading, and proving such affirmative defense.

(b) [Reserved]


§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.

(a) Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with rules for threatened sea turtles specified in §223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by shrimp trawl gear.

(b) Summer flounder fishermen in the Summer flounder fishery-sea turtle protection area who comply with rules for threatened sea turtles specified in §223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by summer flounder gear.

(c) Special prohibitions relating to sea turtles are provided at §223.206(d).


§ 224.105 Speed restrictions to protect North Atlantic Right Whales.

(a) The following restrictions apply to:

1. All vessels greater than or equal to 65 ft (19.8 m) in overall length and subject to the jurisdiction of the United States, and all other vessels greater than or equal to 65 ft (19.8 m) in overall length entering or departing a port or place subject to the jurisdiction of the United States. These restrictions shall not apply to U.S. vessels owned or operated by, or under contract to, the Federal Government. This exemption extends to foreign sovereign vessels when they are engaging in joint exercises with the U.S. Department of the Navy. In addition, these restrictions do not apply to law enforcement vessels of a State, or political subdivision thereof, when engaged in law enforcement or search and rescue duties.

2. Southeast U.S. (south of St. Augustine, FL to north of Brunswick, GA):
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Vessels shall travel at a speed of 10 knots or less over ground during the period of November 15 to April 15 each year in the area bounded by the following: Beginning at 31°27'00.0" N–080°51'36.0" W; thence west to charted mean high water line then south along charted mean high water line and inshore limits of COLREGS limit to a latitude of 29°45'00.0" N; thence east to 29°45'00.0" N–080°51'36.0" W; thence back to starting point. (Fig. 1).

(2) Mid-Atlantic U.S. (from north of Brunswick, Georgia to Rhode Island): Vessels shall travel 10 knots or less over ground in the period of November 15 to April 15 each year in waters bounded by straight lines connecting the following points in the order stated (Fig. 2):

(i) In the area bounded by the following: 33°56'42.0" N–077°31'30.0" W; thence along a NW bearing of 313.26° to a latitude of 31°09'53.6" W; thence east to 31°09'53.6" N–077°31'30.0" W; thence to 32°59'06.0" N–078°50'18.0" W; thence to 33°28'24.0" N–078°32'30.0" W; thence to 33°36'30.0" N–077°47'06.0" W; thence back to starting point.

(ii) Within a 20-nm (37 km) radius (as measured seaward from COLREGS delineated coast lines and the center point of the port entrance) (Fig. 2) at the

(A) Ports of New York/New Jersey: 40°29'42.2" N–073°55'57.6" W;

(B) Delaware Bay (Ports of Philadelphia and Wilmington): 38°52'27.4" N–075°01'32.1" W;

(C) Entrance to the Chesapeake Bay (Ports of Hampton Roads and Baltimore): 37°00'36.9" N–075°57'50.5" W; and

(D) Ports of Morehead City and Beaufort, NC: 34°41'32.6" N–076°40'08.3" W; and

(iii) In Block Island Sound, in the area bounded by the following coordinates: Beginning at 40°51'53.7" N–70°36'44.9" W; thence to 41°20'14.1" N–70°49'41.1" W; thence to 41°04'16.7" N–71°51'21.0" W; thence to 40°35'56.5" N–71°38'25.1" W; thence back to starting point. (Fig. 2).

(3) Northeast U.S. (north of Rhode Island):

(i) In Cape Cod Bay, MA: Vessels shall travel at a speed of 10 knots or less over ground during the period of January 1 to May 15 in Cape Cod Bay, in an area beginning at 42°04'56.5" N–070°12'00.0" W; thence north to 42°12'00.0" N–070°12'00.0" W; thence due west to charted mean high water line; thence along charted mean high water within Cape Cod Bay back to beginning point. (Fig. 3).

(ii) Off Race Point: Vessels shall travel at a speed of 10 knots or less over ground during the period of March 1 to April 30 each year in waters bounded by straight lines connecting the following points in the order stated (Fig. 3):

(A) Ports of New York/New Jersey: 40°29'42.2" N–073°55'57.6" W;

(B) Delaware Bay (Ports of Philadelphia and Wilmington): 38°52'27.4" N–075°01'32.1" W;

(C) Entrance to the Chesapeake Bay (Ports of Hampton Roads and Baltimore): 37°00'36.9" N–075°57'50.5" W; and

(D) Ports of Morehead City and Beaufort, NC: 34°41'32.6" N–076°40'08.3" W; and

(iii) Great South Channel: Vessels shall travel at a speed of 10 knots or less over ground during the period of April 1 to July 31 each year in all waters bounded by straight lines connecting the following points in the order stated (Fig. 3):

42°30'00.0" N–069°45'00.0" W
41°40'00.0" N–069°45'00.0" W
41°00'00.0" N–069°45'00.0" W
42°09'00.0" N–067°08'24.0" W
42°30'00.0" N–067°27'00.0" W
42°30'00.0" N–069°45'00.0" W

(b) Except as noted in paragraph (c) of this section, it is unlawful under this section:

(1) For any vessel subject to the jurisdiction of the United States to violate any speed restriction established in paragraph (a) of this section; or

(2) For any vessel entering or departing a port or place under the jurisdiction of the United States to violate any speed restriction established in paragraph (a) of this section.

(c) A vessel may operate at a speed necessary to maintain safe maneuvering speed instead of the required ten knots only if justified because the vessel is in an area where oceanographic, hydrographic and/or meteorological conditions severely restrict the maneuverability of the vessel and the need to operate at such speed is confirmed by the pilot on board or, when a vessel is not carrying a pilot, the master of the
vessel. If a deviation from the ten-knot speed limit is necessary, the reasons for the deviation, the speed at which the vessel is operated, the latitude and longitude of the area, and the time and duration of such deviation shall be entered into the logbook of the vessel. The master of the vessel shall attest to the accuracy of the logbook entry by signing and dating it.

(d) This final rule expires on December 9, 2013.

Figure 1. Southeast United States.
Figure 2. Mid-Atlantic United States.
PART 225 [RESERVED]

PART 226—DESIGNATED CRITICAL HABITAT

Sec. 226.101 Purpose and scope.
226.201 Critical habitat for Hawaiian monk seals.
226.203 Critical habitat for northern right whales.
226.204 Critical habitat for Sacramento winter-run chinook salmon.
226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon, and Snake River spring/summer chinook salmon.
226.206 Critical habitat for the Southern Resident killer whale (Orcinus orca).
226.207 Critical habitat for leatherback turtles (Dermochelys coriacea).
226.208 Critical habitat for green turtle.
226.209 Critical habitat for hawksbill turtle.
226.210 Critical habitat for Seven Evolutionarily Significant Units (ESUs) of Salmon (Oncorhynchus spp.) in California.
226.211 Critical habitat for 12 Evolutionarily Significant Units (ESUs) of salmon and steelhead (Oncorhynchus spp.) in Washington, Oregon and Idaho.
226.212 Critical habitat for Johnson's seagrass.
226.213 Critical habitat for Gulf sturgeon.
226.214 Critical habitat for the North Pacific Right Whale (Eubalaena japonica).
§ 226.216 Critical habitat for elkhorn (Acropora palmata) and staghorn (A. cervicornis) corals.


§ 226.218 Critical habitat for the U.S. DPS of smalltooth sawfish (Pristis pectinata).


§ 226.220 Critical habitat for the Cook Inlet beluga whale (Delphinapterus leucas).

§ 226.221 Critical habitat for black abalone (Haliotis cracherodii).

§ 226.222 Critical habitat for the southern Distinct Population Segment of eulachon (Thaleichthys pacificus).

§ 226.223 Critical habitat for Hawaiian monk seals.

HAWAIIAN MONK SEAL

(Monachus schauinslandi)

All beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms around the following:

Kure Atoll (28°24' N, 178°20' W)
Midway Islands, except Sand Island and its harbor (28°14' N, 177°22' W)
Pearl and Hermes Reef (27°55' N, 175° W)
Lisianski Island (26°46' N, 173°58' W)
Laysan Island (25°46' N, 171°44' W)
Maro Reef (25°25' N, 170°35' W)
Gardner Pinnacles (25°00' N, 168°00' W)
French Frigate Shoals (23°45' N, 166°00' W)
Necker Island (23°34' N, 164°42' W)
Nihoa Island (23°03.5' N, 161°55.5' W).
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LAYSAN ISLAND

(L from NOS chart 19022)

LISIANSKI ISLAND

(from NOS chart 19022)

**STELLER SEA LION (Eumetopias jubatus)**

(a) Alaska rookeries, haulouts, and associated areas. In Alaska, all major Stellar sea lion rookeries identified in Table 1 and major haulouts identified in Table 2 and associated terrestrial, air, and aquatic zones. Critical habitat includes a terrestrial zone that extends 3,000 feet (0.9 km) landward from the baseline or basepoint of each major rookery and major haulout in Alaska. Critical habitat includes an air zone that extends 3,000 feet (0.9 km) above the terrestrial zone of each major rookery and major haulout in Alaska, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 20 nm (37 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery and major haulout in Alaska, that is east of 144° W. longitude. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery and major haulout in Alaska that is west of 144° W. longitude.

(b) California and Oregon rookeries and associated areas. In California and Oregon, all major Stellar sea lion rookeries identified in Table 1 and associated air and aquatic zones. Critical habitat includes an air zone that extends 3,000 feet (0.9 km) above areas historically occupied by sea lions at each major rookery in California and Oregon, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery in California and Oregon.

(c) **Three special aquatic foraging areas in Alaska.** Three special aquatic foraging areas in Alaska, including the Shelikof Strait area, the Bogoslof area, and the Seguam Pass area.

(1) Critical habitat includes the Shelikof Strait area in the Gulf of Alaska and consists of the area between the Alaska Peninsula and Tugidak, Sitkinak, Atka, Kodak, Raspberry, Afognak and Shuyak Islands (connected by the shortest lines); bounded on the west by a line connecting Cape Kumlik (56°38’157°27’W) and the southwestern tip of Tugidak Island (56°24’154°41’W) and bounded in the east by a line connecting Cape Douglas (38°51’153°15’W) and the northernmost tip of Shuyak Island (58°37’152°22’W).

(2) Critical habitat includes the Bogoslof area in the Bering Sea shelf and consists of the area between 170°00’W and 164°00’W, south of straight lines connecting 55°00’N/170°00’W and 55°00’N/168°00’W; 55°30’N/168°00’W and 55°30’N/166°00’W; 56°00’N/166°00’W and 56°00’N/164°00’W and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed:

<table>
<thead>
<tr>
<th>Coordinates</th>
<th>Degrees</th>
<th>Minutes</th>
<th>Seconds</th>
</tr>
</thead>
<tbody>
<tr>
<td>52°49.2’N/169°40.4’W</td>
<td>52°49.8’N/169°06.3’W</td>
<td>53°23.8’N/167°59.1’W</td>
<td>53°18.7’N/167°51.4’W</td>
</tr>
</tbody>
</table>

(3) Critical habitat includes the Seguam Pass area and consists of the area between 52°00’N and 53°00’N and between 173°30’W and 172°30’W.

§ 226.203 Critical habitat for northern right whales.

(a) **Great South Channel.** The area bounded by 41°40’ N/69°35’ W; 41°00’ N/69°05’ W; 41°38’ N/68°13’ W; and 42°10’ N/68°31’ W.

(b) **Cape Cod Bay, Massachusetts.** The area bounded by 42°04.8’ N/70°10’ W; 42°12’ N/70°15’ W; 42°12’ N/70°30’ W; 41°46.8’ N/70°30’ W and on the south and east by the interior shore line of Cape Cod, Massachusetts.

(c) **Southeastern United States.** The coastal waters between 31°15’ N and 30°15’ N from the coast out 15 nautical miles; and the coastal waters between 30°15’ N and 28°00’ N from the coast out 5 nautical miles (Figure 8 to part 226).

[58 FR 45278, Aug. 27, 1993. Redesignated and amended at 64 FR 14067, Mar. 23, 1999]

§ 226.204 Critical habitat for Sacramento winter-run chinook salmon.

The following waterways, bottom and water of the waterways and adjacent riparian zones: The Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chippis Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta, all waters from Chippis Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward of the Carquinez Bridge, and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge.


§ 226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon, and Snake River spring/summer chinook salmon.

The following areas consisting of the water, waterway bottom, and adjacent riparian zone of specified lakes and river reaches in hydrologic units presently or historically accessible to listed Snake River salmon (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams). Adjacent riparian zones are defined as those areas within a horizontal distance of 300 feet (91.4 m) from the normal line of high water of a stream channel (600 feet or 182.8 m, when both sides of the stream channel are included) or from the shoreline of a standing body of water. The complete text delineating critical habitat for each species follows. Hydrologic units (table 3) are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, “Hydrologic Unit Maps, United States Geological Survey Water Supply Paper 2294, 1987”, and the following DOI, USGS, 1,500,000 scale hydrologic unit map: State of Oregon, 1974; State of Washington, 1974; State of Idaho, 1974, which are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Endangered Species Branch, Environmental and Technical Services Division, 911 NE, 11th Avenue, room 620, Portland, OR 97232, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(a) Snake River Sockeye Salmon (Oncorhynchus nerka). The Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches upstream to the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to the confluence of the Salmon River; all Salmon River reaches from the confluence of the Snake River upstream to Alturas Lake Creek; Stanley, Redfish, Yellow Belly, Pettit, and Alturas Lakes (including their inlet and outlet creeks); Alturas Lake Creek, and that portion of Valley Creek between Stanley Lake Creek and the Salmon River. Critical habitat is comprised of all river lakes and reaches presently or historically accessible (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) to Snake River sockeye salmon in the following hydrologic units: Lower Salmon, Lower Snake, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, and Upper Salmon. Critical habitat borders on or passes through the following counties in Oregon: Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Sherman, Umatilla, Wallowa, Wasco; the following counties in Washington: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Blaine,
§ 226.206 Critical habitat for the Southern Resident killer whale (Orcinus orca).

Critical habitat is designated for the Southern Resident killer whale as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview map is provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) Critical Habitat Boundaries. Critical habitat includes three specific marine areas of Puget Sound, Washington, within the following counties: Clallam, Jefferson, King, Kitsap, Island, Mason, Pierce, San Juan, Skagit, Snohomish.

Custer, Idaho, Lemhi, Lewis, Nez Perce.

(b) Snake River Spring/Summer Chinook Salmon (Oncorhynchus tshawytscha). Geographic Boundaries. Critical habitat is designated to include the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches proceeding upstream to the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to Hells Canyon Dam. Critical habitat also includes river reaches presently or historically accessible (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) to Snake River fall chinook salmon in the following hydrologic units: Clearwater, Hells Canyon, Imnaha, Lower Grande Ronde, Lower North Fork Clearwater, Lower Salmon, Lower Snake, Lower Snake-Asotin, Lower Snake-Tucannon, and Palouse. Critical habitat borders on or passes through the following counties in Oregon: Baker, Clatsop, Columbia, Gillium, Hood River, Morrow, Multnomah, Sherman, Umatilla, Walla, Wasco; the following counties in Washington: Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Lincoln, Pacific, Skamania, Spokane, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Adams, Benewah, Clearwater, Idaho, Latah, Lewis, Nez Perce, Shoshone, Valley.

Thurston, and Whatcom. Critical habitat includes all waters relative to a contiguous shoreline delimited by the line at a depth of 20 feet (6.1 m) relative to extreme high water in each of the following areas:

(1) **Summer Core Area:** All U.S. marine waters in Whatcom and San Juan counties; and all marine waters in Skagit County west and north of the Deception Pass Bridge (Highway 20) (48°24′25″ N./122°38′35″ W.).

(2) **Puget Sound Area:** All marine waters in Island County east and south of the Deception Pass Bridge (Highway 20) (48°24′25″ N./122°38′35″ W.), and east of a line connecting the Point Wilson Lighthouse (48°8′39″ N./122°45′12″ W.) and a point on Whidbey Island located at 48°12′30″ N./122°44′26″ W.; all marine waters in Skagit County east of the Deception Pass Bridge (Highway 20) (48°24′25″ N./122°38′35″ W.); all marine waters of Jefferson County east of a line connecting the Point Wilson Lighthouse (48°8′39″ N./122°45′12″ W.) and a point on Whidbey Island located at 48°12′30″ N./122°44′26″ W., and north of the Hood Canal Bridge (Highway 104) (47°51′36″ N./122°37′23″ W.); all marine waters in eastern Kitsap County east of the Hood Canal Bridge (Highway 104) (47°51′36″ N./122°37′23″ W.); all marine waters (excluding Hood Canal) in Mason County; and all marine waters in King, Pierce, Snohomish, and Thurston counties.

(3) **Strait of Juan de Fuca Area:** All U.S. marine waters in Clallam County east of a line connecting Cape Flattery, Washington (48°23′10″ N./124°43′32″ W.), Tatoosh Island, Washington (48°23′30″ N./124°44′12″ W.), and Bonilla Point, British Columbia (48°35′30″ N./124°43′00″ W.); all marine waters in Jefferson and Island counties west of the Deception Pass Bridge (Highway 20) (48°24′25″ N./122°38′35″ W.), and west of a line connecting the Point Wilson Lighthouse (48°8′39″ N./122°45′12″ W.) and a point on Whidbey Island located at 48°12′30″ N./122°44′26″ W.

(b) An overview map of final critical habitat for the Southern Resident killer whale follows.
(c) Primary Constituent Elements. The primary constituent elements essential for conservation of the Southern Resident killer whale are:

(1) Water quality to support growth and development;

(2) Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and
§ 226.207 Critical habitat for leatherback turtles (Dermochelys coriacea).

Critical habitat is designated for leatherback turtles as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview map is provided for general guidance purposes only and not as a definitive source for determining critical habitat boundaries.

(a) The waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17°42′12″ N. and 64°50′00″ W.

(b) All U.S. coastal marine waters within the areas in paragraphs (b)(1) and (2) of this section and as described in paragraphs (b)(3) and (4) of this section and depicted in paragraph (b)(5) of this section:

(1) California.

(i) The area bounded by Point Sur (36°18′22″ N./121°54′49″ W.) then north along the shoreline following the line of extreme low water to Point Arena, California (38°57′14″ N./123°44′26″ W.) then west to 38°57′14″ N./123°56′44″ W. then south along the 200 meter isobath to 36°18′46″ N./122°4′37″ W. then east to the point of origin at Point Sur.

(ii) Nearshore area from Point Arena, California, to Point Arguello, California (34°34′33″ N./120°38′41″ W.), exclusive of Area 1 (see above) and offshore to a line connecting 38°57′14″ N./124°18′36″ W. and 34°34′32″ N./121°39′51″ W along the 3000 meter isobath.

(2) Oregon/Washington. The area bounded by Cape Blanco, Oregon (42°50′4″ N./124°33′44″ W.) north along the shoreline following the line of extreme low water to Cape Flattery, Washington (48°23′10″ N./124°43′32″ W.) then north to the U.S./Canada boundary at 48°29′38″ N./124°43′32″ W. then west and south along the line of the U.S. Exclusive Economic Zone to 47°57′38″ N./126°22′34″ W. then south along a line approximating the 2,000 meter isobath that passes through points at 47°39′55″ N./126°13′28″ W., 45°26′16″ N./125°21′ W. to 42°49′39″ N./125°8′10″ W. then east to the point of origin at Cape Blanco.

(3) Critical habitat extends to a water depth of 80 meters from the ocean surface and is delineated along the shoreline at the line of extreme low water, except in the case of estuaries and bays where COLREGS lines (defined at 33 CFR part 80) shall be used as the shoreward boundary of critical habitat.

(4) Primary Constituent Elements. The primary constituent element essential for conservation of leatherback turtles is the occurrence of prey species, primarily scyphomedusae of the order Semaeostomeae (Chrysaora, Aurelia, Phacellophora, and Cyanea), of
sufficient condition, distribution, diversity, abundance and density necessary to support individual as well as population growth, reproduction, and development of leatherbacks. (5) A map of critical habitat for leatherback sea turtles follows.
§ 226.208 Critical habitat for green turtle.

(a) Culebra Island, Puerto Rico—Waters surrounding the island of Culebra from the mean high water line seaward to 3 nautical miles (5.6 km). These waters include Culebra’s outlying Keys including Cayo Norte, Cayo Ballena, Cayos Geniqui, Isla Culebrita, Arrecife Culebrita, Cayo de Luis Peña, Las Hermanas, El Mono, Cayo Lobo, Cayo Lobito, Cayo Botijuela, Alcarraza, Los Gemelos, and Piedra Steven.

(b) [Reserved]

§ 226.209 Critical habitat for hawksbill turtle.

(a) Mona and Monito Islands, Puerto Rico—Waters surrounding the islands of Mona and Monito, from the mean high water line seaward to 3 nautical miles (5.6 km).

(b) [Reserved]

§ 226.210 Central California Coast Coho Salmon (Oncorhynchus kisutch), Southern Oregon/Northern California Coasts Coho Salmon (Oncorhynchus kisutch).

Critical habitat is designated to include all river reaches accessible to listed coho within the range of the ESUs listed, except for reaches on Indian lands defined in Tables 5 and 6 to this part. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Tables 5 and 6 to this part for all of the coho ESUs listed in this section. Accessible reaches are those within the historical range of the ESUs that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 5 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(a) Central California Coast Coho Salmon (Oncorhynchus kisutch), Critical habitat is designated to include all river reaches accessible to listed coho salmon from Punta Gorda in northern California south to the San Lorenzo River in central California, including Arroyo Corte Madera Del Presidio and Corte Madera Creek, tributaries to San Francisco Bay. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 5 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 5 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(b) Southern Oregon/Northern California Coasts Coho Salmon (Oncorhynchus kisutch). Critical habitat is designated to include all river reaches accessible to listed coho salmon between Cape Blanco, Oregon, and Punta Gorda, California. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine...
Critical habitat is designated for the following ESUs in the following California counties:

<table>
<thead>
<tr>
<th>ESU</th>
<th>State—counties</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) California Coastal Chinook</td>
<td>CA—Humboldt, Trinity, Mendocino, Sonoma, Lake, Napa, Glenn, Colusa, and Tehama.</td>
</tr>
<tr>
<td>(2) Northern California Steelhead</td>
<td>CA—Humboldt, Trinity, Mendocino, Sonoma, Lake, Glenn, Colusa, and Tehama.</td>
</tr>
<tr>
<td>(3) Central California Coast Steelhead</td>
<td>CA—Lake, Mendocino, Sonoma, Napa, Marin, San Francisco, San Mateo, Santa Clara, Santa Cruz, Alameda, Contra Costa, and San Joaquin.</td>
</tr>
<tr>
<td>(4) South-Central Coast Steelhead</td>
<td>CA—Tehama, Butte, Glenn, Shasta, Yolo, Sacramento, Solano, Colusa, Yuba, Sutter, Trinity, Alameda, San Joaquin, and Contra Costa.</td>
</tr>
<tr>
<td>(5) Southern California Steelhead</td>
<td>CA—San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange and San Diego.</td>
</tr>
<tr>
<td>(6) Central Valley spring-run Chinook</td>
<td>CA—Tehama, Butte, Glenn, Shasta, Yolo, Sacramento, Solano, Yuba, Sutter, Placer, Calaveras, San Joaquin, Stanislaus, Tuolumne, Merced, Alameda, Contra Costa.</td>
</tr>
<tr>
<td>(7) Central Valley Steelhead</td>
<td>CA—Tehama, Butte, Glenn, Shasta, Yolo, Sacramento, Solano, Yuba, Sutter, Placer, Calaveras, San Joaquin, Stanislaus, Tuolumne, Merced, Alameda, Contra Costa.</td>
</tr>
</tbody>
</table>

(b) **Critical habitat boundaries.** Critical habitat includes the stream channels within the designated stream reaches, and includes a lateral extent as defined by the ordinary high-water line (33 CFR 329.11). In areas where the ordinary high-water line has not been defined, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series. Critical habitat in estuaries (e.g., San Francisco-San Pablo-Suisun Bay, Humboldt Bay, and Morro Bay) is defined by the perimeter of the water body as displayed on standard 1:24,000 scale topographic maps or the elevation of extreme high water, whichever is greater.

(c) **Primary constituent elements.** Within these areas, the primary constituent elements essential for the conservation of these ESUs are those sites and habitat components that support one or more life stages, including:

(1) Freshwater spawning sites with water quantity and quality conditions and substrate supporting spawning, incubation and larval development;

(2) Freshwater rearing sites with:

(i) Water quantity and floodplain connectivity to form and maintain physical habitat conditions and support juvenile growth and mobility;
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(ii) Water quality and forage supporting juvenile development; and
(iii) Natural cover such as shade, submerged and overhanging large wood, log jams and beaver dams, aquatic vegetation, large rocks and boulders, side channels, and undercut banks.

(3) Freshwater migration corridors free of obstruction and excessive predation with water quantity and quality conditions and natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels, and undercut banks supporting juvenile and adult mobility and survival.

(4) Estuarine areas free of obstruction and excessive predation with:
(i) Water quality, water quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and saltwater;
(ii) Natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels; and
(iii) Juvenile and adult forage, including aquatic invertebrates and fishes, supporting growth and maturation.

(d) Exclusion of Indian lands. Critical habitat does not include occupied habitat areas on Indian lands. The Indian lands specifically excluded from critical habitat are those defined in the Secretarial Order, including:

(1) Lands held in trust by the United States for the benefit of any Indian tribe;
(2) Land held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;
(3) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and
(4) Fee lands within the reservation boundaries owned by individual Indians.

(e) Land owned or controlled by the Department of Defense. Additionally, critical habitat does not include the following areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a):

(1) Camp Pendleton Marine Corps Base;
(2) Vandenberg Air Force Base;
(3) Camp San Luis Obispo;
(4) Camp Roberts; and
(5) Mare Island Army Reserve Center.

(1) California Coastal Chinook Salmon (Oncorhynchus tshawytscha). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic units:

(1) Redwood Creek Hydrologic Unit 1107—(i) Orick Hydrologic Sub-area 110710. Outlet(s) = Redwood Creek (Lat 41.2923, Long –124.0917) upstream to endpoint(s) in: Boyes Creek (41.137, –123.9845); Bridge Creek (41.137, –124.0012); Brown Creek (41.3866, –124.0012); Emerald (Harry Weir) (41.2142, –123.9812); Godwood Creek (41.3889, –124.0312); Larry Dam Creek (41.3359, –124.003); Little Lost Man Creek (41.2944, –124.0011); Lost Man Creek (41.3133, –123.9654); May Creek (41.3547, –123.9999); McArthur Creek (41.2705, –124.041); North Fork Lost Man Creek (41.3374, –123.9955); Prairie Creek (41.4239, –124.0367); Tom McDonald (41.1628, –124.0419).

(ii) Beaver Hydrologic Sub-area 110720. Outlet(s) = Redwood Creek (Lat 41.1367, Long –123.9609) upstream to endpoint(s) in: Lacks Creek (41.0384, –123.8142); Minor Creek (40.9769, –123.7899).

(iii) Lake Prairie Hydrologic Sub-area 110730. Outlet(s) = Redwood Creek (Lat 40.9070, Long –123.8170) upstream to endpoint(s) in: Redwood Creek (40.7432, –123.7206).

(2) Trinidad Hydrologic Unit 1108—(i) Big Lagoon Hydrologic Sub-area 110810. Outlet(s) = Maple Creek (Lat 41.1555, Long –124.1380) upstream to endpoint(s) in: North Fork Maple Creek (41.137, –124.0824); Maple Creek (41.1239, –124.1041).

(ii) Little River Hydrologic Sub-area 110820. Outlet(s) = Little River (41.0277, –124.1112) upstream to endpoint(s) in: South Fork Little River (40.9908, –124.0412); Little River (41.0529, –123.9727); Railroad Creek (41.0464, –124.0475); Lower South Fork Little River (41.0077, –124.0078); Upper South Fork Little River (41.0131, –123.9853).

(3) Mad River Hydrologic Unit 1109—

(i) Blue Lake Hydrologic Sub-area 110900. Outlet(s) = Mad River (Lat 40.9139,
Long –124.0642) upstream to endpoint(s) in: Lindsay Creek (40.983, –124.0326); Mill Creek (40.908, –124.0086); North Fork Mad River (40.8687, –123.9649); Squaw Creek (40.9426, –124.0202); Warren Creek (40.8901, –124.0402).

(ii) North Fork Mad River 110920. Outlet(s) = North Fork Mad River (Lat 40.8687, Long –123.9649) upstream to endpoint(s) in: Sullivan Gulch (40.8646, –123.9553); North Fork Mad River (40.8837, –123.9436).

(iii) Butler Valley 110930. Outlet(s) = Mad River (Lat 40.8449, Long –123.9807) upstream to endpoint(s) in: Black Creek (40.7547, –123.9649); Black Dog Creek (40.8334, –123.9805); Canon Creek (40.8362, –123.9028); Dry Creek (40.8216, –123.9751); Mad River (40.7926, –123.9742); Unnamed (40.8186, –123.9769).

(iv) Eureka Plain Hydrologic Unit 1110—(i) Eureka Plain Hydrologic Sub-area 111000. Outlet(s) = Mad River (Lat 40.9560, Long –124.1278); Jacoby Creek (40.8436, –124.0834); Freshwater Creek (40.8088, –124.1442); Elk River (40.7588, –124.1948); Salmon Creek (40.6868, –124.2194) upstream to endpoint(s) in: Bridge Creek (40.6958, –124.0795); Dunlap Gulch (40.7101, –124.1155); Freshwater Creek (40.7389, –123.9944); Gannon Slough (40.8629, –124.0184); Jacoby Creek (40.7858, –124.0652); Little Freshwater Creek (40.7485, –124.0652); North Branch of the North Fork Elk River (40.6878, –124.0131); North Fork Elk River (40.6756, –124.0153); Ryan Creek (40.7835, –124.1196); Salmon Creek (40.6438, –124.1319); South Branch of the North Fork Elk River (40.6691, –124.0244); South Fork Elk River (40.6626, –124.0611); South Fork Freshwater Creek (40.7097, –124.0277).

(ii) Scotia Hydrologic Sub-area 111111. Outlet(s) = Eel River (Lat 40.4918, Long –124.0998) upstream to endpoint(s) in: Bear Creek (40.4748, –124.1827); Price Creek (40.5028, –124.2035); Strongs Creek (40.5986, –124.1222); Van Dunze River (40.5337, –124.1262).

(v) Yager Creek Hydrologic Sub-area 111123. Outlet(s) = Yager Creek (Lat 40.5583, Long –124.0577) upstream to endpoint(s) in: Corner Creek (40.6189, –123.9994); Fish Creek (40.6392, –124.0032); Lawrence Creek (40.6394, –123.9935); Middle Fork Yager Creek (40.5799, –123.9105); North Fork Yager Creek (40.6844, –123.9084); Owl Creek (40.5557, –123.9362); Shaw Creek (40.6245, –123.9518); Yager Creek (40.5573, –123.9403).

(vi) Weott Hydrologic Sub-area 111131. Outlet(s) = South Fork Eel River (Lat 40.3500, Long –123.9305) upstream to endpoint(s) in: Bridge Creek (40.2909, –123.9229); Cow Creek (40.3583, –123.9626); Cuneo Creek (40.3377, –124.0385); Elk Creek (40.2837, –123.8365); Fish Creek (40.2316, –123.7915); Harper Creek (40.354, –123.9895); Mill Creek (40.3589, –124.0236); Salmon Creek (40.2214, –123.9059); South Fork Salmon River (40.1769, –123.8929); Squaw Creek (40.3401, –123.9997); Tostin Creek (40.1722, –123.8796).

(vii) Benbow Hydrologic Sub-area 111132. Outlet(s) = South Fork Eel River (Lat 40.1932, Long –123.7692) upstream to endpoint(s) in: Anderson Creek (39.9337, –123.8933); Bear Pen Creek (39.9125, –123.8108); Bear Wallow Creek (39.7926, –123.7172); Bond Creek (39.7856, –123.6937); Butty Creek (39.7642, –123.692); China Creek (40.1835, –123.9493); Connick Creek (40.0911, –123.8187); Cox Creek (40.0288, –123.8542); Cummings Creek (39.8431, –123.5752); Dean Creek (40.1383, –123.7625); Dinner Creek (40.0815, –123.977); East Branch South Fork Eel River (39.8193, –123.6278); Elk Creek (39.7986, –123.5981);
Fish Creek (40.0565, –123.7768); Foster Creek (39.8455, –123.6185); Grapevine Creek (39.7991, –123.5186); Hartsook Creek (40.012, –123.7888); Hollow Tree Creek (39.9464, –123.8993); Jones Creek (39.9977, –123.8378); Legget Creek (40.1374, –123.8312); Little Sproul Creel (40.0897, –123.8585); Low Gap Creek (39.993, –123.767); McCoy Creek (39.9598, –123.7542); Michael’s Creek (39.7642, –123.7175); Miller Creek (40.1215, –123.916); Moody Creek (39.9531, –123.8819); Mud Creek (39.8232, –123.6107); Piercy Creek (39.9706, –123.8189); Pollock Creek (40.0822, –123.9184); Rattlesnake Creek (39.9706, –123.8189); Redwood Creek (39.7721, –123.7651); Redwood Creek (40.0974, –123.9104); Seely Creek (40.1494, –123.8825); Somerville Creek (40.0896, –123.8913); South Fork Redwood Creek (39.7663, –123.7579); Spool Creek (40.0125, –123.8585); Standley Creek (39.9479, –123.3083); Tom Long Creek (40.0315, –123.6891); Twin Rocks Creek (39.8269, –123.5543); Warden Creek (40.0625, –123.8546); West Fork Sproul Creek (40.0386, –123.9015); Wildcat Creek (39.9049, –123.7739); Wilson Creek (39.841, –123.6452); Unnamed Tributary (40.3137, –123.8333); Unnamed Tributary (40.2715, –123.549).


(xii) Outlet Creek Hydrologic Sub-area 111161. Outlet(s) = Eel River (Lat 39.8146, Long –123.1332) upstream to endpoint(s) in: Middle Fork Eel River (39.8146, –123.1332).

(xiii) Tomki Creek Hydrologic Sub-area 111162. Outlet(s) = Eel River (Lat 39.7138, Long –123.3531). upstream to endpoint(s) in: Middle Fork Eel River (39.7138, –123.3531).

(xiv) Lake Pillsbury Hydrologic Sub-area 111163. Outlet(s) = Eel River (Lat 39.3938, Long –122.958).
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–123.1636); Poor Mans Creek (39.8179, –123.1833); Short Creek (39.8645, –123.2242); Turner Creek (39.7238, –123.2191); Williams Creek (39.8596, –123.1341).

(6) Cape Mendocino Hydrologic Unit 1112—(i) Capetown Hydrologic Sub-area 111220. Outlet(s) = Bear River (Lat 40.4744, Long –124.3881) upstream to endpoint(s) in: Bear River (40.3591, –124.0536); South Fork Bear River (40.4271, –124.2873).

(ii) Mattole River Hydrologic Sub-area 111230. Outlet(s) = Mattole River (Lat 40.2942, Long –124.3536) upstream to endpoint(s) in: Bear Creek (40.1262, –124.0631); Blue Slide Creek (40.1262, –123.9850); Conklin Creek (40.3131, –124.2270); Dry Creek (40.2389, –124.0621); East Fork Honeyed Creek (40.1633, –124.0916); East Fork of the North Fork Mattole River (40.3489, –124.2242); Eubanks Creek (40.0883, –123.9745); Gilham Creek (40.2156, –124.0339); Grindstone Creek (40.1975, –124.0041); Honeyed Creek (40.1942, –124.1363); Mattole Canyon (40.1333, –123.9666); Mattole River (39.9735, –123.9548); McGinnis Creek (40.3013, –124.2140); McKee Creek (40.0674, –123.9608); Mill Creek (40.0139, –123.9666); North Fork Mattole River (40.3729, –124.2461); North Fork Bear River (40.1422, –124.0945); Oil Creek (40.3008, –124.1253); Rattlesnake Creek (40.2319, –124.1361); South Fork Bear Creek (40.0354, –124.0222); Squaw Creek (40.219, –124.1921); Thompson Creek (39.9969, –123.9638); Unnamed (40.1522, –124.0698); Upper North Fork Mattole River (40.2907, –124.1155); Westlund Creek (40.2333, –124.0336); Woods creek (40.2235, –124.1574); Yew Creek (40.0019, –123.9743).

(iii) Noyo River Hydrologic Sub-area 111320. Outlet(s) = Noyo River (Lat 39.4274, Long –123.8096) upstream to endpoint(s) in: North Fork Noyo River (39.4841, –123.5331); Noyo River (39.431, 123.494); South Fork Noyo River (39.3549, –123.6136).

(iv) Big River Hydrologic Sub-area 111330. Outlet(s) = Big River (Lat 39.3090, Long –123.7357) upstream to endpoint(s) in: Big River (39.3095, –123.4454).

(v) Albion River Hydrologic Sub-area 111340. Outlet(s) = Albion River (Lat 39.2253, Long –123.7679) upstream to endpoint(s) in: Albion River (39.2644, –123.6072).

(vi) Garcia River Hydrologic Sub-area 111370. Outlet(s) = Garcia River (Lat 39.9455, Long –123.7257) upstream to endpoint(s) in: Garcia River (38.9160, –123.4900).

(7) Mendocino Coast Hydrologic Unit 1113—(i) Guerneville Hydrologic Sub-area 111411. Outlet(s) = Russian River (Lat 38.4507, Long –123.1289) upstream to endpoint(s) in: Austin Creek (38.5099, –123.0681); Mark West Creek (38.4961, –122.8489).

(ii) Austin Creek Hydrologic Sub-area 111412. Outlet(s) = Austin Creek (Lat 38.5099, Long –123.0681) upstream to endpoint(s) in: Austin Creek (38.5326, –123.0844).

(iii) Warm Springs Hydrologic Sub-area 111424. Outlet(s) = Dry Creek (Lat 38.5661, Long –122.8573) upstream to endpoint(s) in: Dry Creek (38.7179, –123.0075).

(iv) Geyserville Hydrologic Sub-area 111425. Outlet(s) = Russian River (Lat 38.6132, Long –122.8321) upstream.

(v) Ukiah Hydrologic Sub-area 111431. Outlet(s) = Russian River (Lat 38.8828, Long –123.0557) upstream to endpoint(s) in: Feliz Creek (38.9941, –123.1779).

(vi) Forsythe Creek Hydrologic Sub-area 111433. Outlet(s) = Russian River (Lat 39.2257, Long –123.2012) upstream to endpoint(s) in: Forsythe Creek (39.2790, –123.2608); Russian River (39.2598, –123.2390).

(9) Maps of critical habitat for the California Coast chinook salmon ESU follow:
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Critical Habitat for the California Coastal Chinook Salmon

Mad River Hydrologic Unit 1109

Cities/Towns
Critical Habitat
Calwater Hydrologic Unit Boundary
Fifth Field Calwater Hydrologic Sub-Area Boundary
110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail
Critical Habitat for the California Coastal Chinook Salmon

Eel River Hydrologic Unit
1111

- Cities/Towns
- Critical Habitat
- Occupied but excluded streams / areas
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number
§ 226.211 Critical Habitat for the California Coastal Chinook Salmon

Mendocino Coast Hydrologic Unit 1113

Legend:
- Cities/Towns
- Critical Habitat
- Occupied but excluded streams / areas
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail

California
(g) Northern California Steelhead (O. mykiss). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic units:

1. Redwood Creek Hydrologic Unit 1107—(1) Orick Hydrologic Sub-area 110710. Outlet(s) = Boat Creek (Lat 41.4059, Long –124.0675); Home Creek (41.4027, –124.0683); Redwood Creek (41.2923, –124.0917); Squashan Creek (41.3889, –124.0703) upstream to endpoint(s) in: Boat Creek (41.4110,
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–124.0583; Bond Creek (41.2326,
–124.9891); Copper Creek (41.1516,
–123.9964); Crozet Creek (41.2366,
–124.012); Cloquet Creek (41.1694,
–123.9667); Elam Creek (41.2363,
–124.0321); Forty Four Creek (41.2187,
–124.0195); Gans South Creek (41.2678,
–124.0071); Godwood Creek (41.3787,
–124.0354); Hayes Creek (41.2890,
–124.0164); Home Creek (41.3951,
–124.0386); Larry Dam Creek (41.3441,
–123.9966); Lost Man Creek (41.3187,
–123.9354); May Creek (41.3521,
–124.0164); McArthur Creek (41.2702,
–124.0427); Minon Creek (41.1826,
–124.0386); Unnamed Tributary (41.3619,
–123.9967); Unnamed Tributary (41.3424,
–124.0572).

(ii) Beaver Hydrologic Sub-area 110720.
Outlet(s) = Redwood Creek (Lat 40.9070,
Long –123.8170) upstream to endpoint(s) in: Big Lagoon Hydrologic Unit 110810.
Outlet(s) = Maple Creek (Lat 41.1555,
Long –124.1380); McDonald Creek (41.1850,
–124.0773); Little River (41.0277,
–124.0582); Freeman Creek (41.0242,
–124.0582); Little River (41.0077,
–124.0079); Railroad Creek (41.0468,
–124.0146); South Fork Little River (41.0077,
–124.0077); Littler River (40.9899,
–123.9232); Lower South Fork (41.1007,
–123.8131); Little River (40.9845,
–123.8656); Unnamed Tributary (41.1270,
–123.8967); Wiregrass Creek (40.9652,
–123.8533).

(iii) Lake Prairie Hydrologic Sub-area 110820. Outlet(s) = Redwood Creek (Lat 40.9070,
Long –123.8170) upstream to endpoint(s) in: Bradford Creek (40.7812,
–123.7215); Cut-Off Meander (40.8507,
–123.7729); Emmey Lou Creek (40.8655,
–123.7771); Gunnar Creek (40.8391,
–123.7650); High Prairie Creek (40.8191,
–123.7723); Jena Creek (40.8742,
–123.8065); Lake Prairie Creek (40.7984,
–123.7558); Lupton Creek (40.9058,
–123.8286); Minon Creek (40.8140,
–123.7372); Noisy Creek (40.8613,
–123.8044); Pardee Creek (40.7779,
–123.7416); Redwood Creek (40.7432,
–123.7206); Simion Creek (40.8241,
–123.7842); Smokehouse Creek (40.7405,
–123.7278); Snowcamp Creek (40.7415,
–123.7296); Squirrel Trail Creek (40.8692,
–123.7844); Twin Lakes Creek (40.7369,
–123.7214); Panther Creek (40.8019,
–123.7094); Windy Creek (40.8866,
–123.7956).

(ii) Beaver Hydrologic Sub-area 110720.
Outlet(s) = Redwood Creek (Lat 41.1367,
Long –123.9309) upstream to endpoint(s) in: Beaver Creek (41.0208,
–123.9790); McDonald Creek (41.1850,
–124.0773); M-Line Creek (41.0752,
–124.0786); North Fork Maple Creek (41.1254,
–124.0539); North Fork McDonald Creek (41.2107,
–124.0664); Pitcher Creek (41.1518,
–124.0874); South Fork Maple Creek (41.1003,
–124.1119); Tom Creek (41.1773,
–124.0966); Unnamed Tributary (41.1004,
–124.0155); Unnamed Tributary (41.0780,
–124.0675); Unnamed Tributary (41.1168,
–124.0886); Unnamed Tributary (41.0804,
–124.0899); Unnamed Tributary (41.1312,
–124.0827); Unnamed Tributary (41.0749,
–124.0899); Unnamed Tributary (41.1002,
–124.0675); Unnamed Tributary (41.0714,
–124.0611); Unnamed Tributary (41.0948,
–124.0016).

(i) Beach Creek (41.0716,
–124.0239); Clear Creek (41.1031,
–124.0030); Diamond Creek (41.1571,
–124.0926); Maple Creek (41.0836,
–123.9790); McDonald Creek (41.1850,
–124.0773); M-Line Creek (41.0752,
–124.0786); North Fork Maple Creek (41.1254,
–124.0539); North Fork McDonald Creek (41.2107,
–124.0664); Pitcher Creek (41.1518,
–124.0874); South Fork Maple Creek (41.1003,
–124.1119); Tom Creek (41.1773,
–124.0966); Unnamed Tributary (41.1004,
–124.0155); Unnamed Tributary (41.0780,
–124.0675); Unnamed Tributary (41.1168,
–124.0886); Unnamed Tributary (41.0804,
–124.0899); Unnamed Tributary (41.1312,
–124.0827); Unnamed Tributary (41.0749,
–124.0899); Unnamed Tributary (41.1002,
–124.0675); Unnamed Tributary (41.0714,
–124.0611); Unnamed Tributary (41.0948,
–124.0016).

(ii) Little River Hydrologic Sub-area 110820. Outlet(s) = Little River (Lat 41.0277,
Long –124.1112) upstream to endpoint(s) in: Freeman Creek (41.0242,
–124.0582); Little River (40.9999,
–123.9232); Lower South Fork (41.1007,
–124.0077); Railroad Creek (41.0468,
–124.0146); South Fork Little River (40.9899,
–124.0394); Unnamed Tributary (41.0356,
–123.9958); Unnamed Tributary (41.0407,
–124.0598); Unnamed Tributary (41.0066,
–123.9830);
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Unnamed Tributary (41.0402, –124.0111);
Unnamed Tributary (41.0402, –124.0189);
Unnamed Tributary (41.0303, –124.0366);
Unnamed Tributary (41.0575, –123.9710);
Unnamed Tributary (41.0068, –123.9830);
Upper South Fork Little River (41.0146, –123.9826).

(3) Mad River Hydrologic Unit 1109—

(i) Blue Lake Hydrologic Sub-area 110910.
Outlet(s) = Mad River (Lat 40.9139,
Long –124.0642); Strawberry Creek
(40.9964, –124.1155); Widow White Creek
(40.9635, –124.1253) upstream to endpoint(s) in: Boundary Creek (40.8935,
–123.9920); Grassly Creek (40.9314,
–124.0188); Hall Creek (40.9162, –124.0141);
Kelly Creek (40.8656, –124.0260); Leggit
Creek (40.8808, –124.0269); Lindsay Creek
(40.9838, –124.0263); Mather Creek
(40.9796, –124.0526); Mill Creek (40.9296,
–124.0141); Mill Creek (40.8521, –123.9617); North
Fork Mad River (40.8687, –123.9649); Nor-
ton Creek (40.9572, –124.1003); Palmer
Creek (40.8633, –124.0193); Puter Creek
(40.8474, –123.9966); Quary Creek
(40.8526, –124.0088); Squaw Creek
(40.9426, –124.0202); Strawberry Creek
(40.9761, –124.0630); Unnamed Tributary
(40.9624, –124.0179); Unnamed Tributary
(40.9549, –124.0554); Unnamed Tributary
(40.9672, –124.0218); Warren Creek
(40.8860, –124.0351); Widow White Creek
(40.9522, –124.0784).

(ii) North Fork Mad River Hydrological Subarea 110920. Outlet(s) = North Fork
Mad River (Lat 40.8687, Long –123.9649)
upstream to endpoint(s) in: Bald Moun-
tain Creek (40.8922, –123.9907); Cannon
Creek (40.8506, –123.9826); Canyon
Creek (40.9702, –123.9449); Gosinta Creek
(40.9195, –124.0240); Hutcheson Creek
(40.9730, –123.9503); Jackson Creek
(40.9838, –123.9462); Krueger Creek
(40.9487, –123.9571); Long Prairie Creek
(40.9294, –123.8842); Mule Creek (40.9416,
–123.9309); North Fork Mad River
(40.9918, –123.9610); Pine Creek (40.9274,
–123.9906); Pollock Creek (40.9381,
–123.9071); Sullivan Gulch (40.8646,
–123.9553); Tyson Creek (40.9559,
–123.9738); Unnamed Tributary (40.9645,
–123.9338); Unnamed Tributary (40.9879,
–123.9511); Unnamed Tributary (40.9906,
–123.8540); Unnamed Tributary (40.9866,
–123.9786); Unnamed Tributary (40.9927,
–123.9736).

(iii) Butler Valley Hydrologic Sub-area
110930. Outlet(s) = Mad River (Lat
40.8449, Long –123.9807) upstream to
endpoint(s) in: Bear Creek (40.5468,
–123.6728); Black Creek (40.7521,
–123.9080); Black Dog Creek (40.8334,
–123.9055); Blue Slide Creek (40.7333,
–123.9225); Boulder Creek (40.7634,
–123.8667); Bug Creek (40.6587, –123.7356); Cannon Creek (40.8535, –123.8850); Coy-
tote Creek (40.6147, –123.6488); Devil
Creek (40.8032, –123.9175); Dry Creek
(40.8218, –123.9751); East Creek (40.5403,
–123.5579); Maple Creek (40.7933,
–123.8535); Pilot Creek (40.5950,
–123.5888); Simpson Creek (40.8138,
–123.9156); Unnamed Tributary (40.7306,
–123.9019); Unnamed Tributary (40.7739,
–123.9255); Unnamed Tributary (40.7174,
–123.9137); Unnamed Tributary (40.8029,
–123.8716); Unnamed Tributary (40.8038,
–123.8691); Unnamed Tributary (40.8363,
–123.9025).

(4) Eureka Plain Hydrologic Unit 1110—

(i) Eureka Plain Hydrologic Sub-
area 111000. Outlet(s) = Elk River (Lat
40.7568, Long –124.1948); Freshwater
Creek (40.8088, –124.1442); Jacoby Creek
(40.8436, –124.0834); Mad River (40.9560,
–124.1278); Rocky Gulch (40.8309,
–124.0813); Salmon Creek (40.8688,
–124.2194); Washington Gulch (40.8317,
–124.0805) upstream to endpoint(s) in:
Bridge Creek (40.6958, –124.0805); Browns
Gulch (40.7038, –124.1074); Clapp Gulch
(40.6967, –124.1084); Cloney Gulch
(40.7626, –124.0347); Doe Creek (40.6964,
–124.0201); Dunlap Gulch (40.7076,
–124.1182); Falls Gulch (40.7655,
–124.0261); Fay Slough (40.8033,
–124.0574); Freshwater Creek (40.7385,
–124.0035); Golf Course Creek (40.8406,
–124.0402); Graham Gulch (40.7540,
–124.0228); Guptil Gulch (40.7530,
–124.1202); Henderson Gulch (40.7357,
–124.1394); Jacoby Creek (40.7949,
–124.0096); Lake Creek (40.6848,
–124.0831); Line Creek (40.6578, –124.0460); Little Freshwater Creek (40.7371,
–124.0649); Little North Fork Elk River
(40.0672, –124.0400); Little South Fork
Elk River (40.6555, –124.0877); Martin
Slough (40.7679, –124.1578); McCready
Gulch (40.7824, –124.0411); McWinney
Creek (40.6968, –124.0616); Morrison
Gulch (40.8169, –124.0430); North Branch
of the North Fork Elk River (40.6879,
–124.0130); North Fork Elk River
(40.6794–123.9834); Railroad Gulch
Rocky Gulch (40.6955, –124.1545); Ryan Creek (40.7352, –124.0996); Salmon Creek (40.6399, –124.1128); South Branch of the North Fork Elk River (40.6700, –124.0251); South Fork Elk River (40.6437, –124.0388); South Fork Freshwater Creek (40.7116, –124.0267); Swain Slough (40.7524, –124.1825); Tom Gulch (40.6794, –124.1452); Unnamed Tributary (40.7850, –124.0561); Unnamed Tributary (40.7496, –124.1651); Unnamed Tributary (40.7785, –124.1825); Unnamed Tributary (40.7667, –124.1054); Unnamed Tributary (40.7559, –124.0870); Unnamed Tributary (40.7952, –124.0568); Unnamed Tributary (40.7408, –124.1118); Unnamed Tributary (40.7186, –124.1385); Unnamed Tributary (40.7224, –124.1038); Unnamed Tributary (40.8210, –124.0549). (ii) [Reserved]

(ii) Eel River Hydrologic Unit 1111—(i) Ferndale Hydrologic Sub-area 111111. Outlet(s) = Eel River (Lat 40.6275, Long –124.2520) upstream to endpoint(s) in: Atwell Creek (40.4847, –124.1217); Horse Creek (40.5198, –124.1702); Howe Creek (40.4654, –124.1916); Nanning Creek (40.4914, –124.0652); North Fork Strongs Creek (40.6077, –124.1047); Price Creek (40.5101, –124.3730); Rohner Creek (40.6015, –124.1408); Strongs Creek (40.5999, –124.0985); Sweet Creek (40.4900, –124.2007); Van Duzen River (40.5337, –124.1262). (ii) Scotia Hydrologic Sub-area 111112. Outlet(s) = Eel River (Lat 40.4918, Long –124.0988) upstream to endpoint(s) in: Bear Creek (40.3942, –124.0362); Bridge Creek (40.4278, –123.9317); Chadd Creek (40.3919, –123.9540); Darnell Creek (40.4333, –123.9808); Dinner Creek (40.4406, –124.0853); Greenlow Creek (40.4315, –124.0251); Jordan Creek (40.4171, –124.0517); Kiler Creek (40.4465, –124.0952); Monument Creek (40.4371, –124.1165); Shively Creek (40.4454, –123.9539); South Fork Bear Creek (40.3856, –124.0182); Stitz Creek (40.4649, –124.0531); Twin Creek (40.4419, –124.0714); Unnamed Tributary (40.3933, –123.9864); Weber Creek (40.3707, –123.9094). (iii) Larabee Creek Hydrologic Sub-area 111113. Outlet(s) = Larabee Creek (Lat 40.4090, Long –123.9334) upstream to endpoint(s) in: Arnold Creek (40.4006, –123.8583); Balcom Creek (40.4030, –123.8885); Bosworth Creek (40.3584, –123.7089); Boulder Flat Creek (40.3530, –123.6811); Burr Creek (40.4250, –123.7767); Carson Creek (40.4181, –123.8879); Cooper Creek (40.3123, –123.6463); Dauphiny Creek (40.4049, –123.8893); Frost Creek (40.3765, –123.7357); Hayfield Creek (40.4050, –123.6535); Knack Creek (40.3788, –123.7385); Larabee Creek (40.2807, –123.6445); Martin Creek (40.3730, –123.7060); Maxwell Creek (40.3959, –123.8049); McMahon Creek (40.3269, –123.6363); Mill Creek (40.3849, –123.7440); Mountain Creek (40.2955, –123.6378); Scott Creek (40.4020, –123.8738); Smith Creek (40.4194, –123.8568); Thurman Creek (40.3506, –123.6669); Unnamed Tributary (40.3842, –123.8062); Unnamed Tributary (40.3962, –123.7862); Unnamed Tributary (40.3806, –123.7564); Unnamed Tributary (40.3661, –123.7398); Unnamed Tributary (40.3524, –123.7330). (iv) Hydesville Hydrologic Sub-area 111112. Outlet(s) = Van Duzen River (Lat 40.5337, Long –123.1282) upstream to endpoint(s) in: Cuddeback Creek (40.5421, –124.0263); Cummings Creek (40.5282, –123.9770); Fiedler Creek (40.5351, –124.0106); Hely Creek (40.5165, –123.9531); Yager Creek (40.5583, –124.0677); Unnamed Tributary (40.5718, –124.0846). (v) Bridgeville Hydrologic Sub-area 111112. Outlet(s) = Van Duzen River (Lat 40.4942, Long –123.9720) upstream to endpoint(s) in: Bear Creek (40.3455, –123.5763); Blanket Creek (40.3635, –123.5710); Browns Creek (40.4558, –123.8103); Butte Creek (40.4119, –123.7047); Daisy Creek (40.4174, –123.5981); Fish Creek (40.4525, –123.8343); Grizzly Creek (40.5193, –123.8470); Little Larabee Creek (40.4708, –123.7395); Little Van Duzen River (40.3021, –123.5540); North Fork Van Duzen (40.4881, –123.6411); Panther Creek (40.3921, –123.5866); Root Creek (40.4490, –123.9018); Stevens Creek (40.5062, –123.9073); Thompson Creek (40.4222, –123.6084); Van Duzen River (40.4820, –123.6629); Unnamed Tributary (40.3074, –123.5834).
(vi) Yager Creek Hydrologic Sub-area 111123. Outlet(s) = Yager Creek (Lat 40.5883, Long –124.0577) upstream to endpoint(s) in: Bell Creek (40.6809, –123.9685); Blanten Creek (40.5839, –124.0165); Booths Run (40.6584, –123.9428); Corner Creek (40.6179, –124.0010); Fish Creek (40.6390, –124.0024); Lawrence Creek (40.6986, –123.9314); Middle Fork Yager Creek (40.5782, –123.9243); North Fork Yager Creek (40.6056, –123.9080); Shaw Creek (40.6231, –123.8950); South Fork Yager Creek (40.5451, –123.9409); Middle Creek (40.5892, –123.9683); Yager Creek (40.5673, –123.9403).

(vii) Weott Hydrologic Sub-area 111131. Outlet(s) = South Fork Eel River (Lat 40.3500, Long –123.9305) upstream to endpoint(s) in: Albee Creek (40.3592, –124.0088); Bull Creek (40.3587, –123.9624); Burns Creek (40.3194, –124.0420); Butte Creek (40.1982, –123.8387); Canoe Creek (40.2669, –123.9556); Coon Creek (40.2702, –123.9013); Cow Creek (40.2459, –123.8398); Cuneo Creek (40.3011, –123.9683); Decker Creek (40.3312, –123.9501); Elk Creek (40.2459, –123.7729); Harper Creek (40.3592, –123.9930); Mill Creek (40.3568, –124.0333); Mowry Creek (40.397, –123.8895); North Fork Cuneo Creek (40.3449, –124.0489); Ohman Creek (40.1924, –123.7648); Panther Creek (40.2775, –124.0289); Preacher Gulch (40.2944, –124.0047); Salmon Creek (40.2254, –123.8926); Slide Creek (40.3011, –124.0390); South Fork Salmon Creek (40.1789, –123.8929); Squaw Creek (40.3167, –123.9688); Unnamed Tributary (40.3065, –124.0074); Unnamed Tributary (40.3831, –124.0359).

(viii) Benbow Hydrologic Sub-area 111132. Outlet(s) = South Fork Eel River (Lat 40.1929, Long –123.7692) upstream to endpoint(s) in: Anderson Creek (39.9325, –123.9826); Bear Creek (39.7985, –123.7620); Bear Pen Creek (39.9201, –123.7966); Bear Wallow Creek (39.7270, –123.7140); Big Dan Creek (39.8430, –123.6992); Bond Creek (39.7776, –123.7096); Bridges Creek (39.9087, –123.7142); Buck Mountain Creek (40.0944, –123.7423); Butler Creek (39.7423, –123.6897); Cedar Creek (38.8934, –123.6216); China Creek (40.1035, –123.9493); Connick Creek (40.0912, –123.8154); Cox Creek (40.0610, –123.8390); Crooked Cabin Creek (39.8921, –123.5842); Durphy Creek (40.6205, –123.8271); East Branch South Fork Eel River (39.9359, –123.6204); Elkhorn Creek (39.9272, –123.6279); Fish Creek (40.0390, –123.7630); Hartsook Creek (40.0881, –123.8113); Hollow Tree Creek (39.7250, –123.6924); Huckleberry Creek (39.7272, –123.7257); Indian Creek (39.9566, –123.9172); John Creek (39.8062, –123.7363); Jones Creek (39.9565, –123.8374); Leggett Creek (40.1470, –123.8375); Little Sproul Creek (40.0890, –123.8577); Lost Man Creek (39.7983, –123.7267); Low Gap Creek (39.8029, –123.6800); Low Gap Creek (39.9933, –123.7601); McCoy Creek (39.9572, –123.7369); Michael’s Creek (39.7665, –123.7035); Middle Creek (39.8052, –123.7691); Milk Ranch Creek (40.0102, –123.7514); Mill Creek (39.8673, –123.7605); Miller Creek (40.1319, –123.9302); Moody Creek (39.9471, –123.8827); Mule Creek (39.8169, –123.7745); North Fork Cedar Creek (39.8864, –123.6363); North Fork McCoy Creek (39.9723, –123.7496); Piercy Creek (39.5979, –123.8442); Pollock Creek (40.0852, –123.9341); Red Mountain Creek (39.9383, –123.7203); Redwood Creek (39.7723, –123.7648); Redwood Creek (40.0974, –123.9104); Rock Creek (39.8962, –123.7065); Sebas Creek (39.9934, –123.8893); Somerville Creek (40.1006, –123.8884); South Fork Mule Creek (39.8174, –123.7798); South Fork Redwood Creek (39.7662, –123.7579); Sproul Creek (40.0226, –123.8649); Squaw Creek (40.0760, –123.7257); Standly Creek (39.9327, –123.8309); Tom Long Creek (40.0175, –123.6551); Waldron Creek (39.7469, –123.7465); Walter’s Creek (39.7921, –123.7250); Warden Creek (40.0629, –123.8551); West Fork Sproul Creek (40.0587, –123.9170); Wildcat Creek (39.8956, –123.7620); Unnamed Tributary (39.9927, –123.8867).

(ix) Laytonville Hydrologic Sub-area 111133. Outlet(s) = South Fork Eel River (Lat 39.7665, Long –123.6484) upstream to endpoint(s) in: Anderson Creek (39.8174, –123.7798); South Fork Redwood Creek (39.7662, –123.7579); Sproul Creek (40.0226, –123.8649); Squaw Creek (40.0760, –123.7257); Standly Creek (39.9327, –123.8309); Tom Long Creek (40.0175, –123.6551); Waldron Creek (39.7469, –123.7465); Walter’s Creek (39.7921, –123.7250); Warden Creek (40.0629, –123.8551); West Fork Sproul Creek (40.0587, –123.9170); Wildcat Creek (39.8956, –123.7620); Unnamed Tributary (39.9927, –123.8867).
(x) *Sequoia Hydrologic Sub-area 111141.*
Outlet(s) = Eel River (Lat 40.3557, Long –123.9191) upstream to endpoint(s) in: Beatty Creek (40.3198, –123.7500); Brock Creek (40.2410, –123.7246); Cameron Creek (40.2216, –123.6029); Dobbyn Creek (40.2669, –123.5467); Kapple Creek (40.3531, –123.8585); Line Gulch Creek (40.1640, –123.4783); Mud Creek (40.2078, –123.5143); North Fork Dobbyn Creek (40.2216, –123.7500); South Fork Dobbyn Creek (40.1723, –123.5112); South Fork Eel River (40.3500, –123.9305); South Fork Thompson Creek (40.3447, –123.3657); Thompson Creek (40.3552, –123.4177); Unnamed Tributary (40.2745, –123.5487).

(xi) *Spy Rock Hydrologic Sub-area 111142.*
Outlet(s) = Eel River (Lat 40.1736, Long –123.6043) upstream to endpoint(s) in: Bear Pen Canyon (39.6943, –123.4359); Bell Springs Creek (39.6937, –123.5313); Blue Rock Creek (39.937, –123.518); Burger Creek (39.6693, –123.5018); Chamise Creek (40.0035, –123.5945); Gill Creek (39.7879, –123.3645); Iron Creek (39.7993, –123.4747); Jewett Creek (40.1122, –123.6171); Kekawaka Creek (40.0035, –123.5945); Rock Creek (39.937, –123.5187); Shell Rock Creek (39.8414, –123.4614); Unnamed Tributary (39.7579, –123.4709); White Rock Creek (39.7646, –123.4684); Woodman Creek (39.7612, –123.4364).

(xii) *Outlet Creek Hydrologic Sub-area 111161.*
Outlet(s) = Outlet Creek (Lat 39.6265, Long –123.3449) upstream to endpoint(s) in: Baechtel Creek (39.3623, –123.4134); Berry Creek (39.4271, –123.2777); Bloody Run Creek (39.5864, –123.3545); Broadus Creek (39.5864, –123.4283); Cherry Creek (39.6043, –123.4073); Conklin Creek (39.8756, –123.2570); Davis Creek (39.3545, –123.2945); Haehl Creek (39.7335, –123.3172); Long Valley Creek (39.6216, –123.4651); Mill Creek (39.4196, –123.3919); Outlet Creek (39.4526, –123.3398); Ryan Creek (39.4804, –123.3644); Unnamed Tributary (39.4956, –123.3591); Unnamed Tributary (39.4322, –123.3848); Unnamed Tributary (39.5973, –123.4546); Unnamed Tributary (39.3703, –123.3419); Upp Creek (39.4479, –123.3825); Willits Creek (39.4686, –123.4299).

(xiii) *Tomki Creek Hydrologic Sub-area 111162.*
Outlet(s) = Eel River (Lat 39.7138, Long –123.3532) upstream to endpoint(s) in: Cave Creek (39.3842, –123.2148); Dean Creek (39.6924, –123.3727); Garcia Creek (39.5153, –123.1512); Little Creek (39.4146, –123.2595); Long Branch Creek (39.4074, –123.1897); Rocktree Creek (39.4534, –123.3053); Salmon Creek (39.4367, –123.1939); Scott Creek (39.4492, –123.2286); String Creek (39.4658, –123.3206); Tarter Creek (39.4713, –123.2976); Thomas Creek (39.4768, –123.1230); Tomki Creek (39.5483, –123.3687); Whitney Creek (39.4399, –123.1084); Wheelbarrow Creek (39.5012, –123.3304).

(xiv) *Eden Valley Hydrologic Sub-area 111171.*
Outlet(s) = Middle Fork Eel River (Lat 39.7138, Long –123.3532) upstream to endpoint(s) in: Crocker Creek (39.5559, –123.0409); Eden Creek (39.5992, –123.1746); Elk Creek (39.5371, –123.0101); Hayes Creek (39.7092, –123.0867); Salt Creek (39.6765, –123.2740); Sportsmans Creek (39.5373, –123.0247); Sulper Springs (39.5536, –123.0365); Thatcher Creek (39.6686, –123.0639).

(xv) *Round Valley Hydrologic Sub-area 111172.*
Outlet(s) = Mill Creek (Lat 39.7396, Long –123.1420); Williams Creek (39.8145, –123.1333) upstream to endpoint(s) in: Cold Creek (39.8714, –123.2991); Grist Creek (39.7640, –123.2683); Mill Creek (39.8481, –123.2896); Murphy Creek (39.8865, –123.3803); Short Creek (39.8703, –123.2532); Town Creek (39.7991, –123.2889); Turner Creek (39.7218, –123.2175); Williams Creek (39.8903, –123.1212); Unnamed Tributary (39.7428, –123.2757); Unnamed Tributary (39.7493, –123.2584).

(xvi) *Black Butte River Hydrologic Sub-area 111173.*
Outlet(s) = Black Butte River (Lat 39.8239, Long –123.0880) upstream to endpoint(s) in: Black Butte River (39.5946, –122.8579); Buckhorn Creek (39.6563, –122.9225); Cold Creek (39.6960, –122.9063); Estell Creek (39.5966, –122.8224); Spanish Creek (39.6287, –122.8331).
(xvii) Wilderness Hydrologic Sub-area
111174. Outlet(s) = Middle Fork Eel River (Lat 39.8240, Long –123.0877) upstream to endpoint(s) in: Beaver Creek (39.9352, –122.9943); Fossil Creek (39.9447, –123.0403); Middle Fork Eel River (40.0780, –123.0442); North Fork Middle Fork Eel River (40.0727, –123.1396); Palm of Gileade Creek (40.0229, –123.0647); Pothole Creek (39.9347, –123.0440).

(6) Cape Mendocino Hydrologic Unit
1112—(i) Oil Creek Hydrologic Sub-area 111210. Outlet(s) = Guthrie Creek (Lat 40.5407, Long –124.3626); Oil Creek (40.5195, –124.3767) upstream to endpoint(s) in: Guthrie Creek (40.5320, –124.3128); Oil Creek (40.5061, –124.2875); Unnamed Tributary (40.4962, –124.3549); Unnamed Tributary (40.5141, –124.3573); Unnamed Tributary (40.4992, –124.3070).

(ii) Capetown Hydrologic Sub-area 111220. Outlet(s) = Bear River (Lat 40.4744, Long –124.3881); Davis Creek (40.3850, –124.3691); Singley Creek (40.4311, –124.4034) upstream to endpoint(s) in: Antone Creek (40.4281, –124.2114); Bear River (40.3591, –124.0536); Beer Bottle Gulch (40.3949, –124.1410); Bonanza Gulch (40.4777, –124.2966); Brushy Creek (40.4102, –124.1650); Davis Creek (40.3945, –124.2912); Harmonica Creek (40.3775, –124.0735); Hollister Creek (40.4109, –124.2891); Nelson Creek (40.3336, –124.1154); Peaked Creek (40.4123, –124.1897); Pullen Creek (40.4057, –124.0814); Singley Creek (40.4177, –124.3305); South Fork Bear River (40.4047, –124.2631); Unnamed Tributary (40.4271, –124.3107); Unnamed Tributary (40.4814, –124.2741); Unnamed Tributary (40.3633, –124.0651); Unnamed Tributary (40.3785, –124.0599); Unnamed Tributary (40.4179, –124.2391); Unnamed Tributary (40.4048, –124.0923); Unnamed Tributary (40.3996, –124.3175); Unnamed Tributary (40.3699, –124.0745); Unnamed Tributary (40.4045, –124.0745); Unnamed Tributary (40.4668, –124.2364); Unnamed Tributary (40.4389, –124.2350); Unnamed Tributary (40.4516, –124.2238); Unnamed Tributary (40.4236, –124.1594); Unnamed Tributary (40.4380, –124.1504); Unnamed Tributary (40.4394, –124.3745); West Side Creek (40.4751, –124.2432).

(iii) Mattole River Hydrologic Sub-area 111230. Outlet(s) = Big Creek (Lat 40.5407, Long –124.2114); Big Flat Creek (40.5195, –124.0780); Buck Creek (40.1066, –124.1218); Cooskie Creek (40.2192, –124.3105); Fourmile Creek (40.2561, –124.3578); Gitchell Creek (40.0938, –124.1023); Horse Mountain Creek (40.0685, –124.0822); Kinsey Creek (40.1717, –124.2310); Mattole River (40.2842, –124.3356); McNutt Gulch (40.2541, –124.3619); Oat Creek (40.1785, –124.2454); Randall Creek (40.2004, –124.2831); Shipman Creek (40.1175, –124.1449); Spanish Creek (40.1835, –124.2569); Telegraph Creek (40.0473, –124.0798); Whale Gulch (39.9623, –124.9785) upstream to endpoint(s) in: Anderson Creek (40.0143, –124.9948); Bear Creek (40.1262, –124.0631); Bear Creek (40.2819, –124.3336); Bear Trap Creek (40.2157, –124.1422); Big Creek (40.1742, –124.1924); Big Finley Creek (40.0910, –124.1444); Blue Slide Creek (40.1562, –124.1636); Box Canyon Creek (40.1078, –123.9283); Bridge Creek (40.0447, –124.0118); Buck Creek (40.1142, –124.2114); Conklin Creek (40.3197, –124.2055); Cooskie Creek (40.2286, –124.2986); Devils Creek (40.3432, –124.1365); Dry Creek (40.2646, –124.0660); East Branch North Fork Mattole River (40.3333, –124.1490); East Fork Honeydew Creek (40.1625, –124.0929); Eubank Creek (40.0997, –123.9661); Fire Creek (40.1533, –123.9529); Fourmile Creek (40.2604, –124.2099); Fourmile Creek (40.2087, –124.3079); Fourmile Creek (40.1767, –124.0759); French Creek (40.1384, –124.0072); Gibson Creek (40.0304, –123.9279); Gilham Creek (40.2078, –124.0855); Gitchell Creek (40.1086, –124.0847); Green Ridge Creek (40.3254, –124.1258); Grindstone Creek (40.2019, –123.9890); Harris Creek (40.0381, –123.9304); Harrow Creek (40.1612, –124.0292); Helen Barnum Creek (40.0036, –123.9101); Honeydew Creek (40.1747, –124.1410); Horse Mountain Creek (40.0769, –124.0729); Indian Creek (40.2772, –124.2759); Jewett Creek (40.1465, –124.2414); Kinsey Creek (40.1765, –124.2220); Lost Man Creek (39.9754, –123.9179); Mattole Canyon (40.2021, –123.9570); Mattole River (39.9614, –123.9623); McQuinn Creek (40.3186, –124.1801); McKee Creek (40.0864, –123.9480); McNutt Gulch (40.3458, –123.3418); Middle Creek (40.2591, –124.0366); Mill Creek (40.0158, –123.9693); Mill Creek (40.3305, –124.2598); Mill Creek (40.2839, –124.2946); Nooning Creek (40.0616, –124.0050); North Fork...
Mattole River (40.3866, –124.1867); North Fork Bear Creek (40.1494, –124.1060); North Fork Fourmile Creek (40.2019, –124.0722); Oat Creek (40.1884, –124.2296); Oil Creek (40.3214, –124.1601); Painter Creek (40.0844, –124.9639); Prichett Creek (40.2892, –124.1704); Randall Creek (40.2092, –124.2668); Ratljesnake Creek (40.3250, –124.0981); Shipman Creek (40.1250, –124.1384); Sholes Creek (40.1603, –124.0619); South Branch West Fork Bridge Creek (40.0326, –123.9853); South Fork Bear Creek (40.0176, –124.0016); Spanish Creek (40.1965, –124.2429); Squaw Creek (40.1884, –124.2002); Sulphur Creek (40.1965, –124.1586); Telegraph Creek (40.0640); Thompson Creek (39.9136, –123.9707); Unnamed Tributary (40.3475, –124.1606); Unnamed Tributary (40.0891, –123.9389); Unnamed Tributary (40.2233, –124.0172); Unnamed Tributary (40.2092, –124.1704); Unnamed Tributary (39.9969, –123.9960); Upper East Fork Honeydew Creek (40.1759, –124.1182); Upper North Fork Mattolte River (40.2907, –124.1115); Vanauken Creek (40.0674, –123.9429); West Fork Bridge Creek (40.0943, –123.9990); West Fork Honeydew Creek (40.1870, –124.1614); Westlund Creek (40.2440, –124.0036); Whale Gulch (39.9747, –123.9812); Woods Creek (40.2119, –124.161); Yew Creek (40.0018, –123.9762).

(ii) Wages Creek Hydrologic Sub-area

Outlet(s) = Cottaneva Creek (Lat 39.8316, Long –123.8507) upstream to endpoint(s) in: Bear Creek (39.8886, –123.8341); Jackass Creek (39.8901, –123.8282); Julia Creek (39.8542, –123.7937); Little Bear Creek (39.8629, –123.8400); North Fork Jackass Creek (39.9095, –123.9101); North Fork Julia Creek (39.8581, –123.8045); Soldier Creek (39.8679, –123.8162); South Fork Usal Creek (39.8556, –123.7865); Unnamed Tributary (39.8890, –123.8480); Usal Creek (39.8957, –123.8797); Waterfall Gulch (39.8787, –123.8680).

(iii) Ten Mile River Hydrologic Sub-area

Outlet(s) = Abalobadiah Creek (Lat 39.5654, Long –123.7672); Chadbourne Gulch (39.6133, –123.7822); Ten Mile River (39.5529, –123.7658); Seaside Creek (39.5592, –123.7655) upstream to endpoint(s) in: Abalobadiah Creek (39.5678, –123.7503); Bald Hill Creek (39.6278, –123.6461); Barlow Gulch (39.6464, –123.7384); Bear Pen Creek (39.5824, –123.6402); Booth Gulch (39.5567, –123.5918); Buckhorn Creek (39.6093, –123.6980); Campbell Creek (39.5053, –123.6610); Cavanough Gulch (39.6107, –123.6776); Chadbourne Gulch (39.6190, –123.7682); Clark Fork (39.5280, –123.5314); Curchman Creek (39.4789, –123.6398); Gulch 11 (39.4687, –123.5816); Gulch 19 (39.5939, –123.5781); Little Bear Haven Creek (39.5655, –123.6147); Little North Fork (39.6264, –123.7350); Mill Creek (39.5932, –123.7068); North Fork Ten Mile River (39.5870, –123.5480); O’Conner Gulch (39.6042, –123.6632); Patsy Creek (39.5714, –123.5669); Redwood Creek (39.5142, –123.5620); Seaside Creek (39.5612, –123.7501); Smith Creek (39.5251, –123.6499); South Fork Bear Haven Creek (39.5688, –123.6527); South Fork Ten Mile River (39.5683, –123.5395); Ten Mile River (39.5721, –123.7098); Unnamed Tributary (39.5180, –123.5948); Unnamed Tributary (39.5146, –123.6183); Unnamed Tributary (39.5898, –123.7677); Unnamed Tributary (39.5898, –123.7593); Unnamed Tributary (39.5936, –123.6034).
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(iv) Noyo River Hydrologic Sub-area 111320. Outlet(s) = Digger Creek (Lat 39.4088, Long –123.8164); Hare Creek (39.4171, –123.8128); Jug Handle Creek (39.3767, –123.8176); Mill Creek (39.4894, –123.7967); Mitchell Creek (39.3923, –123.8165); Noyo River (39.4274, –123.8096); Pudding Creek (39.4588, –123.8089); Virgin Creek (39.4714, –123.8045) upstream to endpoint(s) in: Bear Gulch (39.3881, –123.6614); Brandon Gulch (39.4191, –123.6645); Bunker Gulch (39.3969, –123.7153); Burbeck Creek (39.4354, –123.4235); Covington Gulch (39.4099, –123.7546); Dewarren Creek (39.4974, –123.5555); Digger Creek (39.3932, –123.7820); Duffy Gulch (39.4469, –123.6023); Gulch Creek (39.4441, –123.4684); Gulch Seven (39.4323, –123.5781); Hare = Creek (39.6922); Hayworth Creek (39.4857, –123.7469); Hayshed Creek (39.4200, –123.7391); Jug Handle Creek (39.3647, –123.7523); Kass Creek (39.4262, –123.6807); Little North Fork (39.4532, –123.6636); Little Valley Creek (39.5033, –123.4769); Marble Gulch (39.4423, –123.5479); McMullen Creek (39.4383, –123.4488); Middle Fork North Fork (39.4924, –123.5321); Mill Creek (39.4813, –123.7600); Mitchell Creek (39.3813, –123.7794); North Fork Hayworth Creek (39.4901, –123.5626); North Fork Noyo River (39.4765, –123.5535); North Fork South Fork Noyo River (39.3971, –123.6108); Noyo River (39.4242, –123.3550); Olds Creek (39.3964, –123.4448); Parlin Creek (39.3700, –123.6111); Pudding Creek (39.4591, –123.6516); Redwood Creek (39.4660, –123.4571); South Fork Hare Creek (39.3785, –123.7384); South Fork Noyo River (39.3620, –123.6188); Unnamed Tributary (39.4113, –123.5621); Unnamed Tributary (39.3918, –123.6425); Unnamed Tributary (39.4168, –123.4578); Unnamed Tributary (39.4656, –123.7467); Unnamed Tributary (39.4931, –123.7371); Unnamed Tributary (39.4922, –123.7381); Unnamed Tributary (39.4939, –123.7184); Unnamed Tributary (39.4938, –123.6436); Unnamed Tributary (39.4002, –123.7347); Unnamed Tributary (39.3831, –123.6177); Unnamed Tributary (39.4926, –123.4764); Virgin Creek (39.4621, –123.7855); Unnamed Tributary (39.4650, –123.7463).

(v) Big River Hydrologic Sub-area 111330. Outlet(s) = Big River (Lat 39.3030, Long –123.7957); Casper Creek (39.3617, –123.8169); Doyle Creek (39.3603, –123.8187); Jack Peters Creek (39.3193, –123.8006); Russian Gulch (39.3288, –123.8050) upstream to endpoint(s) in: Berry Gulch (39.3585, –123.6930); Big River (39.3166, –123.7373); Casper Creek (39.3462, –123.7556); Chamberlain Creek (39.4007, –123.5317); Daugherty Creek (39.1700, –123.3099); Doyle Creek (39.3517, –123.8007); East Branch Little North Fork Big River (39.3372, –123.6410); East Branch North Fork Big River (39.3354, –123.6452); Gates Creek (39.2083, –123.3948); Jack Peters Gulch (39.2325, –123.7850); James Creek (39.3922, –123.4747); Johnson Creek (39.1963, –123.3927); Johnson Creek (39.2556, –123.4485); Laguna Creek (39.2910, –123.6334); Little North Fork Big River (39.3497, –123.6242); Marten Creek (39.2920, –123.4767); Mettick Creek (39.2591, –123.5193); Middle Fork North Fork Big River (39.3575, –123.7170); North Fork Big River (39.3762, –123.4591); North Fork Casper Creek (39.3610, –123.7356); North Fork James Creek (39.3989, –123.4939); North Fork Ramone Creek (39.2760, –123.4846); Pig Pen Gulch (39.3226, –123.4609); Pruitt Creek (39.2592, –123.3812); Ramone Creek (39.2714, –123.4145); Rice Creek (39.2809, –123.3963); Russell Brook (39.2863, –123.4461); Russian Gulch (39.2327, –123.7650); Snuffins Creek (39.1836, –123.3854); Soda Creek (39.2230, –123.4239); South Fork Big River (39.2317, –123.3867); South Fork Casper Creek (39.3493, –123.7216); Two Log Creek (39.3484, –123.5781); Unnamed Tributary (39.3807, –123.5556); Unnamed Tributary (39.3637, –123.5464); Unnamed Tributary (39.3776, –123.5274); Unnamed Tributary (39.4029, –123.5771); Valentine Creek (39.2994, –123.3957); Water Gulch (39.3607, –123.5891).

(vi) Albion River Hydrologic Sub-area 111340. Outlet(s) = Albion River (Lat 39.2253, Long –123.7679); Big Salmon Creek (39.2150, –123.7660); Buckhorn Creek (39.2503, –123.7839); Dark Gulch (39.2397, –123.7740); Little Salmon Creek (39.2150, –123.7660); Little River (39.2734, –123.7914) upstream to endpoint(s) in: Albion River (39.2613, –123.5766); Big Salmon Creek (39.2070, –123.6514); Buckhorn Creek (39.2513, –123.7595); Dark Gulch (39.2379, –123.7592); Duck Pond Gulch (39.2456, –123.6990); East Railroad Gulch (39.2604, –123.6381).
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Hazel Gulch (39.2141, –123.6418); Kaison Gulch (39.273, –123.8803); Little North Fork South Fork Albion River (39.235, –123.6431); Little River (39.263, –123.7190); Little Salmon Creek (39.2168, –123.7515); North Fork Albion River (39.265, –123.6503); North Fork Indian Creek (39.123, –123.3345); North Fork Navarro River (39.170, –123.5606); Parkinson Gulch (39.078, –123.4907); Perry Gulch (39.134, –123.5707); Rancheria Creek (38.862, –123.2417); Ray Gulch (39.1792, –123.6494); Robinson Creek (38.945, –123.3513); Rose Creek (39.158, –123.3672); Shingle Mill Creek (39.1671, –123.4223); Soda Creek (39.0238, –123.3149); Soda Creek (39.1531, –123.3734); South Branch (39.1409, –123.3196); Spooner Creek (39.2221, –123.4811); Tramway Gulch (39.1481, –123.5858); Yale Creek (38.8882, –123.2785).

(vi) Navarro River Hydrologic Sub-area 111350. Outlet(s) = Navarro River (Lat 39.1921, Long –123.7611) upstream to endpoint(s) in: Alder Creek (38.9830, –123.3946); Anderson Creek (39.1733, –123.2907); Bailey Creek (39.1804, –123.4804); Barton Gulch (39.1425, –123.4326); Bear Creek (39.1270, –123.4607); Camp 16 Gulch (39.1937, –123.6095); Camp Creek (38.9760, –123.5277); Cold Spring Creek (39.0374, –123.3916); Cook Creek (39.1879, –123.5109); Cune Creek (39.1622, –123.6014); Dago Creek (39.0731, –123.5068); Dead Horse Gulch (39.1576, –123.6124); Dutch Henry Creek (39.2112, –123.5794); Floodgate Creek (39.1291, –123.5365); Fluem Gulch (39.1015, –123.6695); Flynn Creek (39.2099, –123.6032); German Creek (38.9452, –123.4209); Gut Creek (39.0803, –123.3312); Ham Canyon (39.014, –123.4265); Horse Creek (39.0144, –123.4906); Hungry Hollow Creek (39.1327, –123.4486); Indian Creek (39.0708, –123.3301); Jimmy Creek (39.017, –123.2888); John Smith Creek (39.2275, –123.5366); Little North Fork Navarro River (39.1941, –123.4553); Low Gap Creek (39.1590, –123.3783); Navarro River (38.9367, –123.1490); Marsh Gulch (39.1692, –123.7049); McCarvey Creek (39.1589, –123.4048); Mill Creek (39.1270, –123.4315); Minnie Creek (38.9751, –123.4529); Murray Gulch (39.1755, –123.6666); Mustard Gulch (39.1673, –123.6395); North Branch (39.2069, –123.5961); North Fork Indian Creek (39.1213, –123.3345); North Fork Navarro (39.1708, –123.5606); Parkinson Gulch (39.078, –123.4907); Perry Gulch (39.134, –123.5707); Rancheria Creek (38.862, –123.2417); Ray Gulch (39.1792, –123.6494); Robinson Creek (38.945, –123.3513); Rose Creek (39.158, –123.3672); Shingle Mill Creek (39.1671, –123.4223); Soda Creek (39.0238, –123.3149); Soda Creek (39.1531, –123.3734); South Branch (39.1409, –123.3196); Spooner Creek (39.2221, –123.4811); Tramway Gulch (39.1481, –123.5858); Yale Creek (38.8882, –123.2785).

(vii) Navarro River Hydrologic Sub-area 111360. Outlet(s) = Elk Creek (Lat 39.0537, Long –123.5606); Marsh Gulch (39.1692, –123.7049); McCarvey Creek (39.1589, –123.4048); Mill Creek (39.1270, –123.4315); Minnie Creek (38.9751, –123.4529); Murray Gulch (39.1755, –123.6666); Mustard Gulch (39.1673, –123.6395); North Branch (39.2069, –123.5961); North Fork Indian Creek (39.1213, –123.3345); North Fork Navarro (39.1708, –123.5606); Parkinson Gulch (39.078, –123.4907); Perry Gulch (39.134, –123.5707); Rancheria Creek (38.862, –123.2417); Ray Gulch (39.1792, –123.6494); Robinson Creek (38.945, –123.3513); Rose Creek (39.158, –123.3672); Shingle Mill Creek (39.1671, –123.4223); Soda Creek (39.0238, –123.3149); Soda Creek (39.1531, –123.3734); South Branch (39.1409, –123.3196); Spooner Creek (39.2221, –123.4811); Tramway Gulch (39.1481, –123.5858); Yale Creek (38.8882, –123.2785).

(ix) Greenwood Creek Hydrologic Sub-area 111361. Outlet(s) = Greenwood Creek (Lat 39.1262, Long –123.7181) upstream to endpoint(s) in: Greenwood Creek (39.0894, –123.5924).

(x) Elk Creek Hydrologic Sub-area 111362. Outlet(s) = Elk Creek (Lat 39.1024, Long –123.7080) upstream to endpoint(s) in: Elk Creek (39.0657, –123.6254).

(xi) Alder Creek Hydrologic Sub-area 111363. Outlet(s) = Brush Creek (Lat 38.9760, Long –123.7120) upstream to endpoint(s) in: Brush Creek (38.9730, –123.5563); Mill Creek (38.9678, –123.6515); Unnamed Tributary (38.9724, –123.6571).

(xii) Garcia River Hydrologic Sub-area 111370. Outlet(s) = Garcia River (Lat 38.9550, Long –123.7338); Point Arena Creek (38.9141, –123.7103); Schooner Gulch (38.8667, –123.6550) upstream to endpoint(s) in: Blue Water Hole Creek (38.9378, –123.5023); Fleming Creek (38.8341, –123.5361); Garcia River (38.8695, –123.3681); Hathaway Creek (38.9295, –123.7011); Inman Creek (38.8604, –123.4370); Larmour Creek (38.9419, –123.4469); Mill Creek (38.9078, –123.3143); North Fork Garcia River (38.9233, –123.5339); North Fork Schooner Gulch (38.9758, –123.6281); Pardaloe Creek (38.8895, –123.3423); Point Arena Creek (38.9069, –123.6383); Redwood Creek (38.9241, –123.3343); Rolling Brook (38.8665, –123.5716); Schooner Gulch (38.8667, –123.6196); South Fork Garcia River (38.8450, –123.5420); Stansburry Creek (38.9422, –123.4720); Signal Creek (38.8639, –123.4414); Unnamed Tributary (38.9738, –123.5023).
(38.8758, –123.5692); Unnamed Tributary (38.9141, –123.4624).

(xiii) North Fork Gualala River Hydrologic Sub-area 111381. Outlet(s) = North Fork Gualala River (Lat 38.7784, Long –123.4992) upstream to endpoint(s) in: Bear Creek (38.8347, –123.3842); Billings Creek (38.8652, –123.3496); Doty Creek (38.8495, –123.5131); Dry Creek (38.8416, –123.4555); Little North Fork Gualala River (38.8295, –123.5570); McGann Gulch (38.8026, –123.4458); North Fork Gualala River (38.8479, –123.4119); Robinson Creek (38.8416, –123.3725); Robinson Creek (38.8386, –123.4991); Stewart Creek (38.8109, –123.4157); Unnamed Tributary (38.8487, –123.3820).

(xiv) Rockpile Creek Hydrologic Sub-area 111382. Outlet(s) = Rockpile Creek (Lat 38.7507, Long –123.4706) upstream to endpoint(s) in: Rockpile Creek (38.7966, –123.3872).

(xv) Buckeye Creek Hydrologic Sub-area 111383. Outlet(s) = Buckeye Creek (Lat 38.7400, Long –123.2697); Flat Ridge Creek (38.7616, –123.2400); Franchini Creek (38.7500, –123.3708); North Fork Buckeye (38.7991, –123.3166).

(xvi) Wheatfield Fork Hydrologic Sub-area 111384. Outlet(s) = Wheatfield Fork Gualala River (Lat 38.7018, Long –123.4168) upstream to endpoint(s) in: Danfield Creek (38.6369, –123.1431); Fuller Creek (38.7109, –123.2565); Haupt Creek (38.6220, –123.3551); House Creek (38.6545, –123.1184); North Fork Fuller Creek (38.7252, –123.2968); Pepperwood Creek (38.6205, –123.1665); South Fork Fuller Creek (38.6973, –123.2860); Tombs Creek (38.6989, –123.1616); Unnamed Tributary (38.7175, –123.2744); Wheatfield Fork Gualala River (38.7497, –123.2215).

(xvii) Gualala Hydrologic Sub-area 111385. Outlet(s) = Fort Ross Creek (Lat 38.5119, Long –123.2436); Gualala River (38.7687, –123.5334); Kolmer Gulch (38.5238, –123.2646) upstream to endpoint(s) in: Big Pepperwood Creek (38.7951, –123.4638); Carson Creek (38.5653, –123.1906); Fort Ross Creek (38.5174, –123.2363); Groshong Gulch (38.7614, –123.4904); Gualala River (38.7780, –123.4991); Kolmer Gulch (38.5509, –123.2247); Little Pepperwood (38.7738, –123.4427); Marshall Creek (38.5647, –123.2058); McKenzie Creek (38.5895, –123.1730); Palmer Canyon Creek (38.6002, –123.2167); South Fork Gualala River (38.5646, –123.1689); Sproule Creek (38.6122, –123.2739); Turner Canyon (38.5294, –123.1672); Unknown Tributary (38.5634, –123.2003).

(xviii) Russian Gulch Hydrologic Sub-area 111390. Outlet(s) = Russian Gulch Creek (Lat 38.4669, Long –123.1569) upstream to endpoint(s) in: Russian Gulch Creek (38.4956, –123.1535); West Branch Russian Gulch Creek (38.4968, –123.1631).

(8) Maps of critical habitat for the Northern California Steelhead ESU follow:
Critical Habitat for the Northern California Steelhead

Trinidad Hydrologic Unit 1108

Cities/Towns
- Critical Habitat
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail
Critical Habitat for the Northern California Steelhead

Cape Mendocino Hydrologic Unit 1112

- Cities/Towns
- Critical Habitat
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number
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(h) Central California Coast Steelhead (O. mykiss). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) Russian River Hydrologic Unit 1114—(i) Guerneville Hydrologic Sub-area 111411. Outlet(s) = Russian River (Lat 38.4507, Long –123.1289) upstream to endpoint(s) in: Atascadero Creek (38.3473, –122.8626); Austin Creek...
(38.5098, -123.0680); Baumert Springs (38.4195, -122.9658); Dutch Bill Creek (38.4132, -122.9508); Duvoul Creek (38.4527, -122.9525); Fife Creek (38.5584, -122.9922); Freezeout Creek (38.7183, -122.9770); Fife Creek (38.5679, -122.9379); Gage Creek (38.6244, -122.8754); Grape Creek (38.6593, -122.9707); Mill Creek (38.5976, -122.9914); North Slough Creek (38.6392, -122.8886); Palmer Creek (38.5770, -122.9904); Pena Creek (38.6384, -123.0743); Redwood Log Creek (38.6705, -123.0725); Salt Creek (38.5543, -122.9133); Wallace Creek (38.6260, -122.9611); Wine Creek (38.6662, -122.9682); Woods Creek (38.6069, -123.0272).

(ii) SnADDRESS حياته A SNADDRESS مياء مياء A SNADDRESS مياء (38.5586, -122.9508) upstream to endpoint(s) in: Angel Creek (38.6101, -122.9833); Crane Creek (38.6434, -122.9451); Dry Creek (38.7181, -123.0091); Dutcher Creek (38.7223, -122.9770); Felta Creek (38.5679, -122.9379); Foss Creek (38.6244, -122.8754); Grape Creek (38.6593, -122.9707); Mill Creek (38.5976, -122.9914); North Slough Creek (38.6392, -122.8886); Palmer Creek (38.5770, -122.9904); Pena Creek (38.6384, -123.0743); Redwood Log Creek (38.6705, -123.0725); Salt Creek (38.5543, -122.9133); Wallace Creek (38.6260, -122.9611); Wine Creek (38.6662, -122.9682); Woods Creek (38.6069, -123.0272).

(iii) Mark West Hydrologic Sub-area 111423. Outlet(s) = Mark West Creek (Lat 38.4962, Long -122.8492) upstream to endpoint(s) in: Humbug Creek (38.5187, -122.5995); Pool Creek (38.5486, -122.7641); Pong Creek (38.5313, -122.7615); Windsor Creek (38.594, -122.8101).

(iv) Warm Springs Hydrologic Sub-area 111424. Outlet(s) = Dry Creek (Lat 38.5862, Long -122.8577) upstream to endpoint(s) in: Angel Creek (38.6101, -122.9833); Crane Creek (38.6434, -122.9451); Dry Creek (38.7181, -123.0091); Dutcher Creek (38.7223, -122.9770); Felta Creek (38.5679, -122.9379); Foss Creek (38.6244, -122.8754); Grape Creek (38.6593, -122.9707); Mill Creek (38.5976, -122.9914); North Slough Creek (38.6392, -122.8886); Palmer Creek (38.5770, -122.9904); Pena Creek (38.6384, -123.0743); Redwood Log Creek (38.6705, -123.0725); Salt Creek (38.5543, -122.9133); Wallace Creek (38.6260, -122.9611); Wine Creek (38.6662, -122.9682); Woods Creek (38.6069, -123.0272).

(v) Geyserville Hydrologic Sub-area 111425. Outlet(s) = Russian River (Lat 38.6132, Long -122.8321) upstream to endpoint(s) in: Ash Creek (38.8556, -123.0082); Bear Creek (38.7253, -123.0758); Foote Creek (38.6433, -122.6797); Foss Creek (38.6373, -122.8753); Franz Creek (38.6732, -122.6343); Gilling Creek (38.7552, -122.8840); Gird Creek (38.7056, -122.8311); Ingalls Creek (38.7344, -122.7192); Kellogg Creek (38.6753, -122.6423); Little Briggs Creek (38.7082, -122.7014); Maacama Creek (38.6754, -122.8750); Mill Creek (38.6342, -122.8750); North Slough Creek (38.6392, -122.8750); Unnamed Tributary (38.7329, -122.8601); Yellowjacket Creek (38.6666, -122.6308).

(vi) Sulphur Creek Hydrologic Sub-area 111426. Outlet(s) = Big Sulphur Creek (Lat 38.8279, Long -122.9914) upstream to endpoint(s) in: Alder Creek (38.8503, -122.8953); Anna Belcher Creek (38.7537, -122.8596); Big Sulphur Creek (38.8243, -122.8754); Frasier Creek (38.8439, -122.9341); Hummingbird Creek (38.7586, -122.8596); Little Sulphur Creek (38.7586, -122.8596); Little Sulphur Creek (38.7586, -122.8596); Miller Creek (38.7221, -122.6808); Oat Valley Creek (38.8464, -123.0712); Redwood Creek (38.8342, -122.6720); Sausal Creek (38.6924, -122.7930); South Fork Gill Creek (38.7420, -122.8760); Unnamed Tributary (38.7329, -122.8601); Yellowjacket Creek (38.6666, -122.6308).
(vii) Ukiah Hydrologic Sub-area 111431. Outlet(s) = Russian River (Lat 38.8328, Long –123.0557) upstream to endpoint(s) in: Pieta Creek (38.8622, –122.9329).

(viii) Forsythe Creek Hydrologic Sub-area 111433. Outlet(s) = West Branch Russian River (Lat 39.2257, Long –123.2012) upstream to endpoint(s) in: Bakers Creek (39.2585, –123.2432); Eldridge Creek (39.2550, –123.3309); Forsythe Creek (39.2976, –123.2963); Jack Smith Creek (39.2754, –123.3421); Mariposa Creek (39.3473, –123.2625); Mill Creek (39.2969, –123.3360); Salt Hollow Creek (39.2583, –123.1881); Seward Creek (39.2606, –123.2646); West Branch Russian River (39.3642, –123.2334).

(2) Bodega Hydrologic Unit 1115—(i) Salmon Creek Hydrologic Sub-area 111510. Outlet(s) = Salmon Creek (Lat 38.3554, Long –123.0675) upstream to endpoint(s) in: Coleman Valley Creek (38.3956, –123.0097); Faye Creek (38.3749, –123.0000); Finley Creek (38.3707, –123.0258); Salmon Creek (38.3877, –122.9318); Tannery Creek (38.3660, –122.9908).

(ii) Estero Americano Hydrologic Sub-area 111530. Outlet(s) = Estero Americano (Lat 38.2939, Long –123.0011) upstream to endpoint(s) in: Estero Americano (38.3117, –122.9748); Ebabias Creek (38.3345, –122.9759).

(3) Marin Coastal Hydrologic Unit 2201—(i) Walker Creek Hydrologic Sub-area 220112. Outlet(s) = Walker Creek (Lat 38.2213, Long –122.9228) upstream to endpoint(s) in: Chileno Creek (38.2145, –122.8579); Frink Canyon (38.1761, –122.8405); Millerton Gulch (38.1376, –122.8052); Verde Canyon (38.1630, –122.8116); Unnamed Tributary (38.1224, –122.8095); Walker Creek (38.1617, –122.7815).

(ii) Lagunitas Creek Hydrologic Sub-area 220113. Outlet(s) = Lagunitas Creek (Lat 38.0827, Long –122.8274) upstream to endpoint(s) in: Cheda Creek (38.0483, –122.7329); Devil’s Gulch (38.0939, –122.7129); Giacomini Creek (38.0075, –122.7386); Horse Camp Gulch (38.0078, –122.7624); Lagunitas Creek (37.9974, –122.7045); Olema Creek (37.9719, –122.7125); Quarry Gulch (38.0345, –122.7639); San Geronimo Creek (38.0313, –122.6499); Unnamed Tributary (37.9893, –122.7726); Unnamed Tributary (37.9876, –122.7553).

(iii) Point Reyes Hydrologic Sub-area 220120. Outlet(s) = Creamery Bay Creek (Lat 38.0779, Long –122.9572); East Schooner Creek (38.0913, –122.9293); Home Ranch (38.0705, –122.9119); Laguna Creek (38.0335, –122.6732); Muddy Hollow Creek (38.0329, –122.6842) upstream to endpoint(s) in: Creamery Bay Creek (38.0809, –122.9561); East Schooner Creek (38.0928, –122.9159); Home Ranch Creek (38.0784, –122.9038); Laguna Creek (38.0436, –122.6559); Muddy Hollow Creek (38.0549, –122.6669).

(iv) Bolinas Hydrologic Sub-area 220130. Outlet(s) = Easkoot Creek (Lat 37.9026, Long –122.6474); McKinnon Gulch (37.9126, –122.6639); Morse Gulch (37.9189, –122.6710); Pine Gulch Creek (37.9218, –122.6882); Redwood Creek (37.8955, –122.5677); Stinson Gulch (37.9068, –122.6517); Wilkins Creek (37.9343, –122.6967) upstream to endpoint(s) in: Easkoot Creek (37.8997, –122.6370); Kent Canyon (37.8866, –122.5800); McKinnon Gulch (37.9197, –122.6564); Morse Gulch (37.9240, –122.6618); Pine Gulch Creek (37.9557, –122.7197); Redwood Creek (37.9006, –122.5787); Stinson Gulch (37.9141, –122.6426); Wilkins Creek (37.9450, –122.6910).

(4) San Mateo Hydrologic Unit 2202—(i) San Mateo Coastal Hydrologic Sub-area 220221. Outlet(s) = Denniston Creek (37.5033, –122.4869); Frenchmans Creek (37.4804, –122.4518); San Pedro Creek (37.5964, –122.5057) upstream to endpoint(s) in: Denniston Creek (37.5184, –122.4866); Frenchmans Creek (37.5170, –122.4332); Middle Fork San Pedro Creek (37.5758, –122.4591); North Fork San Pedro Creek (37.5996, –122.4635).

(ii) Half Moon Bay Hydrologic Sub-area 220222. Outlet(s) = Pilarcitos Creek (Lat 37.4758, Long –122.4893) upstream to endpoint(s) in: Apanolino Creek (37.5202, –122.4158); Arroyo Leon Creek (37.4560, –122.3442); Mills Creek (37.4629, –122.3721); Pilarcitos Creek (37.5259, –122.3980); Unnamed Tributary (37.4705, –122.3616).

(iii) Tunitas Creek Hydrologic Sub-area 220223. Outlet(s) = Lobitos Creek (Lat 37.3762, Long –122.4093); Tunitas Creek (37.3567, –122.3999) upstream to endpoint(s) in: East Fork Tunitas Creek (37.3981, –122.3104); Lobitos Creek (37.4246, –122.3586); Tunitas Creek (37.4086, –122.3502).
(iv) San Gregorio Creek Hydrologic Sub-area 220230. Outlet(s) = San Gregorio Creek (Lat 37.3215, Long –122.4030) upstream to endpoint(s) in: Alpine Creek (37.3062, –122.2003); Bogess Creek (37.3740, –122.3010); El Corte Madera Creek (37.3650, –122.3307); Harrington Creek (37.3811, –122.2936); La Honda Creek (37.3680, –122.2655); Langley Creek (37.3302, –122.2420); Mindego Creek (37.3204, –122.2239); San Gregorio Creek (37.3099, –122.2779); Woodruff Creek (37.3288, –122.2495).  

(v) Pescadero Creek Hydrologic Sub-area 220240. Outlet(s) = Pescadero Creek (Lat 37.2669, Long –122.4122); Pomponio Creek (37.2979, –122.1461) upstream to endpoint(s) in: Bradley Creek (37.2819, –122.3802); Butano Creek (37.2419, –122.3165); Evans Creek (37.2659, –122.2163); Honsinger Creek (37.2828, –122.3316); Little Boulder Creek (37.2149, –122.2163); Little Butano Creek (37.2040, –122.3492); Oil Creek (37.2572, –122.1325); Pescadero Creek (37.2320, –122.1553); Lamberts Creek (37.3014, –122.1789); Peters Creek (37.2883, –122.1694); Pescadero Creek (37.2300, –122.3805); Slate Creek (37.2530, –122.1935); Tarwater Creek (37.2731, –122.2387); Waterman Creek (37.2455, –122.1568).  

(5) Bay Bridge Hydrologic Unit 2203—(i) San Rafael Hydrologic Sub-area 220320. Outlet(s) = Arroyo Corte Madera del Presidio (Lat 37.8917, Long –122.5254); Corte Madera Creek (37.9425, –122.5059) upstream to endpoint(s) in: Arroyo Corte Madera del Presidio (37.9298, –122.5723); Cascade Creek (37.9867, –122.6287); Cascade Creek (37.9157, –122.5655); Larkspur Creek (37.9905, –122.5514); Old Mill Creek (37.9176, –122.5746); Ross Creek (37.9558, –122.3752); San Anselmo Creek (37.9525, –122.4200); Sleepy Hollow Creek (38.0074, –122.5794); Tamalpais Creek (37.9481, –122.5674).  

(ii) [Reserved]  

(6) Santa Clara Hydrologic Unit 2205—(1) Coyote Creek Hydrologic Sub-area 220530. Outlet(s) = Coyote Creek (Lat 37.4629, Long –122.4030) upstream to endpoint(s) in: Arroyo Aguaque (37.3907, –122.7836); Coyote Creek (37.2778, –121.8033); Upper Penitencia Creek (37.3907, –121.7574).  

(ii) Guadalupe River—San Jose Hydrologic Sub-area 220540. Outlet(s) = Coyote Creek (Lat 37.2778, Long –121.8033) upstream to endpoint(s) in: Coyote Creek (37.2275, –121.7514).  

(3) Palo Alto Hydrologic Sub-area 220550. Outlet(s) = Guadalupe River (Lat 37.4614, Long –122.0240); San Francisco Creek (37.4658, –122.1152); Stevens Creek (37.4566, –122.0641) upstream to endpoint(s) in: Bear Creek (37.4164, –122.2890); Corte Madera Creek (37.4073, –122.2378); Guadalupe River (37.3499, –121.9094); Los Trancos Creek (37.3293, –122.1760); McGarvey Gulch (37.4146, –122.2953); Squealer Gulch (37.4355, –122.2880); Stevens Creek (37.2900, –122.0778); West Union Creek (37.4528, –122.3020).  

(7) San Pablo Hydrologic Unit 2206—(1) Petaluma River Hydrologic Sub-area 220630. Outlet(s) = Petaluma River (Lat 38.1111, Long –122.4944) upstream to endpoint(s) in: Adobe Creek (38.2940, –122.5834); Lichau Creek (38.2848, –122.6654); Lynch Creek (38.2748, –122.6194); Petaluma River (38.3010, –122.7149); Schultz Slough (38.1892, –122.2880); Stevens Creek (37.2900, –122.0778); West Union Creek (37.4528, –122.3020).  

(ii) Sonoma Creek Hydrologic Sub-area 220640. Outlet(s) = Sonoma Creek (Lat 38.1525, Long –122.4050) upstream to endpoint(s) in: Agua Caliente Creek (38.3368, –122.4518); Asbury Creek (38.3401, –122.5590); Bear Creek (38.4666, –122.5253); Calabazas Creek (38.4033, –122.4803); Carriger Creek (38.3031, –122.5336); Graham Creek (38.3474, –122.5607); Hooker Creek (38.3809, –122.5462); Mill Creek (38.3395, –122.5454); Nathanson Creek (38.3350, –122.4290); Rodgers Creek (38.2924, –122.5543); Schell Creek (38.2554, –122.4510); Sonoma Creek (38.4567, –122.3819); Stuart Creek (38.3936, –122.4708); Yulupa Creek (38.3986, –122.5934).  

(iii) Napa River Hydrologic Sub-area 220650. Outlet(s) = Napa River (Lat 38.0786, Long –122.2468) upstream to endpoint(s) in: Bale Slough (38.4566, –122.2468); Bear Canyon Creek (38.4512, –122.4415); Bell Canyon Creek (38.5551, –122.4827); Brown's Valley Creek (38.3251, –122.3686); Canon Creek (38.5368, –122.4854); Carneros Creek (38.3186, –122.3914); Conn Creek (38.3643, –122.3824); Cyrus Creek (38.5776, –122.6032); Diamond Mountain Creek
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(38.5645, –122.5903); Dry Creek (38.4334, –122.4791); Dutch Henery Creek (38.6080, –122.5253); Garnett Creek (38.6286, –122.3893); Huichica Creek (38.6787, –122.3936); Jericho Canyon Creek (38.6219, –122.3593); Milliken Creek (38.3773, –122.2280); Mill Creek (38.5299, –122.5513); Murphy Creek (38.3155, –122.2111); Napa Creek (38.3047, –122.3134); Napa River (38.6638, –122.0621); Pickle Canyon Creek (38.3672, –122.4071); Rector Creek (38.4410, –122.3451); Redwood Creek (38.3765, –122.4466); Ritchie Creek (38.5369, –122.5652); Sarco Creek (38.3567, –122.2071); Soda Creek (38.4156, –122.2953); Spencer Creek (38.2729, –122.1909); Sulphur Creek (38.4895, –122.0293); Suscol Creek (38.2522, –122.2157); Tulucay Creek (38.3672, –122.2385); Unnamed Tributary (38.4248, –122.4935); Unnamed Tributary (38.4839, –122.5161); York Creek (38.5128, –122.5025).

(8) Big Basin Hydrologic Unit 3304—

(i) Davenport Hydrologic Sub-area 330411. Outlet(s) = Baldwin Creek (Lat 36.9669, Long –122.1232); Davenport Landing Creek (37.0231, –122.2153); Laguna Creek (36.9824, –122.1560); Liddell Creek (37.0001, –122.1816); Majors Creek (36.9762, –122.1816); Molino Creek (37.0235, –122.2218); Molino Creek (37.0394, –122.2125); Peasley Gulch (36.9824, –122.0861); Queseria Creek (37.0521, –122.2042); San Vicente Creek (37.0417, –122.1741); Scott Creek (37.1336, –122.2360); West Branch Waddell Creek (37.1087, –122.2062); West Fork Liddell Creek (37.0117, –122.1763); Unnamed Tributary (37.0103, –122.0701); Wilder Creek (37.0107, –122.0770).

(ii) San Lorenzo Hydrologic Sub-area 330412. Outlet(s) = Arana Gulch Creek (Lat 36.9676, Long –122.0028); San Lorenzo River (36.9641, –122.0125) upstream to endpoint(s) in: Arana Gulch Creek (37.0270, –122.0793); Bean Creek (37.0566, –122.0222); Bear Creek (37.1711, –122.0750); Boulder Creek (37.1952, –122.1892); Bracken Brae Creek (37.1441, –122.1459); Branciforte Creek (37.0701, –121.9749); Crystal Creek (37.0333, –121.9825); Carbonera Creek (37.0286, –122.0202); Central Branch Arana Gulch Creek (37.0170, –121.9714); Deer Creek (37.2215, –122.0790); Fall Creek (37.0705, –122.1063); Gold Gulch Creek (37.0427, –122.1018); Granite Creek (37.0490, –122.1979); Hare Creek (37.1544, –122.1690); Jameson Creek (37.1485, –122.1904); Kings Creek (37.2252, –122.1059); Lompico Creek (37.1250, –122.0496); Mackenzie Creek (37.0866, –122.0176); Mountain Charlie Creek (37.1385, –121.9914); Newell Creek (37.1019, –122.0724); San Lorenzo River (37.2276, –122.1384); Two Bar Creek (37.1833, –122.0929); Unnamed Tributary (37.2106, –122.0952); Unnamed Tributary (37.2032, –122.0699); Zayante Creek (37.1062, –122.0224).

(iii) Aptos-Soquel Hydrologic Sub-area 330413. Outlet(s) = Aptos Creek (Lat 36.9692, Long –121.9065); Soquel Creek (36.9720, –121.9526) upstream to endpoint(s) in: Amaya Creek (37.0930, –121.9297); Aptos Creek (37.0545, –121.8568); Bates Creek (37.0099, –121.9353); Bridge Creek (37.0464, –121.9869); East Branch Soquel Creek (37.0690, –121.8297); Hester Creek (37.0967, –121.9458); Hinckley Creek (37.0671, –121.9069); Kings Creek (37.0573, –121.9579); Valencia Creek (37.0323, –121.8493); West Branch Soquel Creek (37.1095, –121.9606).

(iv) Ano Nuevo Hydrologic Sub-area 330420. Outlet(s) = Ano Nuevo Creek (Lat 37.1163, Long –122.3060); Gazos Creek (37.1646, –122.3625); Whitehouse Creek (37.1457, –122.3469) upstream to endpoint(s) in: Ano Nuevo Creek (37.1269, –122.3039); Bear Gulch (37.1965, –122.2773); Gazos Creek (37.2088, –122.2868); Old Womans Creek (37.1629, –122.3033); Whitehouse Creek (37.1775, –122.2900).
(9) Maps of critical habitat for the Central California Coast Steelhead ESU follow:
(i) **South-Central California Coast Steelhead** (*O. mykiss*). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) **Pajaro River Hydrologic Unit** 3305—(1) **Watsonville Hydrologic Sub-area** 330510. Outlet(s) = Pajaro River (Lat 36.8506, Long –121.8101) upstream to endpoint(s) in: Banks Canyon Creek (36.9958, –121.7264); Browns Creek
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(37.0255, -121.7754); Casserly Creek
(36.9902, -121.7359); Corralitos Creek
(36.0666, -121.8339); Gaffey Creek
(36.9905, -121.7132); Gamecock Canyon
(37.0362, -121.7587); Green Valley Creek
(37.0073, -121.7256); Ramsey Gulch
(37.0447, -121.7755); Redwood Canyon
(37.0342, -121.7975); Salsipuedes Creek
(36.9550, -121.7426); Shingle Mill Gulch
(37.0446, -121.7971).

(ii) Santa Cruz Mountains Hydrologic Sub-area 330520. Outlet(s) = Pajaro River (Lat 36.9010, Long -121.5861); Bodfish Creek (37.0041, -121.6667); Pescadero Creek (36.9125, -121.5882); Tar Creek (36.9304, -121.5520); Uvas Creek (36.9603, -121.5328); Llagas Creek (37.1159, -121.6938); Millers Fork (36.9607, -121.7944); Millers Fork (36.2961, -121.6973); Pinch Creek (36.5326, -121.5574); Pine Creek (36.5327, -121.7727); Potrero Creek (36.4801, -121.8258); Rana Creek (36.4677, -121.5694); Rattlesnake Creek (36.3442, -121.7088); Robertson Canyon Creek (36.4776, -121.8048); Robertson Canyon Creek (36.3658, -121.5165); San Clemente Creek (36.4227, -121.8115); Tularcitos Creek (36.4369, -121.5163); Ventana Mesa Creek (36.2977, -121.7116).

(iii) South Santa Clara Valley Hydrologic Sub-area 330530. Outlet(s) = San Benito River (Lat 36.8961, Long -121.5625); Pajaro River (36.9222, -121.3388) upstream to endpoint(s) in: Arroyo Dos Picachos (36.8866, -121.3194); Bodfish Creek (37.0080, -121.6652); Bodfish Creek (37.0041, -121.6667); Carnadero Creek (36.9603, -121.5328); Llagas Creek (37.1159, -121.6938); Miller Canal (36.9608, -121.4814); Pacheco Creek (37.0055, -121.3598); San Felipe Lake (36.9304, -121.5520); Tequisquiata Slough (36.9706, -121.3887); Uvas Creek (37.0146, -121.6314).

(iv) Pacheco-Santa Ana Creek Hydrologic Sub-area 330540. Outlet(s) = Arroyo Dos Picachos (Lat 36.8866, Long -121.3194); Pacheco Creek (37.0055, -121.3598) upstream to endpoint(s) in: Arroyo Dos Picachos (36.8912, -121.2350); Cedar Creek (37.0922, -121.3641); North Fork Pacheco Creek (37.0514, -121.2911); Pacheco Creek (37.0445, -121.2662); South Fork Pacheco Creek (37.0277, -121.2603).

(v) San Benito River Hydrologic Sub-area 330550. Outlet(s) = San Benito River (Lat 36.7838, Long -121.3731) upstream to endpoint(s) in: Bird Creek (36.7694, -121.4506); Pescadero Creek (36.7202, -121.4167); San Benito River (36.3924, -121.6318); Sawmill Creek (36.3393, -120.6284).

(2) Carmel River Hydrologic Unit 3307—(i) Carmel River Hydrologic Sub-area 330700. Outlet(s) = Carmel River (Lat 36.5362, Long -121.9285) upstream to endpoint(s) in: Aqua Mojo Creek (36.4711, -121.5407); Big Creek (36.3935, -121.5419); Blue Creek (36.2796, -121.6330); Boronda Creek (36.3542, -121.6011); Bruce Fork (36.3221, -121.6385); Carmagha Creek (36.3909, -121.5950); Carmel River (36.2837, -121.6203); Danish Creek (36.3730, -121.7590); Hitchcock Canyon Creek (36.4470, -121.7597); James Creek (36.3235, -121.5804); Las Garas Creek (36.4667, -121.7944); Millers Fork (36.2961, -121.5697); Pinch Creek (36.5326, -121.5574); Pine Creek (36.5327, -121.7727); Potrero Creek (36.4801, -121.8258); Rana Creek (36.4677, -121.5694); Rattlesnake Creek (36.3442, -121.7088); Robertson Canyon Creek (36.4776, -121.8048); Robertson Canyon Creek (36.3658, -121.5165); San Clemente Creek (36.4227, -121.8115); Tularcitos Creek (36.4369, -121.5163); Ventana Mesa Creek (36.2977, -121.7116).

(ii) [Reserved]

(3) Santa Lucia Hydrologic Unit 3308—(i) Santa Lucia Hydrologic Sub-area 330800. Outlet(s) = Alder Creek (Lat 35.8578, Long -121.4165); Big Creek (36.0696, -121.6005); Big Sur River (36.2815, -121.8593); Big Creek (36.3713, -121.9029); Garrapata Creek (36.4176, -121.9157); Limekiln Creek (36.0084, -121.5196); Little Sur River (36.3350, -121.8934); Malpaso Creek (36.4814, -121.9384); Mill Creek (35.9907, -121.4632); North Fork Big Sur River (36.2178, -121.5948); Partington Creek (36.1929, -121.6825); Plaskett Creek (35.9185, -121.4717); Premitt Creek (35.9363, -121.4760); Rocky Creek (36.3798, -121.9028); Salmon Creek (35.3558, -121.3634); San Jose Creek (36.0259, -121.9253); Vicente Creek (36.0442, -121.5855); Villa Creek (35.8495, -121.4087); Willow Creek (36.4042, -121.8594); Joshua Creek (36.4182, -121.9000); Limekiln Creek (36.0154, -121.5146); Little Sur River (36.3312, -121.7557); Malpaso Creek (36.4681, -121.8800); Mill Creek (35.9907, -121.4632); North Fork Big Sur River (36.2176, -121.5948); Partington Creek (36.1929, -121.6825); Plaskett Creek
(35.9228, −121.4493); Prewitt Creek (35.9419, −121.4598); Redwood Creek (36.2825, −121.6745); Rocky Creek (36.3805, −121.8440); San Jose Creek (36.4662, −121.8118); South Fork Little Sur River (36.3026, −121.8993); Vicente Creek (36.0463, −121.5708); Villa Creek (35.8525, −121.3978); Wildcat Canyon Creek (36.4124, −121.8860); Williams Canyon Creek (36.4466, −121.8526); Willow Creek (35.9050, −121.3851).

(ii) [Reserved]

(iii) Salinas River Hydrologic Unit 3309—(i) Neponset Hydrologic Sub-area 330911. Outlet(s) = Salinas River (Lat 36.7498, Long −121.8055) upstream to endpoint(s) in: Gabilan Creek (36.6923, −121.6300); Old Salinas River (36.7728, −121.7884); Tembladero Slough (36.6865, −121.6409).

(ii) Chualar Hydrologic Sub-area 330920. Outlet(s) = Gabilan Creek (Lat 36.6923, Long −121.6300) upstream.

(iii) Soledad Hydrologic Sub-area 330930. Outlet(s) = Salinas River (Lat 36.4878, Long −121.4688) upstream to endpoint(s) in: Arroyo Seco River (36.2644, −121.3812); Reliz Creek (36.2863, −121.2981).

(iv) Upper Salinas Valley Hydrologic Sub-area 330940. Outlet(s) = Salinas River (Lat 36.3183, Long −121.1837) upstream.

(v) Arroyo Seco Hydrologic Sub-area 330950. Outlet(s) = Arroyo Seco River (Lat 36.2644, Long −121.3812); Reliz Creek (36.2863, −121.2981); Vasqueros Creek (36.2648, −121.3368) upstream to endpoint(s) in: Arroyo Seco River (36.2041, −121.5002); Calaboose Creek (36.2942, −121.5082); Church Creek (36.2762, −121.5877); Horse Creek (36.2646, −121.3931); Paloma Creek (36.3196, −121.4894); Piney Creek (36.3023, −121.5629); Reliz Creek (36.1935, −121.2777); Rocky Creek (36.2676, −121.5225); Santa Lucia Creek (36.1999, −121.7850); Tassajara Creek (36.2479, −121.3609); Willow Creek (36.3059, −121.5642).

(vi) Gabilan Range Hydrologic Sub-area 330970. Outlet(s) = Gabilan Creek (Lat 36.7800, −121.5836) upstream to endpoint(s) in: Gabilan Creek (36.7335, −121.4399).

(vii) Paso Robles Hydrologic Sub-area 330981. Outlet(s) = Salinas River (Lat 35.9050, −121.0981).

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(5) Estero Bay Hydrologic Unit 3310—(i) San Carpoforo Hydrologic Sub-area 331011. Outlet(s) = San Carpoforo Creek (Lat 35.7646, Long −121.3247) upstream to endpoint(s) in: Dutra Creek (35.8197, −121.3273); Estrada Creek (35.7710, −121.2661); San Carpoforo Creek (35.8202, −121.2745); Unnamed Tributary (35.7503, −121.2733); Wagner Creek (35.8166, −121.2287).

(ii) Arroyo De La Cruz Hydrologic Sub-area 331012. Outlet(s) = Arroyo De La Cruz (Lat 35.7097, Long −121.3080) upstream to endpoint(s) in: Arroyo De La Cruz (35.6986, −121.1722); Burnett Creek (35.7520, −121.1920); Green Canyon Creek (35.7375, −121.2314); Marmolejo Creek (35.6774, −121.1082); Spanish Cabin Creek (35.7234, −121.1497); Unnamed Tributary (35.7291, −121.1977); West Fork Burnett Creek (35.7516, −121.2075).

(iii) San Simeon Hydrologic Sub-area 331013. Outlet(s) = Arroyo del Corral (Lat 35.6838, Long −121.2875); Arroyo del Puerto (35.6432, −121.1889); Little Pico Creek (35.6336, −121.1639); Oak Knoll Creek (35.6512, −121.2197); Pico Creek (35.6156, −121.1495); San Simeon Creek (35.9560, −121.1272) upstream to endpoint(s) in: Arroyo del Lagun (35.6895, −121.2337); Arroyo del Corral (35.6885, −121.2357); Arroyo del Puerto (35.6773, −121.1713); Little Pico Creek (35.6890, −121.1375); Oak Knoll Creek (35.6718, −121.2010); North Fork Pico Creek (35.6886, −121.0861); San Simeon Creek (35.6228, −121.0561); South Fork Pico Creek (35.6640, −121.0685); Steiner Creek (35.6032, −121.0649); Unnamed Tributary (35.6482, −121.1067); Unnamed Tributary (35.6616, −121.0639); Unnamed Tributary (35.6741, −121.0981); Unnamed Tributary
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(35.6777, -121.1503);Unnamed Tributary
(35.6604, -121.1571);Unnamed Tributary
(35.6579, -121.1356);Unnamed Tributary
(35.6744, -121.1187);Unnamed Tributary
(35.6460, -121.1373);Unnamed Tributary
(35.6839, -121.0955);Unnamed Tributary
(35.6431, -121.0795);Unnamed Tributary
(35.6820, -121.2130);Unnamed Tributary
(35.6977, -121.2613);Unnamed Tributary
(35.6702, -121.1884);Unnamed Tributary
(35.6817, -121.0885);Van Gordon Creek
(35.6286, -121.0942).

(iv) Santa Rosa Hydrologic Sub-area 331014. Outlet(s) = Santa Rosa Creek (Lat 35.5685, Long –121.1113) upstream to endpoint(s) in: Green Valley Creek (35.5511, –120.9471); Perry Creek (35.5323–121.0491); Santa Rosa Creek (35.5525, –120.9278);Unnamed Tributary (35.5965, –120.9413);Unnamed Tributary (35.5684, –120.9211);Unnamed Tributary (35.5746, –120.9746).

(v) Villa Hydrologic Sub-area 331015. Outlet(s) = Villa Creek (Lat 35.4601, Long –120.9704) upstream to endpoint(s) in: Villa Creek (35.4941, –120.9079) upstream to endpoint(s) in: Cayucos Creek (35.4927, –120.9271);Unnamed Tributary (35.5157, –120.9005);Unnamed Tributary (35.4943, –120.9513);Unnamed Tributary (35.4887, –120.8968).

(vi) Cayucos Hydrologic Sub-area 331016. Outlet(s) = Cayucos Creek (Lat 35.4491, Long –120.9079) upstream to endpoint(s) in: Cayucos Creek (35.9257, –120.9271);Unnamed Tributary (35.5157, –120.9005);Unnamed Tributary (35.4943, –120.9513);Unnamed Tributary (35.4887, –120.8968).

(vii) Old Hydrologic Sub-area 331017. Outlet(s) = Old Creek (Lat 35.4345, Long –120.8968) upstream to endpoint(s) in: Old Creek (35.4480, –120.8871).

(viii) Toro Hydrologic Sub-area 331018. Outlet(s) = Toro Creek (Lat 35.4126, Long –120.8739) upstream to endpoint(s) in: Toro Creek (35.4945, –120.7994);Unnamed Tributary (35.4917, –120.7983).

(ix) Morro Hydrologic Sub-area 331021. Outlet(s) = Morro Creek (Lat 35.3762, Long –120.8642) upstream to endpoint(s) in: East Fork Morro Creek (35.4218, –120.7382);Little Morro Creek (35.4155, –120.7332);Morro Creek (35.4291, –120.7515);Unnamed Tributary (35.4292, –120.8122);Unnamed Tributary (35.4458, –120.7906);Unnamed Tributary (35.4122, –120.8335);Unnamed Tributary (35.4420, –120.7796).

(x) Chorro Hydrologic Sub-area 331022. Outlet(s) = Chorro Creek (Lat 35.3413, Long –120.8388) upstream to endpoint(s) in: Chorro Creek (35.3340, –120.6897);Dairy Creek (35.3699, –120.6911);Pennington Creek (35.3655, –120.7144);San Bernardino Creek (35.3935, –120.7638);San Luisito (35.3755, –120.7100);Unnamed Tributary (35.3921, –120.7217);Unnamed Tributary (35.3815, –120.7350).

(xi) Los Osos Hydrologic Sub-area 331023. Outlet(s) = Los Osos Creek (Lat 35.3379, Long –120.8273) upstream to endpoint(s) in: Los Osos Creek (35.2718, –120.7627).

(xii) San Luis Obispo Creek Hydrologic Sub-area 331024. Outlet(s) = San Luis Obispo Creek (Lat 35.1822, Long –120.7303) upstream to endpoint(s) in: Brizziolari Creek (35.3236, –120.6411);Prefumo Creek (35.2615, –120.7081);San Luis Obispo Creek (35.3393, –120.6301);See Canyon Creek (35.2306, –120.7675);Stenner Creek (35.3447, –120.6384);Unnamed Tributary (35.2443, –120.7665).

(xiii) Point San Luis Hydrologic Sub-area 331025. Outlet(s) = Coon Creek (Lat 35.2590, Long –120.8951);Islay Creek (35.2753, –120.8884) upstream to endpoint(s) in: Coon Creek (35.2493, –120.7774);Islay Creek (35.2574, –120.7810);Unnamed Tributary (35.2753, –120.8146);Unnamed Tributary (35.2809, –120.8147);Unnamed Tributary (35.2648, –120.7936).

(xiv) Pismo Hydrologic Sub-area 331026. Outlet(s) = Pismo Creek (Lat 35.1336, Long –120.6408) upstream to endpoint(s) in: East Corral de Piedra Creek (35.2343, –120.5571);Pismo Creek (35.1969, –120.6107);Unnamed Tributary (35.2462, –120.5856).

(xv) Oceano Hydrologic Sub-area 331031. Outlet(s) = Arroyo Grande Creek (Lat 35.1011, Long –120.4881);Los Berros Creek (35.0791, –120.4423).

(6) Maps of critical habitat for the South-Central Coast Steelhead ESU follow:
Critical Habitat for the South-central California Coast Steelhead

Santa Lucia Hydrologic Unit
3308

- Cities/Towns
- Critical Habitat
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number
Critical Habitat for the South-central California Coast Steelhead

Salinas Hydrologic Unit 3309

- Cities/Towns
- Critical Habitat
- Occupied but excluded streams / areas
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail
(j) Southern California Steelhead (*O. mykiss*). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) Santa Maria River Hydrologic Unit 3312—(i) Santa Maria Hydrologic Sub-area 331210. Outlet(s) = Santa Maria River (Lat 34.9710, Long -120.6504) upstream to endpoint(s) in:
Cuyama River (34.9058, –120.3026); Santa Maria River (34.9042, –120.3077); Sisquoc River (34.8941, –120.3063).

(ii) Sisquoc Hydrologic Sub-area 331220. Outlet(s) = Sisquoc River (Lat 34.8941, Long –120.3063) upstream to endpoint(s) in: Abel Canyon (34.8662, –119.8354); Davey Brown Creek (34.7541, –119.9650); Fish Creek (34.7531, –119.9100); Foresters Leap (34.8112, –119.7545); La Brea Creek (34.8804, –120.1316); Horse Creek (34.8372, –120.0171); Judell Creek (34.7613, –119.6496); Manzana Creek (34.7082, –119.8324); North Fork La Brea Creek (34.9681, –120.0112); Sisquoc River (34.7087, –119.6409); South Fork La Brea Creek (34.9543, –119.7973); South Fork Sisquoc River (34.7300, –119.7877); Unnamed Tributary (34.8941, –119.9085); Gaviota Creek (34.4706, –120.2267); Jalama Creek (34.4497, –119.9085); Refugio Creek (34.4609, –120.1872); Santa Anita Creek (34.4669, –120.3063); Tecolote Creek (34.4306, –119.9173) upstream to endpoint(s) in: Alegria Creek (34.4713, –120.2720); Arroyo Hondo Creek (34.4735, –120.1415); Cojo Creek (34.4531, –120.4165); Dos Pueblos Creek (34.4407, –119.9646); El Capitan Creek (34.4577, –120.0225); Gato Creek (34.4699, –120.1872); Santa Anita Creek (34.4669, –120.1872); Alisal Creek (34.5649, –119.9249).

(iii) Sisquoc, Zaca Hydrologic Sub-area 331430. Outlet(s) = Santa Ynez River (Lat 34.6172, Long –120.2352) upstream to endpoint(s) in: San Miguelito Creek (34.6309, –120.4631).

(ii) Santa Ynez, Salsipuedes Hydrologic Sub-area 331420. Outlet(s) = Santa Ynez River (Lat 34.6335, Long –120.4126) upstream to endpoint(s) in: El Calllejon Creek (34.5475, –120.2701); El Jaro Creek (34.5327, –120.2861); Llanoit Creek (34.5499, –120.2762); Salsipuedes Creek (34.5711, –120.4076).

(iii) Santa Ynez, Zaca Hydrologic Sub-area 331420. Outlet(s) = Santa Ynez River (Lat 34.6172, Long –120.2352) upstream to endpoint(s) in: San Miguelito Creek (34.6309, –120.4631).

(iv) Santa Ynez to Bradbury Hydrologic Sub-area 331440. Outlet(s) = Santa Ynez River (Lat 34.5847, Long –120.1445) upstream to endpoint(s) in: Alisal Creek (34.5465, –120.1386); Hilton Creek (34.5839, –120.0370); Quista Creek (34.5370, –120.0321); San Lucas Creek (34.5558, –120.0119); Santa Ynez River (34.5829, –120.0433).

(i) Mouth of Santa Ynez Hydrologic Sub-area 331410. Outlet(s) = Santa Ynez River (Lat 34.6639, Long –120.6033) upstream to endpoint(s) in: San Miguelito Creek (34.6309, –120.4631).

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(2) Santa Ynez Hydrologic Unit 3315—(i) Arroyo Hondo Hydrologic Sub-area 331510. Outlet(s) = Alegria Creek (34.4688, Long –120.2720); Arroyo Hondo Creek (34.4735, –120.1415); Cojo Creek (34.4531, –120.4165); Dos Pueblos Creek (34.4407, –119.9646); El Capitan Creek (34.4577, –120.0225); Gato Creek (34.4699, –120.1872); Santa Anita Creek (34.4669, –120.1872); Santa Anita Creek (34.4669, –120.1872); Alisal Creek (34.5649, –119.9249).

(ii) Santa Ynez, Salsipuedes Hydrologic Sub-area 331420. Outlet(s) = Santa Ynez River (Lat 34.6335, Long –120.4126) upstream to endpoint(s) in: El Calllejon Creek (34.5475, –120.2701); El Jaro Creek (34.5327, –120.2861); Llanoit Creek (34.5499, –120.2762); Salsipuedes Creek (34.5711, –120.4076).

(iii) Santa Ynez, Zaca Hydrologic Sub-area 331430. Outlet(s) = Santa Ynez River (Lat 34.6172, Long –120.2352) upstream to endpoint(s) in: San Miguelito Creek (34.6309, –120.4631).

(iv) Santa Ynez to Bradbury Hydrologic Sub-area 331440. Outlet(s) = Santa Ynez River (Lat 34.5847, Long –120.1445) upstream to endpoint(s) in: Alisal Creek (34.5465, –120.1386); Hilton Creek (34.5839, –120.0370); Quista Creek (34.5370, –120.0321); San Lucas Creek (34.5558, –120.0119); Santa Ynez River (34.5829, –120.0433).

(3) South Coast Hydrologic Unit 3315—(i) Arroyo Hondo Hydrologic Sub-area 331510. Outlet(s) = Alegria Creek (34.4688, Long –120.2720); Arroyo Hondo Creek (34.4735, –120.1415); Cojo Creek (34.4531, –120.4165); Dos Pueblos Creek (34.4407, –119.9646); El Capitan Creek (34.4577, –120.0225); Gato Creek (34.4699, –120.1872); Santa Anita Creek (34.4669, –120.1872); Alisal Creek (34.5649, –119.9249).

(ii) Santa Ynez, Salsipuedes Hydrologic Sub-area 331420. Outlet(s) = Santa Ynez River (Lat 34.6335, Long –120.4126) upstream to endpoint(s) in: El Calllejon Creek (34.5475, –120.2701); El Jaro Creek (34.5327, –120.2861); Llanoit Creek (34.5499, –120.2762); Salsipuedes Creek (34.5711, –120.4076).

(iii) Santa Ynez, Zaca Hydrologic Sub-area 331430. Outlet(s) = Santa Ynez River (Lat 34.6172, Long –120.2352) upstream to endpoint(s) in: San Miguelito Creek (34.6309, –120.4631).

(iv) Santa Ynez to Bradbury Hydrologic Sub-area 331440. Outlet(s) = Santa Ynez River (Lat 34.5847, Long –120.1445) upstream to endpoint(s) in: Alisal Creek (34.5465, –120.1386); Hilton Creek (34.5839, –120.0370); Quista Creek (34.5370, –120.0321); San Lucas Creek (34.5558, –120.0119); Santa Ynez River (34.5829, –120.0433).

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(ii) UCSB Slough Hydrologic Sub-area 331531. Outlet(s) = San Pedro Creek (Lat 34.4179, Long –119.8295); Tecolito Creek (34.4179, –119.8295) upstream to endpoint(s) in: Atascadero Creek (34.4345, –119.7755); Carneros Creek (34.4674, –119.8584); Cieneguitas Creek (34.4690, –119.7565); Glen Annie Creek (34.4985, –119.8666); Maria Ygnacio Creek (34.4900, –119.7830); San Antonio Creek (34.4224, –119.2644); Ventura River (34.4852, –119.3001).

(iii) Mission Hydrologic Sub-area 331532. Outlet(s) = Arroyo Burro Creek (Lat 34.4023, Long –119.7430); Mission Creek (34.4124, –119.6876); Sycamore Creek (34.4166, –119.6668) upstream to endpoint(s) in: Arroyo Burro Creek (34.4620, –119.7461); Mission Creek (34.4482, –119.7089); Rattlesnake Creek (34.4633, –119.6902); San Roque Creek (34.4530, –119.7323); Sycamore Creek (34.4530, –119.8783).

(iv) San Ysidro Hydrologic Sub-area 331533. Outlet(s) = Montecito Creek (Lat 34.4167, Long –119.6344); Romero Creek (34.4186, –119.6208); San Ysidro Creek (34.4191, –119.6234) upstream to endpoint(s) in: Cold Springs Creek (34.4794, –119.6694); Montecito Creek (34.4694, –119.6542); Romero Creek (34.4452, –119.5924); San Ysidro Creek (34.4686, –119.6229); Unnamed Tributary (34.4753, –119.6437).

(v) Carpinteria Hydrologic Sub-area 331534. Outlet(s) = Arroyo Paredon (Lat 34.4146, Long –119.5561); Carpinteria Lagoon (Carpinteria Creek) (34.3904, –119.5204); Rincon Lagoon (Rincon Creek) (34.3733, –119.4799) upstream to endpoint(s) in: Arroyo Paredon (34.4371, –119.5481); Carpinteria Creek (34.4239, –119.4964); El Dorado Creek (34.4682, –119.4809); Gobernador Creek (34.4249, –119.4746); Rincon Lagoon (Rincon Creek) (34.3757, –119.4777); Steer Creek (34.4687, –119.4596); Unnamed Tributary (34.4681, –119.5122);

(iv) Ventura River Hydrologic Unit 4402—(i) Ventura Hydrologic Sub-area 440220. Outlet(s) = Ventura River (Lat 34.3517, Long –119.3069) upstream to endpoint(s) in: Coyote Creek (34.3735, –119.3377); Matilija Creek (34.4846, –119.3086); North Fork Matilija Creek (34.5129, –119.2737); San Antonio Creek (34.4224, –119.2644); Ventura River (34.4852, –119.3001).

(iii) Lions Hydrologic Sub-area 440231. Outlet(s) = Lion Creek (Lat 34.4222, Long –119.2044) upstream to endpoint(s) in: Lion Creek (34.4331, –119.2004).

(iv) Thacher Hydrologic Sub-area 440232. Outlet(s) = San Antonio Creek (Lat 34.4224, Long –119.2644) upstream to endpoint(s) in: San Antonio Creek (34.4370, –119.2417).

(5) Santa Clara Calleguas Hydrologic Unit 4403—(i) Mouth of Santa Clara Hydrologic Sub-area 440310. Outlet(s) = Santa Clara River (Lat 34.2348, Long –119.2568).

(ii) Santa Clara, Santa Paula Hydrologic Sub-area 440321. Outlet(s) = Santa Clara River (Lat 34.2731, Long –119.1474) upstream to endpoint(s) in: Santa Paula Creek (34.4500, –119.0563).

(iii) Sisar Hydrologic Sub-area 440322. Outlet(s) = Sisar Creek (Lat 34.2731, Long –119.1474) upstream to endpoint(s) in: Sisar Creek (34.4615, –119.1312).

(iv) Sespe, Santa Clara Hydrologic Sub-area 440331. Outlet(s) = Santa Clara River (Lat 34.3513, Long –119.0397) upstream to endpoint(s) in: Sespe Creek (34.4509, –118.9238).

(v) Sespe Hydrologic Sub-area 440332. Outlet(s) = Sespe Creek (Lat 34.4509, Long –118.9238) upstream to endpoint(s) in: Abadi Creek (34.6999, –119.4233); Alder Creek (34.5691, –118.9528); Bear Creek (34.5114, –119.1041); Chorro Grande Creek (34.6285, –119.3245); Fourfork Creek (34.4735, –118.8893); Howard Creek (34.5459, –119.2154); Lady Bug Creek (34.5724, –119.3173); Lion Creek (34.5047, –119.1101); Little Sespe Creek (34.4586, –118.8938); Munson Creek (34.6152, –119.2963); Park Creek (34.5537, –119.0028); Piedra Blanca Creek (34.6109, –119.1838); Pine Canyon Creek (34.4488, –118.9661); Portrero John Creek (34.6010, –119.2695); Red Reef Creek (34.5344, –119.0411); Rose Valley Creek (34.5185, –119.1756); Sespe Creek (34.6295, –119.4412); Timber Creek (34.5184, –119.8783).
(vi) Santa Clara, Hopper Canyon, Piru Hydrologic Sub-area 440341. Outlet(s) = Santa Clara River (Lat 34.3860, Long –118.8711) upstream to endpoint(s) in: Hopper Creek (34.4263, –118.8309); Piru Creek (34.4613, –118.7537); Santa Clara River (34.3996, –118.7837).

(7) Calleguas Hydrologic Unit 4406—(i) Calleguas Estuary Hydrologic Sub-area 440813. Outlet(s) = Mugu Lagoon (Calleguas Creek) (Lat 34.1093, Long –119.0917) upstream to endpoint(s) in: Mugu Lagoon (Calleguas Creek) (Lat 34.1125, Long –119.0816).

(ii) [Reserved]

(8) San Juan Hydrologic Unit 4901—(i) Middle Trabuco Hydrologic Sub-area 490123. Outlet(s) = Trabuco Creek (Lat 33.5165, Long –117.6727) upstream to endpoint(s) in: Trabuco Creek (33.5264, –117.6700).

(ii) Lower San Juan Hydrologic Sub-area 490127. Outlet(s) = San Juan Creek (Lat 33.4621, Long –117.6842) upstream to endpoint(s) in: San Juan Creek (33.4929, –117.6610); Trabuco Creek (33.5165, –117.6727).

(iii) San Mateo Hydrologic Sub-area 490140. Outlet(s) = San Mateo Creek (Lat 33.4571, Long –117.5933) upstream to endpoint(s) in: San Mateo Creek (33.4779, –117.4386); San Mateo Canyon (33.4957, –117.4522).

(9) Maps of critical habitat for the Southern California Steelhead ESU follow:
Critical Habitat for the Southern California Steelhead

South Coast Hydrologic Unit
3315

Cities/Towns
● Critical Habitat

Calwater Hydrologic Unit Boundary
 stronghold

Fifth Field Calwater Hydrologic Sub-Area Boundary
331210 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail
Critical Habitat for the Southern California Steelhead

Ventura River Hydrologic Unit 4402

- Cities/Towns
- Critical Habitat
- Calwater Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 331210 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail

National Marine Fisheries Service/NOAA, Commerce § 226.211
(k) Central Valley Spring Run Chinook Salmon (O. tshawytscha). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) Tehama Hydrologic Unit 5504—(i) Lower Stony Creek Hydrologic Sub-area 550410. Outlet(s) = Glenn-Colusa Canal (Lat 39.6762, Long –122.0151); Stony Creek (39.7122, –122.0072) upstream to endpoint(s) in: Glenn-Colusa Canal
(39.7122, –122.0072); Stony Creek (39.8178, –122.3253).

(ii) **Red Bluff Hydrologic Sub-area** 550420. Outlet(s) = Sacramento River (Lat 39.6998, Long –121.9419) upstream to endpoint(s) in: Antelope Creek (40.2023, –122.1275); Big Chico Creek (39.7775, –121.7525); Blue Tent Creek (40.2284, –122.2551); Burch Creek (39.8526, –122.1502); Butler Slough (40.1579, –122.1320); Coyote Creek (40.0929, –122.1621); Craig Creek (40.1617, –122.1350); Deer Creek (40.0144, –121.9481); Dibble Creek (40.2003, –122.2420); Dye Creek (40.0904, –122.0767); Elder Creek (40.0526, –122.1717); Jewett Creek (39.8913, –122.1005); Kusal Slough (39.7577, –121.9699); Lindo Channel (39.7623, –121.7923); McClure Creek (40.0074, –122.1729); Mill Creek (40.0550, –122.0072); Mud Creek (39.7931, –121.8865); New Creek (40.0144, –121.9481); Olney Creek (40.2003, –122.2420); Oat Creek (40.0904, –122.0767); Pine Creek (39.8760, –121.9777); Red Bank Creek (40.1391, –122.2157); Reeds Creek (40.1687, –122.2277); Rice Creek (40.1578, –122.2277); Rock Creek (39.8189, –122.1914); Salt Creek (40.1869, –122.1845); Singer Creek (39.9200, –122.2277); Thomas Creek (39.8822, –122.5277); Toomes Creek (39.9806, –122.0642); Unnamed Tributary (39.8526, –122.1502); Unnamed Tributary (40.0929, –122.1621); Unnamed Tributary (40.1617, –122.1350); Unnamed Tributary (40.1682, –122.1450); Unnamed Tributary (40.1867, –122.1350).

(ii) **Battle Creek Hydrologic Sub-area** 550712. Outlet(s) = Battle Creek (Lat 40.4083, Long –122.1102) upstream to endpoint(s) in: Battle Creek (40.4874, –122.1450); North Fork Battle Creek (40.4746, –122.8436); South Fork Battle Creek (40.5349, –122.8611).

(iii) **Inwood Hydrologic Sub-area** 550722. Outlet(s) = Bear Creek (Lat 40.4332, Long –122.2039) upstream to endpoint(s) in: Bear Creek (40.4859, –122.1503); Dry Creek (40.4854, –122.1503); Enterprise Flat Hydrologic Sub-area 550810. Outlet(s) = Sacramento River (Lat 40.2526, Long –122.1707) upstream to endpoint(s) in: Anderson Creek (40.3910, –122.1984); Ash Creek (40.4451, –122.1102); Battle Creek (40.4083, –122.1102); Churn Creek (40.5431, –122.3395); Clear Creek (40.5158, –122.5256); Cow Creek (40.5438, –122.1318); Olney Creek (40.5262, –122.3783); Paynes Creek (40.2810, –122.1587); Stillwater Creek (40.4789, –122.2597).

(ii) **Lower Cottonwood Hydrologic Sub-area** 550820. Outlet(s) = Cottonwood Creek (Lat 40.3777, Long –122.1591) upstream to endpoint(s) in: Cottonwood Creek (40.3943, –122.5544); Middle Fork Cottonwood Creek (40.3314, –122.6663); South Fork Cottonwood Creek (40.1578, –122.5809).

(iii) **Upper Mill Creek Hydrologic Sub-area** 550942. Outlet(s) = Mill Creek (Lat 40.0550, Long –122.0317) upstream to endpoint(s) in: Mill Creek (40.1859, –122.1350).

(iv) **Antelope Creek Hydrologic Sub-area** 550963. Outlet(s) = Antelope Creek (Lat 40.2023, Long –122.1275) upstream to endpoint(s) in: Antelope Creek (40.2416, –121.8630); North Fork Antelope Creek (40.2691, –121.8226); South Fork Antelope Creek (40.2039, –121.8325).

(v) **Sacramento Delta Hydrologic Unit** 5510—(i) **Sacramento Delta Hydrologic Sub-area** 551000. Outlet(s) = Sacramento River (Lat 38.0612, Long –121.7948) upstream to endpoint(s) in: Cache Slough (38.3086, –121.7633); Delta Cross Channel (38.2433, –121.4964); Elk Slough (38.2908, –121.6271); Georgiana Slough (38.2401, –121.5172); Miners Slough (38.2864, –121.6051); Prospect Slough (38.1477, –121.6641); Sevenmile Slough (38.1171, –121.6298); Steamboat Slough (38.3052, –121.5737); Sutter Slough (38.3231, –121.5863); Threemile Slough (38.1155, –121.6893); Yolo Bypass (38.5800, –121.5838).

(ii) [Reserved]

(vi) **Vallejo-Putah-Cache Hydrologic Unit** 5511—(i) **Lower Putah Creek Hydrologic Sub-area** 551120. Outlet(s) = Yolo Bypass (Lat 38.5800, Long –121.5838) upstream to endpoint(s) in: Sacramento River (Lat 38.0612, Long –121.7948).
National Marine Fisheries Service/NOAA, Commerce § 226.211

Bypass (38.6057, –121.5563); Yolo Bypass (38.7627, –121.6325).

(ii) [Reserved]

(7) Marysville Hydrologic Unit 5515—

(i) Lower Yuba River Hydrologic Sub-area 551510. Outlet(s) = Bear River (Lat 38.9296, Long –121.5790) upstream to endpoint(s) in: Bear River (38.9763, –121.5166).

(ii) Lower Yuba River Hydrologic Sub-area 551530. Outlet(s) = Yuba River (Lat 39.1270, Long –121.5981) upstream to endpoint(s) in: Yuba River (39.2203, –121.3314).

(iii) Lower Feather River Hydrologic Sub-area 551540. Outlet(s) = Feather River (Lat 39.1270, Long –121.5981) upstream to endpoint(s) in: Feather River (39.5203, –121.5475).

(8) Yuba River Hydrologic Unit 5517—

(i) Browns Valley Hydrologic Sub-Area 551712. Outlet(s) = Dry Creek (Lat 39.2207, Long –121.4088); Yuba River (39.2203, –121.3314) upstream to endpoint(s) in: Dry Creek (39.3201, –121.3117); Yuba River (39.2305, –121.2813).

(ii) Englebright Hydrologic Sub-area 551714. Outlet(s) = Yuba River (Lat 39.2305, Long –121.2813) upstream to endpoint(s) in: Yuba River (39.2386, –121.3699).

(9) Valley-American Hydrologic Unit 5519—

(i) Lower American Hydrologic Sub-area 551921. Outlet(s) = American River (Lat 38.5971, Long –121.5088) upstream to endpoint(s) in: American River (38.5609, –121.3827).

(ii) Pleasant Grove Hydrologic Sub-area 551922. Outlet(s) = Sacramento River (Lat 38.5965, Long –121.5086) upstream to endpoint(s) in: Feather River (38.1270, –121.5981).

(iii) Sycamore-Sutter Hydrologic Sub-area 552010. Outlet(s) = Sacramento River (Lat 38.7604, Long –121.6767) upstream to endpoint(s) in: Tisdale Bypass (39.0261, –121.7456).

(ii) Sutter Bypass Hydrologic Sub-area 552030. Outlet(s) = Sacramento River (Lat 38.7449, Long –121.6219) upstream to endpoint(s) in: Butte Creek (39.1987, –121.9285); Butte Slough (39.1987, –121.9285); Nelson Slough (38.8961, –121.6552); Sacramento Slough (38.7843, –121.6544); Sutter Bypass (39.1417, –121.8196; 39.1484, –121.8386); Tisdale Bypass (39.0261, –121.7456); Unnamed Tributary (39.1586, –121.8747).

(iii) Butte Basin Hydrologic Sub-area 552040. Outlet(s) = Butte Creek (Lat 39.1990, Long –121.9286); Sacramento River (39.4141, –122.0087) upstream to endpoint(s) in: Butte creek (39.7095, –121.7506); Colusa Bypass (39.2276, –121.9402); Unnamed Tributary (39.6762, –122.0151).

(iv) Butte Creek Hydrologic Unit 5521—Upper Little Chico Hydrologic Sub-area 552130. Outlet(s) = Butte Creek (Lat 39.7096, –121.7504) upstream to endpoint(s) in: Butte Creek (39.8665, –121.6344).

(i) Platina Hydrologic Sub-area 552343. Outlet(s) = Middle Fork Cottonwood Creek (Lat 40.3314, –122.6663) upstream to endpoint(s) in: Beegum Creek (40.3066, –122.9205); Middle Fork Cottonwood Creek (40.3655, –122.7451).

(ii) Spring Creek Hydrologic Sub-area 552440. Outlet(s) = SACRAMENTO RIVER (LAT 40.5943, LONG –122.4343) upstream to endpoint(s) in: SACRAMENTO RIVER (40.6116, –122.4462)

(iii) Kanaka Peak Hydrologic Sub-area 552462. Outlet(s) = Clear Creek (Lat 40.5158, Long –122.5256) upstream to endpoint(s) in: Clear Creek (40.5992, –122.5394).

(13) Maps of critical habitat for the Central Valley Spring Run Chinook ESU follow:
Critical Habitat for the
Central Valley Spring-run Chinook Salmon

Whitmore Hydrologic Unit
5507

City/Towns
Critical Habitat
Hydrologic Unit Boundary
Fifth Field Calwater Hydrologic Sub-Area Boundary
110701 Fifth Field Calwater Hydrologic Sub-Area Number
Critical Habitat for the Central Valley Spring-run Chinook Salmon

Redding Hydrologic Unit 5508

[Map showing critical habitat areas with various labeled waterways and towns, such as Redding and Anderson.]

Key:
- Cities/Towns
- Critical Habitat
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- Fifth Field Calwater Hydrologic Sub-Area Number 110701

Area of Detail

California

494
Critical Habitat for the
Central Valley Spring-run Chinook Salmon

Valley Putah-Cache Hydrologic Unit
5511

Cities/Towns
- Critical Habitat
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail

Vacaville
Dixon
Davis

121°00'00"W
38°00'00"N
121°00'00"W
38°00'00"N

100
50
0
Critical Habitat for the Central Valley Spring-run Chinook Salmon

Valley-American Hydrologic Unit 5519

Cities/Towns
Critical Habitat
Hydrologic Unit Boundary
Fifth Field Calwater Hydrologic Sub-Area Boundary
110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail

California
§ 226.211

Critical Habitat for the Central Valley Spring-run Chinook Salmon

Butte Creek Hydrologic Unit 5521

Legend:
- Cities/Towns
- Critical Habitat
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number
(l) Central Valley steelhead (*O. mykiss*). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) Tehama Hydrologic Unit 5504—(i) Lower Stony Creek Hydrologic Sub-area 550410. Outlet(s) = Stony Creek (Lat 39.6760, Long -121.9732) upstream to
endpoint(s) in: Stony Creek (39.8190, –122.3391).

(ii) Red Bluff Hydrologic Sub-area 550420. Outlet(s) = Sacramento River (Lat 39.6998, Long –121.9419) upstream to endpoint(s) in: Antelope Creek (40.2023, –122.1272); Big Chico Creek (39.7757, –121.7525); Blue Tent Creek (40.2166, –122.2362); Burch Creek (39.8495, –122.1615); Butler Slough (40.1579, –122.1320); Craig Creek (40.1617, –122.1350); Deer Creek (40.0144, –122.9481); Dibble Creek (40.2002, –122.2421); Dye Creek (40.0910, –122.0719); Elder Creek (40.0438, –122.2133); Lindo Channel (39.7623, –121.7923); McClure Creek (40.0074, –122.1723); Mill Creek (40.0550, –122.0317); Mud Creek (39.7985, –121.8803); New Creek (40.1873, –122.1350); Oat Creek (40.0769, –122.2168); Red Bank Creek (40.1421, –122.2399); Rice Creek (39.8495, –122.1615); Rock Creek (39.8034, –121.9403); Salt Creek (40.1572, –122.1646); Thomas Creek (39.8822, –122.5527); Unnamed Tributary (40.1867, –122.1353); Unnamed Tributary (40.1682, –122.1459); Unnamed Tributary (40.0151, –122.1259); Unnamed Tributary (40.0403, –122.1009); Unnamed Tributary (40.0514, –122.0851); Unnamed Tributary (40.0530, –122.0769).

(2) Whitmore Hydrologic Unit 5507—

(i) Inks Creek Hydrologic Sub-area 550711. Outlet(s) = Inks Creek (Lat 40.3305, Long –122.1520) upstream to endpoint(s) in: Inks Creek (40.3418, –122.1332).

(ii) Battle Creek Hydrologic Sub-area 550712. Outlet(s) = Battle Creek (Lat 40.4083, Long –122.1102) upstream to endpoint(s) in: Baldwin Creek (40.4369, –121.9885); Battle Creek (40.4226, –121.9785); Brush Creek (40.4913, –121.8664); Millase Creek (40.4898, –121.8526); Morgan Creek (40.3654, –121.9132); North Fork Battle Creek (40.4977, –121.8185); Panther Creek (40.3897, –121.6106); South Ditch (40.3997, –121.2233); Ripley Creek (40.4999, –121.6868); Soap Creek (40.3904, –121.7565); South Fork Battle Creek (40.3331, –121.6682); Unnamed Tributary (40.3567, –121.8293); Unnamed Tributary (40.4592, –121.8671).

(iii) Ash Creek Hydrologic Sub-area 550721. Outlet(s) = Ash Creek (Lat 40.4401, Long –122.1375) upstream to endpoint(s) in: Ash Creek (40.4626, –122.0066).

(iv) Inwood Hydrologic Sub-area 550722. Outlet(s) = Ash Creek (Lat 40.4626, Long –122.0066); Bear Creek (40.4352, –122.2039) upstream to endpoint(s) in: Ash Creek (40.4859, –121.8993); Bear Creek (40.5368, –121.9560); North Fork Bear Creek (40.5736, –121.8683).

(v) South Cow Creek Hydrologic Sub-area 550731. Outlet(s) = South Cow Creek (Lat 40.5438, Long –122.1318) upstream to endpoint(s) in: South Cow Creek (40.6023, –121.8632).

(vi) Old Cow Creek Hydrologic Sub-area 550732. Outlet(s) = Little Cow Creek (Lat 40.5788, Long –122.1255); Old Cow Creek (40.5442, –122.1317) upstream to endpoint(s) in: Clover Creek (40.6305, –122.0394); Old Cow Creek (40.6295, –122.9619).

(vii) Little Cow Creek Hydrologic Sub-area 550733. Outlet(s) = Little Cow Creek (Lat 40.6148, –122.2271); Oak Run Creek (40.6171, –122.1225) upstream to endpoint(s) in: Little Cow Creek (40.7114, –122.0850); Oak Run Creek (40.6379, –122.0856).

(3) Redding Hydrologic Unit 5508—

(i) Enterprise Flat Hydrologic Sub-area 550810. Outlet(s) = Sacramento River (Lat 40.2526, Long –122.1707) upstream to endpoint(s) in: Ash Creek (40.4401, –122.1757); Battle Creek (40.4083, –122.1102); Bear Creek (40.4360, –122.2036); Calaboose Creek (40.5742, –122.4142); Canyon Creek (40.5532, –122.3814); Churn Creek (40.5986, –122.3418); Clear Creek (40.5158, –122.5256); Clover Creek (40.5788, –122.1252); Cottonwood Creek (40.3777, –122.1991); Cow Creek (40.5437, –122.1318); East Fork Stillwater Creek (40.6495, –122.2934); Inks Creek (40.3305, –122.1520); Jenny Creek (40.5734, –122.4338); Little Cow Creek (40.6148, –122.2271); Oak Run Creek (40.6171, –122.1225); Old Cow Creek (40.5442, –122.1317); Olney Creek (40.5439, –122.4687); Oregon Gulch (40.5463, –122.3866); Paynes Creek (40.3024, –122.1012); Stillwater Creek (40.6495, –122.2934); Sulphur Creek (40.6164, –122.4077).

(ii) Lower Cottonwood Hydrologic Sub-area 550820. Outlet(s) = Cottonwood Creek (Lat 40.3777, Long –122.1991) upstream to endpoint(s) in: Cold Fork Cottonwood Creek (40.4060, –122.0608); Cottonwood Creek (40.3943, –122.2524); Middle Fork Cottonwood Creek (40.3314, –122.6663); North Fork Cottonwood...
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Creek (40.4539, –122.5610); South Fork Cottonwood Creek (40.1578, –122.5809).

(4) Eastern Tehama Hydrologic Unit 5509—(i) Big Chico Creek Hydrologic Sub-area 550914. Outlet(s) = Big Chico Creek (Lat 39.7757, Long –121.7525) upstream to endpoint(s) in: Big Chico Creek (39.8698, –121.6952).

(ii) Deer Creek Hydrologic Sub-area 550920. Outlet(s) = Deer Creek (Lat 40.0142, Long –121.9476) upstream to endpoint(s) in: Deer Creek (40.2025, –121.1244).

(iii) Upper Mill Creek Hydrologic Sub-area 550942. Outlet(s) = Mill Creek (Lat 40.0550, Long –122.0317) upstream to endpoint(s) in: Mill Creek (40.3766, –121.5098); Rocky Gulch Creek (40.2888, –121.3314).

(iv) Dye Creek Hydrologic Sub-area 550962. Outlet(s) = Dye Creek (Lat 40.0910, Long –122.0719) upstream to endpoint(s) in: Dye Creek (40.0996, –121.9612).

(v) Antelope Creek Hydrologic Sub-area 550963. Outlet(s) = Antelope Creek (Lat 40.2023, Long –122.1272) upstream to endpoint(s) in: Antelope Creek (40.2416, –121.8630); Middle Fork Antelope Creek (40.2673, –121.7744); North Fork Antelope Creek (40.2807, –121.7645); South Fork Antelope Creek (40.2521, –121.7575).

(5) Sacramento Delta Hydrologic Unit 5510—

(i) Lower Bear River Hydrologic Sub-area 551010. Outlet(s) = Bear River (Lat 39.9398, Long –121.5790) upstream to endpoint(s) in: Bear River (39.0421, –121.3319).

(ii) Lower Yuba River Hydrologic Sub-area 551510. Outlet(s) = Yuba River (Lat 39.1270, Long –121.5981) upstream to endpoint(s) in: Yuba River (39.2203, –121.3314).

(iii) Lower Feather River Hydrologic Sub-area 551540. Outlet(s) = Feather River (Lat 39.1264, Long –121.5984) upstream to endpoint(s) in: Feather River (39.5205, –121.5475).

(6) Valley-Putah-Cache Hydrologic Unit 5511—

(i) Lower Putah Creek Hydrologic Sub-area 551120. Outlet(s) = Sacramento Bypass (Lat 38.6057, Long –121.5563); Yolo Bypass (38.5800, –121.5838) upstream to endpoint(s) in: Sacramento Bypass (38.5969, –121.5888); Yolo Bypass (38.7627, –121.6325).

(ii) Lower Yuba River Hydrologic Sub-area 551530. Outlet(s) = Yuba River (Lat 39.1270, Long –121.5981) upstream to endpoint(s) in: Yuba River (39.2203, –121.3314).

(7) American River Hydrologic Unit 5514—Auburn Hydrologic Sub-area 551422. Outlet(s) = Auburn Ravine (Lat 38.8921, Long –121.2181); Coon Creek (38.9891, –121.2556); Doty Creek (38.9401, –121.2474) upstream to endpoint(s) in: Auburn Ravine (38.8888, –121.1151); Coon Creek (38.9659, –121.1781); Doty Creek (38.9105, –121.1244).

(8) Marysville Hydrologic Unit 5515—

(i) Lower Bear River Hydrologic Sub-area 551510. Outlet(s) = Bear River (Lat 39.9398, Long –121.5790) upstream to endpoint(s) in: Bear River (39.0421, –121.3319).

(ii) Lower Yuba River Hydrologic Sub-area 551530. Outlet(s) = Yuba River (Lat 39.1270, Long –121.5981) upstream to endpoint(s) in: Yuba River (39.2203, –121.3314).

(9) Yuba River Hydrologic Unit 5517—

(i) Browns Valley Hydrologic Sub-area 551712. Outlet(s) = Dry Creek (Lat 38.5971, –1121.5088); Elk Slough (38.2898, –121.6271); Georgiana Slough (38.2401, –121.5712); Horseshoe Bend (38.1078, –121.7171); Lindsey Slough (38.2592, –121.7580); Miners Slough (38.2864, –121.6615); Prospect Slough (38.2930, –121.6941); Putah Creek (38.5155, –121.5385); Sevenmile Slough (38.1171, –121.6298); Streamboat Slough (38.3052, –121.5737); Sutter Slough (38.3321, –121.5838); Threemile Slough (38.1155, –121.6385); Ulatis Creek (38.2961, –121.7303); Unnamed Tributary (38.2937, –121.7608); Unnamed Tributary (38.2937, –121.7804); Yolo Bypass (38.5800, –121.5838).

(ii) Englebright Hydrologic Sub-area 551714. Outlet(s) = Yuba River (Lat 39.2205, Long –121.2613) upstream to endpoint(s) in: Yuba River (39.2999, –121.2689).

(iii) Pleasant Grove Hydrologic Sub-area 551922. Outlet(s) = Sacramento River (Lat 38.6026, Long –121.5155) upstream to endpoint(s) in: Auburn Ravine (38.8913, –121.2424); Coon Creek (38.9883, –121.2609); Doty Creek (38.9105, –121.2475); Feather River (39.1264, –121.5984).
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(11) Colusa Basin Hydrologic Unit 5520—(i) Sycamore-Sutter Hydrologic Sub-area 552010. Outlet(s) = Sacramento River (Lat 38.7604, Long –1121.6767) upstream to endpoint(s) in: Tisdale Bypass (39.0261, –1121.7456).

(ii) Sutter Bypass Hydrologic Sub-area 552030. Outlet(s) = Sacramento River (Lat 38.7851, Long –1121.6238) upstream to endpoint(s) in: Butte Creek (39.1990, –1121.9286); Butte Slough (39.8956, –1121.6180); Sacramento Slough (38.7844, –1121.6544); Sutter Bypass (39.1586, –1121.8747).

(iii) Butte Basin Hydrologic Sub-area 552040. Outlet(s) = Butte Creek (Lat 39.1990, Long –1121.9286); Sacramento River (39.4141, –1122.0087) upstream to endpoint(s) in: Butte Creek (39.7096, –1121.7504); Colusa Bypass (39.2276, –1121.9402); Little Chico Creek (39.7380, –1121.6180); Little Dry Creek (39.6781, –1121.6580).

(12) Butte Creek Hydrologic Unit 5521—(i) Upper Dry Creek Hydrologic Sub-area 552110. Outlet(s) = Little Dry Creek (Lat 39.6781, –1121.6580) upstream to endpoint(s) in: Little Dry Creek (39.7424, –1121.6213).

(ii) Upper Butte Creek Hydrologic Sub-area 552120. Outlet(s) = Little Chico Creek (Lat 39.7380, Long –1121.7490) upstream to endpoint(s) in: Little Chico Creek (39.8680, –1121.6680).

(iii) Upper Little Chico Hydrologic Sub-area 552130. Outlet(s) = Butte Creek (Lat 39.7096, Long –1121.7504) upstream to endpoint(s) in: Little Butte Creek (39.8215, –1121.6468); Little Butte Creek (39.8159, –1121.5819).

(13) Ball Mountain Hydrologic Unit 5523—(i) Thomas Creek Hydrologic Sub-area 552310. Outlet(s) = Thomas Creek (39.8822, –1122.5527) upstream to endpoint(s) in: Doll Creek (39.8941, –1122.9209); Fish Creek (40.0176, –1122.8142); Snake Creek (39.9455, –1122.7768); Thomas Creek (39.9455, –1122.8491); Willow Creek (39.8941, –1122.9209).

(ii) Shasta Bally Hydrologic Unit 5524—(i) South Fork Hydrologic Sub-area 552433. Outlet(s) = Cold Fork Cottonwood Creek (Lat 40.1578, –1122.5809) upstream to endpoint(s) in: Cold Fork Cottonwood Creek (40.1881, –1122.8690); South Fork Cottonwood Creek (40.1222, –1122.8761).

(ii) Plattey Hydrologic Sub-area 552436. Outlet(s) = Middle Fork Cottonwood Creek (Lat 40.3314, Long –1122.6663) upstream to endpoint(s) in: Beegum Creek (40.3149, –1122.9776); Middle Fork Cottonwood Creek (40.3512, –1122.9629).

(iii) Spring Creek Hydrologic Sub-area 552440. Outlet(s) = Sacramento River (Lat 40.5943, Long –1122.4343) upstream to endpoint(s) in: Middle Creek (40.5904, –1121.4825); Rock Creek (40.6155, –1122.4702); Sacramento River (40.6116, –1122.4462); Salt Creek (40.5830, –1122.4586); Unnamed Tributary (40.5794, –1122.4844).

(iv) Kanaka Peak Hydrologic Sub-area 552462. Outlet(s) = Clear Creek (Lat 40.5138, Long –1122.5256) upstream to endpoint(s) in: Clear Creek (40.5998, 122.5299).

(i5) North Valley Floor Hydrologic Unit 5531—(i) Lower Mokelumne Hydrologic Sub-area 553120. Outlet(s) = Mokelumne River (Lat 38.2104, Long –1121.3804) upstream to endpoint(s) in: Mokelumne River (38.2263, –1121.0241); Murphy Creek (38.2491, –1121.0119).

(ii) Lower Calaveras Hydrologic Sub-area 553130. Outlet(s) = Calaveras River (Lat 37.9836, Long –1121.3110); Mormon Slough (37.9456, –121.2907) upstream to endpoint(s) in: Calaveras River (38.1025, –1120.8503); Mormon Slough (38.0532, –1121.0102); Stockton Diverting Canal (37.0594, –1121.2024).

(16) Upper Calaveras Hydrologic Unit 5533—New Hogan Reservoir Hydrologic Sub-area 553310. Outlet(s) = Calaveras River (Lat 38.1025, Long –1120.8503) upstream to endpoint(s) in: Calaveras River (38.1502, –1120.8145).

(17) Stanislaus River Hydrologic Unit 5534—Table Mountain Hydrologic Sub-area 553410. Outlet(s) = Stanislaus River (Lat 37.8355, Long –1120.6513) upstream to endpoint(s) in: Stanislaus River (37.8631, –1120.6298).

(18) San Joaquin Valley Floor Hydrologic Unit 5535—Riverbank Hydrologic Sub-area 553530. Outlet(s) = Stanislaus River (Lat 37.6648, Long –1121.2414) upstream to endpoint(s) in: Stanislaus River (37.8355, –1120.6513).

(ii) Turlock Hydrologic Sub-area 553550. Outlet(s) = Tuolumne River (Lat 37.6059, Long –1121.1739) upstream to
endpoint(s) in: Tuolumne River (37.6401, –1120.6526).

(iii) Montpelier Hydrologic Sub-area 553560. Outlet(s) = Tuolumne River (Lat 37.6401, Long –1120.6526) upstream to endpoint(s) in: Tuolumne River (37.6721, –1120.4445).

(iv) El Nido-Stevinson Hydrologic Sub-area 553570. Outlet(s) = Merced River (Lat 37.3505, Long –1120.9619) upstream to endpoint(s) in: Merced River (37.3620, –1120.8507).

(v) Merry Hydrologic Sub-area 553580. Outlet(s) = Merced River (Lat 37.3620, Long –1120.8507) upstream to endpoint(s) in: Merced River (37.4982, –1120.4612).

(vi) Fahr Creek Hydrologic Sub-area 553590. Outlet(s) = Merced River (Lat 37.4982, Long –1120.4612) upstream to endpoint(s) in: Merced River (37.5081, –1120.3581).

(19) Delta-Mendota Canal Hydrologic Unit 5541—(i) Patterson Hydrologic Sub-area 554110. Outlet(s) = San Joaquin River (Lat 37.3491, Long –1120.9759).

(ii) Los Banos Hydrologic Sub-area 554120. Outlet(s) = Merced River (Lat 37.3490, Long –1120.9756) upstream to endpoint(s) in: Merced River (37.3505, –1120.9619).

(20) North Diablo Range Hydrologic Unit 5543—North Diablo Range Hydrologic Sub-area 554300. Outlet(s) = San Joaquin River (Lat 38.0247, Long –1121.8216) upstream to endpoint(s) in: San Joaquin River (38.0246, –1121.7471).

(21) San Joaquin Delta Hydrologic Unit 5544—San Joaquin Delta Hydrologic Sub-area 554400. Outlet(s) = San Joaquin River (Lat 38.0246, Long –1121.7471) upstream to endpoint(s) in: Big Break (38.0160, –1121.6849); Bishop Cut (38.0670, –1121.4158); Calaveras River (37.9936, –1121.3110); Cosumnes River (38.2538, –1121.4074); Disappointment Slough (38.0439, –1121.4201); Dutch Slough (38.0088, –1121.6281); Empire Cut (37.9714, –1121.4762); False River (38.0479, –1121.6232); Frank’s Tract (38.0620, –1121.5997); Frank’s Tract (38.0300, –1121.5830); Holland Cut (37.9939, –1121.5757); Honker Cut (38.0680, –1121.4589); Kellog Creek (37.9158, –1121.6051); Latham Slough (37.9716, –1121.5122); Middle River (38.0216, –1121.3747); Mokelumne River (38.2104, –1121.2907); Mormon Slough (37.9456, –121.2907); Mosher Creek (38.0327, –1121.3650); North Mokelumne River (38.2274, –1121.4918); Old River (37.8086, –1121.3274); Orwood Slough (37.9409, –1121.3322); Paradise Cut (37.7605, –1121.3085); Pixley Slough (38.0443, –1121.3868); Potato Slough (38.0440, –1121.4997); Rock Slough (37.9754, –1121.5759); Sand Mound Slough (38.0220, –1121.5979); Stockton Deep Water Channel (37.9657, –1121.4201); Turner Cut (37.9972, –1121.4434); Unnamed Tributary (38.1165, –1121.4976); Victoria Canal (37.8891, –1121.4895); White Slough (38.0818, –1121.4156); Woodward Canal (37.9037, –1121.4793).

(22) Maps of critical habitat for the Central Valley Steelhead ESU follow:
Critical Habitat for the California Central Valley Steelhead

Tehama Hydrologic Unit 5504

- Cities/Towns
- Critical Habitat
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail

California
§ 226.212 Critical habitat for 13 Evolutionarily Significant Units (ESUs) of salmon and steelhead (Oncorhynchus spp.) in Washington, Oregon and Idaho.

Critical habitat is designated in the following states and counties for the following ESUs as described in paragraph (a) of this section, and as further described in paragraphs (b) through (g) of this section. The textual descriptions of critical habitat for each ESU are included in paragraphs (i) through (u) of this section, and these descriptions are the definitive source for determining the critical habitat boundaries. General location maps are provided at the end of each ESU description (paragraphs (i) through (u) of this section) and are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) Critical habitat is designated for the following ESUs in the following states and counties:

<table>
<thead>
<tr>
<th>ESU</th>
<th>State—Counties</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Puget Sound chinook salmon</td>
<td>WA—Clallam, Jefferson, King, Mason, Pierce, Skagit, Snohomish, Thurston, and Whatcom.</td>
</tr>
</tbody>
</table>
| (2) Lower Columbia River chinook salmon | (i) OR—Clackamas, Cowlitz, Columbia, Hood River, and Multnomah.  
(ii) WA—Clark, Cowlitz, Klickitat, Lewis, Pacific, Skamania, and Wahkiakum. |
| (3) Upper Willamette River chinook salmon | (i) OR—Benton, Clackamas, Cowlitz, Columbia, Lane, Linn, Marion, Multnomah, Polk, and Yamhill.  
(ii) WA—Clark, Cowlitz, Pacific, and Wahkiakum. |
| (4) Upper Columbia River spring-run chinook salmon | (i) OR—Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Sherman, Umatilla, and Wasco.  
(ii) WA—Benton, Chelan, Clark, Cowlitz, Douglas, Franklin, Grant, Kittitas, Klickitat, Okanogan, Pacific, Skamania, Wahkiakum, Walla Walla, and Yakima. |
| (5) Hood Canal summer-run chum salmon | WA—Clallam, Jefferson, Kitsap, and Mason. |
| (6) Columbia River chum salmon | (i) OR—Clatsop, Columbia, Hood River, and Multnomah.  
(ii) WA—Clark, Cowlitz, Klickitat, Lewis, Pacific, Skamania, and Wahkiakum. |
| (7) Ozette Lake sockeye salmon | WA—Clallam. |
| (8) Upper Columbia River steelhead | (i) OR—Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Umatilla, and Wasco.  
(ii) WA—Adams, Benton, Chelan, Clark, Cowlitz, Douglas, Franklin, Grant, Kittitas, Klickitat, Okanogan, Pacific, Skamania, Wahkiakum, Walla Walla, and Yakima. |
(ii) OR—Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Sherman, Umatilla, Union, Walla Walla, and Wasco.  
(iii) WA—Adams, Benton, Clark, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Walla Walla, Wahkiakum, and Whitman. |
| (10) Middle Columbia River steelhead | (i) OR—Clatsop, Columbia, Crook, Gilliam, Grant, Hood River, Jefferson, Morrow, Multnomah, Sherman, Umatilla, Union, Walla Walla, Wasco, and Wheeler.  
| (11) Lower Columbia River steelhead | (i) OR—Clackamas, Cowlitz, Columbia, Hood River, Marion, and Multnomah.  
(ii) WA—Clark, Cowlitz, Klickitat, Lewis, Pacific, Skamania, and Wahkiakum. |
| (12) Upper Willamette River steelhead | (i) OR—Benton, Clackamas, Cowlitz, Columbia, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill.  
(ii) WA—Clark, Cowlitz, Pacific, and Wahkiakum. |
| (13) Oregon Coast coho salmon | OR—Benton, Clatsop, Columbia, Coos, Curry, Douglas, Lane, Oregon Lincoln, Polk, Tillamook, Washington, and Yamhill. |

(b) Critical habitat boundaries. Critical habitat includes the stream channels within the designated stream reaches, and includes a lateral extent as defined by the ordinary high-water line (33 CFR 319.11). In areas where ordinary high-water line has not been defined, the lateral extent will be defined by
the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series. Critical habitat in lake areas is defined by the perimeter of the water body as displayed on standard 1:24,000 scale topographic maps or the elevation of ordinary high water, whichever is greater. In estuarine and nearshore marine areas critical habitat includes areas contiguous with the shoreline from the line of extreme high water out to a depth no greater than 30 meters relative to mean lower low water.

(c) Primary constituent elements. Within these areas, the primary constituent elements essential for the conservation of these ESUs are those sites and habitat components that support one or more life stages, including:

(1) Freshwater spawning sites with water quantity and quality conditions and substrate supporting spawning, incubation and larval development;

(2) Freshwater rearing sites with:
  (i) Water quantity and floodplain connectivity to form and maintain physical habitat conditions and support juvenile growth and mobility;
  (ii) Water quality and forage supporting juvenile development; and
  (iii) Natural cover such as shade, submerged and overhanging large wood, log jams and beaver dams, aquatic vegetation, large rocks and boulders, side channels, and undercut banks.

(3) Freshwater migration corridors free of obstruction and excessive predation with water quantity and quality conditions and natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels, and undercut banks supporting juvenile and adult mobility and survival;

(4) Estuarine areas free of obstruction and excessive predation with:
  (i) Water quality, water quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and saltwater;
  (ii) Natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels; and
  (iii) Juvenile and adult forage, including aquatic invertebrates and fishes, supporting growth and maturation.

(5) Nearshore marine areas free of obstruction and excessive predation with:
  (i) Water quality and quantity conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation; and
  (ii) Natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, and side channels.

(6) Offshore marine areas with water quality conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation.

(d) Exclusion of Indian lands. Critical habitat does not include habitat areas on Indian lands. The Indian lands specifically excluded from critical habitat are those defined in the Secretarial Order, including:

(1) Lands held in trust by the United States for the benefit of any Indian tribe;

(2) Land held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(3) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(4) Fee lands within the reservation boundaries owned by individual Indians.

(e) Land owned or controlled by the Department of Defense. Critical habitat does not include any areas subject to an approved Integrated Natural Resource Management Plan or associated with Department of Defense easements or right-of-ways. In areas within Navy security zones identified at 33 CFR 334 that are outside the areas described above, critical habitat is only designated within a narrow nearshore zone from the line of extreme high tide down to the line of mean lower low water. The specific sites addressed include:

(1) Naval Submarine Base, Bangor;

(2) Naval Undersea Warfare Center, Keyport;

(3) Naval Ordnance Center, Port Hadlock (Indian Island);

(4) Naval Radio Station, Jim Creek;

(5) Naval Fuel Depot, Manchester;
(6) Naval Air Station Whidbey Island;
(7) Naval Air Station, Everett;
(8) Bremerton Naval Hospital;
(9) Fort Lewis (Army);
(10) Pier 23 (Army);
(11) Yakima Training Center (Army);
(12) Puget Sound Naval Shipyard;
(13) Naval Submarine Base Bangor security zone;
(14) Strait of Juan de Fuca naval air-to-surface weapon range, restricted area;
(15) Hood Canal and Dabob Bay naval non-explosive torpedo testing area;
(16) Strait of Juan de Fuca and Whidbey Island naval restricted areas;
(17) Admiralty Inlet naval restricted area;
(18) Port Gardner Naval Base restricted area;
(19) Hood Canal naval restricted areas;
(20) Port Orchard Passage naval restricted area;
(21) Sinclair Inlet naval restricted areas;
(22) Carr Inlet naval restricted areas;
(23) Dabob Bay/Whitney Point naval restricted area; and
(24) Port Townsend/Indian Island/Walan Point naval restricted area.

(f) Land subject to the Washington Department of Natural Resources Habitat Conservation Plan. Critical habitat is excluded on lands covered by the incidental take permit issued by NMFS under section 10(a)(1)(B) of the ESA to the Washington Department of Natural Resources.

(g) Land subject to the Green Diamond Company Habitat Conservation Plan. Critical habitat is excluded on lands covered by the incidental take permit issued by NMFS under section 10(a)(1)(B) of the ESA to the Green Diamond Resources Company (formerly Simpson Timber Company).

(h) Land subject to the West Fork Timber Company Habitat Conservation Plan. Critical habitat is excluded on lands covered by the incidental take permit issued by NMFS under section 10(a)(1)(B) of the ESA to the West Fork Timber Company (formerly Murray Pacific Corporation).

(i) Puget Sound Chinook Salmon (Oncorhynchus tshawytscha). Critical habitat is designated to include the areas defined in the following sub-basins:

(1) Nooksack Subbasin 17110004—(i) Upper North Fork Nooksack River Watershed 1711000401. Outlet(s) = North Fork Nooksack River (Lat 48.9055, Long –121.9886) upstream to endpoint(s) in: Boyd Creek (48.8966, –121.8640); Canyon Creek (48.9366, –121.9451); Cascade Creek (48.8996, –121.8621); Cornell Creek (48.8882, –121.9594); Deadhorse Creek (48.9024, –121.8359); Gallop Creek (48.8849, –121.9447); Glacier Creek (48.8197, –121.8931); Hedrick Creek (48.8953, –121.9705); Thompson Creek (48.8837, –121.9028); Wells Creek (48.8940, –121.7976).

(ii) Middle Fork Nooksack River Watershed 1711000402. Outlet(s) = Middle Fork Nooksack River (Lat 48.9342, Long –122.1540) upstream to endpoint(s) in: Canyon Creek (48.8374, –122.1198); Clearwater Creek (48.7841, –122.0293); Middle Fork Nooksack River (48.7249, –121.8999); Porter Creek (48.7851, –122.1098); Sister Creek (48.7492, –121.9736); Unnamed (48.7809, –122.1157); Unnamed (48.7860, –122.1214); Warm Creek (48.7559, –121.9741).

(iii) South Fork Nooksack River Watershed 1711000403. Outlet(s) = South Fork Nooksack River (Lat 48.8995, Long –122.2026) upstream to endpoint(s) in: Black Slough (48.7715, –122.1931); Cavanaugh Creek (48.6446, –122.1094); Deer Creek (48.6041, –122.0912); Edfrő Creek (48.6607, –122.1206); Fobes Creek (48.6250, –122.1139); Hard Scrabble Falls Creek (48.7601, –122.2273); Howard Creek (48.6118, –121.9639); Hutchinson Creek (48.7056, –122.1633); Jones Creek (48.7186, –122.2130); McCarty Creek (48.7275, –122.2188); Plumbago Creek (48.6088, –122.0949); Pond Creek (48.6958, –122.1651); Skokum Creek (48.6871, –122.1029); South Fork Nooksack River (48.6133, –121.9000); Standard Creek (48.7444, –122.2191); Sygitowicz Creek (48.7722, –122.2269); Unnamed (48.6048, –121.9143); Unnamed (48.6213, –122.1039); Unnamed (48.7174, –122.1815); Unnamed (48.7231, –122.1968); Unnamed (48.7943, –122.2188).

(iv) Lower North Fork Nooksack River Watershed 1711000404. Outlet(s) = Nooksack River (Lat 48.8711, Long –122.3227) upstream to endpoint(s) in: Anderson Creek (48.8938, –122.3410); Boulder Creek (48.9314, –122.0258); Coal
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Creek (48.8889, –122.1506); Kendall Creek (48.9251, –122.1455); Kenney Creek (48.8510, –122.1368); Macaulay Creek (48.8353, –122.2345); Maple Creek (48.9262, –122.0751); Mitchell Creek (48.8313, –122.1714); North Fork Nooksack River (48.9055, –121.9886); Racehorse Creek (48.8819, –122.1272); Smith Creek (48.8439, –122.2544); Unnamed (48.9002, –122.1205); Unnamed (48.9040, –122.0875); Unnamed (48.9131, –122.0127); Unnamed (48.9158, –122.0091); Unnamed (48.9162, –122.0615); Unnamed (48.9200, –122.0463); Wildcat Creek (48.9058, –122.0091).

(v) Nooksack River Watershed 1711000405. Outlet(s) = Lummi River (Lat 48.8010, Long –122.6582); Nooksack River (48.7737, –122.5986); Silver Creek (48.7786, –122.5635); Slater Slough (48.7759, –122.6029); Unnamed (48.7776, –122.5708); Unnamed (48.7973, –122.6717); Unnamed (48.8033, –122.6771) upstream to endpoint(s) in: Camp Creek (48.1559, –121.2909); Deer Creek (48.8439, –122.4839).

(ii) Upper Suiattle River Watershed 1711000602. Outlet(s) = Suiattle River (Lat 48.2586, Long –121.2237) upstream to endpoint(s) in: Downey Creek (48.2828, –121.2083); Milk Creek (48.2207, –121.2933); Sulphur Creek (48.2560, –121.3395); Unnamed (48.2338, –121.1792).

(iii) Lower Suiattle River Watershed 1711000603. Outlet(s) = Suiattle River (Lat 48.3384, Long –121.5482) upstream to endpoint(s) in: Big Creek (48.3435, –121.4416); Buck Creek (48.2535, –121.3268); Circle Creek (48.2555, –121.3395); Lime Creek (48.2445, –121.2933); Straight Creek (48.2594, –121.4009); Sulattle River (48.2560, –121.2237); Tenas Creek (48.3971, –121.4904).

(2) Upper Skagit Subbasin 17110005—

(i) Skagit River/Gorge Lake Watershed 1711000504. Outlet(s) = Skagit River (Lat 48.6725, Long –121.2333) upstream to endpoint(s) in: Goodell Creek (48.6890, –121.2718); Skagit River (48.6763, –121.2404).

(ii) Skagit River/Diobsud Creek Watershed 1711000505. Outlet(s) = Skagit River (Lat 48.5218, Long –121.4315) upstream to endpoint(s) in: Bacon Creek (48.6456, –121.4244); Diobsud Creek (48.5761, –121.4398); Falls Creek (48.6344, –121.4288); Skagit River (48.6720, –121.2633).

(iii) Cascade River Watershed 1711000506. Outlet(s) = Cascade River (Lat 48.5218, Long –121.4315) upstream to endpoint(s) in: Found Creek (48.4816, –121.2947); Kindy Creek (48.4613, –121.2094); Marble Creek (48.5398, –121.2612); North Fork Cascade River (48.4660, –121.1641); South Fork Cascade River (48.4592, –121.1949).

(iv) Skagit River/Illabot Creek Watershed 1711000507. Outlet(s) = Skagit River (Lat 48.5333, Long –121.7370) upstream to endpoint(s) in: Illabot Creek (48.4896, –121.4501); Jackman Creek (48.5294, –121.6957); Skagit River (48.5218, –121.4315); Unnamed (48.5013, –121.6598).

(3) Sauk Subbasin 17110006—

(i) Upper Sauk River Watershed 1711000601. Outlet(s) = Sauk River (Lat 48.1731, Long –121.4714) upstream to endpoint(s) in: Camp Creek (48.1559, –121.2909); Deer Creek (48.8439, –122.4839).

(ii) Lower Sauk River Watershed 1711000604. Outlet(s) = Sauk River (Lat 48.4821, Long –121.6060) upstream to endpoint(s) in: Dan Creek (48.2702, –121.5473); Sauk River (48.1731, –121.4714); Unnamed (48.2247, –121.5826); Unnamed (48.3187, –121.5480).

(4) Lower Skagit Subbasin 17110007—

(i) Middle Skagit River/Finney Creek Watershed 1711000701. Outlet(s) = Skagit River (Lat 49.4891, Long –122.2170) upstream to endpoint(s) in: Alder Creek (48.5280, –121.9498); Day Creek (48.4689, –122.0216); Finney Creek (48.4655, –121.6858); Grandy Creek (48.5510, –121.8621); Hansen Creek (48.5600, –122.2069); Jims Slough (48.5274, –122.0227); Jones Creek (48.5418, –122.0494); Mannser Creek (48.5260, –121.2094); North Fork Cascade River (48.4660, –121.1641); South Fork Cascade River (48.4592, –121.1949).
–122.0430); Muddy Creek (48.5278, –122.0007); Pressentin Creek (48.5099, –121.8449); Skagit River (48.5333, –121.7370); Sorenson Creek (48.4875, –122.1029); Unnamed (48.5099, –122.0747); Wiseman Creek (48.5160, –122.1286).

(ii) Lower Skagit River/Nookachamps Creek Watershed 1711000702. Outlet(s) = Browns Slough (Lat 48.3305, Long –122.4194); Freshwater Slough (48.3109, –122.3883); Hall Slough (48.3394, –122.4426); Isohis Slough (48.2975, –122.3711); North Fork Skagit River (48.3625, –122.4689); South Fork Skagit River (48.2920, –122.3670); Unnamed (48.3085, –122.3868); Unnamed (48.3831, –122.3442) upstream to endpoint(s) in: Britt Slough (48.3935, –122.3571); Browns Slough (48.3411, –122.4127); East Fork Nookachamps Creek (48.4044, –122.1790); Hall Slough (48.3437, –122.4376); Mundt Creek (48.4249, –122.2007); Skagit River (48.4981, –122.2178); Unnamed (48.3703, –122.3061); Unnamed (48.3827, –122.1893); Unnamed (48.3924, –122.4822); Walker Creek (48.3778, –122.1899).

(iii) Stillaguamish Subbasin 17110008—(i) North Fork Stillaguamish Watershed 1711000801. Outlet(s) = North Fork Stillaguamish River (Lat 48.2037, Long –122.1256) upstream to endpoint(s) in: Ashton Creek (48.2545, –121.6708); Boulde River (48.2624, –121.6749); Deer Creek (48.2835, –121.9255); French Creek (48.2534, –121.7856); Furland Creek (48.2624, –121.6749); Grant Creek (48.2835, –122.0118); North Fork Stillaguamish River (48.3041, –121.6360); Rollins Creek (48.2908, –122.8441); Squire Creek (48.2389, –121.6374); Unnamed (48.2389, –121.6235); Unnamed (48.2739, –121.9948).

(ii) South Fork Stillaguamish Watershed 1711000802. Outlet(s) = South Fork Stillaguamish River (Lat 48.2037, Long –122.1256) upstream to endpoint(s) in: Jim Creek (48.2230, –121.9438); North Fork Canyon Creek (48.1697, –121.8194); Siberia Creek (48.1731, –122.0377); South Fork Canyon Creek (48.1540, –121.7840); South Fork Stillaguamish River (48.0454, –121.4819); Unnamed (48.1463, –122.0162).

(iii) Lower Stillaguamish Watershed 1711000803. Outlet(s) = Stillaguamish River (Lat 48.2385, Long –122.3493); Unnamed (48.1893, –122.3579) upstream to endpoint(s) in: Armstrong Creek (48.2189, –122.1347); Pilchuck Creek (48.2983, –122.1672); Stillaguamish River (48.2037, –122.1256).

(6) Skykomish Subbasin 17110009—(i) Tye and Beckler River Watershed 1711000901. Outlet(s) = South Fork Skykomish River (Lat 47.7147, Long –121.3393) upstream to endpoint(s) in: East Fork Foss River (47.6522, –121.2792); Rapid River (47.8131, –121.2470); Tye River (47.7172, –121.2254); Unnamed (47.8241, –121.2979); West Fork Foss River (47.6454, –121.2972).

(ii) Skykomish River Forks Watershed 1711000902. Outlet(s) = North Fork Skykomish River (Lat 47.8133, Long –121.5782) upstream to endpoint(s) in: Bridal Veil Creek (47.7987, –121.5597); Lewis Creek (47.8223, –121.5160); Miller Creek (47.7018, –121.3950); Money Creek (47.7206, –121.4062); North Fork Skykomish River (47.9183, –121.3073); South Fork Skykomish River (47.7147, –121.3393); Unnamed (47.7321, –121.4176); Unnamed (47.8002, –121.5548).

(iii) Skykomish River/Wallace River Watershed 1711000903. Outlet(s) = Skykomish River (Lat 47.8602, Long –121.8190) upstream to endpoint(s) in: Deer Creek (47.8191, –121.5805); Olney Creek (47.8796, –121.7163); Proctor Creek (47.8216, –121.6460); Skykomish River (47.8133, –121.5782); Unnamed (47.8507, –121.8010); Wagley's Creek (47.8674, –121.7972); Wallace River (47.8736, –121.6491).

(iv) Sultan River Watershed 1711000904. Outlet(s) = Sultan River (Lat 47.8602, Long –121.8190) upstream to endpoint(s) in: Sultan River (47.9598, –121.7851).

(v) Skykomish River/Woods Creek Watershed 1711000905. Outlet(s) = Skykomish River (Lat 47.8303, Long –122.0451) upstream to endpoint(s) in: Elwell Creek (47.8038, –121.8524); Skykomish River (47.8602, –121.8190); Unnamed (47.8890, –121.8637); West Fork Woods Creek (47.9627, –121.9707); Woods Creek (47.8953, –121.8742); Youngs Creek (47.8081, –121.8332).

(7) Snoqualmie Subbasin 17110010—(i) Middle Fork Snoqualmie River Watershed 1711001003. Outlet(s) = Snoqualmie River (Lat 47.6407, Long –121.9261) upstream to endpoint(s) in: Canyon Creek (47.5837, –121.9623); Deep Creek (47.4764, –121.8905); Griffin Creek (47.6164, –121.9014); Lake Creek (47.5036, –121.9035); Patterson Creek (47.6276, –121.9855); Raging River (47.4795,
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(ii) Lower Snoqualmie River Watershed

171100104. Outlet(s) = Snoqualmie River (Lat 47.8303, Long –122.0451) upstream to endpoint(s) in: Cherry Creek (47.7465, –121.8583); Margaret Creek (47.7547, –121.8933); North Fork Tolt River (47.7060, –121.7957); Snoqualmie River (47.6407, –121.9261); South Fork Tolt River (47.6969, –121.7861); Tuck Creek (47.7442, –122.0032); Unnamed (47.6806, –121.9730); Unnamed (47.6822, –121.9770); Unnamed (47.7420, –122.0084); Unnamed (47.7522, –121.9745); Unnamed (47.7581, –121.9586).

(iii) Lower Green River Watershed

171100103. Outlet(s) = Duwamish River (Lat 47.5113, Long –122.2951) upstream to endpoint(s) in: Big Soos Creek (47.4191, –122.1599); Burns Creek (47.2779, –122.3087); Covington Creek (47.2341, –122.0399); Crisp Creek (47.2897, –122.0590); Green River (47.2911, –122.9714); Jenkins Creek (47.3791, –122.0899); Little Soos Creek (47.4031, –122.1235); Mill Creek (47.3263, –122.2455); Newaukum Creek (47.2303, –122.0618); Unnamed (47.2765, –121.9730); Unnamed (47.2891, –122.1557); Unnamed (47.3007, –122.1774); Unnamed (47.3250, –122.1961); Unnamed (47.3464, –122.2397); Unnamed (47.3751, –122.2648); Unnamed (47.4046, –122.2134); Unnamed (47.4525, –122.2542); Unnamed (47.4618, –122.3315); Unnamed (47.4619, –122.2554); Unnamed (47.4876, –122.2781).

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to endpoint(s) in: Carbon River (46.9965, –121.9198); South Fork South Prairie Creek (47.1203, –121.9963); Voight Creek (47.0751, –122.1285); Wilkeson Creek (47.0972, –122.0245).

(iv) Upper Puyallup River Watershed 1711001404. Outlet(s) = Puyallup River (Lat 47.1308, Long –122.2315) upstream to endpoint(s) in: Deer Creek (46.8547, –121.9680); Kapowsin Creek (47.1203, –122.0845); Mowich River (46.9290, –121.9739); Rushingwater Creek (46.8971, –121.9439); Unnamed (46.8899, –121.9657).

(v) Lower Puyallup River Watershed 1711001405. Outlet(s) = Hylebos Creek (Lat 47.2611, Long –122.3591); Puyallup River (47.2501, –122.4131) upstream to endpoint(s) in: Canyon Falls Creek (47.1421, –122.2186); McAllister Creek (47.0299, –122.7236); Nisqually River (46.8646, –122.4776); Unnamed (47.0001, –122.3371); Unnamed (47.2736, –122.3289).

(12) Nisqually Subbasin 17110015—(i) Mashel/Ohop Watershed 1711001502. Outlet(s) = Nisqually River (Lat 46.8646, Long –122.4776) upstream to endpoint(s) in: Little Mashel River (46.8904, –122.2724); Lynch Creek (46.8760, –122.2724); North Fork Skokomish River (47.5197, –123.3329); Purdy Canyon (47.3021, –123.1803); Unnamed (47.3048, –123.3060); Unnamed (47.3146, –123.1353; Unnamed (47.3209, –123.2212); Unnamed (47.3222, –123.3060); Unnamed (47.3297, –123.1467); Unnamed (47.3250, –123.1317); Weaver Creek (47.3097, –123.2384).

(13) Skokomish Subbasin 17110017—Skokomish River Watershed 1711001701. Outlet(s) = Skokomish River (Lat 47.3543, Long –123.1122); Unnamed (47.3420, –123.1092); Unnamed (47.3471, –123.1275); Unnamed (47.3509, –123.1101) upstream to endpoint(s) in: Brown Creek (47.4238, –123.3502); Fir Creek (47.3083, –123.3016); McGreggert Creek (47.3749, –123.318); North Fork Skokomish River (47.5197, –123.3229); Purdy Canyon (47.3021, –123.1803); Unnamed (47.3048, –123.1528); Unnamed (47.3077, –123.2012); Unnamed (47.3146, –123.1353); Unnamed (47.3209, –123.2212); Unnamed (47.3222, –123.3060); Unnamed (47.3297, –123.1467); Unnamed (47.3250, –123.1317); Weaver Creek (47.3097, –123.2384).

(14) Hood Canal Subbasin 17110018—(i) Hamma Hamma River Watershed 1711001803. Outlet(s) = Hamma Hamma River (Lat 47.5471, Long –123.0440) upstream to endpoint(s) in: Hamma Hamma River (47.5590, –123.0440); North Fork John Creek (47.5442, –123.0696).

(ii) Duckabush River Watershed 1711001804. Outlet(s) = Duckabush River (Lat 47.6502, Long –122.9348) upstream to endpoint(s) in: Duckabush River (47.6825, –123.0675).

(iii) Dosewallips River Watershed 1711001805. Outlet(s) = Dosewallips River (Lat 47.6881, Long –122.8945) upstream to endpoint(s) in: Dosewallips River (47.7252, –123.1111); Rocky Brook (47.7212, –123.9405); Unnamed (47.6886, –123.8977).

(15) Dungeness/Elwha 17110020—(i) Dungeness River Watershed 1711002003. Outlet(s) = Dungeness River (Lat 48.1506, Long –123.1311); Unnamed (48.1537, –123.1267) upstream to endpoint(s) in: Dungeness River (47.9386, –123.0885); Gray Wolf River (47.9168, –123.2499); Matriotti Creek (48.1368, –123.1428); Unnamed (48.1514, –123.1216).

(ii) Elwha River Watershed 1711002007. Outlet(s) = Elwha River (Lat 48.1466, Long –123.5671); Unnamed (48.1463, –123.5599) upstream to endpoint(s) in: Elwha River (48.0927, –123.5614).
(16) Nearshore Marine Areas—Except as provided in paragraph (e) of this section, critical habitat includes all nearshore marine areas (including areas adjacent to islands) of the Strait of Georgia (south of the international border), Puget Sound, Hood Canal, and the Strait of Juan de Fuca (to the western end of the Elwha River delta) from the line of extreme high tide out to a depth of 30 meters.

(17) Maps of critical habitat for the Puget Sound chinook salmon ESU follow:
Final Critical Habitat for the Puget Sound Chinook Salmon ESU

Nooksack Subbasin 17110004:

Legend
- Cities / Towns
- State Boundary
- Shoreline
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 05 = Watershed code - last 2 digits of 17110004xx
Final Critical Habitat for the Puget Sound Chinook Salmon ESU

Legend
- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 04 = Watershed code - last 2 digits of 17110006xx
Final Critical Habitat for the Puget Sound Chinook Salmon ESU

PUYALLUP SUBBASIN
17110014

Legend

- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 05 = Watershed code - last 2 digits of 17110014xx

Area of Detail
Lower Columbia River Chinook Salmon (Oncorhynchus tshawytscha). Critical habitat is designated to include the areas defined in the following subbasins:

(1) Lower Columbia River Chinook Salmon (Oncorhynchus tshawytscha). Critical habitat is designated to include the areas defined in the following subbasins:

(1) Middle Columbia/Hood Subbasin 17070105—(4) East Fork Hood River Watershed 1707010506. Outlet(s) = Hood River (Lat 45.6050, Long -121.6323) upstream to endpoint(s) in: Dog River (45.4655, -121.5656); East Fork Hood River
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(50.4665, –121.569); Pinnacle Creek (45.4095, –121.6568); Tony Creek (45.5435, –121.6411).

(ii) West Fork Hood River Watershed 1707010507. Outlet(s) = West Fork Hood River (Lat 45.6060, Long –121.6323) upstream to endpoint(s) in: Divers Creek (45.4530, –121.7889); Indian Creek (45.3975, –121.7857); Jones Creek (45.4629, –121.7942); Lake Branch (45.5063, –121.8485); McGee Creek (45.4179, –121.7675); No Name Creek (45.5347, –121.7929); Red Hill Creek (45.4720, –121.7705), Unnamed (45.5502, –121.7014).

(iii) Pinnacle Creek (45.4595, –121.6568); Tony Creek (45.5435, –121.6411).

(iv) Tony Creek (45.5435, –121.6411); South Fork Salmon River (45.2606, –121.9474); Unnamed (45.3434, –121.9920).

(v) West Fork Hood River Watershed 1707010507. Outlet(s) = West Fork Hood River (Lat 45.3768, Long –122.0293) upstream to endpoint(s) in: Cheeney Creek (45.3104, –121.9561); Copper Creek (45.2506, –121.9053); Salmon River (45.2511, –121.9029); South Fork Salmon River (45.2606, –121.9474); Unnamed (45.3434, –121.9920).

(vi) Wind River Watershed 1707010509. Outlet(s) = Wind River (Lat 45.7037, Long –121.7946) upstream to endpoint(s) in: Bear Creek (45.7620, –121.8295); Big Hollow Creek (45.9399, –121.9966); Dry Creek (45.9296, –121.9721); Falls Creek (45.9105, –121.9222); Little Wind River (45.7392, –121.7772); Ninemile Creek (45.8929, –121.9526); Paradise Creek (45.9257, –121.9408); Trapper Creek (45.8847, –122.0665); Trout Creek (45.8021, –121.9019); Wind River (45.9372, –121.9331).

(vii) Horseshoe Creek (45.3975, –121.8413); Unnamed (45.3019, –121.8202); Unnamed (45.3092, –121.8642).

(iii) Upper Sandy River Watershed 1706000103. Outlet(s) = Sandy River (Lat 45.4464, Long –122.2459) upstream to endpoint(s) in: Alder Creek (45.3776, –122.0994); Bear Creek (45.3368, –121.9255); Cedar Creek (45.4087, –122.2617); North Boulder Creek (45.3822, –122.0168); Sandy River (45.3899, –121.8620).

(iv) Middle Sandy River Watershed 1706000104. Outlet(s) = Sandy River (Lat 45.4464, Long –122.2459) upstream to endpoint(s) in: Alder Creek (45.3776, –122.0994); Bear Creek (45.3368, –121.9255); Cedar Creek (45.4087, –122.2617); North Boulder Creek (45.3822, –122.0168); Sandy River (45.3899, –121.8620).

(v) Bull Run River Watershed 1706000105. Outlet(s) = Bull Run River (Lat 45.4455, –122.1561); Little Sandy Creek (45.4235, –122.1975).
(45.6414, –121.9764); Hardy Creek (45.6354, –121.9987); Latourell Creek (45.5388, –122.0173); McCord Creek (45.6115, –121.9929); Moffett Creek (45.6185, –121.9675); Multnomah Creek (45.5761, –122.0675); Latourell Creek (45.5883, –122.0718); Tanner Creek (45.6115, –121.9929); Moffett Creek (45.6185, –121.9662); Multnomah Creek (45.5761, –122.1143), Oneonta Creek (45.5821, –122.0718); Tanner Creek (45.6264, –121.9522); Turnaft Creek (45.6101, –122.0284); Unnamed (45.5421, –122.2624); Unnamed (45.5488, –122.3504); Unnamed (45.6025, –122.0443); Unnamed (45.6055, –122.0451); Unnamed (45.6124, –122.0172); Unnamed (45.6133, –122.0055); Wahkeena Creek (45.5755, –122.1266); Young Creek (45.5480, –122.1997).

Lower Sandy River Watershed 1708000108. Outlet(s) = Sandy River (Lat 45.5680, Long –122.4023) upstream to endpoint(s) in: Beaver Creek (45.5258, –122.3822); Gordon Creek (45.4915, –122.2423); Sandy River (45.4464, –122.2459); Trout Creek (45.4844, –122.2785); Unnamed (45.5542, –122.3504); Unnamed (45.5600, –122.3650).

(i) East Fork Lewis River Watershed 1708000205. Outlet(s) = East Fork Lewis River (Lat 45.8664, Long –122.7189) upstream to endpoint(s) in: East Fork Lewis River (45.8895, –122.4463).

(ii) Lower Lewis River Watershed 1708000206. Outlet(s) = Lewis River (Lat 45.8519, Long –122.7806) upstream to endpoint(s) in: Cedar Creek (45.9049, –122.3684); Chelatchie Creek (45.9169, –122.4190); Johnson Creek (45.9385, –122.6261); Lewis River (45.9570, –122.5550); Pup Creek (45.9391, –122.5440); Unnamed (45.8882, –122.7412); Unnamed (45.9153, –122.4362).

(i) Lower Columbia/Clatskanie Subbasin 17080003—(i) Yakima River Watershed 1708000301. Outlet(s) = Burris Creek (45.8926, –122.7892); Kalama River (46.0340, –122.8695) upstream to endpoint(s) in: Arnold Creek (46.0463, –122.9338); Burris Creek (45.9391, –122.7780); Elk Creek (46.0891, –122.5117); Gobar Creek (46.0968, –122.6042); Hatchery Creek (46.0459, –122.8027); Kalama River (46.1109, –122.3579); Little Kalama River (45.9970, –122.6939); North Fork Kalama River (46.1328, –122.4118); Wild Horse Creek (46.0626, –122.6367).

(ii) Cispus River Watershed 1708000303. Outlet(s) = Clatskanie River (Lat 46.1398, Long –123.2303) upstream to endpoint(s) in: Clatskanie River (46.0435, –123.0829); Merrill Creek (46.0916, –123.1727); Perkins Creek (46.0826, –123.1678).

(iii) Skamokawa/Elochoman Watershed 1708000305. Outlet(s) = Elochoman River (Lat 46.2269, Long –123.4040); Skamokawa Creek (46.2677, –123.5622); Unnamed (46.2243, –123.3975) upstream to endpoint(s) in: Beaver Creek (46.2256, –123.3071); Elochoman River (46.3503, –123.2428); Falk Creek (46.2954, –123.4413); Left Fork Skamokawa Creek (46.3249, –123.4538); McDonald Creek (46.3338, –123.4116); Standard Creek (46.3292, –123.3999); West Fork Elochoman River (46.3211, –123.3605); West Fork Skamokawa Creek (46.2871, –123.4654); Wilson Creek (46.2970, –123.3494).

(iv) Plympton Creek Watershed 1708000306. Outlet(s) = Westport Slough (Lat 46.1434, Long –123.3816) upstream to endpoint(s) in: Plympton Creek (46.1261, –123.3842); Westport Slough (46.1195, –123.2797).

(5) Upper Cowlitz Subbasin 17080004—(i) Headwaters Cowlitz River 1708000401. Outlet(s) = Cowlitz River (Lat 46.6580, Long –121.6032) upstream to endpoint(s) in: Clear Fork Cowlitz River (46.6858, –121.5668); Muddy Fork Cowlitz River (46.6994, –121.6169); Ohanapeosh River (46.6883, –121.5809).

(ii) Upper Cowlitz River Watershed 1708000402. Outlet(s) = Cowlitz River (Lat 46.5763, Long –121.7051) upstream to endpoint(s) in: Cowlitz River (46.5763, –121.6032).

(iii) Cowlitz Valley Frontal Watershed 1708000403. Outlet(s) = Cowlitz River (Lat 46.4765, Long –121.6052) upstream to endpoint(s) in: Cowlitz River (46.5763, –121.7051); Silver Creek (46.5576, –121.9178).

(iv) Upper Cispus River Watershed 1708000404. Outlet(s) = Cispus River (Lat 46.4449, Long –121.7954) upstream to endpoint(s) in: Cispus River (46.3419, –121.6709); East Canyon Creek (46.3454, –121.7031); North Fork Cispus River (46.4355, –121.654).

(v) Lower Cispus River Watershed 1708000405. Outlet(s) = Cispus River (Lat 46.4765, Long –122.0932) upstream to endpoint(s) in: Cispus River (46.4449, –121.7954); McCoy Creek (46.3892,
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–121.8190; Yellowjacket Creek (46.3871, –121.8335).

(6) Cowlitz Subbasin 17080005—(i) Riffe Reservoir Watershed 1708000502. Outlet(s) = Cowlitz River (Lat 46.5033, Long –122.5870) upstream to endpoint(s) in: Cowlitz River (46.4765, –122.9952).

(ii) Jackson Prairie Watershed 1708000503. Outlet(s) = Cowlitz River (Lat 46.5033, Long –122.5870) upstream to endpoint(s) in: Bear Creek (46.4215, –122.9224); Blue Creek (46.4885, –122.7253); Cowlitz River (46.5033, –122.5870); Lake Creek (46.5118, –122.8133); Mill Creek (46.4701, –122.8557); Mill Creek (46.5176, –122.6209); Otter Creek (46.4800, –122.6996); Salmon Creek (46.4237, –122.8400); Skook Creek (46.3985, –122.7556).


(iv) Green River Watershed 1708000505. Outlet(s) = Green River (Lat 46.3718, Long –122.5847) upstream to endpoint(s) in: Cascade Creek (46.3924, –122.3530); Devils Creek (46.3975, –122.5113); Elk Creek (46.3929, –122.3224); Green River (46.3957, –122.1815); Miners Creek (46.3971, –122.2091); Shultz Creek (46.3744, –122.2987); Unnamed (46.3796, –122.3632).

(v) South Fork Toutle River Watershed 1708000506. Outlet(s) = South Fork Toutle River (Lat 46.3282, Long –122.7215) upstream to endpoint(s) in: Johnson Creek (46.3100, –122.6338); South Fork Toutle River (46.2306, –122.4439); Studebaker Creek (46.3044, –122.6777).

(vi) East Willapa Watershed 1708000507. Outlet(s) = East Willapa River (Lat 46.2660, Long –122.9154) upstream to endpoint(s) in: Arkansas Creek (46.3275, –123.0123); Baxter Creek (46.3034, –122.9709); Brim Creek (46.4263, –123.0139); Campbell Creek (46.3975, –123.0401); Cowlitz River (46.3975, –122.9337); Delameter Creek (46.2495, –122.9916); Hemlock Creek (46.2365, –122.7269); Hill Creek (46.3724, –122.9211); King Creek (46.5076, –122.9885); Monahan Creek (46.2954, –123.0286); North Fork Toutle River (46.3069, –122.5839); Olequa Creek (46.3714, –122.4028); Stillwater Creek (46.3651, –123.0478); Sucker Creek (46.2628, –122.8116); Unnamed (46.5074, –122.9585); Unnamed (46.5405, –122.0990); Wyant Creek (46.3424, –122.6302).

(vii) Coweeman Watershed 1708000508. Outlet(s) = Cowlitz River (Lat 46.0977, Long –122.9141); Owl Creek (46.3034, –122.9709); Brim Creek (46.3275, –123.0123); Baxter Creek (46.3034, –122.9709); Mill Creek (46.4701, –122.8557); Mill Creek (46.5176, –122.6209); Otter Creek (46.4800, –122.6996); Salmon Creek (46.4237, –122.8400); Skook Creek (46.3985, –122.7556).

(7) Lower Columbia Subbasin 17080006—(i) Big Creek Watershed 1708000602. Outlet(s) = Bear Creek (Lat 46.1719, Long –123.6642); Big Creek (46.1847, –123.5943); Blind Slough (46.2011, –123.5822); John Day River (46.1820, –123.7392) upstream to endpoint(s) in: Bear Creek (46.1181, –123.6388); Big Creek (46.1475, –123.5819); Great Creek (46.1614, –123.4813); John Day River (46.1703, –123.7374).

(ii) Grays Bay Watershed 1708000603. Outlet(s) = Crooked Creek (Lat 46.2962, Long –123.6795); Deep River (46.3035, –123.7092); Grays River (46.3035, –123.6867); Sisson Creek (46.3011, –123.7237); Unnamed (46.3042, –123.6870) upstream to endpoint(s) in: Crooked Creek (46.3033, –123.6222); East Fork Grays River (46.4425, –123.4081); Fossil Creek (46.3628, –123.5530); Grays River (46.4910, –123.4334); Hull Creek (46.3725, –123.5866); Johnson Canyon (46.3999, –123.6699); Klints Creek (46.3662, –123.5675); Malone Creek (46.3289, –123.6545); Mitchell Creek (46.4512, –123.4371); South Fork Grays River (46.3813, –123.4581); Sweeny Creek (46.4195, –123.5375); Unnamed (46.3283, –123.7376); Unnamed (46.3651, –123.6839); Unnamed (46.4701, –123.4515); West Fork Grays River (46.4195, –123.5530).

(8) Clackamas Subbasin 17090011—(i) Lower Clackamas River Watershed 1709001106. Outlet(s) = Clackamas River (Lat 45.3719, Long –122.6071) upstream to endpoint(s) in: Clackamas River (45.3449, –122.2798); Clear Creek (45.3668, –122.4781); Deep Creek (45.3916, –122.4028); Richardson Creek (45.3971,
(i) [Reserved]
(ii) Johnson Creek Watershed 17090012—(i) Johnson Creek Watershed 1709001201. Outlet(s) = Willamette River (Lat 45.4423, Long –122.6453) upstream to endpoint(s) in: Crystal Springs Creek (45.4770, –122.6403); Kellogg Creek (45.4344, –122.6314); Tryon Creek (45.4239, –122.6595); Unnamed (45.4002, –122.6423); Willamette River (45.3719, –122.6071).

(ii) Scappoose Creek Watershed 1709001202. Outlet(s) = Multnomah Channel (Lat 45.8577, Long –122.7919) upstream to endpoint(s) in: Cunningham Slough (45.8250, –122.8069); Multnomah Channel (45.6188, –122.7921); North Scappoose Creek (45.8014, –122.9340).

(iii) Columbia Slough/Willamette River Watershed 1709001203. Outlet(s) = Willamette River (Lat 45.6530, Long –122.7646) upstream to endpoint(s) in: Bybee/Smith Lakes (45.6189, –122.7333); Columbia Slough (45.579, –122.7137); Willamette River (45.4423, –122.6453).

(10) Lower Columbia River Corridor—Lower Columbia River Corridor. Outlet(s) = Columbia River (Lat 46.2485, Long –124.0782) upstream to endpoint(s) in: Columbia River (45.5709, –122.4021).

(11) Maps of critical habitat for the Lower Columbia River chinook salmon ESU follow:
Final Critical Habitat for the Lower Columbia River Chinook Salmon ESU

LEGEND

• Cities / Towns
— State Boundary
— Critical Habitat
— Subbasin Boundary
— Watershed Boundaries

01 - 03 = Watershed code - last 2 digits of 17090012xx

Area of Detail
(k) Upper Willamette River Chinook Salmon (Oncorhynchus tshawytscha). Critical habitat is to include the areas defined in the following subbasins:

(1) Middle Fork Willamette Subbasin 17090001—(i) Upper Middle Fork Willamette River Watershed 1709000101. Outlet(s) = Middle Fork Willamette River (Lat 43.4961, Long -122.3989) upstream to
endpoint(s) in: Echo Creek (43.8670, –122.3172); Found Creek (43.5048, –122.2831); Middle Fork Willamette River (43.4801, –122.2534); Noisy Creek (43.5031, –122.3016); Simpson Creek (43.5069, –122.2666); Staley Creek (43.4927, –122.3265); Swift Creek (43.5438, –122.2431); Tumblebug Creek (43.4740, –122.2549); Unnamed (43.4967, –122.2645); Unnamed (43.4986, –122.2686); Unnamed (43.5020, –122.2764).

(ii) Hills Creek Watershed 1709000102. Outlet(s) = Hills Creek (Lat 43.7071, Long –122.4195) upstream to endpoint(s) in: Hills Creek (43.6718, –122.3502).

(iii) Salt Creek/Willamette Watershed 1709000103. Outlet(s) = Salt Creek (Lat 43.7261, Long –122.4381) upstream to endpoint(s) in: Coyote Creek (43.6682, –122.2378); Eagle Creek (43.6795, –122.2293); Salt Creek (43.6204, –122.1413); South Fork Salt Creek (43.6518, –122.2261).

(iv) Hills Creek Reservoir Watershed 1709000105. Outlet(s) = Middle Fork Willamette River (Lat 43.7589, Long –122.5242) upstream to endpoint(s) in: Big Willow Creek (43.6341, –122.4139); Buck Creek (43.5945, –122.4272); Bull Creek (43.6588, –122.4014); Coal Creek (43.4982, –122.4246); Coopertop Creek (43.6182, –122.4160); Gold Creek (43.5689, –122.4768); Indian Creek (43.5034, –122.4638); Larison Creek (43.6851, –122.4760); Middle Fork Willamette River (43.4961, –122.3989); Packard Creek (43.6516, –122.4904); Snake Creek (43.5388, –122.4524); Snow Creek (43.6061, –122.4585); Windfall Creek (43.5984, –122.4638).

(v) North Fork of Middle Fork Willamette River Watershed 1709000106. Outlet(s) = North Fork Middle Fork Willamette River (Lat 43.7599, Long –122.5322) upstream to endpoint(s) in: Cayuse Creek (43.8651, –122.1856); Chalk Creek (43.8750, –122.4044); Christy Creek (43.9079, –122.3796); Fisher Creek (43.8699, –122.1551); North Fork Middle Fork Willamette River (Lat 43.9871, –122.8711).

(vi) Middle Fork Willamette/Lookout Point Watershed 1709000107. Outlet(s) = Middle Fork Willamette River (Lat 43.9495, Long –122.8471) upstream to endpoint(s) in: Anthony Creek (43.8799, –122.8490); Bannister Creek (43.8743, –122.3393); Head Creek (43.7753, –122.5253); Burnt Bridge Creek (43.7900, –122.5334); Can Creek (43.8558, –122.8177); Deception Creek (43.7551, –122.5541); East Fork Minnow Creek (43.8002, –122.7342); Goodman Creek (43.8309, –122.6940); Gosage Creek (43.8446, –122.8129); Gulley Creek (43.8419, –122.7962); Hazel Creek (43.8637, –122.6891); Lost Creek (43.8427, –122.7781); Middle Creek (43.8624, –122.8323); Middle Fork Willamette River (43.7589, –122.5242); Minnow Creek (43.8872, –122.7458); North Creek (43.8247, –122.6236); Rolling Riffle Creek (43.8750, –122.7052); School Creek (43.6909, –122.6216); South Fork Salt Creek (43.6518, –122.2261).

(vii) Little Fall Creek Watershed 1709000108. Outlet(s) = Little Fall Creek (Lat 43.9777, Long –122.8777) upstream to endpoint(s) in: Alder Creek (44.0000, –122.4903); Fall Creek (43.9922, –122.3758); Gold Creek (43.9772, –122.4051); Logan Creek (43.9447, –122.4504); Nelson Creek (43.9285, –122.6850); Portland Creek (43.9381, –122.4655); Sunshine Creek (43.9943, –122.4672); Winberry Creek (43.9142, –122.6850).

(viii) Fall Creek Watershed 1709000109. Outlet(s) = Fall Creek (Lat 43.9707, Long –122.9077) upstream to endpoint(s) in: Alder Creek (44.0000, –122.4903); Fall Creek (43.9922, –122.3758); Gold Creek (43.9772, –122.4051); Logan Creek (43.9447, –122.4504); Nelson Creek (43.9285, –122.6850); Portland Creek (43.9381, –122.4655); Sunshine Creek (43.9943, –122.4672); Winberry Creek (43.9142, –122.6850).

(ix) Lower Middle Fork Willamette Watershed 1709000110. Outlet(s) = Middle Fork Willamette River (Lat 44.0226, Long –123.0169) upstream to endpoint(s) in: Hills Creek (43.9945, –122.8651); Middle Fork Willamette River (43.9495, –122.8471); Mill Race (44.0407, –123.0004); Pudding Creek (44.0173, –122.9501); Rattlesnake Creek (43.9352, –122.8608); Wallace Creek (44.0074, –122.3984).

(2) Upper Willamette Subbasin 17090003—(i) Muddy Creek Watershed 1709000302. Outlet(s) = Willamette River (Lat 44.0400, Long –123.1096) upstream to endpoint(s) in: Willamette River (44.0226, –123.0169).

(ii) Calapooia Watershed 1709000303. Outlet(s) = Calapooia River (Lat 44.5088, Long –123.1001) upstream to endpoint(s) in: Calapooia River (44.2354, –122.4138).
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(iii) Oak Creek Watershed 1709000304. Outlet(s) = Willamette River (Lat 44.7504, Long –123.1421) upstream to endpoint(s) in: Calapooia River (44.5088, –123.1101); Willamette River (44.6400, –123.1096).

(iv) Marys River Watershed 1709000305. Outlet(s) = Marys River (Lat 44.5566, Long –123.2357) upstream to endpoint(s) in: Calapooia River (44.5088, –123.1101); Willamette River (44.6400, –123.1096).

(v) Luckiamute River Watershed 1709000306. Outlet(s) = Luckiamute River (Lat 44.7504, Long –123.1421) upstream to endpoint(s) in: Soap Creek (44.7317, –123.2151); Unnamed (44.7661, –123.2393).

(3) McKenzie Subbasin 17090004—(i) Upper McKenzie River Watershed 1709000401. Outlet(s) = McKenzie River (Lat 44.1721, Long –122.2058) upstream to endpoint(s) in: Deer Creek (44.2677, –122.0712); Frissell Creek (44.2288, –122.0699); Lost Creek (44.1729, –122.0401); McKenzie River (44.3109, –122.0199); Scott Creek (44.1981, –122.0195); Smith River (44.1981, –122.0195); Smith River (44.1981, –122.0195); Smith River (44.1981, –122.0195);

(ii) Horse Creek Watershed 1709000402. Outlet(s) = West Fork Horse Creek (Lat 44.1721, Long –122.2058) upstream to endpoint(s) in: Cedar Swamp Creek (44.1729, –122.0401); McKenzie River (44.3109, –122.0199); Scott Creek (44.1981, –122.0195); Smith River (44.1981, –122.0195); Smith River (44.1981, –122.0195);

(iii) South Fork McKenzie River Watershed 1709000403. Outlet(s) = South Fork McKenzie River (Lat 44.1563, –122.1132); Horse Creek (44.0602, –122.0087); King Creek (44.1635, –122.1693); Separation Creek (44.1274, –122.0077).

(iv) McKenzie River/Quartz Creek Watershed 1709000405. Outlet(s) = McKenzie River (Lat 44.1721, Long –122.2058); Quartz Creek (44.0186, –122.3015); Wycoff Creek (44.0846, –122.3143).
(ii) Crabtree Creek Watershed 1709000602. Outlet(s) = Crabtree Creek (Lat 44.6756, Long –122.9557) upstream to endpoint(s) in: Bald Peter Creek (44.5682, –122.5825); Beaver Creek (44.6271, –122.8504); Crabtree Creek (44.6058, –122.5405); Roaring River (44.6251, –122.7283); South Fork Crabtree Creek (44.5741, –122.5744).

(iii) Thomas Creek Watershed 1709000603. Outlet(s) = Thomas Creek (Lat 44.6778, Long –122.9654) upstream to endpoint(s) in: Jordan Creek (44.7531, –122.6595); Mill Creek (44.7055, –122.7842); Neal Creek (44.7101, –122.6912); South Fork Neal Creek (44.7033, –122.7078); Thomas Creek (44.6776, –122.4650).

(iv) South Santiam River Watershed 1709000606. Outlet(s) = South Santiam River (Lat 44.3977, Long –122.4491) upstream to endpoint(s) in: Falls Creek (44.407, –122.3828); South Santiam River (44.3898, –122.2610).

(v) South Santiam River/Foster Reservoir Watershed 1709000607. Outlet(s) = South Santiam River (44.4163, Long –122.6693) upstream to endpoint(s) in: Jordan Creek (44.7531, –122.6595); Mill Creek (44.7055, –122.7842); Neal Creek (44.7101, –122.6912); South Fork Neal Creek (44.7033, –122.7078); Thomas Creek (44.6776, –122.4650).

(vi) Wiley Creek Watershed 1709000608. Outlet(s) = Wiley Creek (Lat 44.4140, Long –122.6752) upstream to endpoint(s) in: Little Wiley Creek (44.3673, –122.5916); Wiley Creek (44.3488, –122.5900).

(6) Middle Willamette Subbasin 17090007—(i) Mill Creek/Willamette River Watershed 1709000701. Outlet(s) = Mill Creek (Lat 44.9529, Long –123.0381) upstream to endpoint(s) in: Mill Creek (44.8255, –122.8226).

(ii) Rickreall Creek Watershed 1709000702. Outlet(s) = Willamette River (Lat 44.9288, Long –123.1124) upstream to endpoint(s) in: Willamette River (44.7504, –123.1421).

(iii) Willamette River/Chehalis Creek Watershed 1709000703. Outlet(s) = Willamette River (Lat 45.2552, Long –122.9806) upstream to endpoint(s) in: Willamette River (44.9288, –123.1124).

(iv) Abernethy Creek Watershed 1709000704. Outlet(s) = Willamette River (Lat 45.3719, Long –122.6701) upstream to endpoint(s) in: Willamette River (45.2552, –122.8806).

(7) Molalla/Pudding Subbasin 17090009—(i) Butte Creek/Pudding River Watershed 1709000902. Outlet(s) = Pudding River (Lat 45.1907, Long –122.7527) upstream to endpoint(s) in: Pudding River (45.0740, –122.8525).

(ii) Senecal Creek/Mill Creek Watershed 1709000904. Outlet(s) = Pudding River (Lat 45.2843, Long –122.7149) upstream to endpoint(s) in: Pudding River (45.1907, –122.7527).

(iii) Upper Molalla River Watershed 1709000905. Outlet(s) = Molalla River (Lat 45.1196, Long –122.5342) upstream to endpoint(s) in: Molalla River (44.9124, –122.3342); North Fork Molalla River (45.0872, –122.3849); Table Rock Fork Molalla River (44.9876, –122.2741).

(iv) Lower Molalla River Watershed 1709000906. Outlet(s) = Molalla River (Lat 45.2979, Long –122.7141) upstream to endpoint(s) in: Gribble Creek (45.2146, –122.6988); Milk Creek (45.2278, –122.5670); Molalla River (45.1196, –122.5342).

(8) Clackamas Subbasin 17090011—(i) Collawash River Watershed 1709001101. Outlet(s) = Collawash River (Lat 45.0321, Long –122.0350) upstream to endpoint(s) in: Blister Creek (44.9507, –122.1721); Hot Springs Fk Collawash River (44.9385, –122.1721); Nohorn Creek (44.9442, –122.1957).

(ii) Upper Clackamas River 1709001102. Outlet(s) = Clackamas River (Lat 45.0321, Long –122.0600) upstream to endpoint(s) in: Cabin Creek (45.0087, –121.8858); Clackamas River (44.8966, –121.8800); Cub Creek (44.8969, –121.8976); Granite Creek (45.0184, –121.9885); Hunter Creek (44.9086, –121.8929); Last Creek (44.9715, –121.8547); Lowe Creek (44.9487, –121.8983); Pot Creek (45.0149, –121.9084); Unnamed (44.9469, –121.8691); Wall Creek (44.9555, –121.8343). (iii) Oak Grove Fork Clackamas River Watershed 1709001103. Outlet(s) = Oak Grove Fork Clackamas River (Lat 45.0746, Long –122.0520) upstream to endpoint(s) in: Oak Grove Fork Clackamas River (45.0823, –121.9859).

(iv) Middle Clackamas River Watershed 1709001104. Outlet(s) = Clackamas River
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(Lat 45.240, Long –122.2798) upstream to endpoint(s) in: Clackamas River (45.0321, –122.0600); Fish Creek (45.0962, –122.1683); North Fork Clackamas River (45.2361, –122.2186); Roaring River (45.1773, –122.0650); South Fork Clackamas River (45.1929, –122.2257); Tag Creek (45.0607, –122.0512); Tar Creek (45.0494, –122.0570).

(v) Lower Clackamas River Watershed 1709001106. Outlet(s) = Clackamas River (Lat 45.3719, Long –122.6071) upstream to endpoint(s) in: Clackamas River (45.2440, –122.2798); Clear Creek (45.3568, –122.4781); Deep Creek (45.3971, –122.4095); Richardson Creek (45.3971, –122.4712).

(9) Lower Willamette/Columbia River Corridor—Lower Willamette/Columbia River Corridor. Outlet(s) = Columbia River (Lat 46.2485, Long –124.0782) upstream to endpoint(s) in: Willamette River (45.3719, –122.6071).

(10) Maps of critical habitat for the Upper Willamette River chinook salmon ESU follow:
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Final Critical Habitat for the
Upper Willamette River Chinook Salmon ESU

SOUTH SANTIAM SUBBASIN
17090006, Unit 6

Legend

Cities / Towns

Critical Habitat

Subbasin Boundary

Watershed Boundaries

01 - 08 = Watershed code - last 2 digits of 17090006xx
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Rearing / Migration Corridor for the Upper Willamette River Chinook Salmon ESU

(1) Upper Columbia River Spring Chinook Salmon (Oncorhynchus tshawytscha). Critical habitat is to include the areas defined in the following subbasins:

(1) Chief Joseph Subbasin 17020005—Upper Columbia/Swamp Creek Watershed 1702000505. Outlet(s) = Columbia River (Lat. 47.8077, Long. –119.9754) upstream to endpoint(s) in: Columbia River (48.0502, –119.8942).
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(2) Methow Subbasin 17020008—(i) Lost River Watershed 1702000801. Outlet(s) = Lost River Gorge (Lat 48.6501, Long –120.5103) upstream to endpoint(s) in: Eureka Creek (48.7020, –120.4886); Lost River Gorge (48.7324, –120.4475).

(ii) Upper Methow River Watershed 1702000802. Outlet(s) = Methow River (Lat 48.6015, Long –120.4376) upstream to endpoint(s) in: Early Winters Creek (48.5999, –120.5840); Methow River (48.6015, –120.4376); Rattlesnake Creek (48.6080, –120.5394); South Fork Trout Creek (48.6448, –120.6030).

(iii) Upper Chewuch River Watershed 1702000803. Outlet(s) = Chewuch River (Lat 48.7501, Long –120.1356) upstream to endpoint(s) in: Andrews Creek (48.7855, –120.1087); Chewuch River (48.8614, –120.0288); Dog Creek (48.8216, –120.0151); Lake Creek (48.8258, –120.1996); Thirtymile Creek (48.8109, –120.0199).

(iv) Lower Chewuch River Watershed 1702000804. Outlet(s) = Chewuch River (Lat 48.7501, Long –120.1356) upstream to endpoint(s) in: Bear Creek (48.4527, –120.1423); Goat Creek (48.5888, –120.3705); Little Boulder Creek (48.5700, –120.3797); Methow River (48.6015, –120.4376); Wolf Creek (48.4776, –120.2840); Unnamed (48.4896, –120.2116).

(v) Twisp River Watershed 1702000805. Outlet(s) = Twisp River (Lat 48.3682, Long –120.1176) upstream to endpoint(s) in: Buttermilk Creek (48.3528, –120.3239); Eagle Creek (48.3584, –120.3914); North Creek (48.4537, –120.5955); Poorman Creek (48.3674, –120.1997); South Creek (48.4330, –120.5431); Twisp River (48.4615, –120.5764); War Creek (48.3649, –120.4030).

(vi) Middle Methow River Watershed 1702000806. Outlet(s) = Methow River (Lat 48.2495, Long –120.1156) upstream to endpoint(s) in: Methow River (Lat 48.2495, Long –120.1156).

(3) Upper Columbia/Entiat Subbasin 17020010—(i) Entiat River Watershed 1702001001. Outlet(s) = Entiat River (Lat 47.6585, Long –120.2194) upstream to endpoint(s) in: Entiat River (47.9855, –120.5749); Hornet Creek (47.7714, –120.4403); Mad River (47.7804, –120.4403); Tillicum Creek (47.7295, –120.4304).

(ii) Lake Entiat Watershed 1702001002. Outlet(s) = Columbia River (Lat 47.3438, Long –120.0929) upstream to endpoint(s) in: Columbia River (47.8077, –119.9754).

(4) Wenatchee Subbasin 17020011—(i) White River Watershed 1702001101. Outlet(s) = White River (Lat 47.8088, Long –120.7159) upstream to endpoint(s) in: Little Wenatchee River (47.8526, –120.9541); Napeequa River (47.9285, –120.8829); Panther Creek (47.9355, –120.9482); White River (47.9355, –120.9380).

(ii) Chiwawa River Watershed 1702001102. Outlet(s) = Chiwawa River (Lat 47.7880, Long –120.6589) upstream to endpoint(s) in: Alder Creek (47.8483, –120.6587); Chikamin Creek (47.9785, –120.7194); Chiwawa River (48.1048, –120.8773); Goose Creek (47.8392, –120.6461); Minnow Creek (47.9137, –120.7182); Phelps Creek (48.0794, –120.8400); Unnamed (48.0366, –120.7615).

(iii) Nason/Tumwater Watershed 1702001103. Outlet(s) = Wenatchee River (Lat 47.5801, Long –120.6660) upstream to endpoint(s) in: Chiwaukum Creek (47.7039, –120.7791); Nason Creek (47.7769, –120.9103); Skinney Creek (47.6894, –120.7351).

(iv) Icicle/Chumstick Watershed 1702001104. Outlet(s) = Wenatchee River (Lat 47.5575, Long –120.5729) upstream to endpoint(s) in: Wenatchee River (47.5801, –120.6660).

(v) Lower Wenatchee River Watershed 1702001105. Outlet(s) = Wenatchee River (Lat 47.4553, Long –120.3185) upstream to endpoint(s) in: Wenatchee River (47.5575, –120.5729).

(5) Columbia River Corridor—Columbia River Corridor Outlet(s) = Columbia River (Lat 47.3438, Long –120.0929) upstream to endpoint(s) in: Columbia River (47.3438, –120.0929).

(6) Maps of critical habitat for the Upper Columbia River Spring-run chinook salmon ESU follow:
Map of the Upper Columbia River Spring-run Chinook Salmon ESU

Legend
- State Boundaries
- Water Bodies
- Subbasin Boundaries

Area of Detail
- Washington
- Oregon
- Idaho
Final Critical Habitat for the Upper Columbia River Spring-run Chinook Salmon ESU

Legend
- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

Area of Detail

01 - 05 = Watershed code - last 2 digits of 17020005xx
Final Critical Habitat for the Upper Columbia River Spring-run Chinook Salmon ESU

Legend

- Cities / Towns
- Critical Habitat
- Water Body
- Subbasin Boundary
- Watershed Boundaries

01 - 04 = Watershed code - last 2 digits of 17020010xx
(m) Hood Canal Summer-run Chum Salmon (Oncorhynchus keta). Critical habitat is designated to include the areas defined in the following subbasins:

1. Skokomish Subbasin 17110017—Skokomish River 1711001701. Outlet(s) = Skokomish River (Lat 47.3543, Long –123.1122), Unnamed (47.3420, –123.1092), Unnamed (47.3471, –123.1275), Unnamed (47.3509, –123.1101) upstream to endpoint(s) in: Mussel Sheel Creek (47.3039, –123.1590); Skokomish (47.3199, –123.1215); Unnamed (47.3209, –123.2111).
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(2) Hood Canal Subbasin 17110018—(i) Lower West Hood Canal Frontal Watershed 1711001802. Outlet(s)= Eagle Creek (Lat 47.4849, Long –123.0766); Finch Creek (47.4067, –123.1377); Fulton Creek (47.6183, –122.9736); Jorsted Creek (47.5263, –123.0489); Lilliwaup Creek (47.4689, –123.1136); Unnamed (47.4576, –123.1117) upstream to endpoint(s) in: Eagle Creek (47.4905, –123.0830); Finch Creek (47.4076, –123.1586); Fulton Creek (47.6275, –122.9805); Jorsted Creek (47.5246, –123.0649); Lilliwaup Creek (47.4704, –123.1166); Unnamed (47.4585, –123.1186).

(ii) Hamma Hamma River Watershed 1711001803. Outlet(s) = Hamma Hamma River (Lat 47.5471, Long –123.0440) upstream to endpoint(s) in: Hamma Hamma River (47.5547, –123.0623); John Creek (47.5369, –123.0619).

(iii) Duckabush River Watershed 1711001804. Outlet(s) = Duckabush River (Lat 47.6502, Long –122.9348) upstream to endpoint(s) in: Duckabush River (47.6654, –122.9728).

(iv) Dosewallips River Watershed 1711001805. Outlet(s) = Dosewallips River (Lat 47.6880, Long –122.8949) upstream to endpoint(s) in: Dosewallips River (47.7157, –122.9396).

(v) Big Quilcene River Watershed 1711001806. Outlet(s) = Big Quilcene River (Lat 47.8188, Long –122.8605) upstream to endpoint(s) in: Big Quilcene River (47.8102, –122.9119).

(vi) Upper West Hood Canal Frontal Watershed 1711001807. Outlet(s) = Little Quilcene River (Lat 47.8266; Long –122.8608) upstream to endpoint(s) in: Little Quilcene River (47.8374, –122.9554).

(vii) West Kitsap Watershed 1711001808. Outlet(s) = Anderson Creek (Lat 47.5670, Long –122.9664); Big Beef Creek (47.6521, –122.7823); Dewatto River (47.4937, –122.9914); East Fork Union River (47.5056, –122.7897); Hazel Creek (47.5170, –122.7945); Little Anderson Creek (47.6606, –122.7543); North East Fork Union River (47.4954, –122.7819); Tahuya River (47.4510, –122.9597); Union River (47.5273, –122.7846); Unnamed (47.4492, –122.9229); Unnamed (47.4527, –122.8294); Unnamed (47.4553, –122.8301); Unnamed (47.4594, –122.8396); Unnamed (47.4700, –122.7559); Unnamed (47.6642, –122.7534).

(3) Puget Sound Subbasin 17110019—Port Ludlow/Chimacum Creek Watershed 1711001908. Outlet(s) = Chimacum Creek (Lat 48.6507, Long –122.7832) upstream to endpoint(s) in: Chimacum Creek (47.9743, –122.7764).

(4) Dungeness/Elwha Subbasin 17110020—(i) Discovery Bay Watershed 1711002001. Outlet(s) = Salmon Creek (Lat 47.9895, Long –122.8879); Snow Creek (47.9600, –122.8396) upstream to endpoint(s) in: Salmon Creek (47.9775, –122.9191); Snow Creek (47.9638, –122.8827).

(ii) Sequim Bay Watershed 1711002002. Outlet(s) = Jimmycomelately Creek (Lat 48.0235, Long –123.0039) upstream to endpoint(s) in: Jimmycomelately Creek (48.0125, –123.0026).

(iii) Dungeness River Watershed 1711002003. Outlet(s) = Dungeness River (Lat 48.1506, Long –123.1311); Unnamed (48.1369, –123.1589); Matriotti Creek (48.1369, –123.1488); Unnamed (48.1167, –123.1403); Unnamed (48.1514, –123.1216).

(5) Nearshore Marine Areas—Except as provided in paragraph (e) of this section, critical habitat includes all nearshore marine areas (including areas adjacent to islands) of Hood Canal and the Strait of Juan de Fuca (to Dungeness Bay) from the line of extreme high tide out to a depth of 30 meters.

(6) Maps of critical habitat for the Hood Canal summer-run chum salmon ESU follow:
Final Critical Habitat for the Hood Canal Summer-run Chum Salmon ESU

SKOKOMISH SUBBASIN
17110017

Legend

○ Cities / Towns
- Shoreline
- - Critical Habitat
- Subbasin Boundary
- - Watershed Boundaries

01 = Watershed code - last 2 digits of 17110017xx
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Final Critical Habitat for the Hood Canal Summer-run Chum Salmon ESU

PUGET SOUND / KITSAP SUBBASIN
17110019

Legend

- Cities / Towns
- Shoreline
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 06, 08 = Watershed code - last 2 digits of 17110019xx

Only the occupied watershed in this subbasin is shown.
Final Critical Habitat for the Hood Canal Summer-run Chum Salmon ESU

Legend
- Cities / Towns
- Shoreline
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 04, 07 = Watershed code - last 2 digits of 17110020xx
(n) Columbia River Chum Salmon (Oncorhynchus keta). Critical habitat is designated to include the areas defined in the following subbasins:

(1) Middle Columbia/Hood Subbasin 17070105—

(i) White Salmon River Watershed 1707010509. Outlet(s) = White Salmon River (Lat 45.7267, Long -121.5209) upstream to endpoint(s) in: White Salmon River (45.7677, -121.5374).

(ii) Middle Columbia/Grays Creek Watershed 1707010512. Outlet(s) = Columbia
River (Lat 45.7074, Long –121.7965) upstream to endpoint(s) in: Columbia River (45.7267, –121.5209).

(iii) Middle Columbia/Eagle Creek 1707010513. Outlet(s) = Columbia River (Lat 45.6453, Long –121.9895) upstream to endpoint(s) in: Columbia River (45.7074, –121.7965).

(2) Lower Columbia/Sandy Subbasin 17080001—(i) Washougal River Watershed 1708000105. Outlet(s) = Columbia River (Lat 45.5709, Long –122.4902) upstream to endpoint(s) in: Columbia River (45.6453, –121.9895); Hamilton Creek (45.6539, –121.6488); Little Washougal River (45.6210, –122.3750); Washougal River (45.6232, –122.2738).

(ii) Columbia Gorge Tributaries Watershed 1708000107. Outlet(s) = Columbia River (Lat 45.6453, Long –122.4902) upstream to endpoint(s) in: Columbia River (45.6453, –122.2738); Duncan Creek (45.6136, –122.0539); Gibbons Creek (45.6210, –122.3147); Greenleaf Creek (45.6548, –121.9569); Hamilton Creek (45.6539, –121.6488); Little Washougal River (45.6210, –122.3750); Washougal River (45.6232, –122.2738).

(iii) Salmon Creek Watershed 1708000109. Outlet(s) = Columbia River (Lat 45.6453, Long –122.4902) upstream to endpoint(s) in: Columbia River (45.6453, –122.4902); Hamilton Creek (45.6539, –121.6488); Little Washougal River (45.6210, –122.3750); Washougal River (45.6232, –122.2738).

(3) Lewis Subbasin 17080002—(i) East Fork Lewis River Watershed 1708000205. Outlet(s) = Columbia River (Lat 45.6453, Long –122.4902) upstream to endpoint(s) in: Columbia River (45.6453, –122.4902); Hamilton Creek (45.6539, –121.6488); Little Washougal River (45.6210, –122.3750); Washougal River (45.6232, –122.2738).

(ii) Lower Lewis River Watershed 1708000206. Outlet(s) = Columbia River (Lat 45.6453, Long –122.4902) upstream to endpoint(s) in: Columbia River (45.6453, –122.4902); Duncan Creek (45.6136, –122.0539); Gibbons Creek (45.6210, –122.3147); Greenleaf Creek (45.6548, –121.9569); Hamilton Creek (45.6539, –121.6488); Little Washougal River (45.6210, –122.3750); Washougal River (45.6232, –122.2738).

(iii) Skamokawa/Elochoman Watershed 1708000305. Outlet(s) = Columbia River (Lat 45.6453, Long –122.4902) upstream to endpoint(s) in: Columbia River (45.6453, –122.4902); Hamilton Creek (45.6539, –121.6488); Little Washougal River (45.6210, –122.3750); Washougal River (45.6232, –122.2738).

(4) Lower Columbia/Clatskanie Subbasin 17080003—(i) Kalama River Watershed 1708000301. Outlet(s) = Columbia River (Lat 45.6453, Long –122.4902) upstream to endpoint(s) in: Columbia River (45.6453, –122.4902); Hamilton Creek (45.6539, –121.6488); Little Washougal River (45.6210, –122.3750); Washougal River (45.6232, –122.2738).

(ii) Germany/Abernathy Watershed 1708000304. Outlet(s) = Columbia River (Lat 45.6453, Long –122.4902) upstream to endpoint(s) in: Columbia River (45.6453, –122.4902); Hamilton Creek (45.6539, –121.6488); Little Washougal River (45.6210, –122.3750); Washougal River (45.6232, –122.2738).

(iii) Salmon Creek Watershed 1708000309. Outlet(s) = Columbia River (Lat 45.6453, Long –122.4902) upstream to endpoint(s) in: Columbia River (45.6453, –122.4902); Hamilton Creek (45.6539, –121.6488); Little Washougal River (45.6210, –122.3750); Washougal River (45.6232, –122.2738).

(5) Lower Cowlitz Subbasin 17080005—(i) Jackson Prairie Watershed 1708000503. Outlet(s) = Columbia River (Lat 45.6453, Long –122.4902) upstream to endpoint(s) in: Columbia River (45.6453, –122.4902); Hamilton Creek (45.6539, –121.6488); Little Washougal River (45.6210, –122.3750); Washougal River (45.6232, –122.2738).
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Long –122.9337) upstream to endpoint(s) in: Bear Creek (46.4544, –122.9187); Blue Creek (46.4885, –122.7253); Coon Creek (46.4272, –122.9109); Cowitz River (46.5033, –122.5871); Lacamas Creek (46.5564, –122.6878); Mill Creek (46.5025, –122.8017); Salmon Creek (46.4130, –122.8160); Skook Creek (46.4708, –122.7594); Unnamed (46.4191, –122.8205); Unnamed (46.4205, –122.8662); Unnamed (46.4280, –122.8380); Unnamed (46.4707, –122.7713); Unnamed (46.4885, –122.8068); Unnamed (46.5076, –122.6675); Unnamed (46.5311, –122.8194); Unnamed (46.5432, –122.7466).

(ii) South Fork Toutle River Watershed

Outlet(s) = South Fork Toutle River (Lat 46.3282, Long –122.7215) upstream to endpoint(s) in: Johnson Creek (46.3102, –122.6444); South Fork Toutle River (46.2817, –122.9154).

(iii) East Willapa Watershed

Outlet(s) = Cowlitz River (Lat 46.2660, Long –122.9154) upstream to endpoint(s) in: Arkansas Creek (46.3032, –122.9801); Cowlitz River (46.3678, –122.9337); Delameter Creek (46.2598, –122.9679); Hill Creek (46.3704, –122.9267); McMurphy Creek (46.4082, –122.9520); Monahan Creek (46.2636, –122.9727); North Fork Toutle River (46.3689, –122.5850); Olequa Creek (46.3424, –122.9688); Unnamed (46.2606, –122.9551); Unnamed (46.2642, –122.9291); Unnamed (46.2689, –122.9589); Unnamed (46.3800, –122.9581); Unnamed (46.2892, –122.9626); Unnamed (46.3294, –122.9085); Unnamed (46.3371, –122.8922); Unnamed (46.3491, –122.7052); Unnamed (46.3571, –122.7684); Unnamed (46.3837, –122.7478); Unnamed (46.3683, –122.7503); Unnamed (46.3814, –122.6911); Wyant Creek (46.3314, –122.6768).

(iv) Coweeman Watershed

Outlet(s) = Cowitz River (Lat 46.0977, Long –122.9141); Owl Creek (46.0768, –122.8679) upstream to endpoint(s) in: Baird Creek (46.1789, –122.5822); Butler Creek (46.1491, –122.3170); Cowitz River (46.3643, –122.9154); Goble Creek (46.1074, –122.7068); Leckler Creek (46.2164, –122.9325); Mulholland Creek (46.2004, –122.6484); Nineteen Creek (46.1593, –122.6905); North Fork Goble Creek (46.1208, –122.7691); Owl Creek (46.0814, –122.8692); Salmon Creek (46.2547, –122.8839); Sandy Bend Creek (46.2318, –122.9143); Skipper Creek (46.1625, –122.5915); Turner Creek (46.1167, –122.8150); Unnamed (46.0719, –122.8607); Unnamed (46.0697, –122.7355); Unnamed (46.1295, –122.8990); Unnamed (46.1369, –122.8034); Unnamed (46.1441, –122.8516); Unnamed (46.1478, –122.8649); Unnamed (46.1516, –122.8749); Unnamed (46.1558, –122.7803); Unnamed (46.1727, –122.7716); Unnamed (46.1753, –122.7057); Unnamed (46.1940, –122.7068); Unnamed (46.2021, –122.6914); Unnamed (46.2416, –122.8869).

(6) Lower Columbia Subbasin

Outlet(s) = Deep River (Lat 46.3035, Long –123.7092); Grays River (46.3035, –123.6867); Unnamed (46.2419, –123.8842); Unnamed (46.3026, –123.9702) upstream to endpoint(s) in: Alder Creek (46.4279, –123.4621); Blaney Creek (46.3957, –123.4607); Campbell Creek (46.3435, –123.7087); Chino Creek (46.2685, –123.9233); Deep River (46.3480, –123.6865); East Fork Grays River (46.4424, –123.4120); Fossil Creek (46.3612, –123.5454); Grays River (46.4628, –123.5454); Johnson Creek (46.4528, –123.4602); Kessel Creek (46.389, –123.5850); King Creek (46.3574, –123.7108); Mitchell Creek (46.4512, –123.4269); South Fork Grays River (46.3836, –123.4592); Thadbar Creek (46.3331, –123.6092); Unnamed (46.2502, –123.8833); Unnamed (46.2647, –123.9402); Unnamed (46.2901, –123.9388); Unnamed (46.3605, –123.5228); Unnamed (46.3938, –123.5454); Unnamed (46.4328, –123.4444); West Fork Grays River (46.3942, –123.5611).

(7) Lower Columbia River Corridor—Lower Columbia River Corridor

Outlet(s) = Columbia River (Lat 45.5709, Long –122.4020) upstream to endpoint(s) in: Columbia River (45.5709, –122.4020).

(8) Maps of critical habitat for the Columbia River chum salmon ESU follow:
Final Critical Habitat for the Columbia River Chum Salmon ESU

Legend

- Cities / Towns
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 06 = Watershed code - last 2 digits of 17080002xx
Final Critical Habitat for the Columbia River Chum Salmon ESU

LOWER COLUMBIA / CLATSKANIE SUBBASIN

17080003

Legend
- Cities / Towns
- State Boundary
- Critical Habitat
- Water Bodies
- Subbasin Boundary
- Watershed Boundaries

01 - 06 = Watershed code - last 2 digits of 17080003xx
Final Critical Habitat for the Columbia River Chum Salmon ESU

Legend
- Cities / Towns
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 08 = Watershed code - last 2 digits of 17080005xx
(o) Ozette Lake Sockeye Salmon (Oncorhynchus nerka). Critical habitat is designated to include the areas defined in the following subbasin:

1. Hoh/Quillayute Subbasin

17100101

(1) Ozette Lake Watershed

17100102. Outlet(s) = Ozette River (Lat 48.1818, Long –124.7076) upstream to endpoints in: Big River (48.1844, –124.4987); Coal Creek (48.1631, –124.6612); East Branch Umbrella Creek (48.1835, –124.5659); North Fork Crooked Creek.

(ii) [Reserved]

(2) A map of critical habitat for the Ozette Lake sockeye salmon ESU follows:

[Map showing critical habitat areas for the Ozette Lake sockeye salmon ESU]

Legend:
- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

02 = Watershed code - last 2 digits of 17100101xx
(p) Upper Columbia River Steelhead (Oncorhynchus mykiss). Critical habitat is designated to include the areas defined in the following subbasins:

(1) Chief Joseph Subbasin 17020005—Upper Columbia/Swamp Creek Watershed 1702000505. Outlet(s) = Columbia River (Lat. 47.8077, Long. –119.9754) upstream to endpoint(s) in: Columbia River (48.0828, –119.7062).

(2) Okanogan Subbasin 17020006—(i) Upper Okanogan River Watershed 1702000601. Outlet(s) = Okanogan River (Lat. 48.5612, Long. –119.4863) upstream to endpoint(s) in: Aeneas Creek (48.6629, –119.4953); Bona-parte Creek (48.6824, –119.3947); Okanogan River (48.7350, –119.4280); Whitestone Creek (48.7773, –119.4170).

(ii) Okanogan River/Bonaparte Creek Watershed 1702000602. Outlet(s) = Okanogan River (Lat. 48.5612, Long. –119.4863) upstream to endpoint(s) in: Aeneas Creek (48.6629, –119.4953); Bona-parte Creek (48.6824, –119.3947); Okanogan River (48.7350, –119.4280); Whitestone Creek (48.7773, –119.4170).

(iii) Salmon Creek Watershed 1702000603. Outlet(s) = Salmon Creek (Lat. 48.3593, Long. –119.5805) upstream to endpoint(s) in: Salmon Creek (48.5374, –119.7465).

(iv) Okanogan River/Omak Creek Watershed 1702000604. Outlet(s) = Okanogan River (Lat. 48.5612, Long. –119.4863) upstream to endpoint(s) in: Aeneas Creek (48.6629, –119.4953); Bona-parte Creek (48.6824, –119.3947); Okanogan River (48.7350, –119.4280); Whitestone Creek (48.7773, –119.4170).

(v) Lower Okanogan River Watershed 1702000605. Outlet(s) = Okanogan River (Lat. 48.0976, Long. –119.7352) upstream to endpoint(s) in: Chilliwiss Creek (48.2643, –119.7304); Loup Loup Creek (48.3080, –119.7128); Okanogan River (48.3593, –119.5805).

(3) Similkameen Subbasin 17020007—Lower Similkameen River Watershed 1702000701. Outlet(s) = Similkameen River (Lat. 48.9345, Long. –119.4411) upstream to endpoint(s) in: Similkameen River (48.9657, –119.5009).

(4) Methow Subbasin 17020008—(i) Lost River Watershed 1702000801. Outlet(s) = Lost River Gorge (Lat. 48.6561, Long. –120.1515) upstream to endpoint(s) in: Lost River Gorge (48.7324, –120.4475).

(ii) Upper Methow River Watershed 1702000802. Outlet(s) = Methow River (Lat. 48.6015, Long. –120.4376) upstream to endpoint(s) in: Early Winters Creek (48.5889, –120.4711); Methow River (48.6597, –120.5368).

(iii) Upper Chewuch River Watershed 1702000803. Outlet(s) = Chewuch River (Lat. 48.7501, Long. –120.1356) upstream to endpoint(s) in: Andrews Creek (48.7855, –120.1087); Chewuch River (48.8614, –120.0288); Lake Creek (48.8258, –120.1986).

(iv) Lower Chewuch River Watershed 1702000804. Outlet(s) = Chewuch River (Lat. 48.0976, Long. –119.7352) upstream to endpoint(s) in: Chiliwist Creek (48.2643, –119.7304); Loup Loup Creek (48.3080, –119.7128); Okanogan River (48.3593, –119.5805).

(v) Twisp River Watershed 1702000805. Outlet(s) = Twisp River (Lat. 48.3682, Long. –120.1176) upstream to endpoint(s) in: Buttermilk Creek (48.3414, –120.3034); Eagle Creek (48.3579, –120.3653); Little Bridge Creek (48.4299, –120.3552); South Creek (48.4329, –120.5434); Twisp River (48.4545, –120.5621); War Creek (48.3626, –120.4106).

(vi) Middle Methow River Watershed 1702000806. Outlet(s) = Methow River (Lat. 48.2495, Long. –120.1156) upstream to endpoint(s) in: Goat Creek (48.6101, –120.3692); Hancock Creek (48.5338, –120.3310); Little Boulder Creek (48.5569, –120.3847); Methow River (48.6015, –120.4576); North Fork Beaver Creek (48.4340, –120.0226); Wolf Creek (48.4777, –120.2844).

(vii) Lower Methow River Watershed 1702000807. Outlet(s) = Methow River (Lat. 48.0502, Long. –119.8942) upstream to endpoint(s) in: Black Canyon Creek (48.0721, –120.0188); Foggy Dew Creek (48.1869, –120.2344); Gold Creek (48.2113, –120.2021); Libby Creek (48.2548, –120.1653); Methow River (48.2495, –120.1156); South Fork Gold Creek (48.1468, –120.1650).

(v) Upper Columbia/Entiat Subbasin 17020001—(i) Entiat River Watershed 1702000101. Outlet(s) = Entiat River (Lat. 47.6585, Long. –120.2194) upstream to endpoint(s) in: Entiat River (47.9855, –120.5749); Mad River (47.8254, –120.5301); Potato Creek (47.7944, –120.3889); Roaring Creek (47.6795, –120.4163); Stormy Creek (47.8246, –120.4125); Tamarack
Creek (47.6699, −120.4041); Tillicum Creek (47.7295, −120.4935).

(ii) Lake Entiat Watershed 1702001001. Outlet(s) = Columbia River (Lat 47.3539, Long −120.1105) upstream to endpoint(s) in: Columbia River (47.8077, −119.9754).

(iii) Columbia River/Lynch Coulee Watershed 1702001002. Outlet(s) = Columbia River (Lat 47.0494, Long −120.0241) upstream to endpoint(s) in: Brushy Creek (47.1316, −120.1493); Colockum Creek (47.2320, −119.9943); Quilomene Creek (47.3539, −120.1105); Lynch Coulee (47.2320, −119.9943); Tarpiscan Creek (47.2264, −120.0922); Tekison Creek (47.1816, −120.2096).

(iv) Columbia River/Sand Hollow Watershed 1702001003. Outlet(s) = Columbia River (Lat 46.8159, Long −119.9255) upstream to endpoint(s) in: Columbia River (47.0494, −120.0241); Sand Hollow (46.9296, −119.5965); Whiskey Dick Creek (47.0302, −120.0331).

(6) Wenatchee Subbasin 17020011—(i) White River Watershed 1702001101. Outlet(s) = White River (Lat 47.8088, Long −120.7159) upstream to endpoint(s) in: Little Wenatchee River (47.8526, −120.9541); Napeequa River (47.9359, −120.8712); Panther Creek (47.9375, −120.9408); White River (47.9535, −120.9380).

(ii) Chiwawa River Watershed 1702001102. Outlet(s) = Chiwawa River (Lat 47.7880, Long −120.6589) upstream to endpoint(s) in: Alder Creek (47.8565, −120.6564); Alpine Creek (48.0823, −120.8663); Buck Creek (48.1045, −120.8815); Chikamin Creek (47.9111, −120.7165); Chiwawa River (48.1140, −120.8775); Clear Creek (47.8016, −120.0210); James Creek (48.0748, −120.8508); Phelps Creek (48.0748, −120.8484); Unnamed (47.9727, −120.7878).

(iii) Nason/Tumwater Watershed 1702001103. Outlet(s) = Wenatchee River (Lat 47.5801, Long −120.6660) upstream to endpoint(s) in: Beaver Creek (47.7649, −120.6539); Chiwaukum Creek (47.7036, −120.7788); Cougar Creek (47.7594, −120.7969); Gill Creek (47.7716, −120.8237); Kahler Creek (47.7691, −120.7558); Mill Creek (47.7744, −120.0117); Nason Creek (47.7825, −120.0164); Roaring Creek (47.7572, −120.8263); Skinney Creek (47.7247, −120.7370).

(iv) Icicle/Chumstick Watershed 1702001104. Outlet(s) = Wenatchee River (Lat 47.5533, Long −120.3185) upstream to endpoint(s) in: Chumstick Creek (47.6785, −120.6365); Derby Canyon (47.6036, −120.5623); Eagle Creek (47.6342, −120.6261); Icicle Creek (47.6460, −120.9833); Wenatchee River (47.5801, −120.6660).

(v) Lower Wenatchee River Watershed 1702001105. Outlet(s) = Wenatchee River (Lat 47.4533, Long −120.3185) upstream to endpoint(s) in: Brender Creek (47.5214, −120.4844); Ingalls Creek (47.4612, −120.6776); King Canyon (47.3522, −120.4423); Mill Creek (47.5139, −120.6724); Mission Creek (47.3289, −120.4711); Peshastin Creek (47.4390, −120.6590); Sand Creek (47.4321, −120.5307); Wenatchee River (47.5575, −120.5729).

(7) Lower Crab Subbasin 17020015—Lower Crab Creek Watershed 1702001509. Outlet(s) = Lower Crab Creek (Lat 46.8159, Long −119.9255) upstream to endpoint(s) in: Hayes Creek (46.8821, −119.2703); Lower Crab Creek (46.9028, −119.2785); Unnamed (46.8157, −119.4326); Unnamed (46.8243, −119.4429); Unnamed (46.8353, −119.3750); Unnamed (46.8658, −119.3757); Unnamed (46.8776, −119.5863).

(8) Upper Columbia/Priest Rapids Subbasin 17020016—(i) Yakima River/Hanson Creek Watershed 1702001604. Outlet(s) = Columbia River (Lat 46.7159, Long −119.5294) upstream to endpoint(s) in: Columbia River (46.8159, −119.2529).

(ii) Middle Columbia/Priest Rapids Watershed 1702001605. Outlet(s) = Columbia River (Lat 46.5091, Long −119.2661) upstream to endpoint(s) in: Columbia River (46.7159, −119.5294).

(iii) Columbia River/Zintel Canyon Watershed 1702001606. Outlet(s) = Columbia River (Lat 46.2534, Long −119.2268) upstream to endpoint(s) in: Columbia River (46.5091, −119.2661).

(9) Columbia River Corridor—Columbia River Corridor. Outlet(s) = Columbia River (Lat 46.2485, Long −120.0762) upstream to endpoint(s) in: Columbia River (46.2534, −119.2268).

(10) Maps of critical habitat for the Upper Columbia River Steelhead ESU follow:
Final Critical Habitat for the
Upper Columbia River Steelhead ESU

SIMILKAMEEN SUBBASIN
17020007

Legend

Cities / Towns
State Boundary
Critical Habitat
Subbasin Boundary
Watershed Boundaries

01 - 04 = Watershed code - last 2 digits of 17020007xx

Area of Detail

WASHINGTON
OREGON
IDAHO
This lower segment of the Columbia River is designated Critical Habitat. See the Migration Corridor map.
(q) **Snake River Basin Steelhead** (*Oncorhynchus mykiss*). Critical habitat is designated to include the areas defined in the following subbasins:

1. **Hells Canyon Subbasin 17060101**
   - Outlet(s) = Snake River (Lat 45.467, Long -116.554) upstream to endpoint(s) in: Battle Creek (45.307, -116.697); Bernard Creek (45.387, -116.569); Brush Creek (45.329, -116.673); Deep Creek (45.275, -116.657).
§ 226.212
(45.237, –116.674); Devils Farm Creek (45.301, –116.611); Granite Creek (45.277, –116.630); Hells Canyon (45.254, –116.698); Lightning Creek (45.440, –116.500); Little Granite Creek (45.335, –116.636); North Fork Battle Creek (45.316, –116.687); Rattlesnake Creek (45.457, –116.610); Rough Creek (45.397, –116.638); Rush Creek (45.468, –116.596); Saddle Creek (45.375, –116.721); Sheep Creek (45.406, –116.523); Sluice Creek (45.445, –116.622); Snake River (45.243, –116.700); Stud Creek (45.267, –116.693); Three Creek (45.353, –116.610); Unnamed (45.468, –116.610); Unnamed (45.4787, –116.4799); Wild Sheep Creek (45.326, –116.676).

(ii) Snake River/Getta Creek Watershed 1706010102. Outlet(s) = Snake River (Lat 45.747, Long –116.543) upstream to endpoint(s) in: Big Canyon Creek (45.689, –116.467); Corral Creek (45.588, –116.433); Cove Creek (45.553, –116.574); Durham Creek (45.595, –116.472); Getta Creek (45.736, –116.421); Highrange Creek (45.738, –116.518); Indian Creek (45.744, –116.449); Jones Creek (45.703, –116.526); Kirby Creek (45.575, –116.645); Kirkwood Creek (45.548, –116.457); Klopton Creek (45.627, –116.343); Kurry Creek (45.656, –116.426); Lookout Creek (45.713, –116.342); Lost Valley Creek (45.550, –116.962); Pleasant Valley Creek (45.647, –116.492); Salt Creek (45.576, –116.554); SCreek (45.491, –116.574); Snake River (45.468, –116.554); Somers Creek (45.645, –116.553); Temperance Creek (45.537, –116.571); Tryon Creek (45.694, –116.540); Two Corral Creek (45.561, –116.526); Unnamed (45.5381, –116.598); West Creek (45.664, –116.453); West Fork West Creek (45.669, –116.463).

(iii) Snake River/Divide Creek Watershed 1706010104. Outlet(s) = Snake River (Lat 45.857, Long –116.794) upstream to endpoint(s) in: Big Sheep Creek (45.857, –116.741); Dry Creek (45.842, –116.598); Snake River (45.747, –116.543); Unnamed (45.7599, –116.6456); Wolf Creek (45.776, –116.567).

(ii) Imnaha River Subbasin 17060102—

(i) Upper Imnaha River Watershed 1706010201. Outlet(s) = Imnaha River (Lat 45.232, Long –116.844) upstream to endpoint(s) in: Cazymman Creek (45.190, –116.811); Dry Creek (45.123, –116.867); Gumboot Creek (45.147, –116.908); Mahogany Creek (45.201, –116.905); North Fork Dry Creek (45.143, –116.850); North Fork Gumboot Creek (45.184, –116.928); North Fork Imnaha River (45.118, –117.129); Skookum Creek (45.117, –116.938); South Fork Imnaha River (45.111, –117.230); Unnamed (45.188, –116.923); Unnamed (45.208, –116.890).

(ii) Middle Imnaha River Watershed 1706010202. Outlet(s) = Imnaha River (Lat 45.557, Long –116.834) upstream to endpoint(s) in: Freezecout Creek (45.352, –116.761); Grouse Creek (45.179, –116.976); Imnaha River (45.232, –116.844); Morgan Creek (45.261, –116.948); Rich Creek (45.243, –116.869); Road Creek (45.279, –116.932); Shadow Creek (45.295, –116.860); Summit Creek (45.228, –116.793); Unnamed (45.203, –116.978); Unnamed (45.250, –116.923).

(iii) Big Sheep Creek Watershed 1706010203. Outlet(s) = Big Sheep Creek (Lat 45.557, Long –116.834) upstream to endpoint(s) in: Bear Gulch (45.379, –116.955); Big Sheep Creek (45.520, –116.859); Camp Creek (45.544, –116.959); Canal Creek (45.256, –117.103); Devils Gulch (45.428, –116.962); Downey Gulch (45.405, –116.958); Ferguson Creek (45.387, –117.106); Lightning Creek (45.475, –117.020); Little Sheep Creek (45.236, –117.083); McCully Creek (45.295, –117.107); Redmont Creek (45.250, –117.069); South Fork Lightning Creek (45.473, –117.019); Summit Creek (45.390, –116.930); Threebuck Creek (45.395, –117.012); Trail Creek (45.563, –116.898).

(v) Lower Imnaha River Watershed 1706010205. Outlet(s) = Imnaha River (Lat 45.817, Long –116.764) upstream to endpoint(s) in: Corral Creek (45.708, –116.815); Cottonwood Creek (45.659, –116.865); Cow Creek (45.573, –116.628); Dodson Fork (45.725, –116.821); East Fork Fence Creek (45.652, –116.855); Fence Creek (45.655, –116.875); Horse Creek (45.421, –116.725); Imnaha River (45.557, –116.834); Lightning Creek
(45.447, –116.682); Prong (45.589, –116.592); Pumpkin Creek (45.517, –116.758); Sleepy Creek (45.604, –116.666); Stubblefield Fork (45.711, –116.815); Tulley Creek (45.743, –116.766).

(3) Lower Snake/Asotin Subbasin

17060103—(i) Snake River/Rogersburg Watershed 1706010301. Outlet(s) = Snake River (Lat 46.080, Long –116.978) upstream to endpoint(s) in: Cache Creek (45.976, –116.928); Cave Gulch (46.023, –116.840); Cook Creek (45.901, –116.865); Corral Creek (46.055, –116.875); Cottonwood Creek (45.944, –116.860); Garden Creek (45.972, –116.903); Snake River (45.857, –116.794).

(ii) Asotin River Watershed 1706010302. Outlet(s) = Asotin Creek (Lat 46.345, Long –117.053) upstream to endpoint(s) in: Ayers Gulch (46.278, –117.094); Charley Creek (46.271, –117.460); Coombs Canyon (46.128, –117.276); Hefflefinger Gulch (46.151, –117.231); Huber Gulch (46.155, –117.188); Kelly Creek (46.251, –117.114); Lick Creek (46.280, –117.358); Middle Branch North Fork Asotin Creek (46.195, –117.439); Nims Gulch (46.178, –117.121); North Fork Asotin Creek (46.207, –117.478); Pintler Creek (46.194, –117.153); South Fork Asotin Creek (46.174, –117.341); South Fork North Fork Asotin Creek (46.192, –117.425).

(iii) Snake River/Captain John Creek Watershed 1706010303. Outlet(s) = Snake River (Lat 46.428, Long –117.038) upstream to endpoint(s) in: Captain John Creek (46.145, –116.821); Couse Creek (46.157, –117.032); Edeburn Gulch (46.142, –116.008); Mill Creek (46.157, –116.078); Redbird Creek (46.220, –116.898); Snake River (46.080, –116.978); South Fork Captain John Creek (46.123, –116.864); Tampmany Creek (46.362, –117.052); Tennmile Creek (46.204, –116.876); Unnamed (46.123, –117.086); Unnamed (46.119, –117.100); Unnamed (46.124, –117.111).

(iv) Upper Grande Ronde River Subbasin 17060104—(i) Upper Grande Ronde River Watershed 1706010401. Outlet(s) = Grande Ronde River (Lat 45.264, Long –118.376) upstream to endpoint(s) in: Chicken Creek (44.987, –118.378); Clear Creek (45.014, –118.329); Dry Creek (45.052, –118.380); East Fork Grande Ronde River (45.060, –118.237); East Sheep Creek (44.987, –118.425); Fly Creek (45.125, –118.920); Grande Ronde River (44.998, –118.273); Limber Jim Creek (45.107, –118.270); Little Clear Creek (45.038, –118.300); Little Fly Creek (45.062, –118.504); Lookout Creek (45.065, –118.543); Muir Creek (45.066, –118.297); North Fork Limber Jim Creek (45.125, –118.308); Sheep Creek (45.016, –118.507); South Fork Limber Jim Creek (45.088, –118.304); Squaw Creek (45.103, –118.554); Umapine Creek (45.116, –118.571); Unnamed (45.042, –118.269); Unnamed (45.045, –118.417); West Chicken Creek (45.025, –118.404); Winter Canyon (45.215, –118.361).

(1) Meadow Creek Watershed 1706010402. Outlet(s) = Meadow Creek (Lat 45.264, Long –118.376) upstream to endpoint(s) in: Battle Creek (45.216, –118.507); Bear Creek (45.210, –118.577); Burnt Corral Creek (45.159, –118.524); Dark Canyon (45.382, –118.394); East Burnt Corral Creek (45.173, –118.498); Ensign Creek (45.361, –118.554); Little Dark Canyon (45.322, –118.418); Marley Creek (45.177, –118.476); McCoy Creek (45.322, –118.628); McIntyre Creek (45.345, –118.459); Meadow Creek (45.286, –118.716); Peet Creek (45.233, –118.611); Smith Creek (45.295, –118.594); Sullivan Gulch (45.200, –118.515); Syrup Creek (45.290, –118.543); Tybow Canyon (45.214, –118.467); Unnamed (45.206, –118.552); Unnamed (45.275, –118.695); Unnamed (45.295, –118.718); Unnamed (45.330, –118.551); Waucup Creek (45.243, –118.660).

(ii) Grande Ronde River/Beaver Creek Watershed 1706010403. Outlet(s) = Grande Ronde River (Lat 45.347, Long –118.221) upstream to endpoint(s) in: Bear Creek (45.283, –118.270); Beaver Creek (45.146, –118.209); Dry Beaver Creek (45.168, –118.316); East Fork Rock Creek (45.166, –118.111); Grande Ronde River (45.264, –118.376); Graves Creek (45.245, –118.161); Hoodoo Creek (45.154, –118.259); Jordan Creek (45.162, –118.187); Little Beaver Creek (45.185, –118.333); Little Whiskey Creek (45.299, –118.178); Rock Creek (45.172, –118.139); South Fork Spring Creek (45.346, –118.369); Spring Creek (45.396, –118.372); Unnamed (45.167, –118.144); Unnamed (45.227, –118.262); Unnamed (45.231, –118.279); Unnamed (45.232, –118.091); Unnamed (45.240, –118.257); Watermelon Creek (45.195, –118.277); Whiskey Creek (45.198, –118.181).
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(iv) Grande Ronde River/Five Points Creek Watershed 1706010404. Outlet(s) = Grande Ronde River (Lat 45.408, Long –117.930) upstream to endpoint(s) in: California Gulch (45.406, –118.335); Conley Creek (45.406, –118.084); Dobbin Ditch (45.377, –118.017); Dry Creek (45.326, –118.145); Five Points Creek (45.482, –118.143); Grande Ronde River (45.347, –118.221); Little John Day Creek (45.430, –118.192); Middle Fork Five Points Creek (45.156, –118.567); Milk Creek (45.630, –118.083); Tiet Creek (45.402, –118.129); Unnamed (45.385, –118.043); Unnamed (45.423, –118.243).

(v) Catherine Creek Watershed 1706010405. Outlet(s) = Catherine Creek (Lat 45.219, Long –117.915) upstream to endpoint(s) in: Buck Creek (45.132, –117.606); Camp Creek (45.100, –117.596); Collins Creek (45.100, –117.531); Corral Creek (45.113, –117.575); Little Catherine Creek (45.148, –117.716); Middle Fork Catherine Creek (45.155, –118.567); Milk Creek (45.092, –117.717); North Fork Catherine Creek (45.221, –117.610); Pole Creek (45.123, –117.544); Prong Creek (45.096, –117.565); SPaaS Creek (45.115, –117.528); Scout Creek (45.105, –117.644); South Fork Catherine Creek (45.116, –117.503); Unnamed (45.104, –117.685).

(vi) Ladd Creek Watershed 1706010406. Outlet(s) = Ladd Creek (Lat 45.282, Long –117.936) upstream to endpoint(s) in: Catherine Creek (45.219, –117.915); Ladd Creek (45.215, –118.024); Little Ladd Creek (45.210, –117.784); Milk Creek (45.203, –118.083); Unnamed (45.250, –118.039).

(vii) Grande Ronde River/Mill Creek Watershed 1706010407. Outlet(s) = Grande Ronde River (Lat 45.408, Long –117.930) upstream to endpoint(s) in: California Gulch (45.406, –118.335); McAlister Slough (45.315, –117.973); Mill Creek (45.278, –117.728); Unnamed (45.297, –117.806).

(viii) Phillips Creek/Willow Creek Watershed 1706010408. Outlet(s) = Willow Creek (Lat 45.492, Long –117.931) upstream to endpoint(s) in: Dry Creek (45.640, –118.114); End Creek (45.4622, –118.0316); Finley Creek (45.625, –118.099); Fir Creek (45.5171, –118.0568); Little Dry Creek (45.5349, –118.0393); McDonald Creek (45.5348, –118.0393); Milk Creek (45.568, –118.025); Slide Creek (45.422, –118.028); Smith Creek (45.5256, –118.0537); Unnamed (45.525, –118.014).

(ix) Grande Ronde River/Indian Creek Watershed 1706010409. Outlet(s) = Grande Ronde River (Lat 45.560, Long –117.910) upstream to endpoint(s) in: Camp Creek (45.386, –117.720); Clark Creek (45.409, –117.728); East Fork Indian Creek (45.363, –117.737); Grande Ronde River (45.408, –117.930); Indian Creek (45.332, –117.717); Little Indian Creek (45.375, –117.785); Middle Fork Clark Creek (45.462, –117.764); North Fork Clark Creek (45.502, –117.733); North Fork Indian Creek (45.419, –117.787); Unnamed (45.375, –117.739); Unnamed (45.476, –117.757).

(x) Lookingglass Creek Watershed 1706010410. Outlet(s) = Lookingglass Creek (Lat 45.707, Long –117.841) upstream to endpoint(s) in: Buzzard Creek (45.845, –117.939); Eagle Creek (45.723, –118.005); Jarboe Creek (45.776, –118.855); Little Lookingglass Creek (45.848, –117.901); Lookingglass Creek (45.777, –118.070); Mottet Creek (45.677, –118.027, –117.958); Unnamed (45.835, –117.809); Unnamed (45.844, –117.893).

(xi) Grande Ronde River/Cabin Creek Watershed 1706010411. Outlet(s) = Grande Ronde River (Lat 45.726, Long –117.784) upstream to endpoint(s) in: Buck Creek (45.662, –117.919); Duncan Canyon (45.654, –117.776); East Phillips Creek (45.669, –118.066); Gordon Creek (45.665, –118.001); Grande Ronde River (45.560, –117.910); Little Phillips Creek (45.668, –118.039); North Fork Cabin Creek (45.721, –117.929); Pedro Creek (45.676, –118.051); Phillips Creek (45.666, –118.089); Rysdam Canyon (45.633, –117.812); South Fork Cabin Creek (45.698, –117.963); Unnamed (45.682, –117.974); Unnamed (45.695, –117.927); Unnamed (45.707, –117.916).

(5) Wallowa River Subbasin 17060105—

(i) Upper Wallowa River Watershed 1706010501. Outlet(s) = Wallowa River (Lat 45.427, Long –117.310) upstream to endpoint(s) in: Hurricane Creek (45.337, –117.291); Little Hurricane Creek (45.407, –117.276); Prairie Creek (45.394, –117.189); Spring Creek (45.406, –117.287); Trout Creek (45.455, –117.281); Unnamed (45.367, –117.215); Unnamed (45.392, –117.214); Unnamed (45.392, –117.213); Unnamed (45.412, –117.156); Unnamed (45.405, –117.310); Unnamed (45.392, –117.214); Unnamed (45.392, –117.213); Unnamed (45.412, –117.156); Unnamed (45.405, –117.310); Unnamed (45.392, –117.214); Unnamed (45.392, –117.213); Unnamed (45.412, –117.156); Unnamed (45.405, –117.310); Unnamed (45.392, –117.214); Unnamed (45.392, –117.213); Unnamed (45.412, –117.156); Unnamed (45.405, –117.310); Unnamed (45.392, –117.214); Unnamed (45.392, –117.213); Unnamed (45.412, –117.156).
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(45.424, –117.313); Wallowa River (45.335, –117.222).

(ii) Lostine River Watershed 1706010502.
Outlet(s) = Lostine River (Lat 45.552, Long –117.489) upstream to endpoint(s) in: Lostine River (45.525, –117.375); Silver Creek (45.394, –117.420).

(iii) Middle Wallowa River Watershed 1706010503. Outlet(s) = Wallowa River (Lat 45.584, Long –117.540) upstream to endpoint(s) in: Lostine River (45.552, –117.489); Silver Creek (45.394, –117.420).

(iv) Bear Creek Watershed 1706010504. Outlet(s) = Bear Creek (Lat 45.584, Long –117.540) upstream to endpoint(s) in: Bear Creek (45.347, –117.500); Doc Creek (45.449, –117.572); Fox Creek (45.447, –117.562); Goat Creek (45.413, –117.519); Little Bear Creek (45.456, –117.500).

(v) Minam River Watershed 1706010505. Outlet(s) = Minam River (Lat 45.621, Long –117.720) upstream to endpoint(s) in: Cougar Creek (45.517, –117.672); Elk Creek (45.157, –117.489); Little Minam River (45.338, –117.643); Minam River (45.149, –117.392); Murphy Creek (45.414, –117.644); North Minam River (45.275, –117.520); Patrick Creek (45.426, –117.645); Squaw Creek (45.576, –117.706); Trout Creek (45.471, –117.620).

(vi) Lower Wallowa River Watershed 1706010506. Outlet(s) = Wallowa River (Lat 45.726, Long –117.784) upstream to endpoint(s) in: Deer Creek (45.452, –117.606); Dry Creek (45.650, –117.439); Fisher Creek (45.866, –117.750); Howard Creek (45.735, –117.665); Reagin Gulch (45.670, –117.550); Rock Creek (45.679, –117.620); Sage Creek (45.486, –117.590); Tamarack Canyon (45.656, –117.518); Unnamed (45.618, –117.629); Unnamed (45.654, –117.442); Unnamed (45.676, –117.566); Wallowa River (45.564, –117.540); Water Canyon (45.589, –117.614); Wise Creek (45.671, –117.705).

Lower Grande Ronde Subbasin 17060106—(i) Grande Ronde River/Wendon Watershed 1706010601. Outlet(s) = Grande Ronde River (Lat 45.896, Long –117.893) upstream to endpoint(s) in: Alder Creek (45.844, –117.750); Bear Creek (45.885, –117.752); Clear Creek (45.775, –117.714); Deep Creek (45.817, –117.651); East Grossman Creek (45.819, –117.625); Elbow Creek (45.927, –117.630); Grande Ronde River (45.726, –117.784); Grossman Creek (45.732, –117.614); Meadow Creek (45.825, –117.760); Sheep Creek (45.756, –117.797); Sickfoot Creek (45.842, –117.567); Unnamed (45.746, –117.656).

(ii) Grande Ronde River/Mud Creek Watershed 1706010602. Outlet(s) = Grande Ronde River (Lat 45.946, Long –117.450) upstream to endpoint(s) in: Bishop Creek (45.747, –117.555); Bobcat Creek (45.853, –117.370); Buck Creek (45.758, –117.298); Burnt Creek (45.769, –117.283); Courtney Creek (45.857, –117.314); Grande Ronde River (45.896, –117.493); Little Courtney Canyon (45.903, –117.385); McAllister Creek (45.683, –117.361); McCubbin Creek (45.700, –117.294); Mud Creek (45.633, –117.291); Unnamed (45.867, –117.329); Shamrock Creek (45.828, –117.335); Simmons Draw (45.730, –117.514); Sled Creek (45.730, –117.278); Tope Creek (45.634, –117.330); Unnamed (45.710, –117.283); Unnamed (45.856, –117.312); Wallowa River (45.732, –117.489).

(iii) Wenaha River Watershed 1706010603. Outlet(s) = Wenaha River (Lat 45.946, Long –117.450) upstream to endpoint(s) in: Beaver Creek (46.002, –117.815); Crooked Creek (46.046, –117.624); First Creek (46.071, –117.519); Melton Creek (46.060, –117.560); Milk Creek (45.973, –117.656); North Fork Wenaha River (46.064, –117.912); Rock Creek (45.999, –117.766); Second Creek (46.065, –117.595); Slick Ear Creek (45.983, –117.784); South Fork Wenaha River (45.872, –117.897); Third Creek (46.089, –117.627); Weller Creek (45.899, –117.648); West Fork Butte Creek (46.064, –117.759).

(iv) Chesnimnus Creek Watershed 1706010604. Outlet(s) = Chesnimnus Creek (Lat 45.715, Long –117.155) upstream to endpoint(s) in: Alder Creek (45.702, –116.997); Billy Creek (45.815, –117.032); Butte Creek (45.641, –117.096); Chesnimnus Creek (45.718, –116.906); Deadman Gulch (45.659, –117.049); Devils Run Creek (45.775, –116.882); Doe Creek (45.751, –117.029); Dry Salmon Creek (45.663, –117.051); East Fork Peavine Creek (45.830, –117.061); Gooseberry Creek (45.885, –117.752); Clear Creek (45.775, –117.714); Deep Creek (45.817, –117.651); East Grossman Creek (45.819, –117.625); Elbow Creek (45.927, –117.630); Grande Ronde River (45.726, –117.784); Grossman Creek (45.732, –117.614); Meadow Creek (45.825, –117.760); Sheep Creek (45.756, –117.797); Sickfoot Creek (45.842, –117.567); Unnamed (45.746, –117.656).
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Creek (45.681, –117.110); McCarty Gulch (45.749, –117.064); Peavine Creek (45.795, –117.084); Pine Creek (45.673, –117.029); Poison Creek (45.791, –116.979); Salmon Creek (45.662, –117.038); South Fork Chosnimnus Creek (45.743, –116.861); Sterling Gulch (45.712, –117.000); Summit Creek (45.794, –116.947); Telephone Gulch (45.767, –117.076); TNT Gulch (45.754, –116.919); Unnamed (45.694, –117.013); Unnamed (45.709, –116.878); Unnamed (45.724, –116.867); Unnamed (45.742, –116.919); Unnamed (45.791, –116.979); Unnamed (45.838, –117.009); Unnamed (45.846, –117.029); West Fork Peavine Creek (45.805, –117.100).

(v) Upper Joseph Creek Watershed 1706010605. Outlet(s) = Joseph Creek (Lat 45.823, Long –117.231) upstream to endpoint(s) in: Alford Gulch (45.729, –117.165); Cougar Creek (45.806, –117.150); Cranberry Creek (45.536, –117.115); Davis Creek (45.658, –117.257); Elk Creek (45.598, –117.167); Gould Gulch (45.657, –117.181); Little Elk Creek (45.694, –117.199); Sumac Creek (45.753, –117.148); Swamp Creek (45.543, –117.218); Unnamed (45.597, –117.141).

(vi) Lower Joseph Creek Watershed 1706010606. Outlet(s) = Joseph Creek (Lat 46.053, Long –117.005) upstream to endpoint(s) in: Basin Creek (45.910, –117.057); Broady Creek (45.882, –117.076); Cottonwood Creek (45.832, –116.950); Horse Creek (45.945, –116.962); Joseph Creek (45.823, –117.291); Peavine Creek (45.879, –117.162); Rush Creek (45.899, –117.150); Tamarack Creek (45.964, –117.127); Unnamed (45.826, –116.957); West Fork Broady Creek (45.862, –117.102).

(vii) Lower Grande Ronde River/ Menachte Creek Watershed 1706010607. Outlet(s) = Grande Ronde River (Lat 46.080, Long –116.978) upstream to endpoint(s) in: Bear Creek (45.973, –117.455); Buford Creek (45.975, –117.276); Cottonwood Creek (46.071, –117.301); Cougar Creek (46.049, –117.327); Deer Creek (45.992, –117.191); East Bear Creek (45.960, –117.307); Grande Ronde River (45.946, –117.450); Grouse Creek (46.031, –117.460); Menatchee Creek (46.018, –117.371); Rattlesnake Creek (46.079, –117.294); Shumaker Creek (46.049, –117.117); West Bear Creek (45.951, –117.337); West Branch Rattlesnake Creek (46.086, –117.258).

(8) Upper Salmon Subbasin 17060201—

(i) Salmon River/Challis Watershed 1706020101. Outlet(s) = Salmon River (Lat 44.692, Long –114.049) upstream to endpoint(s) in: Challis Creek (44.563, –114.246); Salmon River (44.470, –114.192).

(ii) Salmon River/Bayhorse Creek Watershed 1706020104. Outlet(s) = Salmon River (Lat 44.470, Long –114.192) upstream to endpoint(s) in: Bayhorse Creek (44.305, –114.308); Salmon River (44.268, –114.326).
(iii) East Fork Salmon River/McDonald Creek Watershed 1706020105. Outlet(s) = East Fork Salmon River (Lat 44.268, Long -114.326) upstream to endpoint(s) in: Big Lake Creek (44.165, -114.394); East Fork Salmon River (44.147, -114.378); McDonald Creek (44.091, -114.318); Pine Creek (44.136, -114.367).

(iv) Herd Creek Watershed 1706020108. Outlet(s) = Herd Creek (Lat 44.154, Long -114.300) upstream to endpoint(s) in: East Fork Herd Creek (44.037, -114.203); East Pass Creek (44.009, -114.369); Lake Creek (44.103, -114.194); Taylor Creek (44.067, -114.317); West Fork Herd Creek (44.032, -114.248).

(v) East Fork Salmon River/Big Boulder Creek Watershed 1706020109. Outlet(s) = East Fork Salmon River (Lat 44.147, Long -114.378) upstream to endpoint(s) in: Big Boulder Creek (44.131, -114.518); East Fork Salmon River (44.039, -114.461); Little Boulder Creek (44.065, -114.542).

(vi) Upper East Fork Salmon River Watershed 1706020110. Outlet(s) = Upper East Fork Salmon River (Lat 44.039, Long -114.461) upstream to endpoint(s) in: Bowery Creek (44.0316, -114.4587); South Fork East Fork Salmon River (43.902, -114.562); West Fork East Fork Salmon River (43.929, -114.575); West Pass Creek (43.922, -114.446).

(vii) Germania Creek Watershed 1706020111. Outlet(s) = Germania Creek (Lat 44.039, Long -114.461) upstream to endpoint(s) in: Germania Creek (44.003, -114.332). 

(viii) Salmon River/Kinnikinic Creek Watershed 1706020112. Outlet(s) = Salmon River (Lat 44.268, Long -114.326) upstream to endpoint(s) in: Kinnikinic Creek (44.2667, -114.4026); Salmon River (44.249, -114.454).

(ix) Salmon River/Slate Creek Watershed 1706020113. Outlet(s) = Salmon River (Lat 44.249, Long -114.454) upstream to endpoint(s) in: Holman Creek (44.250, -114.529); Salmon River (44.254, -114.675); Silver Rule Creek (44.196, -114.386); Slate Creek (44.166, -114.626); Thompson Creek (44.318, -114.588).

(x) Warm Springs Creek Watershed 1706020114. Outlet(s) = Warm Springs Creek (Lat 44.254, Long -114.675) upstream to endpoint(s) in: Warm Springs Creek (44.151, -114.718).

(xi) Salmon River/Big Casino Creek Watershed 1706020115. Outlet(s) = Salmon River (Lat 44.254, Long -114.675) upstream to endpoint(s) in: Big Casino Creek (44.216, -114.830); Little Casino Creek (44.224, -114.861); Lower Harden Creek (44.274, -114.778); Nip Tuck Creek (44.234, -114.929); Salmon River (44.169, -114.898); Upper Harden Creek (44.272, -114.791).

(xii) Salmon River/Fisher Creek Watershed 1706020117. Outlet(s) = Salmon River (Lat 44.169, Long -114.898) upstream to endpoint(s) in: Decker Creek (44.072, -114.879); Gold Creek (44.114, -114.846); Huckleberry Creek (44.061, -114.875); Salmon River (44.032, -114.836); Williams Creek (44.096, -114.852).

(xiii) Salmon River/Fourth of July Creek Watershed 1706020118. Outlet(s) = Salmon River (Lat 44.032, Long -114.836) upstream to endpoint(s) in: Champion Creek (44.019, -114.825); Fourth of July Creek (44.035, -114.784); Hell Roaring Creek (44.0268, -114.9252); Salmon River (44.004, -114.836); Unnamed (44.017, -114.879).

(xiv) Upper Salmon River Watershed 1706020119. Outlet(s) = Upper Salmon River (Lat 44.04, Long -114.836) upstream to endpoint(s) in: Beaver Creek (43.919, -114.813); Camp Creek (43.876, -114.738); Frenchman Creek (43.822, -114.792); Pole Creek (43.940, -114.668); Salmon River (43.837, -114.759); Smiley Creek (43.829, -114.823); Twin Creek (43.935, -114.723); Unnamed (43.843, -114.742); Unnamed (43.990, -114.803).

(xv) Alturas Lake Creek Watershed 1706020120. Outlet(s) = Alturas Lake Creek (Lat 44.04, Long -114.836) upstream to endpoint(s) in: Alpine Creek (43.905, -114.923); Alturas Lake Creek (43.895, -114.910); Cabin Creek (43.937, -114.856); Pettit Lake Creek (43.961, -114.916); Unnamed (43.952, -114.856); Vat Creek (43.967, -114.871); Yellowbelly Creek (43.995, -114.847).

(xvi) Redfish Lake Creek Watershed 1706020121. Outlet(s) = Redfish Lake Creek (Lat 44.04, Long -114.836) upstream to endpoint(s) in: Fishhook Creek (44.277, -114.966); Redfish Lake Creek (44.097, -114.926).

(xvii) Valley Creek/Iron Creek Watershed 1706020122. Outlet(s) = Valley Creek (Lat 44.225, Long -114.927) upstream to endpoint(s) in: Crooked Creek (44.214, -115.034); Goat Creek (44.179, -115.008); Iron Creek (44.191, -115.025); Job Creek (44.242, -115.027);
Meadow Creek (44.190, –115.961); Park Creek (44.281, –115.036); Stanley Creek (44.276, –114.938); Valley Creek (44.291, –115.018).

(xviii) Upper Valley Creek Watershed 1706020123. Outlet(s) = Valley Creek (Lat 44.291, Long –115.018); Stanley Lake Creek (44.255, –115.040) upstream to endpoint(s) in: East Fork Valley Creek (44.347, –114.999); Elk Creek (44.227, –115.145); Hanna Creek (44.314, –115.041); Meadow Creek (44.291, –115.119); Stanley Lake Creek (44.246, –115.045); Trap Creek (44.311, –115.121); Valley Creek (44.392, –114.980).

(xix) Basin Creek Watershed 1706020124. Outlet(s) = Basin Creek (Lat 44.264, Long –114.817) upstream to endpoint(s) in: Basin Creek (44.361, –114.902); East Basin Creek (44.314, –114.823).

(x) Yankee Fork/Jordan Creek Watershed 1706020125. Outlet(s) = Yankee Fork (Lat 44.270, Long –114.734) upstream to endpoint(s) in: Eightmile Creek (44.448, –114.639); Fivemile Creek (44.355, –114.615); Jordan Creek (44.457, –114.752); Ramey Creek (44.355, –114.641); Sevenmile Creek (44.423, –114.608); Sixmile Creek (44.394, –114.585); Yankee Fork (44.426, –114.619).

(xx) West Fork Yankee Fork Watershed 1706020126. Outlet(s) = West Fork Yankee Fork (Lat 44.351, Long –114.727) upstream to endpoint(s) in: Cabin Creek (44.428, –114.881); Deadwood Creek (44.356, –114.834); Lightning Creek (44.466, –114.787); Sawmill Creek (44.341, –114.765); West Fork Yankee Fork (44.386, –114.919).

(xxii) Upper Yankee Fork Watershed 1706020127. Outlet(s) = Yankee Fork (Lat 44.426, Long –114.619) upstream to endpoint(s) in: Elevenmile Creek (44.436, –114.544); McKay Creek (44.475, –114.491); Ninemile Creek (44.439, –114.590); Tenmile Creek (44.484, –114.646); Twelvemile Creek (44.497, –114.614); Yankee Fork (44.510, –114.588).

(xxiii) Squaw Creek Watershed 1706020128. Outlet(s) = Squaw Creek (Lat 44.249, Long –114.454) upstream to endpoint(s) in: Cash Creek (44.353, –114.473); Cinnabar Creek (44.359, –114.503); Squaw Creek (44.420, –114.489).

(xxiv) Garden Creek Watershed 1706020129. Outlet(s) = Garden Creek (Lat 44.511, Long –114.203) upstream to endpoint(s) in: Garden Creek (44.468, –114.325).

(xxv) Challis Creek/Mill Creek Watershed 1706020130. Outlet(s) = Challis Creek (Lat 44.563, Long –114.246) upstream to endpoint(s) in: Challis Creek (44.573, –114.309); Darling Creek (44.572, –114.252).

(xxxi) Morgan Creek Watershed 1706020132. Outlet(s) = Morgan Creek (Lat 44.612, Long –114.168) upstream to endpoint(s) in: Blowfly Creek (44.714, –114.236); Corral Creek (44.804, –114.223); Liam Creek (44.737, –114.294); Morgan Creek (44.802, –114.236); Van Horn Creek (44.761, –114.268); West Fork Morgan Creek (44.710, –114.335).

(xvii) South Fork Challis Creek Watershed 1706020133. Outlet(s) = South Fork Challis Creek (Lat 44.594, Long –114.314) upstream to endpoint(s) in: South Fork Challis Creek (44.631, –114.266); South Fork Watson Creek (44.654, –114.196); South Fork Challis Creek (44.672, –114.255); West Fork Challis Creek (44.691, –114.335).

(9) Pahsimeroi Subbasin 17060202—(i) Lower Pahsimeroi River Watershed 1706020201. Outlet(s) = Pahsimeroi River (Lat 44.692, Long –114.049) upstream to endpoint(s) in: Pahsimeroi River (44.559, –113.900); Patterson Creek (44.561, –113.897).

(ii) Patterson Creek Watershed 1706020202. Outlet(s) = Patterson Creek (Lat 44.534, Long –113.857) upstream to endpoint(s) in: Patterson Creek (44.566, –113.670).

(10) Middle Salmon-Panther Subbasin 17060203—(i) Salmon River/Colson Creek Watershed 1706020301. Outlet(s) = Salmon River (Lat 45.297, Long –114.591) upstream to endpoint(s) in: Colson Creek (45.307, –114.551); Owl Creek (45.340, –114.462); Salmon River (45.316, –114.405).

(ii) Owl Creek Watershed 1706020302. Outlet(s) = Owl Creek (Lat 45.340, Long –114.462) upstream to endpoint(s) in: East Fork Owl Creek (45.367, –114.430); Owl Creek (45.382, –114.469).

(iii) Salmon River/Pine Creek Watershed 1706020303. Outlet(s) = Salmon River (Lat 45.316, Long –114.405) upstream to endpoint(s) in: Boulder Creek (45.365, –114.207); Pine Creek (45.307, –114.186); Salmon River (45.399, –114.168); Spring Creek (45.421, –114.278); Squaw Creek (45.449, –114.215).

(iv) Indian Creek Watershed 1706020304. Outlet(s) = Indian Creek (Lat 45.400, Long –114.167) upstream to endpoint(s) in: Indian Creek (45.523, –114.151); McConn Creek (45.519, –114.183); West Fork Indian Creek (45.481, –114.168).

(v) Salmon River/Moose Creek Watershed 1706020305. Outlet(s) = Salmon River (Lat 45.399, Long –114.168) upstream to endpoint(s) in: Dump Creek (45.369, –114.035); Fourth of July Creek
(54.417, -113.857); Little Fourth of July Creek (54.396, -113.912); Moose Creek (54.346, -114.080); Salmon River (54.320, -113.909); Wagonhammer Creek (54.395, -113.945).

(vi) North Fork Salmon River Watershed 1706020306. Outlet(s) = North Fork Salmon River (Lat 45.405, Long -113.994) upstream to endpoint(s) in: Anderson Creek (45.577, -113.918); Dahomenga Creek (45.559, -113.845); Ditch Creek (45.534, -113.994); Hughes Creek (45.541, -114.069); Moose Creek (45.674, -113.951); Pierce Creek (45.640, -114.069); Sheep Creek (45.502, -113.889); Smithy Creek (45.575, -113.889); Threemile Creek (45.577, -113.866); Twin Creek (45.591, -114.081).

(vii) Salmon River/Tower Creek Watershed 1706020307. Outlet(s) = Salmon River (Lat 45.320, Long -113.909) upstream to endpoint(s) in: Salmon River (45.250, -113.899); Tower Creek (45.367, -113.857); Wallace Creek (45.2645, -113.9035).

(viii) Carmen Creek Watershed 1706020308. Outlet(s) = Carmen Creek (Lat 45.250, Long -113.899) upstream to endpoint(s) in: Carmen Creek (45.316, -113.800); Freeman Creek (45.289, -113.752).

(ix) Salmon River/Jesse Creek Watershed 1706020309. Outlet(s) = Salmon River (Lat 45.250, Long -113.899) upstream to endpoint(s) in: Salmon River (45.109, -113.901); Unnamed (45.180, -113.930).

(x) Salmon River/Williams Creek Watershed 1706020310. Outlet(s) = Salmon River (Lat 45.109, Long -113.901) upstream to endpoint(s) in: Salmon River (45.011, -113.932); Williams Creek (45.081, -113.935).

(xi) Salmon River/Twelvemile Creek Watershed 1706020311. Outlet(s) = Salmon River (Lat 45.011, Long -113.932) upstream to endpoint(s) in: Lake Creek (45.015, -113.959); Salmon River (44.896, -113.963); Twelvemile Creek (45.011, -113.927).

(xii) Salmon River/Cow Creek Watershed 1706020312. Outlet(s) = Salmon River (Lat 44.896, Long -113.963) upstream to endpoint(s) in: Cow Creek (44.730, -113.940); McKim Creek (44.810, -114.049); Poison Creek (44.876, -113.954); Salmon River (44.692, -114.049); Warm Spring Creek (44.913, -113.914).

(xiii) Hat Creek Watershed 1706020313. Outlet(s) = Hat Creek (Lat 44.795, Long -114.001) upstream to endpoint(s) in: Hat Creek (44.785, -114.040).

(xiv) Iron Creek Watershed 1706020314. Outlet(s) = Iron Creek (Lat 44.887, Long -113.968) upstream to endpoint(s) in: Iron Creek (44.921, -114.124).

(xv) Upper Panther Creek Watershed 1706020315. Outlet(s) = Panther Creek (Lat 45.022, Long -114.313) upstream to endpoint(s) in: Cabin Creek (44.957, -114.365); Opal Creek (44.901, -114.307); Panther Creek (44.867, -114.305); Porphyry Creek (45.034, -114.388).

(xvi) Moyer Creek Watershed 1706020316. Outlet(s) = Moyer Creek (Lat 45.024, Long -114.311) upstream to endpoint(s) in: Moyer Creek (44.949, -114.265); South Fork Moyer Creek (44.944, -114.305).

(xvii) Panther Creek/Woodtick Creek Watershed 1706020317. Outlet(s) = Panther Creek (Lat 45.079, Long -114.251) upstream to endpoint(s) in: Copper Creek (45.060, -114.258); Fawn Creek (45.073, -114.247); Musgrove Creek (45.064, -114.368); Panther Creek (45.022, -114.313); Woodtick Creek (45.008, -114.238).

(xviii) Deep Creek Watershed 1706020318. Outlet(s) = Deep Creek (Lat 45.126, Long -114.215) upstream to endpoint(s) in: Deep Creek (45.108, -114.179).

(xix) Panther Creek/Spring Creek Watershed 1706020319. Outlet(s) = Panther Creek (Lat 45.176, Long -114.314) upstream to endpoint(s) in: Little Deer Creek (45.156, -114.298); Panther Creek (45.079, -114.251); Spring Creek (45.088, -114.223).

(xx) Big Deer Creek Watershed 1706020320. Outlet(s) = Big Deer Creek (Lat 45.176, Long -114.314) upstream to endpoint(s) in: Big Deer Creek (45.1695, -114.3256).

(XX) Panther Creek/Trail Creek Watershed 1706020321. Outlet(s) = Panther Creek (Lat 45.316, Long -114.405) upstream to endpoint(s) in: Beaver Creek (45.2916, -114.2744); Garden Creek (45.2959, -114.4293); Trail Creek (45.2318, -114.2663); Panther Creek (45.176, -114.314).

(xxxi) Clear Creek Watershed 1706020322. Outlet(s) = Clear Creek (Lat 45.205, Long -114.351) upstream to endpoint(s) in: Clear Creek (45.210, -114.485).
(11) Lemhi Subbasin 17060204—(i) Lemhi River/Bohannon Creek Watershed 1706020401. Outlet(s) = Lemhi River (Lat 45.188, Long –113.889) upstream to endpoint(s) in: Bohannon Creek (45.189, –113.692); Lemhi River (45.096, –113.720).

(ii) Lemhi River/Whimpey Creek Watershed 1706020402. Outlet(s) = Lemhi River (Lat 45.098, Long –113.720) upstream to endpoint(s) in: Lemhi River (45.032, –113.662); Wimpey Creek (45.131, –113.678); Withington Creek (45.058, –113.750).

(iii) Lemhi River/Kenney Creek Watershed 1706020403. Outlet(s) = Lemhi River (Lat 44.940, Long –113.639) upstream to endpoint(s) in: Kenney Creek (44.987, –113.551); Lemhi River (44.870, –113.626).

(iv) Lemhi River/McDevitt Creek Watershed 1706020405. Outlet(s) = Lemhi River (Lat 44.870, Long –113.626) upstream to endpoint(s) in: Lemhi River (44.778, –113.535).

(v) Peterson Creek Watershed 1706020407. Outlet(s) = Lemhi River (Lat 44.778, Long –113.535) upstream to endpoint(s) in: Lemhi River (44.739, –113.459).

(vi) Big Eight Mile Creek Watershed 1706020408. Outlet(s) = Lemhi River (Lat 44.739, Long –113.459) upstream to endpoint(s) in: Lemhi River (44.682, –113.366).

(vii) Canyon Creek Watershed 1706020409. Outlet(s) = Lemhi River (Lat 44.682, Long –113.366) upstream to endpoint(s) in: Lemhi River (44.682, –113.355).

(ix) Texas Creek Watershed 1706020412. Outlet(s) = Texas Creek (Lat 44.682, Long –113.3545) upstream to endpoint(s) in: Purcell Creek (44.5726, –113.3459); Texas Creek (44.5348, –113.3018).

(x) Hayden Creek Watershed 1706020414. Outlet(s) = Hayden Creek (Lat 44.680, Long –113.628) upstream to endpoint(s) in: Bear Valley Creek (44.796, –113.790); East Fork Hayden Creek (44.708, –113.661); Hayden Creek (44.726, –113.769); Kadietz Creek (44.761, –113.767); West Fork Hayden Creek (44.706, –113.768); Wright Creek (44.739, –113.794).

(12) Upper Middle Fork Salmon Subbasin 17060205—(i) Lower Loon Creek Watershed 1706020501. Outlet(s) = Loon Creek (Lat 41.808, Long –114.811) upstream to endpoint(s) in: Cabin Creek (44.742, –114.708); Loon Creek (41.552, –114.849).

(ii) Warm Springs Watershed 1706020502. Outlet(s) = Warm Spring Creek (Lat 41.653, Long –114.736) upstream to endpoint(s) in: Trapper Creek (44.504, –114.617); Warm Spring Creek (44.609, –114.481).

(iii) Upper Loon Creek Watershed 1706020503. Outlet(s) = Loon Creek (Lat 44.552, Long –114.849) upstream to endpoint(s) in: Cottonwood Creek (44.593, –114.679); East Fork Mayfield Creek (44.494, –114.700); Loon Creek (44.469, –114.923); Pioneer Creek (44.466, –114.873); South Fork Cottonwood Creek (44.563, –114.780); Trail Creek (44.506, –114.959); West Fork Mayfield Creek (44.473, –114.730).

(iv) Middle Fork Salmon River/Soldier Creek Watershed 1706020507. Outlet(s) = Middle Fork Salmon River (Lat 44.680, Long –115.152) upstream to endpoint(s) in: Boundary Creek (44.507, –115.328); Dagger Creek (44.498, –115.307); Elkhorn Creek (44.582, –115.369); Greyhound Creek (44.626, –115.158); Middle Fork Salmon River (44.449, –115.230); Soldier Creek (44.528, –115.201).
Bear Valley Creek Watershed 1706020508. Outlet(s) = Bear Valley Creek (Lat 44.449, Long –115.230) upstream to endpoint(s) in: Ayers Creek (44.454, –115.330); Bear Valley Creek (44.236, –115.499); Bearskin Creek (44.331, –115.528); Cache Creek (44.286, –115.409); Cold Creek (44.371, –115.317); Cook Creek (44.389, –115.438); East Fork Elk Creek (44.481, –115.359); Fir Creek (44.354, –115.296); Little Beaver Creek (44.415, –115.504); Little East Fork Elk Creek (44.479, –115.407); Mace Creek (44.289, –115.507); North Creek Elk Creek (44.527, –115.458); Poker Creek (44.444, –115.345); Pole Creek (44.361, –115.366); Porter Creek (44.466, –115.529); Sack Creek (44.320, –115.351); Sheep Trail Creek (44.360, –115.451); West Fork Elk Creek (44.465, –115.499); Wyoming Creek (44.392, –115.335).

Sulphur Creek Watershed 1706020509. Outlet(s) = Sulphur Creek (Lat 44.555, Long –115.297) upstream to endpoint(s) in: Blue Moon Creek (44.572, –115.364); Full Moon Creek (44.553, –115.400); Honeymoon Creek (44.605, –115.399); North Fork Sulphur Creek (44.528, –115.467); Sulphur Creek (44.510, –115.518).

Pistol Creek Watershed 1706020510. Outlet(s) = Pistol Creek (Lat 44.724, Long –115.149) upstream to endpoint(s) in: Little Pistol Creek (44.721, –115.404); Luger Creek (44.636, –115.398); Pistol Creek (44.644, –115.442).

Indiana Creek Watershed 1706020511. Outlet(s) = Indiana Creek (Lat 44.770, Long –115.089) upstream to endpoint(s) in: Big Chief Creek (44.817, –115.388); Indiana Creek (44.803, –115.383); Little Indian Creek (44.878, –115.228).

Upper Marble Creek Watershed 1706020512. Outlet(s) = Marble Creek (Lat 44.797, Long –114.971) upstream to endpoint(s) in: Big Cottonwood Creek (44.879, –115.206); Canyon Creek (44.822, –114.943); Cornish Creek (44.933, –115.127); Dynamite Creek (44.871, –115.207); Marble Creek (44.983, –115.079); Trail Creek (44.917, –114.930).

Middle Fork Salmon River/Lower Marble Creek Watershed 1706020513. Outlet(s) = Middle Fork Salmon River (Lat 44.808, Long –114.811) upstream to endpoint(s) in: Marble Creek (44.797, –114.971); Middle Fork Salmon River (44.680, –115.152).

Lower Middle Fork Salmon Subbasin 1706020601. Outlet(s) = Middle Fork Salmon River (Lat 45.297, Long –114.591) upstream to endpoint(s) in: Middle Fork Salmon River (45.095, –114.732); Roaring Creek (45.186, –114.574); Stoddard Creek (45.244, –114.702).

Wilson Creek Watershed 1706020602. Outlet(s) = Wilson Creek (Lat 45.033, Long –114.723) upstream to endpoint(s) in: Wilson Creek (45.032, –114.699).

Middle Fork Salmon River/Brush Creek Watershed 1706020603. Outlet(s) = Middle Fork Salmon River (Lat 45.095, Long –114.732) upstream to endpoint(s) in: Brush Creek (44.955, –114.733); Middle Fork Salmon River (45.058, –114.747).

Yellow Jacket Creek Watershed 1706020604. Outlet(s) = Yellowjacket Creek (Lat 44.892, Long –114.644) upstream to endpoint(s) in: Beagle Creek (44.993, –114.466); Hoodoo Creek (44.993, –114.568); Lake Creek (44.967, –114.603); Little Jacket Creek (44.931, –114.505); Meadow Creek (44.984, –114.481); Shovel Creek (45.006, –114.463); Trail Creek (44.939, –114.461); Yellowjacket Creek (45.050, –114.480).

Silver Creek Watershed 1706020605. Outlet(s) = Silver Creek (Lat 44.830, Long –114.501) upstream to endpoint(s) in: Silver Creek (44.856, –114.458).

Upper Camas Creek Watershed 1706020606. Outlet(s) = Camas Creek (Lat 44.830, Long –114.501) upstream to endpoint(s) in: Castle Creek (44.825, –114.415); Fly Creek (44.703, –114.509); Furnace Creek (44.767, –114.421); J Fell Creek (44.669, –114.459); South Fork Camas Creek (44.731, –114.553); Spider Creek (44.688, –114.495); White Goat Creek (44.731, –114.460).

West Fork Camas Creek Watershed 1706020607. Outlet(s) = West Fork Camas Creek (Lat 44.831, Long –114.504) upstream to endpoint(s) in: Flume Creek (44.806, –114.526); Martindale Creek (44.822, –114.560); West Fork Camas Creek (44.795, –114.595).

Lower Camas Creek Watershed 1706020608. Outlet(s) = Camas Creek (Lat 44.892, Long –114.722) upstream to endpoint(s) in: Camas Creek (44.830, –114.501); Duck Creek (44.832, –114.521); Woodtick Creek (44.870, –114.636).

Middle Fork Salmon River/Sheep Creek Watershed 1706020609. Outlet(s) =
Middle Fork Salmon River (Lat 44.955, Long –114.733) upstream to endpoint(s) in: Middle Fork Salmon River (44.806, –114.811); Sheep Creek (44.923, –114.873).

(x) Rush Creek Watershed 1706020610. Outlet(s) = Rush Creek (Lat 45.105, Long –114.861) upstream to endpoint(s) in: Rush Creek (44.928, –114.892); South Fork Rush Creek (45.013, –114.972); Two Point Creek (45.027, –114.947).

(xi) Monumental Creek Watershed 1706020611. Outlet(s) = Monumental Creek (Lat 45.160, Long –115.129) upstream to endpoint(s) in: Monumental Creek (44.952, –115.179); Snowslide Creek (45.013, –115.266); West Fork Monumental Creek (45.011, –115.244).

(xii) Big Creek/Little Marble Creek Watershed 1706020612. Outlet(s) = Big Creek (Lat 45.163, Long –115.128) upstream to endpoint(s) in: Big Creek (45.153, –115.297); Little Marble Creek (45.062, –115.276).

(xiii) Upper Big Creek Watershed 1706020613. Outlet(s) = Big Creek (Lat 45.153, Long –115.297) upstream to endpoint(s) in: Big Creek (45.075, –115.342); Jacobs Ladder Creek (45.063, –115.322); Middle Fork Smith Creek (45.166, –115.311); Smith Creek (45.170, –115.390); Unnamed (45.129, –115.422).

(xiv) Beaver Creek Watershed 1706020614. Outlet(s) = Beaver Creek (Lat 45.163, Long –115.242) upstream to endpoint(s) in: Beaver Creek (45.242, –115.314); Coin Creek (45.218, –115.326); HCreek (45.206, –115.270).

(xv) Big Ramey Creek Watershed 1706020615. Outlet(s) = Big Ramey Creek (Lat 45.177, Long –115.159) upstream to endpoint(s) in: Big Ramey Creek (45.279, –115.243).

(xvi) Big Creek/Crooked Creek Watershed 1706020616. Outlet(s) = Big Creek (Lat 45.127, Long –114.935) upstream to endpoint(s) in: Big Creek (45.163, –115.128); Cave Creek (45.219, –114.916); Coxey Creek (45.181, –115.022); East Fork Crooked Creek (45.250, –114.975); Fawn Creek (45.125, –115.032); West Fork Crooked Creek (45.251, –115.117).

(xvii) Lower Big Creek Watershed 1706020617. Outlet(s) = Big Creek (Lat 45.095, Long –114.732) upstream to endpoint(s) in: Big Creek (45.127, –114.935); Cabin Creek (45.165, –114.837); Canyon Creek (45.087, –114.907); Cliff Creek (45.127, –114.857); Cougar Creek (45.138, –114.813); Pioneer Creek (45.066, –114.842).

(14) Middle Salmon-Chamberlain Subbasin 17060207—(i) Salmon River/Fall Creek Watershed 1706020701. Outlet(s) = Salmon River (Lat 45.426, Long –116.025) upstream to endpoint(s) in: Carey Creek (45.422, –115.934); Fall Creek (45.413, –115.975); Salmon River (45.455, –115.941).


(iii) Salmon River/California Creek Watershed 1706020703. Outlet(s) = Salmon River (Lat 45.455, Long –115.941) upstream to endpoint(s) in: Bear Creek (45.485, –115.832); Bull Creek (45.482, –115.716); California Creek (45.341, –115.850); Cottontail Creek (45.388, –115.752); Maxwell Creek (45.392, –115.841); Salmon River (45.434, –115.666).

(iv) Sheep Creek Watershed 1706020704. Outlet(s) = Sheep Creek (Lat 45.468, Long –115.810) upstream to endpoint(s) in: East Fork Sheep Creek (45.546, –115.769); Meadow Creek (45.544, –115.792); Plummer Creek (45.531, –115.807); Porcupine Creek (45.506, –115.817); Sheep Creek (45.591, –115.705).

(v) Crooked Creek Watershed 1706020705. Outlet(s) = Crooked Creek (Lat 45.434, Long –115.666) upstream to endpoint(s) in: Indian Creek (45.409, –115.608); Rabbit Creek (45.416, –115.667); Salmon River (45.378, –115.512).

(vi) Salmon River/Rabbit Creek Watershed 1706020706. Outlet(s) = Salmon River (Lat 45.434, Long –115.666) upstream to endpoint(s) in: Indian Creek (45.409, –115.608); Rabbit Creek (45.416, –115.667); Salmon River (45.378, –115.512).

(vii) Salmon River/Trout Creek Watershed 1706020708. Outlet(s) = Salmon River (Lat 45.378, Long –115.512) upstream to endpoint(s) in: Big Blowout Creek (45.468, –115.432); Big Elkhorn Creek (45.521, –115.331); Fivemile Creek (45.391, –115.452); Jersey Creek (45.494, –115.351); Little Fivemile Creek (45.415, –115.425); Little Mallard Creek (45.538, –115.317); Rhet Creek (45.483, –115.410); Richardson Creek (45.499, –115.265); Salmon River (45.567, –115.191); Trout Creek (45.396, –115.315).

(viii) Bargamin Creek Watershed 1706020709. Outlet(s) = Bargamin Creek (Lat 45.567, Long –115.191) upstream to
endpoint(s) in: Bargamin Creek (45.706, –115.046); Cache Creek (45.691, –115.180); Porcupine Creek (45.725, –115.128); Prospector Creek (45.688, –115.153); Rainey Creek (45.617, –115.210); Salt Creek (45.643, –115.189).

(ix) Salmon River/Rattlesnake Creek Watershed 1706020710. Outlet(s) = Salmon River (Lat 45.567, Long –115.191) upstream to endpoint(s) in: Rattlesnake Creek (45.560, –115.143); Salmon River (45.511, –115.041).

(xi) Salmon River/Hot Springs Creek Watershed 1706020712. Outlet(s) = Salmon River (Lat 45.511, Long –115.041) upstream to endpoint(s) in: Big Harrington Creek (45.498, –114.895); Hot Springs Creek (45.465, –115.135); Salmon River (45.454, –114.981).

(xii) Salmon River/Disappointment Creek Watershed 1706020713. Outlet(s) = Salmon River (Lat 45.454, Long –114.931) upstream to endpoint(s) in: Salmon River (45.395, –114.732).

(xiii) Horse Creek Watershed 1706020714. Outlet(s) = Horse Creek (Lat 45.395, Long –114.732) upstream to endpoint(s) in: Cort Creek (45.370, –114.681); Kitchen Creek (45.295, –114.732); Salmon River (45.297, –114.591).

(xiv) Salmon River/Kitchen Creek Watershed 1706020715. Outlet(s) = Salmon River (Lat 45.395, Long –114.732) upstream to endpoint(s) in: Corn Creek (45.370, –114.681); Kitchen Creek (45.295, –114.732); Salmon River (45.297, –114.591).

(xv) Cottonwood Creek Watershed 1706020716. Outlet(s) = Cottonwood Creek (Lat 45.394, Long –114.802) upstream to endpoint(s) in: Cottonwood Creek (45.354, –114.823).

(xvi) Lower Chamberlain/McCalla Creek Watershed 1706020717. Outlet(s) = Chamberlain Creek (Lat 45.454, Long –114.931) upstream to endpoint(s) in: McCalla Creek (45.321, –115.115); Unnamed Creek (45.433, –114.985); Whitstick Creek (45.241, –115.053).

(xvii) Upper Chamberlain Creek Watershed 1706020718. Outlet(s) = Chamberlain Creek (Lat 45.414, Long –114.981) upstream to endpoint(s) in: Flossie Creek (45.384, –115.248); Lodgepole Creek (45.305, –115.254); Moose Creek (45.283, –115.292); South Fork Chamberlain Creek (45.288, –115.342).

(xviii) Warren Creek Watershed 1706020719. Outlet(s) = Warren Creek (Lat 45.397, Long –115.592) upstream to endpoint(s) in: Richardson Creek (45.372, –115.625); Slaughter Creek (45.269, –115.648); Steamboat Creek (45.259, –115.722); Warren Creek (45.248, –115.653).

(15) South Fork Salmon Subbasin 17060208—(i) Lower South Fork Salmon River Watershed 1706020801. Outlet(s) = South Fork Salmon River (Lat 45.378, Long –115.512) upstream to endpoint(s) in: Big Buck Creek (45.253, –115.554); Pony Creek (45.209, –115.663); Porphyry Creek (45.255, –115.462); Smith Creek (45.265, –115.550); South Fork Salmon River (45.156, –115.585).

(ii) South Fork Salmon River/Sheep Creek Watershed 1706020802. Outlet(s) = South Fork Salmon River (Lat 45.156, Long –115.585) upstream to endpoint(s) in: Bear Creek (45.124, –115.643); Contux Creek (45.155, –115.620); Deer Creek (45.162, –115.006); Elk Creek (45.149, –115.506); Sheep Creek (45.039, –115.583); South Fork Salmon River (45.025, –115.706).

(iii) Lower East Fork South Fork Salmon River Watershed 1706020803. Outlet(s) = East Fork South Salmon River (Lat 45.015, Long –115.713) upstream to endpoint(s) in: Caton Creek (44.900, –115.584); East Fork South Fork Salmon River (44.963, –115.501); Loosum Creek (44.918, –115.529); Parks Creek (44.969, –115.513).

(iv) Upper East Fork South Fork Salmon River Watershed 1706020804. Outlet(s) = East Fork South Fork Salmon River (Lat 44.963, Long –115.501) upstream to endpoint(s) in: East Fork South Fork Salmon River (44.934, –115.336); Profile Creek (45.035, –115.409); Quartz Creek (45.046, –115.496); Salt Creek (44.962, –115.329); Sugar Creek (44.975, –115.245); Tamarack Creek (44.995, –115.318).

(v) Lower Johnson Creek Watershed 1706020805. Outlet(s) = Johnson Creek (Lat 44.963, Long –115.501) upstream to endpoint(s) in: Johnson Creek (44.803, –115.518); Riordan Creek (44.808, –115.472); Trapper Creek (44.829, –115.508).
(vi) Burntlog Creek Watershed 1706020806. Outlet(s) = Burntlog Creek (Lat 44.803, Long –115.518) upstream to endpoint(s) in: Burntlog Creek (44.718, –115.419).

(vii) Upper Johnson Creek Watershed 1706020807. Outlet(s) = Johnson Creek (Lat 44.803, Long –115.518) upstream to endpoint(s) in: Boulder Creek (44.565, –115.595); Johnson Creek (44.550, –115.590); Landmark Creek (44.630, –115.574); Rock Creek (44.600, –115.592); SCreek (44.669, –115.413); Whiskey Creek (44.563, –115.486).

(viii) Upper South Fork Salmon River Watershed 1706020808. Outlet(s) = South Fork Salmon River (Lat 44.652, Long –115.703) upstream to endpoint(s) in: Bear Creek (44.607, –115.600); Camp Creek (44.605, –115.633); Curtis Creek (44.593, –115.752); Lodgepole Creek (44.576, –115.610); Mormon Creek (44.499, –115.654); Rice Creek (44.510, –115.644); South Fork Salmon River (44.480, –115.688); Tyndall Creek (44.568, –115.736).

(ix) South Fork Salmon River/Cabin Creek Watershed 1706020809. Outlet(s) = South Fork Salmon River (Lat 44.759, Long –115.684) upstream to endpoint(s) in: Cabin Creek (44.713, –115.638); Dollar Creek (44.758, –115.751); North Fork Dollar Creek (44.755, –115.745); Six-Bit Creek (44.684, –115.724); South Fork Salmon River (44.652, –115.703); Two-bit Creek (44.655, –115.747); Warm Lake Creek (44.653, –115.662).

(x) South Fork Salmon River/Blackmare Creek Watershed 1706020810. Outlet(s) = South Fork Salmon River (Lat 44.898, Long –115.715) upstream to endpoint(s) in: Blackmare Creek (44.809, –115.795); Camp Creek (44.889, –115.691); Cougar Creek (44.823, –115.804); Phoebe Creek (44.910, –115.765); South Fork Salmon River (44.759, –115.684).

(xi) [Reserved]

(xii) Buckhorn Creek Watershed 1706020811. Outlet(s) = Buckhorn Creek (Lat 44.922, Long –115.736) upstream to endpoint(s) in: Buckhorn Creek (44.881, –115.856); Little Buckhorn Creek (44.902, –115.756); West Fork Buckhorn Creek (44.909, –115.832).

(xiii) South Fork Salmon River/Fitsum Creek Watershed 1706020812. Outlet(s) = South Fork Salmon River (Lat 45.025, Long –115.706) upstream to endpoint(s) in: Fitsum Creek (44.996, –115.784); North Fork Fitsum Creek (44.992, –115.870); South Fork Fitsum Creek (44.981, –115.768); South Fork Salmon River (44.898, –115.715).

(xiv) Lower Secesh River Watershed 1706020813. Outlet(s) = Secesh River (Lat 45.025, Long –115.706) upstream to endpoint(s) in: Cly Creek (45.091, –115.911); Hum Creek (45.070, –115.903); Lick Creek (45.049, –115.906); Secesh River (45.183, –115.821); Split Creek (45.109, –115.805); Zena Creek (45.057, –115.732).

(xv) Middle Secesh River Watershed 1706020814. Outlet(s) = Secesh River (Lat 45.025, Long –115.895) upstream to endpoint(s) in: Grouse Creek (45.289, –115.835); Secesh River (45.257, –115.895); Victor Creek (45.186, –115.831).

(xvi) Upper Secesh River Watershed 1706020815. Outlet(s) = Secesh River (Lat 45.257, Long –115.895) upstream to endpoint(s) in: Lake Creek (45.374, –115.867); Threemile Creek (45.334, –115.891).

(16) Lower Salmon Subbasin 17060209—(i) Salmon River/China Creek Watershed 1706020901. Outlet(s) = Salmon River (Lat 45.857, Long –116.794) upstream to endpoint(s) in: China Creek (46.017, –116.817); Flynn Creek (45.911, –116.714); Salmon River (45.999, –116.695); Wapshilla Creek (45.945, –116.766).

(ii) Eagle Creek Watershed 1706020902. Outlet(s) = Eagle Creek (Lat 45.997, Long –116.760) upstream to endpoint(s) in: Eagle Creek (46.057, –116.814).

(iii) Deer Creek Watershed 1706020903. Outlet(s) = Deer Creek (Lat 45.999, Long –116.695) upstream to endpoint(s) in: Deer Creek (46.051, –116.702).

(iv) Salmon River/Cottonwood Creek Watershed 1706020904. Outlet(s) = Salmon River (Lat 45.999, Long –116.695) upstream to endpoint(s) in: Cottonwood Creek (45.990, –116.643); Cottonwood Creek (45.932, –116.598); Maloney Creek (46.068, –116.625); Salmon River (46.038, –116.625); West Fork Maloney Creek (46.061, –116.632).

(v) Salmon River/Deep Creek Watershed 1706020905. Outlet(s) = Salmon River (Lat 46.038, Long –116.625) upstream to endpoint(s) in: Burnt Creek (45.966, –116.548); Deep Creek (46.005, –116.547); Round Spring Creek (45.972, –116.501); Salmon River (45.911, –116.410); Telcher Creek (45.978, –116.443).
(vi) Rock Creek Watershed 1706020906. Outlet(s) = Rock Creek (Lat 45.905, Long –116.396) upstream to endpoint(s) in: Grave Creek (45.978, –116.359); Johns Creek (45.930, –116.245); Rock Creek (45.919, –116.245).

(vii) Salmon River/Hammer Creek Watershed 1706020907. Outlet(s) = Salmon River (Lat 45.911, Long –116.410) upstream to endpoint(s) in: Salmon River (45.752, –116.322).

(viii) White Bird Creek Watershed 1706020908. Outlet(s) = White Bird Creek (Lat 45.752, Long –116.322) upstream to endpoint(s) in: Asbestos Creek (45.722, –116.050); Cabin Creek (45.842, –116.110); Chapmam Creek (45.841, –116.216); Cold Springs Creek (45.716, –116.037); Fish Creek (45.865, –116.084); Jungle Creek (45.739, –116.096); Little White Bird Creek (45.740, –116.067); North Fork White Bird Creek (45.797, –116.089); Pinnacle Creek (45.779, –116.086); South Fork White Bird Creek (45.772, –116.028); Twin Cabins Creek (45.782, –116.048); Unnamed (45.809, –116.086); Unnamed (45.841, –116.114); Unnamed (45.858, –116.105).

(ix) Salmon River/McKinzie Creek Watershed 1706020909. Outlet(s) = Salmon River (Lat 45.911, Long –116.410) upstream to endpoint(s) in: Deer Creek (45.706, –116.332); McKinzie Creek (45.676, –116.260); Salmon River (45.640, –116.252); Sotin Creek (45.725, –116.341).

(x) Skookumchuck Creek Watershed 1706020910. Outlet(s) = Skookumchuck Creek (Lat 45.700, Long –116.317) upstream to endpoint(s) in: North Fork Skookumchuck Creek (45.728, –116.114); South Fork Skookumchuck Creek (45.711, –116.197).

(xi) Slate Creek Watershed 1706020911. Outlet(s) = Slate Creek (Lat 45.640, Long –116.284) upstream to endpoint(s) in: Deadhorse Creek (45.603, –116.093); Little Slate Creek (45.587, –116.075); North Fork Slate Creek (45.671, –116.095); Slate Creek (45.634, –116.000); Slide Creek (45.662, –116.146); Unnamed (45.589, –116.106); Waterspout Creek (45.631, –116.115).

(xii) Salmon River/John Day Creek Watershed 1706020912. Outlet(s) = Salmon River (Lat 45.640, Long –116.284) upstream to endpoint(s) in: China Creek (45.547, –116.310); Cow Creek (45.539, –116.330); East Fork John Day Creek (45.575, –116.221); Fiddle Creek (45.496, –116.269); John Day Creek (45.564, –116.220); Race Creek (45.437, –116.316); South Fork Race Creek (45.440, –116.403); West Fork Race Creek (45.464, –116.352).

(xiii) Salmon River/Lake Creek Watershed 1706020913. Outlet(s) = Salmon River (Lat 45.417, Long –116.317) upstream to endpoint(s) in: Allison Creek (45.507, –116.156); Berg Creek (45.426, –116.244); Lake Creek (45.294, –116.219); Salmon River (45.418, –116.162); West Fork Allison Creek (45.457, –116.184); West Fork Lake Creek (45.370, –116.241).

(xiv) Salmon River/Van Creek Watershed 1706020914. Outlet(s) = Salmon River (Lat 45.418, Long –116.162) upstream to endpoint(s) in: Robbins Creek (45.430, –116.026); Salmon River (45.426, –116.025); Van Creek (45.431, –116.138).

(xv) French Creek Watershed 1706020915. Outlet(s) = French Creek (Lat 45.425, Long –116.030) upstream to endpoint(s) in: French Creek (45.375, –116.040).

(xvi) Partridge Creek Watershed 1706020916. Outlet(s) = Elkhorn Creek (Lat 45.404, Long –116.091); Partridge Creek (45.408, –116.126) upstream to endpoint(s) in: Elkhorn Creek (45.369, –116.092); Partridge Creek (45.369, –116.146).

(17) Little Salmon Subbasin 17060210—(i) Lower Little Salmon River Watershed 1706021001. Outlet(s) = Little Salmon River (Lat 45.417, Long –116.317) upstream to endpoint(s) in: Deadhorse Creek (45.603, –116.093); Little Salmon River (45.700, Long –116.317); Little Salmon River (45.424, –116.4220); Papoose Creek (45.478, –116.3920); Rattlesnake Creek (45.268, –116.339); Sheep Creek (45.344, –116.336); South Fork Squaw Creek (45.409, –116.435).

(ii) Little Salmon River/Hard Creek Watershed 1706021002. Outlet(s) = Little Salmon River (Lat 45.294, Long –116.310) upstream to endpoint(s) in: Bascum Canyon (45.145, –116.248); Hard Creek (45.125, –116.239); Little Salmon River (45.123, –116.298); Trail Creek (45.164, –116.338).

(iii) Hazard Creek Watershed 1706021003. Outlet(s) = Hazard Creek (Lat 45.183, Long –116.283) upstream to
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endpoint(s) in: Hazard Creek (45.201, –116.248).

(iv) Boulder Creek Watershed
1706021006. Outlet(s) = Boulder Creek (Lat 45.204, Long –116.310) upstream to endpoint(s) in: Ant Basin Creek (45.128, –116.547); Boulder Creek (45.103, –116.479); Bull Horn Creek (45.159, –116.407); Pollock Creek (45.168, –116.395); Pony Creek (45.190, –116.374); Squirrel Creek (45.198, –116.368); Star Creek (45.152, –116.418); Unnamed (45.095, –116.461); Unnamed (45.116, –116.455); Yellow Jacket Creek (45.141, –116.426).

(v) Rapid River Watershed 1706021007. Outlet(s) = Rapid River (Lat 45.375, Long –116.355) upstream to endpoint(s) in: Granite Fork Lake Fork Rapid River (45.379, –116.528); Paradise Creek (45.223, –116.550); Rapid River (45.157, –116.489); Shingle Creek (45.369, –116.409); West Fork Rapid River (45.306, –116.425).

(18) Upper Selway Subbasin 17060301—
(i) Selway River/Pettibone Creek Watershed 1706030101. Outlet(s) = Selway River (Lat 46.122, Long –114.935) upstream to endpoint(s) in: Ditch Creek (46.022, –114.900); Elk Creek (45.987, –114.872); Pettibone Creek (45.105, –114.745); Selway River (45.962, –114.928).

(ii) Bear Creek Watershed 1706030102. Outlet(s) = Bear Creek (Lat 46.019, Long –114.844) upstream to endpoint(s) in: Bear Creek (46.104, –114.588); Brushy Fork Creek (45.978, –114.602); Cub Creek (46.021, –114.602); Granite Creek (45.102, –114.619); Paradise Creek (46.036, –114.710); Wahoo Creek (46.104, –114.633).

(iii) Selway River/Gardner Creek Watershed 1706030103. Outlet(s) = Selway River (Lat 45.962, Long –114.828) upstream to endpoint(s) in: Bad Luck Creek (45.899, –114.752); Crooked Creek (45.865, –114.764); Gardner Creek (45.937, –114.772); Magruder Creek (45.702, –114.795); North Star Creek (45.950, –114.806); Selway River (45.707, –114.719); Sheep Creek (45.821, –114.741); Snake Creek (45.855, –114.728).

(iv) White Cap Creek Watershed 1706030104. Outlet(s) = White Cap Creek (Lat 45.860, Long –114.744) upstream to endpoint(s) in: Barefoot Creek (45.886, –114.639); Canyon Creek (45.878, –114.422); Cedar Creek (45.896, –114.668); Copper Creek (45.861, –114.557); Elk Creek (45.928, –114.574); Fox Creek (45.888, –114.597); Granite Creek (45.931, –114.506); Lookout Creek (45.599, –114.625); Paloma Creek (45.918, –114.592); Peach Creek (45.868, –114.607); South Fork Lookout Creek (45.929, –114.649); Unnamed (45.855, –114.557); White Cap Creek (45.947, –114.534).

(v) Indian Creek Watershed 1706030105. Outlet(s) = Indian Creek (Lat 45.792, Long –114.764) upstream to endpoint(s) in: Indian Creek (45.786, –114.581); Jack Creek (45.789, –114.681); Saddle Gulch (45.766, –114.641); Schofield Creek (45.818, –114.586).

(vi) Upper Selway River Watershed 1706030106. Outlet(s) = Selway River (Lat 45.707, Long –114.719) upstream to endpoint(s) in: Cayuse Creek (45.752, –114.572); Deep Creek (45.703, –114.517); French Creek (45.609, –114.561); Gabe Creek (45.714, –114.666); Hells Half Acre Creek (45.689, –114.708); Lazy Creek (45.670, –114.553); Line Creek (45.590, –114.585); Mist Creek (45.561, –114.629); Pete Creek (45.720, –114.557); Selway River (45.502, –114.702); Slow Gulch Creek (45.678, –114.520); Storm Creek (45.641, –114.596); Surprise Creek (45.533, –114.672); Swet Creek (45.516, –114.804); Three Lakes Creek (45.620, –114.803); Unnamed (45.569, –114.642); Vance Creek (45.661, –114.594); Wilkerson Creek (45.561, –114.604).

(vii) Little Clearwater River Watershed 1706030107. Outlet(s) = Little Clearwater River (Lat 45.754, Long –114.775) upstream to endpoint(s) in: Burnt Knob Creek (45.697, –114.950); F Creek (45.644, –114.847); Little Clearwater River (45.740, –114.949); Lonely Creek (45.727, –114.865); Salamander Creek (45.655, –114.883); Short Creek (45.759, –114.859); Throng Creek (45.736, –114.904).

(viii) Running Creek Watershed 1706030108. Outlet(s) = Running Creek (Lat 45.919, Long –114.832) upstream to endpoint(s) in: Eagle Creek (45.844, –114.886); Lynx Creek (45.794, –114.993); Running Creek (45.910, –115.027); South Fork Running Creek (45.820, –115.024).

(ix) Goat Creek Watershed 1706030109. Outlet(s) = Goat Creek (Lat 45.962, Long –114.828) upstream to endpoint(s) in: Goat Creek (45.940, –115.038).

(19) Lower Selway Subbasin 17060302—(i) Selway River/Goddard Creek Watershed 1706030201. Outlet(s) = Selway River (Lat 46.140, Long –115.599) upstream to endpoint(s) in: Boyd Creek
(46.092, –115.431); Glover Creek (46.082, –115.361); Goddard Creek (46.059, –115.610); Johnson Creek (46.139, –115.514); Rackliff Creek (46.110, –115.494); Selway River (46.046, –115.295).

(ii) Gedney Creek Watershed 1706030202. Outlet(s) = Gedney Creek (Lat 46.056, Long –115.313) upstream to endpoint(s) in: Gedney Creek (46.111, –115.268).

(iii) Selway River/Three Links Creek Watershed 1706030203. Outlet(s) = Selway River (Lat 46.046, Long –115.295) upstream to endpoint(s) in: Mink Creek (46.041, –115.087); Otter Creek (46.042, –115.216); Pinchot Creek (46.120, –115.108); Selway River (46.098, –115.071); Three Links Creek (46.143, –115.093).

(iv) Upper Three Links Creek Watershed 1706030204. Outlet(s) = Three Links Creek (Lat 46.143, Long –115.093) upstream to endpoint(s) in: Three Links Creek (46.155, –115.100).

(v) Rhoda Creek Watershed 1706030205. Outlet(s) = Rhoda Creek (Lat 46.234, Long –114.960) upstream to endpoint(s) in: North Fork Moose Creek (46.305, –114.853); West Moose Creek (46.322, –114.970).

(vi) North Fork Moose Creek Watershed 1706030207. Outlet(s) = North Fork Moose Creek (Lat 46.165, Long –114.897) upstream to endpoint(s) in: North Fork Moose Creek (46.305, –114.853); West Moose Creek (46.322, –114.970).

(vii) East Fork Moose Creek/Trout Creek Watershed 1706030208. Outlet(s) = Selway River (Lat 46.098, Long –115.071) upstream to endpoint(s) in: Lizard Creek (46.220, –115.136); Otter Creek (46.042, –115.216); Pinchot Creek (46.120, –115.108); Selway River (46.098, –115.071); Three Links Creek (46.143, –115.093).

(viii) Upper East Fork Moose Creek Watershed 1706030209. Outlet(s) = East Fork Moose Creek (Lat 46.204, –114.722) upstream to endpoint(s) in: Cedar Creek (46.291, –114.708); East Fork Moose Creek (46.230, –114.837); East Fork Trout Creek (46.204, –114.722); Elbow Creek (46.200, –114.716); Fitting Creek (46.231, –114.861); Maple Creek (46.218, –114.783); Monument Creek (46.180, –114.728); Selway River (46.122, –114.935); Trout Creek (46.141, –114.861).

(ix) Upper Meadow Creek Watershed 1706030210. Outlet(s) = Marten Creek (Lat 46.099, Long –115.052) upstream to endpoint(s) in: Marten Creek (45.988, –115.029).

(x) Upper Meadow Creek Watershed 1706030211. Outlet(s) = Meadow Creek (Lat 45.88043738, Long –115.1034371) upstream to endpoint(s) in: Butter Creek (45.804, –115.149); Meadow Creek (45.698, –115.217); Three Prong Creek (45.790, –115.062).

(xi) Middle Meadow Creek Watershed 1706030212. Outlet(s) = Meadow Creek (Lat 45.80157325, Long –115.2170401) upstream to endpoint(s) in: East Fork Meadow Creek (45.888, –115.067); Meadow Creek (45.880, –115.103); Sable Creek (45.853, –115.219); Schwar Creek (45.905, –115.108); Simmons Creek (45.856, –115.247).

(xii) Upper East Fork Meadow Creek Watershed 1706030308. Outlet(s) = East Fork Meadow Creek (Lat 45.991, –115.084) upstream to endpoint(s) in: Double Creek (46.230, –114.837); East Fork Moose Creek (46.305, –114.853); West Moose Creek (46.322, –114.970).

(xiii) O’Hara Creek Watershed 1706030304. Outlet(s) = East Fork O’Hara Creek (45.995, –115.521) upstream to endpoint(s) in: East Fork O’Hara Creek (45.995, –115.543); West Fork O’Hara Creek (45.995, –115.543).

(xiv) Lower Lochsa River Watershed 1706030305. Outlet(s) = Lochsa River (Lat 46.08603027, Long –115.5170987) upstream to endpoint(s) in: Canyon Creek (46.227, –115.580); Coolwater Creek (46.215, –115.464); Deadman Creek (46.262, –115.517); East Fork Deadman Creek (46.275, –115.505); Fire Creek (46.203, –115.411); Kerr Creek (46.102, –115.579); Lochsa River (46.338, –115.314); Nut Creek (46.180, –115.601); Pete King Creek (46.182, –115.671); Placer Creek (46.196, –115.631); South Fork Canyon Creek (46.211, –115.556); Split Creek (46.207, –115.364); Walde Creek (46.193, –115.662).

(xv) Lower Lochsa River Watershed 1706030306. Outlet(s) = Fish Creek (Lat 46.33337703, Long –115.3449332) upstream to endpoint(s) in: Alder Creek (46.319, –115.460); Ceanothus Creek (46.341, –115.470); Fish Creek (46.341, –115.575); Frenchman Creek (46.330, –115.544); Gass Creek (46.390, –115.511); Ham Creek (46.381, –115.365); Hungery Creek (46.377, –115.542); Myrtle Creek (46.343, –115.569); Poker Creek (46.346, –115.447); Willow Creek (46.396, –115.369).

(xvi) Lochsa River/Stanley Creek Watershed 1706030307. Outlet(s) = Lochsa River (Lat 46.33315653, Long
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(ix) Storm Creek Watershed 1706030309. Outlet(s) = Storm Creek (Lat 46.46307502, Long –114.5482819) upstream to endpoint(s) in: Maud Creek (46.495, –114.511); Storm Creek (46.540, –114.424).

(x) Upper White Sands Creek Watershed 1706030310. Outlet(s) = White Sands Creek (Lat 46.4330966, Long –114.5395027) upstream to endpoint(s) in: Big FCreek (46.401, –114.475); Big SCreek (46.407, –114.534); Colt Creek (46.403, –114.726); White Sands Creek (46.422, –114.462).

(xi) Warm Springs Creek Watershed 1706030311. Outlet(s) = Warm Springs Creek (Lat 46.4733796, Long –114.8972254) upstream to endpoint(s) in: Cooperation Creek (46.453, –114.866); Warm Springs Creek (46.426, –114.868).

(xii) Fish Lake Creek Watershed 1706030312. Outlet(s) = Fish Lake Creek (Lat 46.46336343, Long –114.9957028) upstream to endpoint(s) in: Fish Lake Creek (46.405, –115.000); Heslip Creek (46.393, –115.027); Sponge Creek (46.384, –115.048).

(xiii) Boulder Creek Watershed 1706030313. Outlet(s) = Boulder Creek (Lat 46.33815653, Long –115.3141495) upstream to endpoint(s) in: Boulder Creek (46.320, –115.199).

(xiv) Old Man Creek Watershed 1706030314. Outlet(s) = Old Man Creek (Lat 46.2524595, Long –115.3988563) upstream to endpoint(s) in: Old Man Creek (46.256, –115.343).

(21) Middle Fork Clearwater Subbasin 1706030304—(i) Middle Fork Clearwater River/Maggie Creek Watershed 1706030401. Outlet(s) = Middle Fork Clearwater River (Lat 46.1459, Long –115.9797) upstream to endpoint(s) in: Maggie Creek (46.195, –115.801); Middle Fork Clearwater River (46.140, –115.599).

(ii) Clear Creek Watershed 1706030402. Outlet(s) = Clear Creek (Lat 46.1349, Long –115.9515) upstream to endpoint(s) in: Browns Spring Creek (46.067, –115.658); Clear Creek (46.056, –115.659); Kay Creek (46.005, –115.725); Middle Fork Clear Creek (46.030, –115.738); Pine Knob Creek (46.093, –115.702); South Fork Clear Creek (45.941, –115.769); West Fork Clear Creek (46.013, –115.621).

(22) South Fork Clearwater Subbasin 1706030305—(i) Lower South Fork Clearwater River Watershed 1706030501. Outlet(s) = South Fork Clearwater River (Lat 46.1459, Long –115.9797) upstream to endpoint(s) in: Butcher Creek (45.945,
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-116.064); Castle Creek (45.834, –115.966); Earthquake Creek (45.853, –116.005); Green Creek (45.957, –115.937); Lightning Creek (45.936, –115.946); Mill Creek (45.934, –116.010); Rabbit Creek (46.028, –115.877); Sally Ann Creek (46.019, –115.893); Schwartz Creek (45.914, –116.000); South Fork Clearwater River (45.830, –115.931); Wall Creek (45.996, –115.926).

(ii) South Fork Clearwater River/Meadow Creek Watershed 1706030502. Outlet(s) = South Fork Clearwater River (Lat 45.8299, Long –115.9312) upstream to endpoint(s) in: Covert Creek (45.890, –115.933); North Meadow Creek (45.923, –115.890); South Fork Clearwater River (45.824, –115.889); Storm Creek (45.952, –115.848); Whitman Creek (45.914, –115.919).

(iii) South Fork Clearwater River/Peasley Creek Watershed 1706030503. Outlet(s) = South Fork Clearwater River (Lat 45.8239, Long –115.8892) upstream to endpoint(s) in: South Fork Clearwater River (45.795, –115.763).

(iv) South Fork Clearwater River/Leggett Creek Watershed 1706030504. Outlet(s) = South Fork Clearwater River (Lat 45.7952, Long –115.7628) upstream to endpoint(s) in: Allison Creek (45.832, –115.588); Buckhorn Creek (45.807, –115.658); Fall Creek (45.833, –115.696); Leggett Creek (45.862, –115.685); Maurice Creek (45.856, –115.514); Moose Creek (45.835, –115.578); Rabbit Creek (45.822, –115.603); Santiam Creek (45.811, –115.624); South Fork Clearwater River (45.808, –115.474); Twentymile Creek (45.791, –115.765); Whiskey Creek (45.869, –115.544).

(v) Newsome Creek Watershed 1706030505. Outlet(s) = Newsome Creek (Lat 45.8284, Long –115.6147) upstream to endpoint(s) in: Baldy Creek (45.944, –115.681); Bear Creek (45.887, –115.580); Beaver Creek (45.943, –115.568); Haysfork Creek (45.953, –115.678); Mule Creek (45.983, –115.606); Newsome Creek (45.972, –115.654); Nugget Creek (45.897, –115.600); Pile Creek (45.939, –115.716); Sawmill Creek (45.904, –115.701); Sing Lee Creek (45.898, –115.677); West Fork Newsome Creek (45.880, –115.661).

(vi) American River Watershed 1706030506. Outlet(s) = American River (Lat 45.8062, Long –115.4740) upstream to endpoint(s) in: American River (45.996, –115.445); Big Elk Creek (45.902, –115.513); Box Sing Creek (45.850, –115.386); Buffalo Gulch (45.873, –115.522); East Fork American River (45.905, –115.381); Flint Creek (45.913, –115.423); Kirks Fork American River (45.842, –115.385); Lick Creek (45.945, –115.477); Little Elk Creek (45.894, –115.476); Monroe Creek (45.871, –115.495); Unnamed (45.884, –115.510); West Fork American River (45.994, –115.510); West Fork Big Elk Creek (45.883, –115.515).

(vii) Red River Watershed 1706030507. Outlet(s) = Red River (Lat 45.8082, Long –115.4740) upstream to endpoint(s) in: Bridge Creek (45.814, –115.163); Campbell Creek (45.792, –115.486); Dawson Creek (45.728, –115.393); Deadwood Creek (45.794, –115.471); Ditch Creek (45.794, –115.293); Jungle Creek (45.710, –115.286); Little Campbell Creek (45.801, –115.478); Little Moose Creek (45.710, –115.399); Moose Butte Creek (45.695, –115.365); Otterson Creek (45.803, –115.222); Red Horse Creek (45.822, –115.355); Red River (45.788, –115.174); Siegel Creek (45.800, –115.323); Soda Creek (45.741, –115.257); South Fork Red River (45.646, –115.407); Trail Creek (45.784, –115.265); Trapper Creek (45.672, –115.311); Unnamed (45.788, –115.199); West Fork Red River (45.662, –115.447).

(viii) Crooked River Watershed 1706030508. Outlet(s) = Crooked River (Lat 45.8241, Long –115.5291) upstream to endpoint(s) in: American Creek (45.719, –115.9679); East Fork Crooked River (45.655, –115.562); East Fork Relief Creek (45.763, –115.4511); Fifemile Creek (45.721, –115.568); Quartz Creek (45.702, –115.536); Relief Creek (45.712, –115.472); Silver Creek (45.713, –115.535); Trout Creek (45.6876, –115.9463); West Fork Crooked River (45.666, –115.596).

(ix) Ten Mile Creek Watershed 1706030509. Outlet(s) = Tenmile Creek (Lat 45.8064, Long –115.6833) upstream to endpoint(s) in: Mackey Creek (45.754, –115.683); Morgan Creek (45.731, –115.672); Sixmile Creek (45.762, –115.641); Tenmile Creek (45.694, –115.694); Williams Creek (45.703, –115.636).

(x) John’s Creek Watershed 1706030510. Outlet(s) = Johns Creek (Lat 45.8239, Long –115.8892) upstream to endpoint(s) in: American Creek (45.750, –115.961); Frank Brown Creek (45.708, –115.765); Gospel Creek (45.637, –115.915); Johns Creek (45.665, –115.827); Trout Creek
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(23) Clearwater Subbasin 17060305—(i) Lower Clearwater River Watershed 1706030601. Outlet(s) = Clearwater River (Lat 46.4741, Long –116.7652) upstream to endpoint(s) in: Catholic Creek (46.516, –116.590); Louse Creek (46.5380, –116.4411); Pine Creek (46.579, –116.615).

(ii) Potlatch River/Middle Potlatch Creek Watershed 1706030603. Outlet(s) = Potlatch River (Lat 46.5231, Long –116.7284) upstream to endpoint(s) in: Middle Potlatch Creek (46.669, –116.796); Potlatch River (46.583, –116.700).

(iv) Upper Big Bear Creek Watershed 1706030605. Outlet(s) = Big Bear Creek (Lat 46.7145, Long –116.6632) upstream to endpoint(s) in: Big Bear Creek (46.7145, –116.6632); Little Bear Creek (46.7360, –116.7010); West Fork Little Bear Creek (46.7413, –116.7789).

(v) Potlatch River/Pine Creek Watershed 1706030607. Outlet(s) = Potlatch River (Lat 46.5830, Long –116.6998) upstream to endpoint(s) in: Boulder Creek (46.711, –116.450); Leopold Creek (46.647, –116.4407); Pine Creek (46.706, –116.554); Potlatch River (46.699, –116.594).

(vi) Upper Potlatch River Watershed 1706030607. Outlet(s) = Potlatch River (Lat 46.6987, Long –116.5036) upstream to endpoint(s) in: Corral Creek (46.8012, –116.4746); East Fork Potlatch River (46.876, –116.247); Feather Creek (46.938, –116.411); Head Creek (46.942, –116.366); Little Boulder Creek (46.788, –116.414); Nat Brown Creek (46.911, –116.375); Pasture Creek (46.940, –116.371); Porcupine Creek (46.947, –116.379); Potlatch River (46.941, –116.359); Ruby Creek (46.792, –116.3037); Unnamed (46.8938, –116.3617); Unnamed (46.922, –116.449); West Fork Potlatch River (46.931, –116.438).

(viii) Clearwater River/Bedrock Creek Watershed 1706030608. Outlet(s) = Clearwater River (Lat 46.4741, Long –116.7652) upstream to endpoint(s) in: Bedrock Creek (46.5738, –116.500); Clearwater River (46.516, –116.590); Little Bear Creek (46.5380, –116.4411); Pine Creek (46.579, –116.615).

(ix) Clearwater River/Jack's Creek Watershed 1706030609. Outlet(s) = Clearwater River (Lat 46.4984, Long –116.4326) upstream to endpoint(s) in: Clearwater River (46.476, –116.254); Orofino Creek (46.485, –116.197); Whiskey Creek (46.5214, –116.1753).

(x) Big Canyon Creek Watershed 1706030610. Outlet(s) = Big Canyon Creek (Lat 46.4984, Long –116.4326) upstream to endpoint(s) in: Big Canyon Creek (46.2808, –116.5396); Cold Springs Creek (46.2500, –116.5210); Posthole Canyon (46.318, –116.450); Sixmile Canyon (46.372, –116.441); Unnamed (46.3801, –116.3750).

(xi) Little Canyon Creek Watershed 1706030611. Outlet(s) = Little Canyon Creek (Lat 46.4681, Long –116.4172) upstream to endpoint(s) in: Little Canyon Creek (46.295, –116.279).

(xii) Clearwater River/Lower Orofino Creek Watershed 1706030612. Outlet(s) = Clearwater River (Lat 46.4984, Long –116.4326) upstream to endpoint(s) in: Clearwater River (46.476, –116.254); Orofino Creek (46.485, –116.196); Whiskey Creek (46.5214, –116.1753).

(xiii) Jim Ford Creek Watershed 1706030614. Outlet(s) = Jim Ford Creek (Lat 46.4394, Long –116.2115) upstream to endpoint(s) in: Jim Ford Creek (46.3957, –115.9570).

(xiv) Lower Lolo Creek Watershed 1706030615. Outlet(s) = Lolo Creek (Lat 46.476, –116.1697) upstream to endpoint(s) in: Big Creek (46.392, –116.118); Lolo Creek (46.284, –115.882); Schmidt Creek (46.3617, –116.0426).
(xv) Middle Lolo Creek Watershed 1706030616. Outlet(s) = Lolo Creek (Lat 46.2844, Long –115.8818) upstream to endpoint(s) in: Crocker Creek (46.254, –115.859); Lolo Creek (46.381, –115.708); Mud Creek (46.274, –115.759); Nevada Creek (46.322, –115.735); Pete Charlie Creek (46.289, –115.823); Yakus Creek (46.238, –115.763).

(xvi) Musselshell Creek Watershed 1706030617. Outlet(s) = Jim Brown Creek (Lat 46.3098, Long –115.7531) upstream to endpoint(s) in: Gold Creek (46.376, –115.735); Jim Brown Creek (46.357, –115.790); Musselshell Creek (46.394, –115.744).

(xvii) Upper Lolo Creek Watershed 1706030618. Outlet(s) = Lolo Creek (Lat 46.3815, Long –115.7078) upstream to endpoint(s) in: Camp Creek (46.416, –115.624); Lolo Creek (46.425, –115.735); Max Creek (46.384, –115.679); Relaskon Creek (46.394, –115.647); Siberia Creek (46.384, –115.707); Yoosa Creek (46.408, –115.599).

(xviii) Eldorado Creek Watershed 1706030619. Outlet(s) = Eldorado Creek (Lat 46.2947, Long –115.7500) upstream to endpoint(s) in: Cedar Creek (46.296, –115.711); Dollar Creek (46.301, –115.640); Eldorado Creek (46.300, –115.645); Four Bit Creek (46.294, –115.644).

(xix) Clearwater River/Fivemile Creek Watershed 1706030620. Outlet(s) = Clearwater River (Lat 46.4759, Long –116.2543) upstream to endpoint(s) in: Clearwater River (46.350, –116.154); Fivemile Creek (46.3473, –116.1839).

(xx) Clearwater River/Sixmile Creek Watershed 1706030621. Outlet(s) = Clearwater River (Lat 46.3500, Long –116.1541) upstream to endpoint(s) in: Clearwater River (46.227, –116.067); Sixmile Creek (46.269, –116.213).

(xxii) Clearwater River/Tom Taha Creek Watershed 1706030622. Outlet(s) = Clearwater River (Lat 46.2566, Long –116.067) upstream to endpoint(s) in: Clearwater River (46.146, –115.980); Tom Taha Creek (46.244, –115.993).

(xxii) Lower Lolo Creek Watershed 1706030623. Outlet(s) = Lawyer Creek (Lat 46.2257, Long –116.0116) upstream to endpoint(s) in: Lawyer Creek (46.155, –116.190); Sevenmile Creek (46.1498, –116.0838).

(xxiii) Middle Lawyer Creek Watershed 1706030624. Outlet(s) = Lawyer Creek (Lat 46.1546, Long –116.1899) upstream to endpoint(s) in: Lawyer Creek (46.188, –116.380).

(xxiv) Cottonwood Creek Watershed 1706030627. Outlet(s) = Cottonwood Creek (Lat 46.5023, Long –116.7127) upstream to endpoint(s) in: Cottonwood Creek (46.387, –116.622); Coyote Creek (46.4622, –116.6377); Maple Creek (46.4814, –116.6643).

(xxv) Upper Lapwai Creek Watershed 1706030628. Outlet(s) = Lapwai Creek (Lat 46.3674, Long –116.7352) upstream to endpoint(s) in: Mission Creek (46.3674, Long –116.73525) upstream to endpoint(s) in: Mission Creek (46.2742, –116.6949); Rock Creek (46.3048, –116.6250).


(xxvii) Upper Sweetwater Creek Watershed 1706030630. Outlet(s) = Webb Creek (Lat 46.3319, Long –116.6369) upstream to endpoint(s) in: Sweetwater Creek (46.2751, –116.6513); Webb Creek (46.2338, –116.7500).

(xxviii) Lower Sweetwater Creek Watershed 1706030631. Outlet(s) = Lapwai Creek (Lat 46.4512, Long –116.8182) upstream to endpoint(s) in: Lapwai Creek (46.364, –116.750); Sweetwater Creek (46.331, –116.837); Tom Beall Creek (46.4240, –116.7822).

(24) Lower Snake/Columbia River Corridor—Lower Snake/Columbia River Corridor. Outlet(s) = Columbia River mouth (Lat 46.2465, Long –124.0782) upstream to endpoint at the confluence of the Palouse River (46.589, –117.215).

(25) Maps of critical habitat for the Snake River Basin Steelhead ESU follow:
Final Critical Habitat for the Snake River Basin Steelhead ESU

LOWER GRANDE RONDE SUBBASIN
17060106

Legend:
- Cities / Towns
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 07 = Watershed code - last 2 digits of 17060106xx
Final Critical Habitat for the Snake River Basin Steelhead ESU

Legend
- Cities / Towns
■ Dams
State Boundary
~ Critical Habitat
Subbasin Boundary
Watershed Boundaries
01 - 08 = Watershed code - last 2 digits of 17060107xx

Area of Detail
§ 226.212

Final Critical Habitat for the Snake River Basin Steelhead ESU

UPPER MIDDLE FORK SALMON SUBBASIN
17060205
Final Critical Habitat for the
Snake River Basin Steelhead ESU

SOUTH FORK SALMON SUBBASIN
17060208

Legend
- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 15 = Watershed code - last 2 digits of 17060208xx
§ 226.212

Final Critical Habitat for the Snake River Basin Steelhead ESU

UPPER SELWAY SUBBASIN
17060301

Legend

Cities / Towns
State Boundary
Critical Habitat
Subbasin Boundary
Watershed Boundaries

01 - 09 = Watershed code - last 2 digits of 17060301xx
Final Critical Habitat for the Snake River Basin Steelhead ESU

MIDDLE FORK CLEARWATER SUBBASIN 17060304

Legend
- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 02 = Watershed code - last 2 digits of 17060304xx

Area of Detail
Final Critical Habitat for the Snake River Basin Steelhead ESU

SOUTH FORK CLEARWATER SUBBASIN
17060305

Legend

- Cities / Towns
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 13 = Watershed code - last 2 digits of 17060305xx
(r) *Middle Columbia River Steelhead* (*Oncorhynchus mykiss*). Critical habitat is designated to include the areas defined in the following subbasins:

1. Upper Yakima Subbasin 17030001—
   1. Upper Yakima River Watershed 1703000101. Outlet(s) = Yakima River (Lat 47.1770, Long -120.9964) upstream to endpoint(s) in: Big Creek (47.1951, -121.1181); Cabin Creek (47.2457, -121.0729); Kachess River (47.2645, -121.2400); Cle Elum River (47.2457, -121.0729); Kachess River (47.2645, -121.2400); Cle Elum River (47.2457, -121.0729); Kachess River (47.2645, -121.2400).
(ii) **Teanaway River Watershed 1703000102.** Outlet(s) = Yakima River (Lat 47.1673, Long –120.8338) upstream to endpoint(s) in: Bear Creek (47.3684, –120.7902); DeRoux Creek (47.4202, –120.9477); Indian Creek (47.3216, –120.8322); Jungle Creek (47.3453, –120.8951); Mason Creek (47.2528, –120.7889); Middle Creek (47.2973, –120.8204); Middle Fork Teanaway River (47.3750, –120.9890); Standup Creek (47.3764, –120.8362); Tillman Creek (47.1770, –120.9964).

(iii) **Middle Upper Yakima River Watershed 1703000103.** Outlet(s) = Yakima River (Lat 46.8987, Long –120.5035) upstream to endpoint(s) in: Badger Creek (46.9305, –120.4805); Coleman Creek (46.9636, –120.4764); Cooke Creek (46.9738, –120.4831); Dry Creek (47.0366, –120.6122); First Creek (47.2082, –120.6732); Iron Creek (47.3495, –120.7032); Manastash Creek (46.9537, –120.5637); Naneum Creek (46.9561, –120.4987); North Fork Taneum Creek (47.1224, –120.9396); Reecer Creek (47.0066, –120.5817); South Fork Taneum Creek (47.0962, –120.9713); Sswauk Creek (47.3274, –120.6586); Unnamed (46.9799, –120.5407); Unnamed (47.0000, –120.5534); Williams Creek (47.2638, –120.6513); Wilson Creek (46.9931, –120.5497); Yakima River (47.1770, –120.9964).

(iv) **Umtanum/Wenas Watershed 1703000104.** Outlet(s) = Yakima River (Lat 46.6309, Long –120.5130) upstream to endpoint(s) in: Burbank Creek (46.7663, –120.4238); Lmuma Creek (46.8224, –120.4510); Umtanum Creek (46.8928, –120.6130); Wenas Creek (46.7087, –120.5170); Yakima River (46.9677, –120.5035).

(2) Naches Subbasin 17030002—(i) **Little Naches River Watershed 1703000201.** Outlet(s) = Little Naches River (Lat 46.9854, Long –120.9015) upstream to endpoint(s) in: American River (46.9068, –121.1948); Barton Creek (46.8645, –121.2869); Bear Creek (47.0793, –121.2415); Blowout Creek (47.0946, –121.3046); Crow Creek (47.0147, –121.3224); Goat Creek (46.9193, –121.3224); Yakima (46.9360, –121.3226); Mathew Creek (47.0829, –121.1944); Miner Creek (46.9542, –121.3074); Morse Creek (46.9053, –121.4131); North Fork Little Naches River (47.0958, –121.3141); Parker Creek (46.9589, –121.2990); Pinus Creek (46.9682, –121.2766); Quartz Creek (47.0382, –121.1128); Scab Creek (46.8869, –121.2459); South Fork Little Naches River (47.0574, –121.2700); Sunrise Creek (46.9041, –121.2448); Survey Creek (46.9435, –121.3296); Timber Creek (46.9113, –121.3822); Union Creek (46.9366, –121.3596); Unnamed (46.8705, –121.2809); Unnamed (46.8741, –121.2856); Unnamed (46.8872, –121.2911); Unnamed (46.8911, –121.2816); Unnamed (46.9033, –121.4162); Unnamed (46.9128, –121.2286); Unnamed (46.9132, –121.4058); Unnamed (46.9158, –121.3710); Unnamed (46.9224, –121.2200); Unnamed (46.9238, –121.3484); Unnamed (46.9302, –121.2103); Unnamed (46.9339, –121.1970); Unnamed (46.9360, –121.3482); Unnamed (46.9384, –121.3200); Unnamed (46.9390, –121.1898); Unnamed (46.9396, –121.3404); Unnamed (46.9431, –121.3088); Unnamed (46.9507, –121.2894); Unnamed (46.9774, –121.3092); Wash Creek (46.9639, –121.2810).

(ii) **Naches River/Rattlesnake Creek Watershed 1703000202.** Outlet(s) = Naches River (Lat 46.7467, Long –120.7858) upstream to endpoint(s) in: Glass Creek (46.8697, –121.0974); Gold Creek (46.9219, –121.0464); Hindoo Creek (46.7862, –121.1689); Little Rattlesnake Creek (46.7550, –121.0543); Lost Creek (46.9200, –121.0568); Naches River (46.9854, –121.0915); North Fork Rattlesnake Creek (46.8940, –121.1439); Rattlesnake Creek (46.7316, –121.2339); Rock Creek (46.8847, –120.9718).

(iii) **Naches River/Tieton River Watershed 1703000203.** Outlet(s) = Naches River (Lat 46.6309, Long –120.5130) upstream to endpoint(s) in: Naches River (46.7467, –120.7858); South Fork Cowiche Creek (46.6555, –121.7601); Tieton River (46.6567, –121.1287); Unnamed (46.6446, –120.5923); Wildcat Creek (46.6715, –121.1520).

(3) Lower Yakima Subbasin 17030003—

(i) **Ahtanum Creek Watershed 1703000301.** Outlet(s) = Ahtanum Creek (Lat 46.6309, Long –120.5130) upstream to endpoint(s) in: American River (46.9068, –121.1948); Barton Creek (46.8645, –121.2869); Bear Creek (47.0793, –121.2415); Bl...
endpoint(s) in: Foundation Creek (46.5549, –120.0134); Middle Fork Ahtanum Creek (46.5075, –121.0225); Nasty Creek (46.5718, –120.9721); North Fork Ahtanum Creek (46.5217, –121.0617); South Fork Ahtanum Creek (46.4917, –120.9590); Unnamed (46.5811, –120.6390).

(ii) Upper Lower Yakima River Watershed 1703000302. Outlet(s) = Yakima River (Lat 46.5283, Long –120.4732) upstream to endpoint(s) in: Unnamed (46.5460, –120.4383); Yakima River (46.6309, –120.5130).

(iii) Upper Toppenish Creek Watershed 1703000303. Outlet(s) = Toppenish Creek (Lat 46.3767, Long –120.6172) upstream to endpoint(s) in: Agency Creek (46.3619, –120.9646); Branch Creek (46.2958, –120.9969); North Fork Simcoe Creek (46.4548, –120.9307); North Fork Toppenish Creek (46.3217, –120.9968); Old Maid Canyon (46.4210, –120.9349); South Fork Toppenish Creek (46.2422, –120.0868); Toppenish Creek (46.3180, –120.9367); Unnamed (46.3768, –120.9336); Unnamed (46.4555, –120.8468); Wahtum Creek (46.3942, –120.9146); Willy Dick Canyon (46.2952, –120.9201).

(iv) Lower Toppenish Creek Watershed 1703000304. Outlet(s) = Yakima River (Lat 46.3246, Long –120.1671) upstream to endpoint(s) in: Toppenish Creek (46.3767, –120.6172); Unnamed (46.3244, –120.4464); Unnamed (46.3363, –120.5891); Unnamed (46.3364, –120.2288); Unnamed (46.3679, –120.2801); Unnamed (46.4107, –120.0582); Unnamed (46.4379, –120.4258); Yakima River (46.5283, –120.4732).

(v) Satus Creek Watershed 1703000305. Outlet(s) = Satus Creek (Lat 46.2893, Long –120.1972) upstream to endpoint(s) in: Bull Creek (46.0344, –120.5147); Kusshio Creek (46.0994, –120.6894); Logy Creek (46.1357, –120.6389); Mule Dry Creek (46.0959, –120.3168); North Fork Dry Creek (46.1779, –120.7669); Satus Creek (46.0185, –120.7268); Unnamed (46.0883, –120.5278); Wilson Charley Canyon (46.0419, –120.6479).

(vi) Yakima River/Spring Creek Watershed 1703000306. Outlet(s) = Yakima River (Lat 46.3361, Long –119.7817) upstream to endpoint(s) in: Corral Creek (46.2971, –119.5302); Satus Creek (46.2893, –120.1972); Snipes Creek (46.2619, –119.6805); Spring Creek (46.2359, –119.6805); Unnamed (46.2169, –120.0189); Unnamed (46.2426, –120.0993); Unnamed (46.2598, –120.1322); Unnamed (46.2514, –120.0190); Yakima River (46.3246, –120.1671).

(vii) Yakima River/Cold Creek Watershed 1703000307. Outlet(s) = Yakima River (Lat 46.2534, Long –119.2268) upstream to endpoint(s) in: Yakima River (46.3301, –119.4817).

(4) Middle Columbia/Lake Wallula Subbasin 17070101—(i) Upper Lake Wallula Watershed 1707010101. Outlet(s) = Columbia River (Lat 45.0594, Long –118.9445) upstream to endpoint(s) in: Columbia River (46.1776, –119.0183).

(ii) Lower Lake Wallula Watershed 1707010102. Outlet(s) = Columbia River (Lat 45.9376, Long –119.2969) upstream to endpoint(s) in: Columbia River (46.0594, –118.9445).

(iii) Glade Creek Watershed 1707010105. Outlet(s) = Glade Creek (Lat 45.8885, Long –119.6809) upstream to endpoint(s) in: Columbia River (45.8978, –119.6962).

(iv) Upper Lake Umatilla Watershed 1707010106. Outlet(s) = Columbia River (Lat 45.8885, Long –119.6809) upstream to endpoint(s) in: Columbia River (45.9376, –119.2969).

(v) Middle Lake Umatilla Watershed 1707010109. Outlet(s) = Columbia River (Lat 45.8318, Long –119.9069) upstream to endpoint(s) in: Columbia River (45.8885, –119.6809).

(vi) Alder Creek Watershed 1707010110. Outlet(s) = Columbia River (Lat 45.8993, Long –119.2969) upstream to endpoint(s) in: Columbia River (45.8688, –119.9224).

(vii) Pine Creek Watershed 1707010111. Outlet(s) = Pine Creek (Lat 45.7843, Long –120.0823) upstream to endpoint(s) in: Pine Creek (45.8234, –120.1396).

(viii) Wood Gulch Watershed 1707010112. Outlet(s) = Wood Creek (Lat 45.7434, Long –120.1930) upstream to endpoint(s) in: Big Horn Canyon (45.8322, –120.2467); Wood Gulch (45.8386, –120.3006).

(ix) Rock Creek Watershed 1707010113. Outlet(s) = Rock Creek (Lat 45.6995, Long –120.4977) upstream to endpoint(s) in: Rock Creek (45.8835, –120.5557); Squaw Creek (45.8399, –120.4935).

(x) Lower Lake Umatilla Watershed 1707010114. Outlet(s) = Columbia River (Lat 45.7168, Long –120.6927) upstream to endpoint(s) in: Chapman Creek (45.7223, –120.3148); Columbia River (45.8318, –119.9069).
(5) Walla Walla Subbasin 17070102—(i)
Upper Walla Walla River Watershed 1707010201. Outlet(s) = Walla Walla River (Lat 45.9104, Long –118.3696) upstream to endpoint(s) in: Bear Creek (45.8328, –118.0991); Big Meadow Canyon (45.900, –118.1116); Burnt Cabin Gulch (45.8056, –118.0503); Couse Creek (45.8035, –118.2032); Elbow Creek (45.7999, –118.1462); Kees Canyon (45.8262, –118.0927); Little Meadow Canyon (45.9094, –118.1333); North Fork Walla Walla River (45.9342, –118.0169); Reser Creek (45.8840, –117.9950); Rodgers Gulch (45.8513, –118.0839); Skiphorton Creek (45.8892, –118.0255); South Fork Walla Walla River (45.9512, –117.9621).

(ii) Mill Creek Watershed 1707010202. Outlet(s) = Mill Creek (Lat 46.0391, Long –118.4779) upstream to endpoint(s) in: Blue Creek (46.0112, –117.9406); Broken Creek (45.9745, –117.9899); Cold Creek (46.0540, –118.0519); Deadman Creek (46.0421, –117.9503); Doan Creek (46.0437, –118.4353); Green Fork (46.0296, –117.9383); Henry Canyon (45.9554, –118.1104); Low Creek (45.9649, –117.9901); Mill Creek (46.0112, –117.9406); North Fork Mill Creek (46.0322, –117.9937); Paradise Creek (46.0005, –117.9900); Tiger Creek (45.9588, –118.0253); Unnamed (46.0233, –117.9220); Unnamed (46.0383, –117.9403); Webb Creek (45.9800, –118.0675).

(iii) Upper Touchet River Watershed 1707010203. Outlet(s) = Touchet River (Lat 46.3196, Long –117.9841) upstream to endpoint(s) in: Burnt Fork (46.0838, –118.0311); Coates Creek (46.1395, –117.8431); Green Fork (45.0737, –117.9712); Griffin Fork (46.1100, –117.9336); Ireland Gulch (46.1894, –117.8070); Jim Creek (46.2156, –117.7959); Lewis Creek (45.1855, –117.7791); North Fork Touchet River (46.0338, –117.9460); North Pattie Creek (45.3418, –117.7538); Robinson Fork (46.1200, –117.9066); Rodgers Gulch (46.2813, –117.8411); Spangler Creek (46.1156, –117.7934); Unnamed (46.1049, –117.9351); Unnamed (46.1061, –117.9544); Unnamed (46.1366, –117.9386); Unnamed (46.1604, –117.9018); Unnamed (46.2900, –117.7339); Weidman Gulch (46.2359, –117.8067); West Pattie Creek (46.2940, –117.7164); Whitney Creek (46.1348, –117.8491); Wolf Fork (46.1055, –117.8797).

(iv) Middle Touchet River Watershed 1707010204. Outlet(s) = Touchet River (Lat 46.2952, Long –118.3320) upstream to endpoint(s) in: North Fork Coppel Creek (46.1384, –118.0181); South Fork Coppel Creek (46.1302, –118.0608); Touchet River (46.3196, –117.9841); Whitney Creek (46.2438, –118.0785).

(v) Lower Touchet River Watershed 1707010207. Outlet(s) = Touchet River (46.0340, Long –118.6828) upstream to endpoint(s) in: Touchet River (46.2952, –118.3320).

(vi) Cottonwood Creek Watershed 1707010208. Outlet(s) = Walla Walla River (Lat 46.0391, Long –118.4779) upstream to endpoint(s) in: Birch Creek (45.9489, –118.2541); Caldwell Creek (46.0493, –118.3022); East Little Walla Walla River (46.0009, –118.4069); Garrison Creek (46.0753, –118.2726); Middle Fork Cottonwood Creek (45.9566, –118.1776); North Fork Cottonwood Creek (45.9738, –118.1533); Reser Creek (46.0370, –118.3085); Russell Creek (46.0424, –118.2488); South Fork Cottonwood Creek (45.9252, –118.1798); Stone Creek (46.0618, –118.3081); Unnamed (45.9525, –118.4070); Walla Walla River (45.9104, –118.3696); Yellowhawk Creek (46.0753, –118.2726).

(vii) Dry Creek Watershed 1707010210. Outlet(s) = Dry Creek (Lat 46.0507, Long –118.5932) upstream to endpoint(s) in: Birch Creek (45.9489, –118.2541); Caldwell Creek (46.0493, –118.3022); East Little Walla Walla River (46.0009, –118.4069); Garrison Creek (46.0753, –118.2726); Middle Fork Cottonwood Creek (45.9566, –118.1776); North Fork Cottonwood Creek (45.9738, –118.1533); Reser Creek (46.0370, –118.3085); Russell Creek (46.0424, –118.2488); South Fork Cottonwood Creek (45.9252, –118.1798); Stone Creek (46.0618, –118.3081); Unnamed (45.9525, –118.4070); Walla Walla River (45.9104, –118.3696); Yellowhawk Creek (46.0753, –118.2726).

(viii) Lower Walla Walla River Watershed 1707010211. Outlet(s) = Walla Walla River (Lat 46.0391, Long –118.4779) upstream to endpoint(s) in: Dry Creek (46.0725, –118.0268); Mud Creek (46.1414, –118.1313); South Fork Dry Creek (46.0651, –118.0514); Unnamed (46.1122, –118.1141).

(6) Umatilla Subbasin 17070103—(i)
Upper Umatilla River Watershed 1707010301. Outlet(s) = Umatilla River (Lat 45.7024, Long –118.3593) upstream to endpoint(s) in: Bear Creek (45.7595, –118.1942); Bobsled Creek (46.7268, –118.2503); Buck Creek (45.7081, –118.1059); East Fork Coyote Creek (45.7553, –118.1263); Johnson Creek #4 (45.7239, –118.0797); Lake Creek #2 (45.7040, –118.1297); Lick Creek (45.7400, –118.1880); North Fork Umatilla River (45.7400, –118.1880).
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(45.7193, –118.0244); Rock Creek (45.7629, –118.2377); Ryan Creek (45.6362, –118.2963); Shimmiehorn Creek (45.6184, –118.1908); South Fork Umatilla River (45.6292, –118.2424); Spring Creek #2 (45.6288, –118.1535); Swamp Creek (45.6978, –118.1356); Thomas Creek (45.6546, –118.1435); Unnamed (45.6648, –118.1371); Unnamed (45.6737, –118.1616); Unnamed (45.6938, –118.3036); Unnamed (45.7060, –118.3372); Unnamed (45.7200, –118.3092); Unnamed (45.7281, –118.1604); Unnamed (45.7282, –118.3372); Unnamed (45.7419, –118.1586); West Fork Coyote Creek (45.7713, –118.1513); Woodward Creek (45.7494, –118.0760).

(ii) Meacham Creek Watershed 1707010302. Outlet(s) = Meacham Creek (Lat 45.7024, Long –118.3593) upstream to endpoint(s) in: Bear Creek #3 (45.4882, –118.1993); Beaver Creek (45.4940, –118.4411); Boston Canyon (45.6594, –118.3344); Butcher Creek (45.6558, –118.3737); Camp Creek (45.5855, –118.2900); Duncan Canyon (45.5674, –118.3241); East Meacham Creek (45.4570, –118.2212); Hoskins Creek (45.5188, –118.2059); Line Creek (45.6303, –118.3291); Meacham Creek (45.4364, –118.3963); North Fork Meacham Creek (45.5767, –118.1721); Owseley Creek (45.4349, –118.2434); Pot Creek (45.5063, –118.1438); Sheep Creek (45.5121, –118.3945); Twomile Creek (45.5085, –118.4579); Unnamed (45.4540, –118.2192); Unnamed (45.5585, –118.2064); Unnamed (45.6019, –118.2971); Unnamed (45.6774, –118.3415). (iii) Umatilla River/Mission Creek Watershed 1707010303. Outlet(s) = Umatilla River (Lat 45.6559, Long –118.8004) upstream to endpoint(s) in: Bachelor Canyon (45.6306, –118.3890); Buckaroo Creek (45.6062, –118.5000); Cooskin Creek (45.6556, –118.5239); Cottonwood Creek (45.4622, –118.5704); Little Squaw Creek (45.5969, –118.4095); Mission Creek (45.6256, –118.6133); Moonshine Creek (45.6166, –118.3392); Patawa Creek (45.6424, –118.7125); Red Elk Canyon (45.6643, –118.4433); Saddle Hollow (45.7067, –118.3968); South Patawa Creek (45.6250, –118.6919); Squaw Creek (45.5584, –118.4389); Stage Gulch (45.6533, –118.4481); Thorn Hollow Creek (45.6957, –118.6330); Umatilla River (45.7024, –118.3959); Unnamed (45.5649, –118.4221); Unnamed (45.6602, –118.7003); Unnamed (45.6100, –118.4046); Unnamed (45.6571, –118.7473); Unnamed (45.6599, –118.4641); Unnamed (45.6599, –118.4711); Unnamed (45.6676, –118.6176); Unnamed (45.6688, –118.5575); Unnamed (45.6745, –118.5859).

(iv) McKay Creek Watershed 1707010305. Outlet(s) = McKay Creek (Lat 45.6685, Long –118.8400) upstream to endpoint(s) in: McKay Creek (45.6077, –118.7917).

(v) Birch Creek Watershed 1707010306. Outlet(s) = Birch Creek (Lat 45.6559, Long –118.8004) upstream to endpoint(s) in: Bear Creek (45.2739, –118.6939); Bridge Creek (45.3603, –118.9039); California Gulch (45.3950, –118.8149); Dark Canyon (45.3119, –118.7572); East Birch Creek (45.3676, –118.6085); Johnson Creek #2 (45.3931, –118.7518); LittleBear Pearlson Creek (45.3892, –118.7415); Merle Gulch (45.3450, –118.8130); Owings Creek (45.3864, –118.9000); Pearson Creek (45.2901, –118.7985); South Canyon #2 (45.3444, –118.6949); Unnamed (45.2703, –118.7624); Unnamed (45.3016, –118.7705); Unnamed (45.3222, –118.7264); Unnamed (45.3470, –118.7984); Unnamed (45.3478, –118.6703); Unnamed (45.3511, –118.6328); Unnamed (45.4628, –118.7491); West Birch Creek (45.2973, –118.8341); Willow Spring Canyon (45.3426, –118.9833).

(vi) Umatilla River/Alkali Canyon Watershed 1707010307. Outlet(s) = Umatilla River (Lat 45.7831, Long –119.2372) upstream to endpoint(s) in: Umatilla River (45.6559, –118.8004).

(vii) Lower Umatilla River Watershed 1707010313. Outlet(s) = Umatilla River (Lat 45.7831, Long –119.2372) upstream to endpoint(s) in: Umatilla River (45.8202, –119.3305).

(7) Middle Columbia/Hood Subbasin 17070105. (i) Upper Middle Columbia/Hood Watershed 1707010501. Outlet(s) = Columbia River (Lat 45.6426, Long –120.9142) upstream to endpoint(s) in: Columbia River (45.7168, –120.6927); Frank Fulton Canyon (45.6244, –120.8258); Spanish Hollow Creek (45.6469, –120.8069); Unnamed (45.6404, –120.8654).

(ii) Fifteenmile Creek Watershed 1707010502. Outlet(s) = Fifteenmile Creek (Lat 45.6197, Long –121.2652) upstream to endpoint(s) in: Cedar Creek (45.3713, –121.4153); Dry Creek (45.4918, –121.0497); Fifteenmile Creek (45.3686, –121.4390); Ramsey Creek (45.3999, –121.4454); Unnamed (45.3768, –121.4410).
(iii) Fivemile Creek Watershed 1707010503. Outlet(s) = Eightmile Creek (Lat 45.6064, Long –121.0854) upstream to endpoint(s) in: Eightmile Creek (45.3944, –121.4983); Middle Fork Fivemile Creek (45.4502, –121.4324); South Fork Fivemile Creek (45.4622, –121.3641).

(iv) Middle Columbia/Mill Creek Watershed 1707010504. Outlet(s) = Columbia River (Lat 45.6920, Long –121.2937) upstream to endpoint(s) in: Brown Creek (45.5911, –121.2729); Chenoweth Creek (45.6119, –121.2658); Columbia River (45.4502, –121.0854); Diamond Fork (45.4794, –121.2294); Holter Creek (45.4273, –121.3720); Klickitat River (46.4439, –121.3756); McCreedy Creek (46.3319, –121.2529); Piscor Creek (46.3708, –121.1436); Surveyors Creek (46.2181, –121.1838); Unnamed (46.4476, –121.2575); Unnamed (46.4385, –121.2565); West Fork Klickitat River (46.2757, –121.3267).

(v) Mosier Creek Watershed 1707010505. Outlet(s) = Mosier Creek (Lat 45.6950, Long –121.3996) upstream to endpoint(s) in: Mosier Creek (45.6826, –121.3896); Rock Creek (45.6649, –121.4352).

(vi) White Salmon River Watershed 1707010509. Outlet(s) = White Salmon River (Lat 45.7267, Long –121.5209) upstream to endpoint(s) in: Unnamed (45.7395, –121.5500); White Salmon River (45.7676, –121.5374).

(vii) Middle Columbia/Grays Creek Watershed 1707010512. Outlet(s) = Columbia River (Lat 45.6920, Long –121.2937) upstream to endpoint(s) in: Catherine Creek (45.7448, –121.4206); Columbia River (45.6920, –121.2937); Dog Creek (45.7200, –121.6804); East Fork Major Creek (45.8005, –121.3449); Hanson Creek (45.7472, –121.3143); Jewett Creek (45.7524, –121.4704); Rowena Creek (45.6940, –121.3122); Unnamed (45.7236, –121.7277); Unnamed (45.7248, –121.7322); Unnamed (45.7303, –121.3095); Unnamed (45.7316, –121.3094); Unnamed (45.7445, –121.3203); Unnamed (45.7530, –121.4967); Unnamed (45.7632, –121.4795); Unnamed (45.7954, –121.3863); Unnamed (45.8003, –121.4062); West Fork Major Creek (45.8117, –121.3929).

(8) Klickitat Subbasin 17070106—(i) Upper Klickitat River Watershed 1707010601. Outlet(s) = Klickitat River (Lat 46.1263, Long –121.2881) upstream to endpoint(s) in: Cedar Creek (46.2122, –121.2042); Coyote Creek (46.4640, –121.1839); Cuitin Creek (46.4602, –121.1662); Diamond Fork (46.4794, –121.2294); Holterberry Creek (46.4273, –121.3720); Klickitat River (46.4439, –121.3756); McCreedy Creek (46.3319, –121.2529); Piscor Creek (46.3708, –121.1436); Surveyors Creek (46.2181, –121.1838); Unnamed (46.4476, –121.2575); Unnamed (46.4385, –121.2565); West Fork Klickitat River (46.2757, –121.3267).

(9) Upper John Day Subbasin 17070201—(i) Middle South Fork John Day Watershed 1707020103. Outlet(s) = South Fork John Day River (Lat 44.1918, Long –119.5261) upstream to endpoint(s) in: Blue Creek (44.2183, –119.3679); Corral Creek (44.1698, –119.3573); North Fork Deer Creek (44.2034, –119.3069); South Fork Deer Creek (44.1550, –119.3457); South Fork John Day River (44.1822, –119.5243) Unnamed (44.1824, –119.4210); Vester Creek (44.1794, –119.3872).

(ii) Murderers Creek Watershed 1707020104. Outlet(s) = Murderers Creek (Lat 44.3146, Long –119.5383) upstream to endpoint(s) in: Bark Cabin Creek (44.2481, –119.3967); Basin Creek (44.2700, –119.1711); Cabin Creek (44.3420, –119.4403); Charlie Mack Creek (44.2708, –119.2344); Crazy Creek (44.2421, –119.4282); Dans Creek (44.2500,
---119.2774); Duncan Creek (44.3219,
-119.3555); Lemon Creek (44.2528,
-119.2500); Miner Creek (44.3237,
-119.2416); Orange Creek (44.2524,
-119.2613); Oregon Mine Creek (44.32816,
-119.3221); Sugar Creek (44.2914,
-119.2520); Tennessee Creek (44.3041,
-119.3029); Thorn Creek (44.3133,
-119.3157); Todd Creek (44.3291,
-119.3976); Unnamed (44.3133, –119.3533);
Unnamed (44.3250, –119.3476); White
Creek (44.2747, –119.1866).

(iii) Lower South Fork John Day Wa-
tershed 1707020105. Outlet(s) = South
Fork John Day River (Lat 44.4740, Long
-119.5344) upstream to endpoint(s) in:
Cougar Gulch (44.2279, –119.4898);
Frazier Creek (44.2200, –119.5745); Jack-
ass Creek (44.3564, –119.4958); North
Fork Wind Creek (44.3019, –119.6632);
Payten Creek (44.3692, –119.6158);
Smoky Creek (44.3893, –119.4791); South
Fork Black Canyon Creek (44.3789,
-119.7293); South Fork John Day River
(44.1918, –119.5261); South Fork Wind
Creek (44.2169, –119.6192); South Prong
Creek (44.3093, –119.6558); Squaw Creek
(44.3000, –119.6143); Unnamed (44.2306,
-119.6095); Unnamed (44.2358, –119.6013);
Unnamed (44.3052, –119.6332); Wind
Creek (44.2783, –119.6515).

(iv) Upper John Day River Watershed
1707020106. Outlet(s) = John Day River
(Lat 44.4534, Long –118.6711) upstream to
endpoint(s) in: Cougar Gulch (44.3279, –119.4898);
Frazier Creek (44.2200, –119.5745); Jack-
ass Creek (44.3564, –119.4958); North
Fork Wind Creek (44.3019, –119.6632);
Payten Creek (44.3692, –119.6158);
Smoky Creek (44.3893, –119.4791); South
Fork Black Canyon Creek (44.3789,
-119.7293); South Fork John Day River
(44.1918, –119.5261); South Fork Wind
Creek (44.2169, –119.6192); South Prong
Creek (44.3093, –119.6558); Squaw Creek
(44.3000, –119.6143); Unnamed (44.2306,
-119.6095); Unnamed (44.2358, –119.6013);
Unnamed (44.3052, –119.6332); Wind
Creek (44.2783, –119.6515).

(v) Canyon Creek Watershed 1707020107.
Outlet(s) = Canyon Creek (Lat 44.4225,
Long –118.9584) upstream to endpoint(s) in:
Berry Creek (44.3084, –118.8791);
Brookling Creek (44.3042, –118.8933);
Canyon Creek (44.2368, –118.7775); Crazy
Creek #2 (44.2165, –118.7751); East
Brookling Creek (44.3029, –118.8082); East
Fork Canyon Creek (44.2865,
-118.7939); Middle Fork Canyon Creek
(44.2885, –118.7900); Skin Shin Creek
(44.3036, –118.8488); Tamarack Creek #2
(44.2965, –118.8611); Unnamed (44.2500,
-118.6238); Unnamed (44.2717, –118.7500);
Unnamed (44.2814, –118.7620); Vance
Creek (44.2929, –118.9898); Wall Creek
(44.2543, –118.8308).

(vi) Strawberry Creek Watershed
1707020108. Outlet(s) = John Day River
(Lat 44.4225, Long –118.9584) upstream to
endpoint(s) in: Bear Creek (44.5434,
-118.7508); Dixie Creek (44.5814,
-118.7257); Dog Creek (44.3635, –118.8890);
Grub Creek (44.5189, –118.8050); Hall
Creek (44.5479, –118.7894); Indian Creek
#3 (44.3092, –118.7858); John Day River
(44.4534, –118.6711); Little Pine Creek
(44.3771, –118.9103); Onion Creek (44.3151,
-118.6972); Overholt Creek (44.3385,
-118.7196); Pine Creek (44.3488, –118.8345);
Slide Creek (44.2988, –118.6583); Stand-
ard Creek (44.5648, –118.6468); Straw-
berry Creek (44.3128, –118.6772); West
Fork Little Indian Creek (44.3632,
-118.7918).

(vii) Beech Creek Watershed 1707020109.
Outlet(s) = Beech Creek (Lat 44.4116,
Long –119.1151) upstream to endpoint(s) in:
Bear Creek (44.5268, –119.1002); Beech
Creek (44.5682, –119.1170); Clear Creek
(44.5522, –118.9942); Cottonwood Creek
(44.5758, –119.0694); East Fork Beech
Creek (44.5284, –118.9023); Ennis Creek
(44.5409, –119.0207); Hog Creek (44.5484,
-118.0579); Little Beech Creek (44.4676,
-118.9733); McClellan Creek #2 (44.5570,
-118.9490); Tinker Creek (44.5550,
-118.8892); Unnamed (44.5349, –119.0827).

(viii) Laycock Creek Watershed
1707020110. Outlet(s) = John Day River
(Lat 44.4156, Long –119.2230) upstream to
endpoint(s) in: Birch Creek (44.4353,
-119.2148); East Fork Dry Creek
(44.4896, –119.1817); Fall Creek #2
(44.3551, –119.0420); Hanscombe Creek
(44.3040, –119.0513); Harper Creek
(Lat 44.4225, Long –118.9230); Ingle Creek (44.3154,
-119.1153); John Day River (44.4225,
-118.9584); Laycock Creek (44.3118,
-119.0842); McClellan Creek (44.3510,
-119.204); Moon Creek (44.3483,
-119.2389); Riley Creek (44.3450,
-119.1664).

(ix) Fields Creek Watershed 1707020111.
Outlet(s) = John Day River (Lat 44.4740,
Long –119.5344) upstream to endpoint(s) in: Belshaw Creek (44.5460, –119.2025); Bridge Creek (44.4062, –119.4180); Buck Cabin Creek (44.3412, –119.3313); Cummings Creek (44.5043, –119.3250); Fields Creek (44.3260, –119.2828); Flat Creek (44.3930, –119.4386); John Day River (44.4155, –119.2230); Marks Creek (44.5162, –119.3886); Wickiup Creek (44.3713, –119.3239); Widows Creek (44.3752, –119.3819); Wiley Creek (44.4752, –119.3784).

(x) Upper Middle John Day Watershed

Outlet(s) = John Day River (Lat 44.5289, Long –119.6320) upstream to endpoint(s) in: Back Creek (44.4164, –119.6858); Battle Creek (44.4658, –119.5863); Cottonwood Creek (44.3846, –119.7376); Cougar Creek (44.4031, –119.7056); East Fork Cottonwood Creek (44.3846, –119.6177); Ferris Creek (44.5446, –119.5250); Franks Creek (44.5067, –119.4903); John Day River (44.4740, –119.5344); Rattlesnake Creek (44.4673, –119.6953); Unnamed (44.3827, –119.6479); Unnamed (44.3961, –119.7493); Unnamed (44.4062, –119.6916).

(xi) Mountain Creek Watershed

Outlet(s) = Mountain Creek (Lat 44.5214, Long –119.7138) upstream to endpoint(s) in: Badger Creek (44.3906, –119.7651); Bear Creek (44.3676, –119.8401); Fir Tree Creek (44.3902, –119.7893); First Creek (44.4062, –119.8120); Fred Creek (44.4602, –119.8549); Little Windy Creek (44.3751, –119.7595); Pine Hollow #2 (44.5077, –119.8559); Rock Creek (44.3509, –119.7636); Second Creek (44.3984, –119.8075); Unnamed (44.4000, –119.8501); Unnamed (44.4232, –119.7271); West Fork Birch Creek (44.4365, –119.7500).

(xii) Rock Creek Watershed

Outlet(s) = Rock Creek (Lat 44.5289, Long –119.6320) upstream to endpoint(s) in: Baldy Creek (44.3906, –119.7651); Bear Creek (44.3676, –119.8401); Fir Tree Creek (44.3902, –119.7893); First Creek (44.4062, –119.8120); Fred Creek (44.4602, –119.8549); Little Windy Creek (44.3751, –119.7595); Pine Hollow #2 (44.5077, –119.8559); Rock Creek (44.3509, –119.7636); Second Creek (44.3984, –119.8075); Unnamed (44.4000, –119.8501); Unnamed (44.4232, –119.7271); West Fork Birch Creek (44.4365, –119.7500).

(xiii) John Day River/Johnson Creek Watershed

Outlet(s) = John Day River (Lat 44.4155, Long –119.2230) upstream to endpoint(s) in: Buckhorn Creek (44.6137, –119.7382); Burnt Corral Creek (44.6987, –119.5733); Frank Creek (44.6262, –119.7177); Indian Creek (44.5925, –119.7636); John Day River (44.5289, –119.6320); Johnny Creek (44.6126, –119.5534); Johnson Creek (44.6766, –119.7363).

(xi) Upper Middle John Day Watershed

Outlet(s) = John Day River (Lat 44.4155, Long –119.2230) upstream to endpoint(s) in: Baldy Creek (44.3906, –119.7651); Bear Creek (44.3676, –119.8401); Fir Tree Creek (44.3902, –119.7893); First Creek (44.4062, –119.8120); Fred Creek (44.4602, –119.8549); Little Windy Creek (44.3751, –119.7595); Pine Hollow #2 (44.5077, –119.8559); Rock Creek (44.3509, –119.7636); Second Creek (44.3984, –119.8075); Unnamed (44.4000, –119.8501); Unnamed (44.4232, –119.7271); West Fork Birch Creek (44.4365, –119.7500).
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(iii) North Fork John Day River/Big Creek Watershed 1707020203. Outlet(s) = North Fork John Day River (Lat 44.9976, Long –118.9444) upstream to endpoint(s) in: Backout Creek (44.8560, –118.6289); Basin Creek (44.9081, –118.6671); Big Creek (45.0115, –118.6041); Bismark Creek (44.9545, –118.7020); Corral Creek (44.9592, –118.6368); Cougar Creek (44.9288, –118.6653); Meadow Creek (44.9856, –118.4664); North Fork John Day River (44.8661, –118.5605); Oregon Gulch (44.8094, –118.6119); Oriental Creek (45.0000, –118.7255); Otter Creek (44.9634, –118.7567); Paradise Creek (44.9168, –118.5850); Raspberry Creek (44.9638, –118.7356); Ryder Creek (44.9341, –118.5943); Silver Creek (44.9077, –118.5580); Simpson Creek (44.9383, –118.6944); South Fork Meadow Creek (44.903, –118.5481); South Martin Creek (44.9479, –118.5281); Trough Creek (44.9960, –118.8499); Unnamed (44.9073, –118.6944); Unnamed (45.0031, –118.7060); Unnamed (45.0267, –118.7635); Unnamed (45.0413, –118.8089); White Creek (45.0000, –118.5617); Winom Creek (44.9822, –118.6760).

(iv) Desolation Creek Watershed 1707020204. Outlet(s) = Desolation Creek (Lat 44.9977, Long –118.9352) upstream to endpoint(s) in: Battle Creek (44.8895, –118.7010); Beeman Creek (44.8230, –118.7498); Bruin Creek (44.8936, –118.7600); Howard Creek (44.8513, –118.7004); Junkens Creek (44.9842, –118.7994); Kelsay Creek (44.9203, –118.6899); Little Kelsay Creek (44.9277, –118.7124); North Fork Desolation Creek (44.7791, –118.6231); Park Creek (44.9109, –118.7839); Peep Creek (44.9488, –118.8069); South Fork Desolation Creek (44.7890, –118.6732); Sponge Creek (44.8577, –118.7165); Starvout Creek (44.8994, –118.8220); Unnamed (44.8709, –118.7130); Unnamed (44.9058, –118.7689); Unnamed (44.9163, –118.8384); Unnamed (44.9203, –118.8315); Unnamed (44.9521, –118.8141); Unnamed (44.9735, –118.8707).

(vi) Lower Camas Creek Watershed 1707020206. Outlet(s) = Camas Creek (Lat 45.0101, Long –118.9950) upstream to endpoint(s) in: Bridge Creek (45.0077, –118.6944); Camas Creek (45.1576, –118.8411); Cooper Creek (45.2133, –118.9881); Deeck Creek (45.1482, –119.1820); Dry Fivemile Creek (45.1713, –119.1617); Unnamed (45.0797, –118.7878); Unnamed (45.1198, –119.0312); Unnamed (45.1193, –119.0439); North Fork Owens Creek (45.1872, –119.9705); Owens Creek (45.2562, –118.8305); Silver Creek (45.1066, –119.1268); Snipe Creek (45.2502, –118.9707); South Fork Wilkins Creek (45.1078, –119.0312); Sugarbowl Creek (45.1986, –119.0999); Taylor Creek (45.1482, –119.1820); Tribble Creek (45.1713, –119.1617); Unnamed (45.0797, –118.7878); Unnamed (45.1198, –118.8514); Unnamed (45.1993, –119.0622); Unnamed (45.2000, –118.8236); Unnamed (45.2141, –118.8079); Unnamed (45.1773, –119.0753); Unnamed (45.2062, –119.9717); Wilkins Creek (45.1239, –119.0094).

(vii) North Fork John Day River/ Potamus Creek Watershed 1707020207. Outlet(s) = North Fork John Day River (Lat 44.9976, Long –118.9444) upstream to endpoint(s) in: Buckaroo Creek (45.0245, –119.1187); Butcher Bill Creek (45.1290, –119.3197); Cabin Creek (44.9650, –119.3628); Deep Creek (45.0977, –119.2021); Deerhorn Creek (45.0513, –119.0542); Ditch Creek (45.1584, –119.3153); East Fork Meadow Brook Creek (44.9634, –118.9575); Ellis Creek (45.1197, –119.2167); Graves Creek (44.9627, –119.3171); Hinton Creek (44.9650, –119.0025); Hunter Creek (45.0114, –118.6653); Jericho Creek (45.0301, –119.0829); Little Potamus Creek (45.0462, –119.2579); Mallory Creek (45.1196, –118.6152); Hidaway Creek (45.0807, –118.5788); Lane Creek (45.2429, –118.7749); Line Creek (45.1067, –118.6562); North Fork Cable Creek (45.0535, –118.6569); Rancheria Creek (45.2144, –118.6552); Salsbury Creek (45.2022, –118.6206); South Fork Cable Creek (45.0077, –118.6942); Unnamed (45.0508, –118.6536); Unnamed (45.0579, –118.6705); Unnamed (45.0636, –118.6198); Unnamed (45.0638, –118.5908); Unnamed (45.0823, –118.6579); Unnamed (45.1369, –118.6771); Unnamed (45.1513, –118.5966); Unnamed (45.1854, –118.6942); Unnamed (45.1891, –118.6110); Unnamed (45.2429, –118.7575); Warm Spring Creek (45.1386, –118.6561).
(45.1030, –119.3112); Martin Creek (44.1217, –119.3538); Matlock Creek (45.0762, –119.1837); No Name Creek (45.0730, –119.1459); North Fork John Day River (44.9376, –118.9444); Pole Creek (45.1066, –119.2533); Rush Creek (44.9498, –119.3355); Smith Creek (44.9443, –118.9687); Stalder Creek (45.0655, –119.2844); Stony Creek (45.0424, –119.1489); West Fork Meadow Brook (44.9428, –119.0319); Wickiup Creek (45.0256, –119.2776); Wilson Creek (45.1372, –119.2673).

(viii) Wall Creek Watershed 1707020208. Outlet(s) = Big Wall Creek (Lat 44.8832, Long –119.4090) upstream to endpoint(s) in: Alder Creek (45.1049, –119.4170); Bacon Creek (45.0137, –119.4800); Bear Creek (45.0551, –119.4170); Big Wall Creek (44.9369, –119.6055); Bull Prairie Creek (44.9835, –119.6911); East Fork Alder Creek (45.1028, –119.3929); East Fork Indian Creek (44.9009, –119.4918); Happy Jack Creek (44.8997, –119.5730); Hog Creek (45.0507, –119.4821); Indian Creek (44.8810, –119.5260); Johnson Creek (45.0097, –119.6282); Little Bear Creek (45.0433, –119.4084); Little Wall Creek (45.0271, –119.5235); Little Wilson Creek (44.8979, –119.5531); Lovett Creek (44.9073, –119.5305); Skookum Creek (45.0894, –119.4725); South Fork Big Wall Creek (44.9315, –119.6167); Swale Creek (45.1162, –119.3836); Three Trough Creek (44.9927, –119.5318); Two Spring Creek (45.0251, –119.3938); Unnamed (44.9606, –119.6213); Unnamed (44.9830, –119.7394); Unnamed (44.9883, –119.7248); Unnamed (45.0922, –119.4374); Unnamed (45.1079, –119.4350); Willow Spring Creek (44.9467, –119.9221); Wilson Creek (44.9861, –119.6823).

(ix) Cottonwood Creek Watershed 1707020209. Outlet(s) = Cottonwood Creek (Lat 44.8141, Long –119.4183) upstream to endpoint(s) in: Beck Creek (44.5795, –119.2664); Board Creek (44.5841, –119.3763); Boulder Creek (44.5876, –119.3855); Camp Creek #3 (44.6606, –119.3283); Cougar Creek #2 (44.6630, –119.4133); Day Creek (44.5946, –119.0235); Donaldson Creek (44.5919, –119.3480); Dunning Creek (44.6146, –119.0623); Fox Creek (44.6163, –119.0578); Indian Creek #3 (44.6794, –119.2196); McHaley Creek (44.6454, –119.3343); Mill Creek (44.6430, –119.0878); Mine Creek (44.5938, –119.1756); Murphy Creek (44.6062, –119.1114); Smith Creek (44.6627, –119.0808); Squaw Creek #3 (44.5715, –119.4069); Unnamed (44.6176, –119.0806).

(x) Lower North Fork John Day River Watershed 1707020210. Outlet(s) = North Fork John Day River (Lat 44.7554, Long –119.6382) upstream to endpoint(s) in: East Fork Deer Creek (44.7033, –119.2753); Gilmore Creek (44.6744, –119.4875); North Fork John Day River (44.6832, –119.4090); Radio Creek (44.6254, –119.5026); Straight Creek (44.6759, –118.3807); West Fork Deer Creek (44.6985, –119.3372).

(xi) Middle Fork John Day Subbasin 17070203. (i) Upper Middle Fork John Day River Watershed 1707020301. Outlet(s) = Middle Fork John Day River (Lat 44.5846, Long –118.5163) upstream to endpoint(s) in: Bridge Creek (44.5326, –118.5746); Clear Creek (44.4692, –118.4615); Crawford Creek (44.6381, –118.3887); Dry Fork Creek (44.5339, –118.4164); Fly Creek (44.6106, –118.3810); Idaho Creek (44.6113, –118.3856); Middle Fork John Day River (44.5847, –118.4286); Mill Creek (44.6106, –118.4809); North Fork Bridge Creek (44.5479, –118.5663); North Fork Summit Creek (44.5678, –118.3560); Squaw Creek (44.5303, –118.4089); Summit Creek (44.5331, –118.3563).

(ii) Camp Creek Watershed 1707020302. Outlet(s) = Middle Fork John Day River (Lat 44.6934, Long –118.7947) upstream to endpoint(s) in: Badger Creek (44.7102, –118.6738); Balance Creek (44.6756, –118.7660); Beaver Creek (44.6918, –118.6467); Bennett Creek (44.6095, –118.6432); Big Boulder Creek (44.7332, –118.6888); Blue Gulch (44.6952, –118.5220); Butte Creek (44.5913, –118.6481); Camp Creek (44.5692, –118.8041); Caribou Creek (44.6381, –118.5543); Charlie Creek (44.5829, –118.8277); Cottonwood Creek (44.6616, –118.8919); Cougar Creek (44.6014, –118.8261); Coxie Creek (44.5596, –118.8457); Coyote Creek (44.7040, –118.7436); Davis Creek (44.5720, –118.6026); Deerhorn Creek (44.5984, –118.5879); Dry Creek (44.6722, –118.6962); Eagle Creek (44.5715, –118.8269); Granite Boulder Creek (44.6869, –118.6039); Lemon Creek (44.6933, –118.6169); Lick Creek (44.6102, –118.7594); Little Boulder Creek (44.6661, –118.5807); Little Butte Creek (44.6093, –118.6188); Middle Fork
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John Day River (44.5946, –118.5163); Myrtle Gulch (44.5670, –118.5593); Ragged Creek (44.6366, –118.7048); Ruby Creek (44.6050, –118.6897); Sulphur Creek (44.6119, –118.6672); Sunshine Creek (44.6424, –118.7487); Tincup Creek (44.6489, –118.6320); Trail Creek (44.6249, –118.8469); Unnamed (44.5535, –118.8139); Unnamed (44.5697, –118.5975); Unnamed (44.6041, –118.8051); Unnamed (44.6119, –118.6051); Unnamed (44.6471, –118.8699); Unnamed (44.6559, –118.5777); Whiskey Creek (44.6776, –118.8659); Windlass Creek (44.6653, –118.8659); Wray Creek (44.6978, –118.6388).

(iii) Big Creek Watershed 1707020303. Outlet(s) = Middle Fork John Day River (Lat 44.8363, Long –119.0306) upstream to endpoint(s) in: Barnes Creek (44.8911, –118.9974); Bear Creek (44.7068, –118.8742); Big Creek (44.7728, –118.6831); Deadwood Creek (44.7645, –118.7499); Deep Creek (44.7448, –118.7591); East Fork Big Creek (44.7923, –118.7783); Elk Creek (44.7167, –118.7721); Granite Creek (44.8893, –119.0103); Huckleberry Creek (44.8045, –118.8605); Indian Creek (44.8037, –118.7498); Lick Creek (44.8302, –118.6519); Little Indian Creek (44.8719, –118.8602); Lost Creek (44.7906, –118.7970); Middle Fork John Day River (44.6934, –118.7947); Mosquito Creek (44.7504, –118.8021); North Fork Elk Creek (44.7281, –118.7624); Onion Gulch (44.7622, –118.7940); Pizer Creek (44.7805, –118.8102); Slide Creek (44.6950, –118.9124); Swamp Gulch (44.7606, –118.7641); Unnamed (44.8249, –118.8718); Unnamed (44.8594, –118.9018).

(iv) Long Creek Watershed 1707020304. Outlet(s) = Long Creek (Lat 44.7368, Long –120.3054) upstream to endpoint(s) in: Bear Creek (44.5585, –120.4198); Bridge Creek (44.4721, –120.2099); Carroll Creek (44.5460, –120.3322); Dodds Creek (44.5329, –120.3867); Gable Creek (44.5186, –120.2384); Johnson Creek #2 (44.5193, –120.0892); Slide Creek (44.4956, –120.3023); Thompson Creek (44.5270, –120.2489); West Branch Bridge Creek (44.4911, –120.3098).

(iii) Bridge Creek Watershed 1707020403. Outlet(s) = Bridge Creek (Lat 44.7368, Long –120.3054) upstream to endpoint(s) in: Bear Creek (44.5585, –120.4198); Bridge Creek (44.4721, –120.2099); Carroll Creek (44.5460, –120.3322); Dodds Creek (44.5329, –120.3867); Gable Creek (44.5186, –120.2384); Johnson Creek #2 (44.5193, –120.0892); Slide Creek (44.4956, –120.3023); Thompson Creek (44.5270, –120.2489); West Branch Bridge Creek (44.4911, –120.3098).

(v) Lower Middle Fork John Day River Watershed 1707020305. Outlet(s) = Middle Fork John Day River (Lat 44.9168, Long –119.9085) upstream to endpoint(s) in: Middle Fork John Day River (44.8363, –119.0306).

(12) Lower John Day Subbasin 17070204—(i) Lower John Day River/Kahler Creek 1707020401. Outlet(s) = John Day River (Lat 44.8080, Long –119.9585) upstream to endpoint(s) in: Alder Creek (44.9575, –119.8621); Camp Creek (44.9605, –119.9055); East B Cycling Canyon (44.9484, –119.5942); Henry Creek (44.9609, –119.7683); Horsethief Creek (44.7076, –119.9465); John Day River (44.7554, –119.6382); Kahler Creek (44.9109, –119.7030); Lake Creek (44.9012, –119.9806); Left Overhead Creek (44.7693, –116.7163); Parrish Creek (44.7207, –119.8369); Tamarack Butte #2 (44.6867, –119.7888); Tamarack Creek (44.9483, –118.8447); William Creek (44.7458, –119.9027).

(ii) Lower John Day River/Service Creek Watershed 1707020402. Outlet(s) = John Day River (Lat 44.7368, Long –120.3054) upstream to endpoint(s) in: Big Service Creek (44.9296, –120.0428); Girds Creek (44.9296, –120.0428); Rowe Creek (44.8037, –120.1751); Service Creek (44.8951, –120.0892); Shoofly Creek (44.6510, –120.0207).

(iii) Bridge Creek Watershed 1707020403. Outlet(s) = Bridge Creek (Lat 44.7368, Long –120.3054) upstream to endpoint(s) in: Bear Creek (44.5585, –120.4198); Bridge Creek (44.4721, –120.2099); Carroll Creek (44.5460, –120.3322); Dodds Creek (44.5329, –120.3867); Gable Creek (44.5186, –120.2384); Johnson Creek #2 (44.5193, –120.0892); Slide Creek (44.4956, –120.3023); Thompson Creek (44.5270, –120.2489); West Branch Bridge Creek (44.4911, –120.3098).

(v) Lower John Day River/Muddy Creek Watershed 1707020404. Outlet(s) = John Day River (Lat 44.9062, Long –120.4455) upstream to endpoint(s) in: Cherry Creek (44.6344, –120.4543); Clubfoot Hollow (44.8865, –120.1929); Cove Creek (44.9299, –120.3791); Dry Creek (44.6771, –120.5367); John Day River (44.7368, –120.3054); Little Muddy Creek (44.7371, –120.5575); Muddy Creek (44.7491, –120.5071); Pine Creek (44.8893, –120.1797); Robinson Canyon (44.8807,
(v) Lower John Day River/Clarno Watershed 1707020405. Outlet(s) = John Day River (Lat 45.1626, Long –120.4681) upstream to endpoint(s) in: Pine Creek (44.9062, –120.1466); Sorefoot Creek (44.9426, –120.5481).

(vi) Butte Creek Watershed 1707020406. Outlet(s) = Butte Creek (Lat 45.0574, Long –120.4831) upstream to endpoint(s) in: Butte Creek (44.9266, –120.1142); Cottonwood Creek (45.0166, –120.2636); Straw Fork (45.4936, –120.1024); Unnamed (45.0952, –120.2928); West Fork Butte Creek (44.9923, –120.2928).

(vii) Pine Hollow Watershed 1707020407. Outlet(s) = Pine Hollow (Lat 45.1531, Long –120.4757) upstream to endpoint(s) in: Big Pine Hollow (44.9988, –120.7342); Butte Canyon (45.1522, –120.6158); Cottonwood Creek (44.9968, –120.5047); West Little Pine Hollow (44.9921, –120.7324).

(viii) Thirtymile Creek Watershed 1707020408. Outlet(s) = Thirtymile Creek (Lat 45.1629, Long –120.4681) upstream to endpoint(s) in: Condor Canyon (45.1870, –120.1829); East Fork Thirtymile Creek (45.1858, –120.1338); Lost Valley Creek (45.1062, –119.9916); Petliu Canyon (45.1252, –120.1870); Named (44.9802, –120.0375); Unnamed (44.9753, –120.0469); West Fork Rock Creek (45.2770, –120.1229).

(ix) Lower John Day River/Ferry Canyon Watershed 1707020409. Outlet(s) = John Day River (Lat 45.3801, Long –120.5177) upstream to endpoint(s) in: Ferry Canyon (45.3424, –120.3838); Jackknife Creek (45.2940, –120.6106); Jordan Creek (45.1626, –120.4681); Little Ferry Canyon (45.3827, –120.5913).

(x) Lower John Day River/Scott Canyon Watershed 1707020410. Outlet(s) = John Day River (Lat 45.5768, Long –120.4042) upstream to endpoint(s) in: Cottonwood Canyon (45.4143, –120.4490); Cottonwood Valley (45.4898, –120.5118); Dry Fork Cay Creek (45.3903, –120.1612); John Day River (45.3801, –120.5117); Scott Canyon (45.1249, –120.1967); Unnamed (45.3407, –120.2299).

(xi) Upper Rock Creek Watershed 1707020412. Outlet(s) = Rock Creek (Lat 45.5769, Long –120.4041) upstream to endpoint(s) in: Dry Creek (45.3238, –119.9799); Rock Creek (45.2190, –119.9597); Sixmile Canyon (45.2448, –120.0239); South Fork Rock Creek (45.2770, –120.1229).

(xii) Grass Valley Watershed 1707020413. Outlet(s) = Grass Valley (Lat 45.5794, Long –120.4232) upstream to endpoint(s) in: Grass Valley Canyon (45.0711, –120.7226); Hay Canyon (45.5104, –120.6085); Rosebush Creek (45.3385, –120.7159).

(xiii) Lower John Day River/McDonald Ferry Watershed 1707020414. Outlet(s) = John Day River (Lat 45.7389, Long –120.6520) upstream to endpoint(s) in: John Day River (45.5769, –120.4041).

(13) Lower Deschutes Subbasin 17070306—(i) Upper Deschutes River Watershed 1707030603. Outlet(s) = Deschutes River (Lat 44.8579, Long –121.0668) upstream to endpoint(s) in: Deschutes River (44.7243, –121.2465); Shitike Creek (44.7855, –121.0835); Unnamed (44.7994, –121.3715).

(ii) Mill Creek Watershed 1707030604. Outlet(s) = Mill Creek (Lat 44.8792, Long –121.3711) upstream to endpoint(s) in: Boulder Creek (44.8261, –121.4924); Mill Creek (44.8334, –121.8737); Unnamed (44.8330, –121.6756).
(iii) Beaver Creek Watershed
1707030605. Outlet(s) = Beaver Creek (Lat 44.8730, Long –121.3405) upstream to endpoint(s) in: Beaver Butte Creek (45.0786, –121.5746); Beaver Creek (45.1306, –121.6468); Indian Creek (45.0835, –121.5113).

(iv) Warm Springs River Watershed
1707030606. Outlet(s) = Warm Springs River (Lat 44.8579, Long –121.0668) upstream to endpoint(s) in: Badger Creek #2 (44.9352, –121.5569); South Fork Warm Springs River (44.9268, –121.6995); Warm Springs River (44.9612, –121.7976).

(v) Middle Deschutes River Watershed
1707030607. Outlet(s) = Deschutes River (Lat 45.2642, Long –121.0232) upstream to endpoint(s) in: Cove Creek (44.9673, –121.0430); Deschutes River (44.8579, –121.0668); Eagle Creek (44.9999, –121.1688); Nena Creek (45.1030, –121.1653); Oak Creek (44.9336, –121.0981); Paquet Gulch (45.0676, –121.2911); Skookum Creek (44.9171, –121.1251); Stag Canyon (45.1030, –121.0563);Unnamed (45.0186, –121.0464); Unnamed (45.0930, –121.1511); Wapinitia Creek (45.1177, –121.3025).

(vi) Bakeoven Creek Watershed
1707030608. Outlet(s) = Bakeoven Creek (Lat 45.1748, Long –121.0728) upstream to endpoint(s) in: Bakeoven Creek (45.1261, –120.9398); Booten Creek (45.1434, –121.0131); Cottonwood Creek (45.0036, –120.8720); Deep Creek (45.9723, –120.9400); Robin Creek (45.1209, –120.9652); Trail Hollow Creek (45.1461, –121.0423).

(vii) Buck Hollow Creek Watershed
1707030611. Outlet(s) = Buck Hollow Creek (Lat 45.2642, Long –121.0232) upstream to endpoint(s) in: Buck Hollow Creek (45.0663, –120.7065); Finneegan Creek (45.2231, –120.8472); Macken Canyon (45.1093, –120.7011); Thorn Hollow (45.0450, –120.7386).

(viii) Lower Deschutes River Watershed
1707030612. Outlet(s) = Deschutes River (Lat 45.6426, Long –120.9132) upstream to endpoint(s) in: Bull Run Canyon (45.4480, –120.8655); Deschutes River (45.2642, –120.2023); Fall Canyon (45.5222, –120.8538); Ferry Canyon (45.3854, –120.9373); Jones Canyon (45.3011, –120.9404); Macks Canyon (45.3659, –120.8524); Oak Canyon (45.3460, –120.9960); Sixteen Canyon (45.4050, –120.8529).

(14) Trout Subbasin 17070307—(i) Upper Trout Creek Watershed 1707030701. Outlet(s) = Trout Creek (Lat 44.8229, Long –120.9193) upstream to endpoint(s) in: Amity Creek (44.6447, –120.5854); Auger Creek (44.5539, –120.5381); Beaver Creek (44.6390, –120.7034); Big Log Creek (44.5436, –120.6997); Big Whetstone Creek (44.6761, –120.7645); Board Hollow (44.6064, –120.7405); Cartwright Creek (44.5404, –120.6535); Clover Creek (44.6523, –120.7358); Dutchman Creek (44.5320, –120.6704); Foley Creek (44.5861, –120.6801); Little Trout Creek (44.7816, –120.7237); Opal Creek (44.5792, –120.5446); Potlid Creek (44.5366, –120.6207); Trout Creek (44.5286, –120.5805); Tub Springs Canyon (44.8155, –120.7888); Unnamed (44.5428, –120.5848); Unnamed (44.6043, –120.7403); Unnamed (44.6510, –120.7397).

(ii) Antelope Creek Watershed 1707030702. Outlet(s) = Antelope Creek (Lat 44.8229, Long –120.9193) upstream to endpoint(s) in: Antelope Creek (44.8564, –120.8574); Boot Creek (44.9086, –120.8864); Pole Creek (44.9023, –120.9108); Ward Creek (44.9513, –120.8341).

(iii) Lower Trout Creek Watershed 1707030705. Outlet(s) = Trout Creek (Lat 44.8214, Long –120.8767) upstream to endpoint(s) in: Brocher Creek (44.8357, –120.0330); Hay Creek (44.7824, –120.9652); Trout Creek (44.8229, –120.9193).

(v) Middle Columbia River/Zintel Canyon Watershed 1702001606. Outlet(s) = Columbia River (Lat 46.1776, Long –119.0183) upstream to endpoint(s) in: Columbia River (46.2534, –119.2268).

(15) Upper Columbia/Priest Rapids Subbasin 17020016—Columbia River/Zintel Canyon Watershed 1702001606. Outlet(s) = Columbia River (Lat 46.1776, Long –119.0183) upstream to endpoint(s) in: Columbia River (46.2534, –119.2268).

(16) Columbia River Corridor—Columbia River Corridor. Outlet(s) = Columbia River (Lat 46.2485, Long –121.0792) upstream to endpoint(s) in: Columbia River (45.7070, –121.7943).

(17) Maps of critical habitat for the Middle Columbia River Steelhead ESU follow:
Final Critical Habitat for the
Middle Columbia River Steelhead ESU

Legend
- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 04 = Watershed code - last 2 digits of 17030001xx
Final Critical Habitat for the Middle Columbia River Steelhead ESU

LOWER YAKIMA SUBBASIN
17030003

Legend

- Cities / Towns
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 07 = Watershed code - last 2 digits of 17030003xx

Area of Detail
Final Critical Habitat for the Middle Columbia River Steelhead ESU

WALLA WALLA SUBBASIN 17070102

Legend

⊙ Cities / Towns

State Boundary

Critical Habitat

Subbasin Boundary

Watershed Boundaries

01 - 11 = Watershed code - last 2 digits of 17070102xx
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Final Critical Habitat for the
Middle Columbia River Steelhead ESU

TROUT SUBBASIN
17070307

Legend

- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 05 = Watershed code - last 2 digits of 17070307xx
(s) Lower Columbia River Steelhead (Oncorhynchus mykiss). Critical habitat is designated to include the areas defined in the following subbasins:

1. Middle Columbia/Hood Subbasin 17070105—(1) East Fork Hood River Watershed 1707010506. Outlet(s) = Hood River (Lat 45.6050, Long –121.6323) upstream to endpoint(s) in: Baldwin Creek (45.5618, −121.5585); Bear Creek (45.4894, −121.6516); Cat Creek (45.3335, −121.6420); Coe Branch (45.4342, −121.6673); Cold Spring Creek (45.4020, −121.5873); Culvert Creek
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(ii) West Fork Hood River Watershed 1707010507. Outlet(s) = West Fork Hood River (Lat 45.6050, Long –121.6323) upstream to endpoint(s) in: Divers Creek (45.5457, –121.7447); Elk Creek (45.4294, –121.7884); Green Point Creek (45.5915, –121.6981); Indian Creek (45.5375, –121.7857); Jones Creek (45.4673, –121.8020); Lake Branch (45.5083, –121.8485); McGee Creek (45.4120, –121.7588); No Name Creek (45.5347, –121.7929); Red Hill Creek (45.4720, –121.7705); Unnamed (45.5502, –121.7014).

(iii) Hood River Watershed 1707010508. Outlet(s) = Hood River (Lat 45.7237, Long –121.5049) upstream to endpoint(s) in: Hood River (45.6050, –121.6323); Lenz Creek (45.6291, –121.5220); Neal Creek (45.5787, –121.4875); West Fork Neal Creek (45.5751, –121.5215); Whiskey Creek (45.6827, –121.5064).

(iv) Wind River Watershed 1707010511. Outlet(s) = Wind River (Lat 45.7067, Long –121.7929) upstream to endpoint(s) in: Bear Creek (45.7619, –121.8295); Big Hollow Creek (45.9408, –122.0075); Bourbon Creek (45.9246, –121.9982); Brush Creek (45.7720, –121.7528); Cedar Creek (45.8388, –121.7588); Compass Creek (45.8372, –122.0633); Crater Creek (45.8637, –122.0693); Dry Creek (45.9551, –121.9924); East Fork Trout Creek (45.8503, –122.0096); Eightmile Creek (45.8616, –121.8660); Falls Creek (45.9107, –121.9151); Hollis Creek (45.8294, –121.9394); Jiminy Creek (45.7890, –121.8409); Layout Creek (45.8096, –122.0475); Little Wind River (45.7763, –121.7222); Martha Creek (45.7846, –121.9482); Mouse Creek (45.8115, –121.9430); Ninemile Creek (45.8942, –121.6225); Oldman Creek (45.9636, –121.9369); Panther Creek (45.8605, –121.8422); Pass Creek (45.8555, –122.0133); Planting Creek (45.8071, –122.0010); Proverbial Creek (45.9816, –121.9654); Tennmile Creek (45.8760, –121.8694); Trapper Creek (45.9113, –122.0470); Trout Creek (45.8679, –122.0477); Unnamed (45.7862, –121.9097); Unnamed (45.8006, –121.9881); Unnamed (45.8055, –121.9676); Unnamed (45.8142, –122.0204); Unnamed (45.8149, –122.0532); Unnamed (45.8161, –121.8437); Unnamed (45.8206, –121.8111); Unnamed (45.8218, –121.9470); Unnamed (45.8242, –122.0295); Unnamed (45.8427, –121.9180); Unnamed (45.8509, –121.9180); Unnamed (45.8529, –122.0406); Unnamed (45.8551, –122.0638); Unnamed (45.8610, –121.9635); Unnamed (45.8637, –122.0625); Unnamed (45.8640, –121.9764); Unnamed (45.8682, –121.9714); Unnamed (45.8940, –122.0348); Unnamed (45.8965, –122.0055); Unnamed (45.9652, –121.9517); Unnamed (45.9798, –121.8873); Unnamed (45.9844, –121.9171); Wind River (45.9964, –121.9000).

(v) Middle Columbia/Grays Creek Watershed 1707010512. Outlet(s) = Columbia River (Lat 45.7070, Long –121.7943) upstream to endpoint(s) in: Columbia River (45.7237, –121.5049).

(vi) Middle Columbia/Eagle Creek Watershed 1707010513. Outlet(s) = Columbia River (Lat 45.6453, Long –121.9395) upstream to endpoint(s) in: Columbia River (45.7070, –121.7943).

(2) Lower Columbia/Sandy Subbasin 17080001—(i) Salmon River Watershed 17080001. Outlet(s) = Salmon River (Lat 45.3768, Long –122.0293) upstream to endpoint(s) in: Bighorn Creek (45.2582, –121.9204); Boulder Creek (45.3027, –122.0209); Cheaney Creek (45.2919, –121.9710); Copper Creek (45.2454, –121.9051); Mack Hall Creek (45.2391, –121.9508); Salmon River (45.2511, –121.9025); South Fork Salmon River (45.2500, –121.9770); Unnamed (45.2576, –121.9068); Unnamed (45.2600, –121.9093); Unnamed (45.2633, –121.9153); Unnamed (45.2646, –121.9175); Unnamed (45.2708, –121.9124); Unnamed (45.2916, –122.0298); Unnamed (45.3011, –121.9566); Unnamed (45.3225, –121.9690); Unnamed (45.3254, –121.9582); Unnamed (45.3277, –121.9635); Unnamed (45.3336, –121.9538); Unnamed (45.3383, –121.9768); Unnamed (45.3398, –121.9954).

(ii) Zigzag River Watershed 1708000102. Outlet(s) = Zigzag River (Lat 45.3489, Long –121.9442) upstream to endpoint(s)
in: Camp Creek (45.3070, –121.7921); Cool Creek (45.2867, –121.8849); Devil Canyon (45.3186, –121.8587); Henry Creek (45.3241, –121.8890); Lady Creek (45.3199, –121.8225); Little Zigzag Canyon (45.3138, –121.8035); Still Creek (45.3167, –121.7228); Unnamed (45.2706, –121.8194); Unnamed (45.2793, –121.8529); Wind Creek (45.2961, –121.8537); Zigzag River (45.3270, –121.7786).

(iii) Upper Sandy River Watershed

Outlet(s) = Sandy River (Lat 45.3489, Long –121.9442) upstream to endpoint(s) in: Cast Creek (45.3794, –121.8538); Clear Creek (45.3998, –121.8936); Clear Fork (45.4256, –121.8006); Horseshoe Creek (45.3664, –121.8680); Little Clear Creek (45.3854, –121.9190); Lost Creek (45.3920, –121.8035); Sandy River (45.3719, –121.7560); Unnamed (45.3813, –121.8954); Unnamed (45.3904, –121.7979); Unnamed (45.4090, –121.8056); Unnamed (45.4164, –121.8342).

(iv) Middle Sandy River Watershed

Outlet(s) = Sandy River (Lat 45.4464, Long –122.2459) upstream to endpoint(s) in: Alder Creek (45.3459, –122.0675); Bear Creek #2 (45.3368, –121.9260); Cedar Creek (45.3446, –122.2513); Hackett Creek (45.3525, –121.9504); North Boulder Creek (45.3900, –122.0037); Sandy River (45.3498, –121.9442); Unnamed (45.3469, –122.0673); Unnamed (45.3699, –122.0764); Unnamed (45.3808, –122.0325); Unnamed (45.3864, –122.0355); Whisky Creek (45.3744, –122.1202).

(v) Washougal River Watershed

Outlet(s) = Unnamed (Lat 45.5812, Long –122.4023) upstream to endpoint(s) in: Bear Creek (45.7732, –122.1468); Bluebird Creek (45.7486, –122.1717); Cougar Creek (45.6514, –122.2677); Dougan Creek (45.7080, –122.1817); East Fork Little Washougal River (45.6722, –122.3842); Grouse Creek (45.7574, –122.1332); Hagen Creek (45.7154, –122.2518); Jackson Creek (45.6755, –122.2530); Jones Creek (45.6913, –122.2870); Lacamas Creek (45.5972, –122.3933); Little Washougal River (45.7006, –122.3212); Lookout Creek (45.7806, –122.1006); Meander Creek (45.7798, –122.1230); Prospector Creek (45.7590, –122.0890); Silver Creek (45.7343, –122.1694); Stebbins Creek (45.7285, –122.0683); Texas Creek (45.6946, –122.1873); Timber Creek (45.7236, –122.1001); Unnamed (45.5873, –122.4121); Unnamed (45.6002, –122.3312); Unnamed (45.6132, –122.3238); Unnamed (45.6177, –122.2425); Unnamed (45.6206, –122.3494); Unnamed (45.6213, –122.2807); Unnamed (45.6243, –122.2289); Unnamed (45.6251, –122.3419); Unnamed (45.6279, –122.5549); Unnamed (45.6297, –122.2463); Unnamed (45.6321, –122.2753); Unnamed (45.6328, –122.2574); Unnamed (45.6382, –122.3915); Unnamed (45.6477, –122.3685); Unnamed (45.6487, –122.3336); Unnamed (45.6507, –122.1562); Unnamed (45.6531, –122.2759); Unnamed (45.6594, –122.2062); Unnamed (45.6622, –122.3015); Unnamed (45.6625, –122.3446); Unnamed (45.6675, –122.3415); Unnamed (45.6694, –122.1553); Unnamed (45.6703, –122.3399); Unnamed (45.6721, –122.1725); Unnamed (45.6749, –122.3970); Unnamed (45.6796, –122.2903); Unnamed (45.6835, –122.3336); Unnamed (45.6836, –122.1146); Unnamed (45.6871, –122.2996); Unnamed (45.6934, –122.1063); Unnamed (45.6949, –122.3305); Unnamed (45.6959, –122.3149); Unnamed (45.6965, –122.0837); Unnamed (45.7074, –122.1366); Unnamed (45.7080, –122.2600); Unnamed (45.7092, –122.2510); Unnamed (45.7179, –122.0744); Unnamed (45.7201, –122.1360); Unnamed (45.7249, –122.1067); Unnamed (45.7285, –122.1965); Unnamed (45.7303, –122.1126); Unnamed (45.7458, –122.1328); Unnamed (45.7476, –122.0518); Unnamed (45.7492, –122.1594); Unnamed (45.7624, –122.1308); Unnamed (45.7841, –122.1211); Washougal River (45.7798, –122.1403); West Fork Washougal River (45.7382, –122.2173); Wildboy Creek (45.6712, –122.2172); Winkler Creek (45.6977, –122.2580).

(vi) Columbia Gorge Tributaries Watershed

Outlet(s) = Columbia River (Lat 45.5710, Long –122.4023) upstream to endpoint(s) in: Beaver Creek (45.4579, –122.4023); Big Creek (45.5068, –122.2966); Buck Creek (45.4985, –122.2671); Gordon Creek (45.5021, –122.1805); Kelly Creek (45.5134, –122.3953); Sandy River (45.4464, –122.2459); Smith Creek (45.5136, –122.3339); Trout Creek (45.4819, –122.2870); Unnamed (45.4889, –122.3513);
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Unnamed (45.5557, –122.3715); Unnamed (45.5600, –122.3650).

(3) Lewis Subbasin 17080002—(i) East Fork Lewis River Watershed 1708000205. Outlet(s) = Allen Creek (Lat 45.8641, Long –122.7499); East Fork Lewis River (45.8694, –122.7189); Gee Creek (45.8462, –122.7803) upstream to endpoint(s) in: Allen Creek (45.8279, –122.6968); Anaconda Creek (45.8208, –122.2652); Basket Creek (45.8327, –122.4579); Big Tree Creek (45.8572, –122.0777); Unnamed (45.8756, –122.4795); Unnamed (45.8813, –122.4772); Unnamed (45.8899, –122.6256); Unnamed (45.8896, –122.5742); Unnamed (45.8888, –122.6123); Unnamed (45.9055, –122.5187); Yacolt Creek (45.6761, –122.4220).

(ii) Lower Lewis River Watershed 1708000206. Outlet(s) = Lewis River (Lat 45.8519, Long –122.7806) upstream to endpoint(s) in: Bitter Creek (45.9133, –122.4593); Brush Creek (45.9280, –122.4674); Cedar Creek (45.9019, –122.3653); Chelatchie Creek (45.9357, –122.3784); Colvin Creek (45.9400, –122.6081); Houghton Creek (45.9559, –122.6348); John Creek (45.9291, –122.4964); Johnson Creek (45.9536, –122.6183); Lewis River (45.9570, –122.5530); Pup Creek (45.9486, –122.5245); Robinson Creek (45.9362, –122.7243); Ross Creek (45.9536, –122.7043); Staples Creek (45.9423, –122.6665); Unnamed (45.8956, –122.7658); Unnamed (45.8878, –122.9688); Unnamed (45.8928, –122.4209); Unnamed (45.8949, –122.4371); Unnamed (45.9001, –122.7226); Unnamed (45.9193, –122.6836); Unnamed (45.9141, –122.5565); Unnamed (45.9172, –122.3591); Unnamed (45.9202, –122.5359); Unnamed (45.9203, –122.4557); Unnamed (45.9245, –122.3731); Unnamed (45.9258, –122.5964); Unnamed (45.9294, –122.6225); Unnamed (45.9396, –122.4097); Unnamed (45.9417, –122.7035); Unnamed (45.9436, –122.6417); Unnamed (45.9438, –122.6190); Unnamed (45.9446, –122.6437); Unnamed (45.9457, –122.3926); Unnamed (45.9474, –122.6695); Unnamed (45.9549, –122.6867).

(4) Lower Columbia/Clatskanie Subbasin 17080003—Kalama River Watershed 1708000031. Outlet(s) = Burris Creek (Lat 45.8926, Long –122.7892); Bybee Creek (45.9667, –122.8150); Kalama River (46.0340, –122.8085); Mill Creek (45.9579, –122.8030); Schoolhouse Creek (45.9785, –122.4828); Unnamed (46.0001, –122.8438); Unnamed (46.0075, –122.8455) upstream to endpoint(s) in: Arnold Creek (46.0206, –122.5638); Bear Creek (46.0951, –122.5772); Burris Creek (45.9606, –122.7428); Bush Creek (46.0828, –122.4611); Bybee Creek (45.9695, –122.6867).
-122.8135); Canyon Creek (45.9540, -122.7925); Cedar Creek (46.0333, -122.8110); Dee Creek (45.9953, -122.6525); Elk Creek (46.1154, -122.4796); Hatchery Creek (46.0673, -122.7548); Indian Creek (46.0516, -122.7502); Jacks Creek (46.0400, -122.5014); Kalama River (46.1109, -122.3579); Knowlton Creek (46.0245, -122.6454); Langdon Creek (46.1137, -122.4364); Little Kalama River (45.9745, -122.6604); Lost Creek (46.0692, -122.5292); Mill Creek (45.9741, -122.7756); North Fork Elk Creek (46.1086, -122.5284); North Fork Kalama River (46.1550, -122.4007); Schoolhouse Creek (46.0357, -122.6529); Unnamed (45.9034, -122.7792); Unnamed (45.9423, -122.7761); Unnamed (45.9683, -122.7751); Unnamed (45.9772, -122.6534); Unnamed (45.9820, -122.7123); Unnamed (45.9830, -122.8249); Unnamed (45.9957, -122.6742); Unnamed (46.0023, -122.8001); Unnamed (46.0034, -122.8330); Unnamed (46.0059, -122.7350); Unnamed (46.0064, -122.7377); Unnamed (46.0028, -122.5834); Unnamed (46.0257, -122.5913); Unnamed (46.0389, -122.6305); Unnamed (46.0437, -122.5713); Unnamed (46.0440, -122.8548); Unnamed (46.0462, -122.5997); Unnamed (46.0473, -122.7668); Unnamed (46.0611, -122.5514); Unnamed (46.0618, -122.2390); Unnamed (46.0634, -122.5630); Unnamed (46.0645, -122.3953); Unnamed (46.0681, -122.6708); Unnamed (46.0882, -122.5729); Unnamed (46.0882, -122.4887); Unnamed (46.0886, -122.6384); Unnamed (46.0998, -122.6089); Unnamed (46.1031, -122.3851); Unnamed (46.1076, -122.5965); Unnamed (46.1086, -122.4399); Unnamed (46.1088, -122.3440); Unnamed (46.1124, -122.4111); Unnamed (46.1153, -122.5646); Unnamed (46.1159, -122.5728); Unnamed (46.1169, -122.3397); Unnamed (46.1242, -122.4235); Unnamed (46.1355, -122.4413); Unnamed (46.1451, -122.4279); Unnamed (46.1543, -122.4313); Unnamed (46.1559, -122.4254); Wild Horse Creek (46.1018, -122.6755); Wolf Creek (46.0523, -122.4334).

(i) Headwaters Cowlitz River Watershed

(1) Riffe Reservoir Watershed

Outlet(s) = Cowlitz River (Lat 46.5742, Long -121.7059) upstream to endpoint(s) in: Butter Creek (46.6451, -121.6749); Coal Creek (46.6438, -121.6108); Cowlitz River (46.6580, -121.6032); Hall Creek (46.6044, -121.6609); Johnson Creek (46.5546, -121.6373); Lake Creek (46.6227, -121.6093); Skate Creek (46.6850, -121.8052); Unnamed (46.6930, -121.8024).

(2) Headwaters Cowlitz River Watershed

Outlet(s) = Cowlitz River (Lat 46.5742, Long -121.7059) upstream to endpoint(s) in: Butter Creek (46.6451, -121.6749); Coal Creek (46.6438, -121.6108); Cowlitz River (46.6580, -121.6032); Hall Creek (46.6044, -121.6609); Johnson Creek (46.5546, -121.6373); Lake Creek (46.6227, -121.6093); Skate Creek (46.6850, -121.8052); Unnamed (46.6930, -121.8024).

(ii) Upper Cowlitz River Watershed

Outlet(s) = Cowlitz River (Lat 46.5742, Long -121.7059) upstream to endpoint(s) in: Butter Creek (46.6451, -121.6749); Coal Creek (46.6438, -121.6108); Cowlitz River (46.6580, -121.6032); Hall Creek (46.6044, -121.6609); Johnson Creek (46.5546, -121.6373); Lake Creek (46.6227, -121.6093); Skate Creek (46.6850, -121.8052); Unnamed (46.6930, -121.8024).

(iii) Cowlitz Valley Frontal Watershed

Outlet(s) = Cowlitz River (Lat 46.5742, Long -121.7059) upstream to endpoint(s) in: Burton Creek (46.5423, -121.7505); Davis Creek (46.5140, -121.8084); Kilborn Creek (46.5081, -121.8007); Oliver Creek (46.5450, -121.9283); Peters Creek (46.5366, -121.9280); Siler Creek (46.4931, -121.9253); Smith Creek (46.5620, -121.6923); Unnamed (46.4913, -122.0820); Unnamed (46.5657, -122.0489); Unnamed (46.5805, -121.7319).

(iv) Upper Cispus River Watershed

Outlet(s) = Cispus River (Lat 46.4449, Long -121.7954) upstream to endpoint(s) in: Cispus River (46.3450, -121.6833); East Canyon Creek (46.3472, -121.7028); North Fork Cispus River (46.4362, -121.6497); Timonium Creek (46.4318, -121.6548); Twin Creek (46.3748, -121.7297); Yozoo Creek (46.4363, -121.6637).

(v) Lower Cispus River Watershed

Outlet(s) = Cispus River (Lat 46.4765, Long -122.0952) upstream to endpoint(s) in: Ames Creek (46.4654, -121.9233); Camp Creek (46.4513, -121.8301); Cispus River (46.4449, -121.7954); Covell Creek (46.4381, -121.8516); Crystal Creek (46.4454, -122.0234); Greenhorn Creek (46.4217, -121.9202); Iron Creek (46.3887, -121.9702); McCoy Creek (46.3891, -121.8190); Quartz Creek (46.4250, -122.0519); Unnamed (46.4633, -121.9548); Woods Creek (46.4741, -121.9473); Yellowjacket Creek (46.3869, -121.8342).

(6) Riffe Reservoir Watershed

Outlet(s) = Cowlitz River (Lat 46.5033, Long -122.5870) upstream to endpoint(s) in: Cowlitz River (46.4765, -122.0952).
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-122.9192; Blue Creek (46.4885, -122.7253); Brights Creek (46.5015, -122.6274); Cedar Creek (46.4110, -122.7316); Coon Creek (46.4371, -122.9065); Cougar Creek (46.3937, -122.7945); Cowlitz River (46.5033, -122.5870); Foster Creek (46.4073, -122.8897); Hopkey Creek (46.4987, -122.5533); Jones Creek (46.5129, -122.6825); Lacamas Creek (46.5242, -122.7923); Little Salmon Creek (46.4402, -122.7458); Mill Creek (46.5024, -122.8013); Mill Creek (46.5175, -122.6209); Otter Creek (46.4801, -122.7000); Pin Creek (46.4133, -122.8321); Rapid Creek (46.4320, -122.5465); Skook Creek (46.5031, -122.7561); Unnamed (46.3838, -122.7243); Unnamed (46.3841, -122.6789); Unnamed (46.3849, -122.7043); Unnamed (46.3857, -122.9224); Unnamed (46.3861, -122.6949); Unnamed (46.3900, -122.7368); Unnamed (46.3998, -122.8974); Unnamed (46.4001, -122.7437); Unnamed (46.4015, -122.7327); Unnamed (46.4097, -122.5878); Unnamed (46.4102, -122.6787); Unnamed (46.4106, -122.7075); Unnamed (46.4115, -122.9091); Unnamed (46.4117, -122.7554); Unnamed (46.4143, -122.7823); Unnamed (46.4147, -122.6365); Unnamed (46.4241, -122.8170); Unnamed (46.4269, -122.6124); Unnamed (46.4291, -122.6418); Unnamed (46.4293, -122.8354); Unnamed (46.4412, -122.5192); Unnamed (46.4454, -122.8662); Unnamed (46.4496, -122.5581); Unnamed (46.4514, -122.6969); Unnamed (46.4703, -122.7059); Unnamed (46.4708, -122.7713); Unnamed (46.4729, -122.6850); Unnamed (46.4886, -122.8067); Unnamed (46.5172, -122.6334); Unnamed (46.5312, -122.8196).

(iii) North Fork Toutle River Watershed 1708000504. Outlet(s) = North Fork Toutle River (Lat 46.3669, Long -122.5859) upstream to endpoint(s) in: Alder Creek (46.2831, -122.4964); Bear Creek (46.3085, -122.3504); Coldwater Creek (46.2884, -122.2975); Cow Creek (46.3287, -122.4616); Hofstad Creek (46.3211, -122.3324); Maratta Creek (46.2925, -122.2845); Unnamed (46.3050, -122.5416); Unnamed (46.3346, -122.5460); Unnamed (46.3394, -122.3314).

(iv) Green River Watershed 1708000505. Outlet(s) = Green River (Lat 46.3718, Long -122.5847) upstream to endpoint(s) in: Beaver Creek (46.4056, -122.5671); Cascade Creek (46.3924, -122.3529); Devils Creek (46.4017, -122.4089); Elk Creek (46.4178, -122.2477); Green River (46.3857, -122.1810); Jim Creek (46.3895, -122.5256); Miners Creek (46.3483, -122.1932); Shultz Creek (46.3684, -122.2848); Tradedollar Creek (46.3769, -122.2411); Unnamed (46.3271, -122.3978); Unnamed (46.3467, -122.2092); Unnamed (46.3602, -122.3257); Unnamed (46.3655, -122.4774); Unnamed (46.3683, -122.3454); Unnamed (46.3695, -122.4132); Unnamed (46.3697, -122.4705); Unnamed (46.3707, -122.5175); Unnamed (46.3734, -122.3883); Unnamed (46.3817, -122.2348); Unnamed (46.3844, -122.4335); Unnamed (46.3876, -122.4870); Unnamed (46.3891, -122.3726); Unnamed (46.4023, -122.5543); Unnamed (46.4060, -122.5415); Unnamed (46.4087, -122.2532); Unnamed (46.4106, -122.4300); Unnamed (46.4143, -122.4463); Unnamed (46.4173, -122.2910); Unnamed (46.4196, -122.2850); Unnamed (46.4226, -122.3029); Unnamed (46.4285, -122.2962); Unnamed (46.3881, -122.4126); John- son Creek (46.3047, -122.5923); Sheep Canyon (46.2066, -122.2672); South Fork Toutle River (Lat 46.2137, -122.2347); Stadebaker Creek (46.2925, -122.6805); Thirteen Creek (46.2974, -122.6230); Trouble Creek (46.1999, -122.3774); Twenty Creek (46.2508, -122.5738); Unnamed (46.1858, -122.2983); Unnamed (46.1953, -122.2881); Unnamed (46.2068, -122.3301); Unnamed (46.2075, -122.3207); Unnamed (46.2082, -122.2591); Unnamed (46.2107, -122.4301); Unnamed (46.2115, -122.2786); Unnamed (46.2117, -122.2378); Unnamed (46.2121, -122.5188); Unnamed (46.2157, -122.3467); Unnamed (46.2215, -122.5318); Unnamed (46.2234, -122.3265); Unnamed (46.2265, -122.3906); Unnamed (46.2271, -122.3307); Unnamed (46.2277, -122.3719); Unnamed (46.2309, -122.3828); Unnamed (46.2357, -122.4802); Unnamed (46.2365, -122.4402); Unnamed (46.2424, -122.4860); Unnamed (46.2444, -122.5427); Unnamed (46.2457, -122.6230); Unnamed (46.2523, -122.5147); Unnamed (46.2597, -122.5333); Unnamed (46.2591, -122.5240); Unnamed (46.2608, -122.5493); Unnamed (46.2618, -122.5705); Unnamed (46.2603, -122.5763); Unnamed (46.2707, -122.6094); Unnamed (46.2932, -122.5830); Unnamed (46.2969, -122.6718); Unnamed (46.2976, -122.6319); Unnamed (46.3035, -122.5952); Unnamed (46.3128,
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–122.7032; Unnamed (46.3217, –122.6473); Whitten Creek (46.2328, –122.4944).

(vi) East Willapa Watershed 170800507.
Outlet(s) = Cowlitz River (Lat 46.3683, –122.8930); Unnamed (46.3683, –122.7502); Unnamed (46.3718, –122.6202); Unnamed (46.3730, –123.0933); Unnamed (46.3748, –122.6167); Unnamed (46.3818, –122.8822); Unnamed (46.3824, –122.6900); Unnamed (46.4015, –122.0272); Unnamed (46.4045, –122.0314); Unnamed (46.4177, –122.9611); Unnamed (46.4200, –123.0403); Unnamed (46.4286, –123.0467); Unnamed (46.4362, –123.0328); Unnamed (46.4379, –122.9865); Unnamed (46.4571, –122.9604); Unnamed (46.4606, –122.0166); Unnamed (46.4724, –122.9989); Unnamed (46.4907, –123.0332); Unnamed (46.5074, –122.8877); Unnamed (46.5089, –122.9291); Unnamed (46.5228, –122.8539); Unnamed (46.5336, –122.9793); Unnamed (46.5371, –122.8214); Unnamed (46.5439, –122.8538); Whittle Creek (46.3122, –122.9501); Wyant Creek (46.3381, –122.5357); Wyant Creek.

(vii) Coweeman River Watershed 170800508. Outlet(s) = Cowlitz River (Lat 46.0977, Long –122.9141); Owl Creek (46.0913, –122.8644); Salmon Creek (46.2547, –122.8839); Sandy Bend Creek (46.2319, –122.9140); Skipper Creek (46.1639, –122.5885); South Fork Ostrander Creek (46.1724, –122.6117).
(46.1735, –122.8282); Unnamed (46.1750, –122.7557); Unnamed (46.1797, –122.7746); Unnamed (46.1803, –122.7801); Unnamed (46.1811, –122.7631); Unnamed (46.1814, –122.7656); Unnamed (46.1840, –122.8191); Unnamed (46.1955, –122.9082); Unnamed (46.1966, –122.5542); Unnamed (46.1966, –122.5542); Unnamed (46.1971, –122.7118); Unnamed (46.2014, –122.8241); Unnamed (46.2021, –122.6941); Unnamed (46.2027, –122.5593); Unnamed (46.2172, –122.9516); Unnamed (46.2199, –122.8375); Unnamed (46.2208, –122.8887); Unnamed (46.2231, –122.9509); Unnamed (46.2257, –122.7667); Unnamed (46.2261, –122.8023); Unnamed (46.2379, –122.8859); Unnamed (46.2430, –122.8842).

(7) Clackamas Subbasin 17090011—(i) Collawash River Watershed 1709001101. Outlet(s) = Collawash River (Lat 45.0321, Long –122.0600) upstream to endpoint(s) in: Blister Creek (44.9594, –122.1590); Dickey Creek (44.9335, –122.0469); East Fork Collawash River (44.8789, –122.9585); Elk Lake Creek (44.8986, –122.0126); Pan Creek (44.9226, –122.0735); Farm Creek (44.9620, –122.0640); Hot Springs Fork Collawash River (44.9005, –122.1616); Hugh Creek (44.9226, –122.1978); Pansy Creek (44.9926, –122.0735); Skin Creek (44.9477, –122.2015); Thunder Creek (44.9740, –122.1230).

(ii) Upper Clackamas River Watershed 1709001102. Outlet(s) = Clackamas River (Lat 45.0321, Long –122.0600) upstream to endpoint(s) in: Berry Creek (44.8291, –121.9176); Cabin Creek (45.0987, –121.8958); Clackamas River (44.8723, –121.9470); Cub Creek (44.8926, –121.8863); Fawn Creek (44.9089, –122.9226); Hunter Creek (44.8926, –122.9265); Kansas Creek (44.9820, –122.8990); Last Creek (44.9759, –122.8242); Lost Creek (45.0180, –122.9070); Lowe Creek (44.9636, –121.9457); Pinhead Creek (44.9421, –122.8359); Pot Creek (45.0201, –122.9014); Rhododendron Creek (44.9358, –121.9154); Sisli Creek (44.9110, –121.8875); Unnamed (44.8826, –121.9225); Unnamed (44.8343, –121.8778); Unnamed (44.8944, –121.9268); Unnamed (44.9335, –121.8737); Unnamed (44.9611, –121.8891); Unnamed (44.9687, –121.8920); Unnamed (45.0000, –121.8910).

(iii) Oak Grove Fork Clackamas River Watershed 1709001103. Outlet(s) = Oak Grove Fork Clackamas River (Lat 45.0736, Long –122.6530) upstream to endpoint(s) in: Oak Grove Fork Clackamas River (45.0823, –121.9861); Pint Creek (45.0834, –122.0355).

(iv) Middle Clackamas River Watershed 1709001104. Outlet(s) = Clackamas River (Lat 45.2440, Long –122.2798) upstream to endpoint(s) in: Big Creek (45.0694, –122.0848); Calico Creek (45.0682, –122.1627); Clackamas River (45.0821, –122.0600); Cripple Creek (45.1149, –122.0618); Fish Creek (45.0634, –122.1597); Mag Creek (45.0587, –122.0488); North Fork Clackamas River (45.2371, –122.2181); Pick Creek (45.0736, –122.1944); Pinn Creek (45.1451, –122.1056); Roaring River (45.1773, –122.0650); Sandstone Creek (45.0862, –122.0845); Second Creek (45.1081, –122.1601); South Fork Clackamas River (45.1912, –122.2261); Tag Creek (45.0605, –122.0475); Tar Creek (45.0494, –122.0569); Third Creek (45.0977, –122.1649); Trout Creek (45.0479, –122.0720); Wash Creek (45.0473, –122.1893); Whale Creek (45.1102, –122.0849).

(v) Eagle Creek Watershed 1709001105. Outlet(s) = Eagle Creek (Lat 45.3535, Long –122.3823) upstream to endpoint(s) in: Bear Creek (45.3369, –122.2331); Currin Creek (45.3369, –122.3555); Delph Creek (45.2387, –122.2098); Eagle Creek (45.2766, –122.1998); Little Eagle Creek (45.3003, –122.1682); North Fork Eagle Creek (45.3142, –122.1135); Trout Creek (45.3305, –122.1187).

(vi) Lower Clackamas River 1709001106. Outlet(s) = Clackamas River (Lat 45.3719, Long –122.6071) upstream to endpoint(s) in: Bargfeld Creek (45.3195, –122.4398); Clackamas River (45.2440, –122.2798); Clear Creek (45.2022, –122.3121); Deep Creek (45.3421, –122.2799); Foster Creek (45.3512, –122.4082); Goose Creek (45.3621, –122.3549); Little Clear Creek (45.3803, –122.4055); Mosier Creek (45.2683, –122.4516); North Fork Deep Creek (45.4271, –122.3094); Richardson Creek (45.4097, –122.4484); Rock Creek (45.4157, –122.5013); Tickell Creek (45.3932, –122.2775); Unnamed (45.3502, –122.4681); Unnamed (45.3626, –122.3858); Unnamed (45.3816, –122.3721); Unnamed (45.4057, –122.3223); Unnamed (45.4102, –122.2987); Wade Creek (45.2922, –122.3237).

(8) Lower Willamette Subbasin 17090012—(1) Johnson Creek Watershed 1709001201. Outlet(s) = Willamette River (Lat 45.4323, Long –122.6530) upstream to endpoint(s) in: Crystal Springs...
Creek (45.4811, –122.6381); Crystal Springs Lake (45.4799, –122.6361); John-son Creek (45.4610, –122.3432); Kellogg Creek (45.4063, –122.5925); Kelly Creek (45.4661, –122.4655); Mount Scott Creek (45.4306, –122.5556); Oswego Creek (45.4165, –122.6666); Phillips Creek (45.4328, –122.5763); Tryon Creek (45.4472, –122.6863); Unnamed (45.4793, –122.4165); Willamette River (45.3719, –122.6071).

(ii) Scappoose Creek Watershed 1709001202. Outlet(s) = Multnomah Channel (Lat 45.8577, Long –122.7919) upstream to endpoint(s) in: Multnomah Channel (45.6188, –122.7921).

(iii) Columbia Slough/Willamette River Watershed 1709001203. Outlet(s) = Willamette River (Lat 45.6530, Long –122.7646) upstream to endpoint(s) in: Bybee Lake (45.6266, –122.7523); Bybee/Smith Lakes (45.6105, –122.7285); Columbia Slough #1 (45.6078, –122.7447); Swan Island Basin (45.5652, –122.7120); Unnamed (45.6253, –122.7568); Willamette River (45.4423, –122.6453).

(9) Lower Columbia River Corridor—Lower Columbia River Corridor Outlet(s) = Columbia River (Lat 46.2485, Long –124.0782) upstream to endpoint(s) in: Columbia River (45.5710, –122.4021).

(10) Maps of critical habitat for the Lower Columbia River Steelhead ESU follow:
Final Critical Habitat for the Lower Columbia River Steelhead ESU

UPPER COWLITZ SUBBASIN 17080004

Legend

Cities / Towns
Critical Habitat
Subbasin Boundary
Watershed Boundaries

01 - 05 = Watershed code - last 2 digits of 17080004xx

Area of Detail

WASHINGTON
OREGON
IDAHO
Critical habitat is designated to include the areas defined in the following subbasins:

1. **Upper Willamette Subbasin 17090003—(i) Calapooia River Watershed**
   - Outlet(s) = Calapooia River (Lat 44.5088, Long -123.1101) upstream to endpoint(s) in: Butte Creek (44.4884, -122.6133); Calapooia River (44.2361, -122.3664); Hands Creek (44.2559, -122.3664).
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122.5127; King Creek (44.2458, –122.4526); McKinley Creek (44.2569, –122.5621); North Fork Calapooia River (44.2497, –122.4094); Potts Creek (44.2581, –122.4756); Spoon Creek (44.4379, –123.0877); United States Creek (44.2244, –122.3825).

(ii) Oak Creek Watershed 1709000304. Outlet(s) = Willamette River (Lat 44.7504, Long –123.1421) upstream to endpoint(s) in: Calapooia River (44.5088, –123.1101); Cox Creek (44.6417, –123.0680); Periwinkle Creek (44.6250, –123.0814); Truax Creek (44.6560, –123.0598).

(ii) Oak Creek Watershed 1709000304. Outlet(s) = Willamette River (Lat 44.7504, Long –123.1421) upstream to endpoint(s) in: Calapooia River (44.5088, –123.1101); Cox Creek (44.6417, –123.0680); Periwinkle Creek (44.6250, –123.0814); Truax Creek (44.6560, –123.0598).

(iii) Luckiamute River Watershed 1709000306. Outlet(s) = Luckiamute River (Lat 44.7561, Long –123.1468) upstream to endpoint(s) in: Bonner Creek (44.6735, –123.4849); Burgett Creek (44.6367, –123.4574); Clayton Creek (44.7749, –123.4870); Cooper Creek (44.7011, –123.4080); Snake Creek (44.7365, –123.4870).

122.5127; King Creek (44.2458, –122.4526); McKinley Creek (44.2569, –122.5621); North Fork Calapooia River (44.2497, –122.4094); Potts Creek (44.2581, –122.4756); Spoon Creek (44.4379, –123.0877); United States Creek (44.2244, –122.3825).

(ii) Oak Creek Watershed 1709000304. Outlet(s) = Willamette River (Lat 44.7504, Long –123.1421) upstream to endpoint(s) in: Calapooia River (44.5088, –123.1101); Cox Creek (44.6417, –123.0680); Periwinkle Creek (44.6250, –123.0814); Truax Creek (44.6560, –123.0598).

(iii) Luckiamute River Watershed 1709000306. Outlet(s) = Luckiamute River (Lat 44.7561, Long –123.1468) upstream to endpoint(s) in: Bonner Creek (44.6735, –123.4849); Burgett Creek (44.6367, –123.4574); Clayton Creek (44.7749, –123.4870); Cooper Creek (44.7011, –123.4080); Snake Creek (44.7365, –123.4870).

(ii) Oak Creek Watershed 1709000304. Outlet(s) = Willamette River (Lat 44.7504, Long –123.1421) upstream to endpoint(s) in: Calapooia River (44.5088, –123.1101); Cox Creek (44.6417, –123.0680); Periwinkle Creek (44.6250, –123.0814); Truax Creek (44.6560, –123.0598).

(iii) Luckiamute River Watershed 1709000306. Outlet(s) = Luckiamute River (Lat 44.7561, Long –123.1468) upstream to endpoint(s) in: Bonner Creek (44.6735, –123.4849); Burgett Creek (44.6367, –123.4574); Clayton Creek (44.7749, –123.4870); Cooper Creek (44.7011, –123.4080); Snake Creek (44.7365, –123.4870).

(2) North Santiam Subbasin 17090005—(i) Middle North Santiam River Watershed 1709000504. Outlet(s) = North Santiam River (Lat 44.7852, Long –122.6079) upstream to endpoint(s) in: Little Rock Creek (44.7330, –122.3927); Mad Creek (44.7373, –122.3735); North Santiam River (44.7512, –122.1421); Rock Creek (44.7011, –122.4080); Snake Creek (44.7365, –122.4870).

(ii) Little North Santiam River Watershed 1709000505. Outlet(s) = Little North Santiam River (Lat 44.7852, Long –122.6079) upstream to endpoint(s) in: Cedar Creek (44.8439, –122.2682); Elkhorn Creek (44.8338, –122.3451); Evans Creek (44.8412, –122.3601); Fish Creek (44.8326, –122.3915); Little North Santiam River (44.8334, –122.2887); Little Sinker Creek (44.8235, –122.4163); Sinker Creek (44.8211, –122.4210).

(iii) Lower North Santiam River Watershed 1709000506. Outlet(s) = Santiam River (Lat 44.7504, Long –123.1421) upstream to endpoint(s) in: Bear Branch (44.7602, –122.7942); Chehulpum Creek (44.7554, –122.9898); Cold Creek (44.7537, –122.8812); Morgan Creek (44.7495, –123.0443); North Santiam River (44.7852, –122.6079); Salem Ditch (44.8000, –122.8120); Santiam River (44.6869, –122.0052); Smallman Creek (44.7293, –122.9139); Stout Creek (44.8089, –122.5994); Trask Creek (44.7725, –122.6152); Unnamed (44.7972, –122.7236); Valentine Creek (44.7999, –122.7311).

(3) South Santiam Subbasin 17090006—(i) Hamilton Creek/South Santiam River Watershed 1709000601. Outlet(s) = Santiam River (Lat 44.6869, Long –123.0052) upstream to endpoint(s) in: Albany—Santiam Canal (44.5512, –122.9032); Hamilton Creek (44.5392, –122.7018); Johnson Creek (44.4548, –122.7080); McDowell Creek (44.4640, –122.6803); Mill Creek (44.6628, –122.9575); Morgan Creek (44.6571, –122.7038); Noble Creek (44.4513, –122.7974); South Santiam River (44.4163, –122.6693).

(ii) Crabtree Creek Watershed 1709000602. Outlet(s) = Crabtree Creek (Lat 44.6756, Long –122.9557) upstream to endpoint(s) in: Bald Barney Creek (44.5489, –122.9595); Bald Peter Creek (44.5325, –122.6024); Beaver Creek (44.6337, –122.8537); Camp Creek (44.5628, –122.5768); Crabtree Creek (44.6208, –122.5055); Cruiser Creek (44.5543, –122.5831); Green Mountain Creek (44.5777, –122.6258); Roaring River (44.6291, –122.7148); Rock Creek (44.5883, –122.6000); South Fork Crabtree Creek (44.5648, –122.5414); White Rock Creek (44.6050, –122.5209).

(iii) Thomas Creek Watershed 1709000603. Outlet(s) = Thomas Creek (Lat 44.6778, Long –122.9654) upstream to endpoint(s) in: Criminal Creek (44.7122, –122.5709); Ella Creek (44.6815, –122.5228); Hortense Creek (44.6756, –122.5017); Jordan Creek (44.7527, –122.6519); Mill Creek (44.7060, –122.7849); Neal Creek (44.6923, –122.6484); South Fork Neal Creek (44.7016, –122.7049); Thomas Creek (44.6778, –122.6500); West Fork Ella Creek (44.6605, –122.5288).
(iv) South Santiam River Watershed 1709000606. Outlet(s) = South Santiam River (Lat 44.3977, Long –122.4473) upstream to endpoint(s) in: Canyon Creek (44.3074, –122.3300); Falls Creek (44.4007, –122.3828); Harter Creek (44.4166, –122.2605); Keith Creek (44.4093, –122.3417); Moose Creek (44.4388, –122.3671), Owl Creek (44.2999, –122.3686); Shuttle Camp Creek (44.4336, –122.2597); Soda Fork South Santiam River (44.4410, –122.2466); South Santiam River (44.3980, –122.2610); Trout Creek (44.3993, –122.3464); Two Girls Creek (44.3248, –122.3346).

(v) South Santiam River/Foster Reservoir Watershed 1709000607. Outlet(s) = South Santiam River (Lat 44.4163, Long –122.6693) upstream to endpoint(s) in: Lewis Creek (44.4387, –122.6223); Middle Santiam River (44.4498, –122.5479); South Santiam River (44.3977, –122.4473).

(vi) Wiley Creek Watershed 1709000608. Outlet(s) = Wiley Creek (Lat 44.4140, Long –122.6752) upstream to endpoint(s) in: Farmers Creek (44.3383, –122.5812); Jackson Creek (44.3669, –122.6344); Little Wiley Creek (44.3633, –122.5228); Unnamed (44.3121, –122.5197); Unnamed (44.3455, –122.5894); Unnamed (44.3565, –122.6051); Wiley Creek (44.2981, –122.4318).

(4) Middle Willamette Subbasin 17090007—(i) Mill Creek/Willamette River Watershed 1709000701. Outlet(s) = Mill Creek (Lat 44.9520, Long –123.0381) upstream to endpoint(s) in: Mill Creek (44.8268, –122.8249).

(ii) Rickreall Creek Watershed 1709000702. Outlet(s) = Willamette River (Lat 44.9288, Long –123.1124) upstream to endpoint(s) in: Willamette River (44.7594, –123.1421).

(iii) Willamette River/Chetalem Creek Watershed 1709000703. Outlet(s) = Willamette River (Lat 45.2552, Long –122.8806) upstream to endpoint(s) in: Willamette River (44.9288, –123.1124).

(iv) Abernethy Creek Watershed 1709000704. Outlet(s) = Willamette River (Lat 45.3540, Long –122.6186) upstream to endpoint(s) in: Willamette River (45.2552, –122.8806).

(5) Yamhill Subbasin 17090008—(1) Upper South Yamhill River Watershed 1709000801. Outlet(s) = South Yamhill River (Lat 44.7914, Long –123.4753) upstream to endpoint(s) in: Agency Creek (45.1799, –123.6976); Cedar Creek (45.0892, –123.6969); Cockheram Creek (45.0584, –123.5077); Copser Creek (45.1497, –123.6178); Cow Creek (45.0410, –123.6165); Crooked Creek (45.0964, –123.6611); Doane Creek (45.0449, –123.4929); Ead Creek (45.1214, –123.6969); Elmer Creek (45.0794, –123.6714); Gold Creek (45.0108, –123.5496); Jackass Creek (45.0589, –123.6495); Joe Creek (45.1216, –123.6216); Joe Day Creek (45.0285, –123.6660); Kitten Creek (45.1110, –123.7266); Klees Creek (45.0784, –123.5496); Lady Creek (45.0404, –123.9299); Little Rowell Creek (45.0235, –123.5792); Middle Santiam River (44.3946, –122.5479); River (44.3977, –122.4473).

(ii) Mill Creek/South Yamhill River Watershed 1709000803. Outlet(s) = Mill Creek (Lat 45.0908, Long –123.4434) upstream to endpoint(s) in: Mill Creek (45.0980, –123.4434).

(iii) Lower South Yamhill River Watershed 1709000804. Outlet(s) = South Yamhill River (Lat 45.1616, Long –123.2190) upstream to endpoint(s) in: South Yamhill River (45.0784, –123.4753).

(iv) Yamhill River Watershed 1709000807. Outlet(s) = Yamhill River (Lat 45.2301, Long –122.9590) upstream to endpoint(s) in: South Yamhill River (45.1616, –123.2190).

(6) Molalla/Pudding Subbasin 17090009—(i) Abiqua Creek/Pudding River Watershed 1709000901. Outlet(s) = Pudding River (Lat 45.0740, Long –122.8525) upstream to endpoint(s) in: Abiqua Creek (44.9264, –122.5666); Little Abiqua Creek (44.9253, –122.6204); Little Pudding River (44.9253, –122.8655); Powers Creek (44.9552, –122.6796); Pudding (44.9988, –122.8412); Silver Creek (44.8981, –122.6799).
(iii) Rock Creek/Pudding River Watershed 1709000903. Outlet(s) = Rock Creek (Lat 45.1907, Long –122.7527) upstream to endpoint(s) in: Rock Creek (45.0876, –122.5916).

(iv) Senecal Creek/Mill Creek Watershed 1709000904. Outlet(s) = Pudding River (Lat 45.2843, Long –122.7149) upstream to endpoint(s) in: Pudding River (45.1907, –122.7527).

(v) Upper Molalla River Watershed 1709000905. Outlet(s) = Molalla River (Lat 45.1196, Long –122.5342) upstream to endpoint(s) in: Molalla River (44.9124, –122.3761); Table Rock Fork Molalla River (44.9731, –122.2629); Trout Creek (45.2979, Long –122.7141) upstream to endpoint(s) in: Buckner Creek (45.2382, –122.5399); Canyon Creek (45.1317, –122.3858); Cedar Creek (45.2037, –122.5327); Gribble Creek (45.204, –122.6867); Jackson Creek (45.1822, –122.3898); Milk Creek (45.2036, –122.3761); Molalla River (45.1196, –122.5342); Woodcock Creek (45.1508, –122.5075).

(7) Tualatin Subbasin 17090010—Gales Creek Watershed 1709001002. Outlet(s) = Tualatin River (Lat 45.5019, Long –122.9946) upstream to endpoint(s) in: Bateman Creek (45.6350, –123.2966); Beaver Creek (45.6902, –123.2899); Clear Creek (45.5705, –123.2567); Gales Creek (45.6428, –123.3576); Iler Creek (45.5900, –123.2582); North Fork Gales Creek (45.6689, –123.3394); Roaring Creek (45.5620, –123.2574); Roderick Creek (45.5382, –123.2013); South Fork Gales Creek (45.6059, –123.2978); Tualatin River (45.4917, –123.1012).

(8) Lower Willamette/Columbia River Corridor—Lower Willamette/Columbia River Corridor. Outlet(s) = Columbia River (Lat 46.2485, Long –124.0782) upstream to endpoint(s) in: Willamette River (45.3540, –122.6186).

(9) Maps of critical habitat for the Upper Willamette River Steelhead ESU follow:
Final Critical Habitat for the Upper Willamette River Steelhead ESU

Legend

- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 06 = Watershed code - last 2 digits of 17110001xx
Final Critical Habitat for the Upper Willamette River Steelhead ESU

NORTH SANTIAM SUBBASIN
17090005

Legend
- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 06 = Watershed code - last 2 digits of 17090005xx
(u) Oregon Coast Coho Salmon (Oncorhynchus kisutch). Critical habitat is designated to include the areas defined in the following subbasins:

1. Necanicum Subbasin 17100201—Necanicum River Watershed 1710020101. Outlet(s) = Arch Cape Creek (Lat 45.8035, Long – 123.9656); Asbury Creek (45.815, –123.9624); Ecola Creek (45.8959, –123.9649); Necanicum River (46.0113, –123.9264); Short Sand Creek (45.7595, –123.9641) upstream to end-point(s) in: Arch Cape Creek (45.8044, –123.9404); Asbury Creek
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(45.8150, –123.9584); Beerman Creek to endpoint(s) in: Bear Creek
(45.9577, –123.8749); Bergsvik Creek (45.7781, –123.4252); Bear Creek
(45.8704, –123.7650); Brandis Creek (45.8556, –123.2205); Beaver Creek
(45.8894, –123.8529); Charlie Creek (45.7624, –123.2973); Beaver Creek Trib A
(45.9164, –123.7606); Circle Creek (45.8071, –123.2143); Beaver Creek Trib B
(45.9234, –123.9436); Circle Creek Trib A (45.7711, –123.2318); Carlson Creek
(45.9335, –123.9457); North Fork Ecola Creek (45.7173, –123.3425); Castor Creek
(45.8705, –123.9070); West Fork Ecola Creek (45.8565, –123.9424); Grindy Creek
(45.9197, –123.7390); Hawley Creek
(45.9259, –123.8864); Joe Creek (45.8239, –123.3531); Coal Creek
(45.8747, –123.7503); Johnson Creek Trib B (45.8149, –123.1174); Coal Creek
(45.8885, –123.8816); Klootch Creek (45.7976, –123.1293); Coon Creek
(45.9450, –123.8433); Klootch Creek (45.8231, –123.2546); Dell Creek
(45.9250, –123.8447); Lindley Creek
(45.9198, –123.8339); Little Humbug Creek (45.9235, –123.7653); Little Joe Creek
(45.8781, –123.7862); Little Muddy Creek (45.8626, –123.3247); Ginger Creek
(45.8897, –123.8655); Meyer Creek (45.8320, –123.3511); Ivy Creek
(45.9279, –123.9135); Mill Creek (45.8938, –123.3160); Jim George Creek
(46.0245, –123.8905); Mill Creek Trib 1 (45.8009, –123.1014); Kensusky Creek
(46.0142, –123.8967); Neaoxie Creek (45.8859, –123.0422); Kist Creek
(46.0245, –123.9157); Neawanna Creek (45.7826, –123.2507); Louisignot Creek
(45.9810, –123.8889); Necanicum River (45.7424, –123.3722); Louisignot Creek
(45.9197, –123.7106); North Fork Necanicum River (45.9388, –123.7986); Martin Creek
(45.9398, –123.8199); South Fork Necanicum River Trib A (45.8556, –123.3038); Military Creek
(45.9398, –123.8199); South Fork Necanicum River Trib B (45.8223, –123.4812); Nehalem River
(45.8760, –123.8122); River (45.7369, –123.4159); Nehalem River
(45.9706, –123.8778); River, East Fork (45.6324, –123.0502); Nehalem River
(45.7763, –123.9466); Olson Creek (45.6128, –123.3653); Pebble Creek
(46.0108, –123.8951); Thompson Creek (45.7661, –123.1357); Pebble Creek
(45.8858, –123.9397); Tolovana Creek (45.7664, –123.1899); Robinson Creek
(45.8648, –123.9371); Unnamed (45.7363, –123.2512); Rock Creek
(45.8821, –123.9318); Unnamed (45.8135, –123.5201); Rock Creek, North
(45.8881, –123.7406); Unnamed Fork (45.8616, –123.4560); Rock Creek,
(45.8883, –123.9569); Unnamed South Fork (45.7598, –123.4249); Rock Creek Trib C (45.9767, –123.4882); South Fork
(45.9115, –123.8656); Unnamed Rock Creek Trib A (45.7832, –123.2975); Step Creek
(45.9161, –123.9000); Unnamed (45.8624, –123.3348); Swamp Creek
(45.9210, –123.8668); Unnamed (45.8217, –123.2004); Unnamed
(45.9292, –123.8900); Unnamed (45.7270, –123.3419); Unnamed
(45.9443, –123.9038); Unnamed (45.8095, –123.0908); Unnamed
(45.9250, –123.8989); Unnamed (45.7558, –123.2630); Unnamed
(46.0018, –123.8989); Volmer Creek (45.7938, –123.3847); Unnamed
(45.9049, –123.9199); Warner Creek (45.7943, –123.4059); Unnamed
(45.8887, –123.7801); Williamson Creek (45.8197, –123.0679); Unnamed
(45.9522, –123.9060); Unnamed (45.8477, –123.0734); Unnamed
(2) Nehalem Subbasin 17100202—(i) Upper Nehalem River Watershed 17100202, Outlet(s) = Nehalem River (Lat 45.9019, Long –123.1442) upstream
(45.8707, –123.4049); Wolf Creek, South
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Fork (45.7988, −123.4028); Wolf Creek (45.8949, −123.6764); Big Creek (45.8655, −123.6476); Bull Heffer Creek (45.9908, −123.5322); Buster Creek

(ii) Middle Nehalem River Watershed 1710020202. Outlet(s) = Nehalem River (45.9306, −123.4165); Cedar Creek (45.8931, −123.6029); Cow Creek
to endpoint(s) in: Adams Creek (45.8587, −123.5206); Crawford Creek (45.9609, −123.4725); Cronin Creek, Middle Fork (45.7719, −123.5747); Cronin (45.9218, −123.0829); Beaver Creek (45.9666, −123.5895); Fishhawk Creek (45.9218, −123.0829); Beaver Creek (45.9043, −123.2689); Deep Creek (45.9224, −123.5374); George Creek (45.9461, −123.3719); Deep Creek Trib A (45.8461, −123.6226); George Creek (45.9127, −123.3794); Deep Creek Trib B (45.9118, −123.5766); Gilmore Creek (45.9314, −123.3809); Deer Creek (45.9609, −123.5372); Hamilton Creek (45.9033, −123.3142); Eastman Creek (46.0034, −123.3881); Klines Creek (46.0100, −123.2202); Fall Creek (45.8703, −123.5890); Larsen Creek (45.9438, −123.2012); Fishhawk Creek (45.8757, −123.5847); Little Fishhawk Creek, North Fork (45.9256, −123.5501); Little Rock Creek (45.8886, −123.4558); McClure Creek (45.8560, −123.6227); Moores Creek (45.8608, −123.3692); Ford Creek (45.8801, −123.5178); Nehalem River (45.9514, −123.2976); Cedar Creek (45.7456, −123.5596); Destruction Creek (45.9752, −123.1143); Cook Creek (45.8750, −123.6571); East Humburg Creek (45.9212, −123.1087); Cow Creek (45.9454, −123.6358); Fishhawk Creek (45.9609, −123.5372); Hamilton Creek (46.0590, −123.3426); Crooked Creek (45.9666, −123.5895); Fishhawk Creek (45.9666, −123.5895); Fishhawk Creek (45.9248, −123.3253); Little Deer Creek (45.9814, −123.4529); Stanley Creek (45.9578, −123.2780); Losignont Creek (45.8861, −123.4352); Strum Creek (46.0342, −123.4186); Lundgren Creek (45.9321, −123.4275); Trailover Creek (46.0240, −123.2092); McCoon Creek (46.0129, −123.4976); Unnamed (46.0665, −123.3043); Messing Creek (45.8803, −123.6290); Unnamed (46.0393, −123.2206); Nehalem River (45.8682, −123.6168); Unnamed (46.0393, −123.2206); Nehalem River (45.9019, −123.1442); Northrup Creek (45.9078, −123.6630); Unnamed (46.0672, −123.4377); Oak Ranch Creek (45.9207, −123.4534); Unnamed (45.9085, −123.0834); Sager Creek (45.9405, −123.6338); Unnamed (45.9388, −123.4020); Unnamed (45.9029, −123.2044); Unnamed (45.9067, −123.0595); Unnamed (45.9498, −123.2220); Unnamed (45.9629, −123.3845); Unnamed (45.9999, −123.1732); Unnamed (46.0068, −123.4506); Unnamed (46.0208, −123.4588); Unnamed (46.0236, −123.2381); Unnamed (46.0308, −123.3135); Unnamed (46.0325, −123.4650); Unnamed (46.0390, −123.3648); Unnamed (46.0776, −123.3274); Unnamed (46.0792, −123.3409); Unnamed (46.0835, −123.2956); Warner Creek (46.0312, −123.3817); Wrong Way Creek (46.0789, −123.3142).

(iii) Lower Nehalem River Watershed 1710020203. Outlet(s) = Nehalem River (Lat 45.7567, Long −123.6530) upstream to endpoint(s) in: Alder Creek (45.9069, −123.5907); Beaver Creek (45.7923, −123.8292); Anderson Creek (45.7643, −123.9073); Big Rackheep Creek (45.7546, −123.8149); Boykin Creek (45.8030, −123.8596); Buchanan Creek (45.8270, −123.7901); Coal

Outlet(s) = Nehalem River (45.7795, −123.6064); North Fork (45.0907, −123.3675); Fishhawk Creek, Trib C (45.8560, −123.6227); Moores Creek

Outlet(s) = Nehalem River (45.7795, −123.6064); North Fork (45.0907, −123.3675); Fishhawk Creek, Trib C (45.8560, −123.6227); Moores Creek
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Creek (45.7897, −123.8676); Coal Creek, (45.7489, −123.7778); Foley Creek
West Fork (45.7753, −123.8871); Cougar (45.6436, −123.8933); Gallagher Slough
Creek (45.8064, −123.8090); Fall Creek (45.7140, −123.8657); Hanson Creek
(45.7842, −123.8547); Fall Creek (45.6611, −123.7179); Harliss Creek
(45.8226, −123.7054); Gods Valley Creek (45.6851, −123.7249); Helloff Creek
(45.7689, −123.7793); Grassy Lake Creek (45.7545, −123.7603); Hoevett Creek
(45.7986, −123.8193); Gravel Creek (45.6894, −123.6276); Jetty Creek
(45.7361, −123.8126); Henderson Creek (45.6615, −123.9103); Lost Creek
(45.7932, −123.8548); Jack Horner Creek (45.7216, −123.7164); Neahkanie Creek
(45.8531, −123.7837); Lost Creek (45.7197, −123.9247); Nehalem River
(45.7909, −123.715); Nehalem River, Little North Fork (45.9101, −123.6972); Nehalem River, North Fork (45.8623, −123.7474); Nehalem River, North Fork, Trib R (45.8287, −123.6625); Unnamed
Nehalem River, North Fork, Trib T (45.8492, −123.6796); Rackheap Creek (45.6454, −123.8663); Unnamed
(45.7077, −123.8008); Sally Creek (45.6483, −123.8605); Unnamed
(45.8294, −123.7468); Soapstone Creek (45.6814, −123.8786); Unnamed
(45.8498, −123.7409); Soapstone Creek, Trib A (45.8591, −123.7616); Sweethome Creek (45.7699, −123.6616); Unnamed
(45.7457, −123.8490); Unnamed Nestucca River Watershed 17100201—(i) Little Nestucca River Watershed 17100203. Outlet(s) = Little Nestucca River (Lat 45.1827, Long −123.8543) upstream to endpoint(s) in: Austin Creek (45.1080, −123.8748); Austin Creek, West Fork (45.1074, −123.8894);
(45.7738, −123.7534); Unnamed Creek, West Fork (45.1310, −123.8500); Bowers Creek
(45.7780, −123.7434); Unnamed Baxter Creek (45.1149, −123.7705); Bear Creek
(45.7784, −123.7742); Unnamed Creek (45.1300, −123.8500); Bowers Creek
(45.7794, −123.7315); Unnamed (45.1393, −123.9196); Cedar Creek
(45.7824, −123.7396); Unnamed (45.0971, −123.8094); Fall Creek
(45.7833, −123.7680); Unnamed (45.1474, −123.8767); Hiack Creek
(45.7841, −123.7290); Unnamed (45.0759, −123.8042); Kautz Creek
(45.7858, −123.7660); Unnamed (45.0776, −123.8317); Kellow Creek
(45.7898, −123.7424); Unnamed (45.1271, −123.9072); Little Nestucca
(45.7946, −123.7365); Unnamed River (45.0730, −123.7825); Little Nestucca River, South Fork
(45.7966, −123.7953); Unnamed Nestucca River, South Fork
(45.8008, −123.7349); Unnamed (45.0754, −123.8393); Louie Creek
(45.8193, −123.7436); Unnamed (45.1277, −123.7869); McKnight Creek
(45.8322, −123.7789); Unnamed (45.1124, −123.8363); Small Creek
(45.8359, −123.7766); Unnamed (45.1151, −123.8227); Sourgrass Creek
(45.8569, −123.7235); Unnamed (45.0917, −123.7623); Sourgrass Creek,
(45.8029, −123.7347); Unnamed Trib A (45.1108, −123.7064); Squaw Creek
(45.8062, −123.7444); Unnamed (45.1169, −123.8938); Stillwell Creek
(45.8962, −123.7189); Unnamed (45.0919, −123.8141); Unnamed
(vi) Lower Nehalem River/Cook Creek Watershed 17100202. Outlet(s) =
Nehalem River (Lat 45.6577, Long −123.9355) upstream to endpoint(s) in: Alder Creek (45.7286, −123.9091); Anderson Creek (45.7661, −123.7470); Bastard Creek (45.7667, −123.6943); Bob’s Creek (45.2436, −123.7361); Bays Creek
(45.7444, −123.9038); Cook Creek (45.3197, −123.7240); Bear Creek
(45.6939, −123.6146); Cook Creek, East Fork (45.3188, −123.6022); Bear Creek
Fork (45.6705, −123.6440); Daniels Creek (45.3345, −123.7896); Beulah Creek
(45.6716, −123.8606); Dry Creek (45.2074, −123.6747); Bible Creek
(45.6449, −123.8507); Dry Creek (45.2331, −123.5868); Boulder Creek
(45.6956, −123.7122); East Foley Creek (45.2530, −123.7525); Buck Creek
(45.6621, −123.8068); Fall Creek (45.1455, −123.7734); Cedar Creek

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(45.3288, – 123.4531); Clarence Creek (45.3824, – 123.7210); Joe Creek
(45.2649, – 123.6395); Clear Creek (45.3754, – 123.8257); Killam Creek
(45.1725, – 123.8660); Crazy Creek (45.4087, – 123.7276); Mills Creek
(45.1636, – 123.7595); Dahl Fork (45.3461, – 123.7915); Munson Creek
(45.2306, – 123.7076); East Beaver Creek (45.3626, – 123.7681); Simmons Creek
(45.3579, – 123.6877); East Creek (45.3605, – 123.7364); Sutton Creek
(45.3134, – 123.6348); Elk Creek (45.4049, – 123.8568); Tillamook River
(45.3134, – 123.5645); Elk Creek, Trib A (45.3595, – 123.9115); Tomilson Creek
(45.2926, – 123.5381); Elk Creek, Trib B (45.4587, – 123.8868); Unnamed
(45.2981, – 123.5471); Fan Creek (45.3660, – 123.8313); Unnamed
(45.2975, – 123.4994); Farmer Creek (45.3602, – 123.8466); Unnamed
(45.2593, – 123.9074); Poland Creek (45.3654, – 123.9650); Unnamed
(45.2506, – 123.7898); Poland Creek, West Fork (45.3987, – 123.7105); Unnamed
Fork (45.2619, – 123.8029); George Creek (45.4083, – 123.8160); Unnamed
(45.2239, – 123.8291); Ginger Creek (45.4478, – 123.8670); Unnamed
(45.3283, – 123.4680); Hartney Creek (45.3950, – 123.7348).
(45.2192, – 123.8632); Horn Creek (iv) Trask River Watershed 1710020304.
(45.2536, – 123.9212); Lawrence Creek Outlet(s) = Trask River (Lat 45.4682,
(45.1861, – 123.7832); Limestone Creek Long (45.8802) upstream to end
(45.2472, – 123.7169); Minn Creek point(s) In: Bales Creek
(45.2444, – 123.6197); Moon Creek (45.3712, – 123.5786); Bark Shanty Creek
(45.3293, – 123.6762); North Beaver Creek (45.4232, – 123.5550); Bear Creek
(45.3497, – 123.8961); Nestucca River (45.4192, – 123.7412); Bill Creek
(45.3093, – 123.4077); Niagara Creek (45.3713, – 123.6386); Blue Bus Creek
(45.1898, – 123.6637); Pheasant Creek (45.4146, – 123.3949); Boundry Creek
(45.2121, – 123.6306); Pollard Creek (45.3493, – 123.5470); Clear Creek #1
(45.1951, – 123.7958); Powder Creek (45.4638, – 123.5571); Clear Creek #2
(45.2305, – 123.6974); Saling Creek (45.5025, – 123.4683); Cruiser Creek
(45.2691, – 123.8474); Sanders Creek (45.4201, – 123.4753); Dougherty Slough
(45.2254, – 123.8959); Slick Rock Creek (45.4684, – 123.7888); East Fork of South
(45.2603, – 123.6106); Swab Creek Fork Trask River (45.3563, – 123.4752);
(45.2689, – 123.7656); Testament Creek (45.3852, – 123.6676); Elk-
(45.2213, – 123.5488); Three Rivers (45.4080, – 123.4440);
(45.1785, – 123.7557); Tiger Creek (45.4392, – 123.4709); Gold
(45.3405, – 123.8029); Tiger Creek, Trib A Creek (45.4326, – 123.7218); Green Creek
(45.3346, – 123.8547); Tony Creek (45.4510, – 123.7361); Hatchery Creek
(45.2975, – 123.7735); Turpy Creek (45.4485, – 123.6623); Headquarters Camp
(45.2537, – 123.7620); Unnamed Creek (45.3517, – 123.5672); Hoquarten
(45.1924, – 123.8292); Unnamed Slough (45.4597, – 123.8480); Joyce Creek
(45.2290, – 123.9398); Unnamed (45.3881, – 123.6386); Michael Creek
(45.3018, – 123.4636); Unnamed (45.4799, – 123.5119); Mill Creek
(45.3102, – 123.6628); Unnamed (45.4100, – 123.7450); Miller Creek
(45.3148, – 123.6616); Unnamed (45.3582, – 123.5666); Pigeon Creek
(45.3158, – 123.8679); Unnamed (45.3910, – 123.5656); Raw Creek
(45.3292, – 123.8872); Walker Creek (45.4395, – 123.6351); Rock Creek
(45.2914, – 123.4207); West Beaver Creek (45.3515, – 123.5074); Samson Creek
(45.3109, – 123.8840); West Creek (45.4662, – 123.6439); Scotch Creek
(45.2899, – 123.8514); Wildcat Creek (45.4015, – 123.5873); Steampot Creek
(45.3164, – 123.8187); Wolfe Creek (45.3875, – 123.5425); Stretch Creek
(45.3133, – 123.7658); Woods Creek (45.3483, – 123.5382); Summit Creek
(45.1691, – 123.8070); Summit Creek (45.3481, – 123.6054); Summit Creek,
(iii) Tillamook River Watershed
1770020303. Outlet(s) = Tillamook River
River, North Fork, Middle Fork
(Lat 45.4682, Long (45.8802) upstream to endpoint(s) in: Bear Creek
River, North Fork (45.5275, – 123.4177);
(45.4213, – 123.8885); Beaver Creek Trask River, South Fork
(45.4032, – 123.8661); Beaver Creek (45.3558, – 123.6445); Trib A
(45.4237, – 123.8965); Trib B (45.3766, – 123.5191); Trib B
(45.4464, – 123.9017); Fawcett Creek (45.3776, – 123.4988); Unnamed

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(45.3639, – 123.6054);  Unnamed (45.5533, – 123.7144);  Schroeder Creek
(45.4105, – 123.7741);  Unnamed (45.6469, – 123.7064);  Unnamed
(45.4201, – 123.6320);  Unnamed (45.5625, – 123.7593).
(45.4220, – 123.7654).

(v) Wilson River Watershed 1710020305.
Outlet(s) = Wilson River (Lat 45.4816, Long – 123.8788) upstream to endpoint(s) in: Beavert Creek (45.6158, – 123.8184); Holson Creek
(45.4894, – 123.7933); Ben Smith Creek (45.5738, – 123.8970); Illingsworth Creek
(45.5772, – 123.5072); Cedar Creek (45.5547, – 123.8693); Miami River
(45.5869, – 123.6228); Cedar Creek, North Fork (45.6362, – 123.7533); Miami River, Trib S Fork (45.6182, – 123.8004); Miami River, Trib T Fork (45.6066, – 123.8151); Deo Creek (45.6208, – 123.4717); Elliott Creek
(45.6646, – 123.7943); French Creek (45.5609, – 123.8369); Hoess Creek
(45.6550, – 123.4620); Elk Creek, West Fork (45.5628, – 123.8319); Peterson Creek
(45.6191, – 123.7178); Kilchis River, North Fork (45.6028, – 123.8901); Wheeler Creek
(45.6151, – 123.4358); White Creek (45.6314, – 123.9001); Waldrum Creek
(45.6540, – 123.7526); Idiot Creek (45.5856, – 123.8483).
(45.6252, – 123.4296);  Jones Creek (vi) Tillamook Bay Watershed
(45.6028, – 123.5702); Jordan Creek (1710020308. Outlet(s) = Tillamook Bay (45.6010, – 123.4557); Jordan Creek, South Fork (45.5099, – 123.5279); Kansas Creek (45.4579, – 123.5049); Tuffy Creek
(45.5738, – 123.4702);  Unnamed (45.4736, – 123.8637); Jacoby Creek
(45.4809, – 123.8362);  Unnamed (45.5297, – 123.8665); Kilchis River
(45.5758, – 123.5226);  Unnamed (45.4927, – 123.8615); Larson Creek
(45.3942, – 123.4259);  Unnamed (45.5366, – 123.8849); Miami River
(45.6002, – 123.5893);  Unnamed (45.5597, – 123.8964); Patterson Creek
(45.5181, – 123.7223); Wilson River, Devil’s Lake Fork (45.6008, – 123.3301); Wilson River, North Fork (45.5181, – 123.7223); Wilson River, Devil’s Lake Fork (45.4816, – 123.8708).
(45.6679, – 123.5138); Wilson River, North Fork, Little (45.5283, – 123.6771); Wilson River, North Fork, West Fork (45.6330, – 123.5879); Wilson River, North Fork, West Fork, North Fork (45.6495, – 123.5779); Wilson River, South Fork (45.5567, – 123.3965); Wolf Creek
(45.5633, – 123.6129).

(ix) Spring Creek/Sand Lake/Neskowin Creek Frontal Watershed 1710020309. Outlet(s) = Crescent Lake
(45.6306, – 123.9405); Neskowin Creek (45.1001, – 123.9859); Netarts Bay
(45.4339, – 123.9512); Rover Creek (45.3290, – 123.9670); Sand Creek
(45.5892, – 123.9477) upstream to endpoint(s) in: Andy Creek
(45.5905, – 123.8744);  Butte Creek
(45.5000, – 123.7647);  Coal Creek (45.1159, – 123.9360);  Crescent Lake
(45.5004, – 123.8085);  Company Creek (45.6320, – 123.9376);  Davis Creek
(45.5939, – 123.7370);  French Creek (45.6220, – 123.9254);  Fall Creek
(45.6313, – 123.6926);  Kilchis River, Little South Fork (45.5668, – 123.7178); Kilchis River, North Fork (45.6044, – 123.6504); Kilchis River, South Fork (45.5875, – 123.6941); Mapes Creek
(45.0896, – 123.9224);  Lewis Creek
(45.3229, – 123.8382);  Murphy Creek (45.0835, – 123.8979);  Meadow Creek
(45.5220, – 123.8311); Myrtle Creek (45.9823, – 123.9824);  Neskowin Creek
(45.5296, – 123.8156); Sam Downs Creek (45.0574, – 123.8812);  Prospect Creek
(45.0858, – 123.9321);  Reneke Creek
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<table>
<thead>
<tr>
<th>Name</th>
<th>Coordinates</th>
<th>Type</th>
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<tr>
<td>Yaquina River</td>
<td>(44.6822, -123.8741)</td>
<td>Outlet(s) = Yaquina River</td>
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<tr>
<td>Haxel Creek</td>
<td>(44.6020, -123.7667)</td>
<td>Devil's Well Creek</td>
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<td>Jackass Creek</td>
<td>(44.5725, -123.8025)</td>
<td>Jackass Creek</td>
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<tr>
<td>Little Elk</td>
<td>(44.5204, -123.7206)</td>
<td>Lake Creek</td>
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<td>Buttermilk Creek</td>
<td>(44.5332, -123.6345)</td>
<td>Little Creek</td>
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<td>Deer Creek</td>
<td>(44.5538, -123.6345)</td>
<td>Little Creek</td>
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<tr>
<td>Yequina River</td>
<td>(44.6188, -123.7379)</td>
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<td>Sloop Creek</td>
<td>(44.5805, -123.6309)</td>
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<td>Spilide Creek</td>
<td>(44.5108, -123.6249)</td>
<td>Unnamed</td>
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<td>Stony Creek</td>
<td>(44.5144, -123.6554)</td>
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<td>Trapp Creek</td>
<td>(44.5410, -123.8213)</td>
<td>Unnamed</td>
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<td>Thunder Creek</td>
<td>(44.5450, -123.8590)</td>
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<tr>
<td>Sugarbowl Creek</td>
<td>(44.5256, -123.6894)</td>
<td>Unnamed</td>
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(44.5771, –123.7027); Unnamed Fork (44.8233, –123.8095); Buck Creek,
(44.5821, –123.8123); Unnamed West Fork (44.8352, –123.8084); Cerine
(44.5840, –123.6678); Unnamed Creek (44.7478, –123.7198); Deer Creek
(44.5906, –123.7871); Unnamed (44.8245, –123.7268); Deer Creek, Trib A
(44.5990, –123.7808); Unnamed (44.8178, –123.7397); Elk Creek
(44.5865, –123.8521); Wolf Creek (44.8704, –123.7668); Fourth of July
(44.5873, –123.6939); Wolf Creek, Trib A Creek (44.8203, –123.6810); Gunn Creek
(44.5662, –123.7188); Wolf Creek, Trib B (44.7616, –123.7679); Holman River
(44.5847, –123.7062).

(iii) Lower Yaquina River Watershed
1710020403. Outlet(s) = Yaquina River
(Lat 44.6098, Long –124.0618) upstream to endpoint(s) in: Abbey Creek
(44.6098, –124.0618); Buck Creek (44.5873, –124.0900); Nute Slough
(44.5617, –123.9799); Blue Creek
(44.6141, –123.9936); Boone Slough, Trib A
(44.6134, –123.9769); Depot Creek, Little
(44.6135, –123.9482); Depot Creek, Trib A
(44.6837, –123.9420); Drake Creek
(44.6974, –123.9690); East Fork Mill
(44.5691, –123.8843); Flesher Slough
(44.5668, –123.9803); King Slough
(44.5944, –124.0323); Little Beaver Creek
(44.6531, –123.9728); McCaffery Slough
(44.5659, –124.0180); Mill Creek
(44.5550, –123.9064); Mill Creek, Trib A
(44.5828, –123.8750); Montgomery Creek
(44.5796, –123.9286); Nute Slough
(44.6073, –123.9660); Olalla Creek
(44.6810, –123.8972); Olalla Creek, Trib A
(44.6511, –123.9034); Parker Slough
(44.5889, –124.0119); Unnamed
(44.5471, –123.9557); Unnamed
(44.5485, –123.9308); Unnamed
(44.5520, –123.9433); Unnamed
(44.5528, –123.9695);
(44.5552, –123.9294); Unnamed
(44.5619, –123.9348); Unnamed
(44.5662, –123.8905); Unnamed
(44.5827, –123.9456); Unnamed
(44.5877, –123.8850); Unnamed
(44.6444, –123.9059); Unnamed
(44.6457, –123.9990); Unnamed
(44.6530, –123.9914); Unnamed
(44.6581, –123.8947); Unnamed
(44.6727, –123.8942); Unnamed
(44.6831, –123.9940); West Olalla Creek
(44.6812, –123.9299); West Olalla Creek,
Trib A (44.6649, –123.9204); Wessel Creek
(44.5619, –123.9348); West Olalla Creek
(44.5506, –123.9250); Wright Creek, Trib A
(44.5658, –123.9422); Yaquina River
(44.6219, –123.8741).

(iv) Middle Siletz River Watershed
1710020405. Outlet(s) = Siletz River (Lat 44.7375, Long –123.7917) upstream to endpoint(s) in: Buck Creek, East Fork
(44.8410, –123.7970); Buck Creek, South
(44.6812, –123.9724); Drift Creek
(44.7255, –123.9724); Drift Creek
(44.7255, –123.9724); Drift Creek
(44.6935, –123.8211); Erickson Creek
(44.9629, –123.9490); Euchre Creek
(44.9203, –123.8687); Fowler Creek
(44.9271, –123.8440); Gordey Creek
(44.9114, –123.9724); Hough Creek
(44.8052, –123.8991); Jaybird Creek
(44.7640, –123.9733); Long Prairie Creek
(44.6970, –123.7499); Long Tom Creek
(44.7037, –123.8533); Mann Creek
(44.6987, –123.8025); Mill Creek
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(44.6949, –123.8967); Miller Creek (44.9903, –123.8158); Sulphur Creek
(44.7487, –123.9733); North Creek (45.0403, –123.8216); Telephone Creek
(44.9279, –123.8906); North Roy Creek (45.0467, –123.9348); Toketa Creek
(44.7916, –123.9897); Ojalla Creek (45.0482, –123.9088); Trout Creek
(44.7489, –123.9427); Quarry Creek (44.9693, –123.8337); Unnamed
(44.8899, –123.9390); Reed Creek (44.9912, –123.8789); Unnamed
(44.8020, –123.8835); Reed Creek (45.0370, –123.7333); Unnamed
(44.8475, –123.9267); Roots Creek (45.0433, –123.7650); Widow Creek
(44.8300, –123.9351); South Roy Creek (45.0373, –123.8530); Widow Creek, West
(44.7773, –123.9847); Sam Creek (45.0320, –123.8643); Willis Creek
(44.7086, –123.7312); Sampson Creek (45.0059, –123.9391).
(44.9098, –123.8173); Savage Creek
(44.8021, –123.8966); Scare Creek
(44.8246, –123.9954); Schooner Creek
(44.9401, –123.8689); Scott Creek
(44.7414, –123.8268); Sljota Creek
(44.8883, –124.0257); Siletz River
(44.7375, –123.7917); Skunk Creek
(44.8780, –123.9073); Smith Creek
(44.9294, –123.8056); Stemple Creek
(44.8405, –123.9492); Tanager Creek
(44.7278, –123.8944); Thayer Creek
(44.7023, –123.8256); Thompson Creek
(44.7620, –123.8893); Unnamed
(44.7003, –123.7669); Unnamed
(44.8004, –123.8034); Unnamed
(44.8927, –123.8400); Unnamed
(44.7034, –123.7754); Unnamed
(44.7145, –123.8423); Unnamed
(44.7410, –123.8800); Unnamed
(44.7925, –123.9212); Unnamed
(44.8396, –123.8896); Unnamed
(44.9035, –123.8635); Unnamed
(44.9240, –123.7913); West Fork Mill Creek (44.7119, –123.9703); Wildcat Creek
(44.8915, –123.8842); (vii) Salmon River/Siletz/Yaquina Bay Watershed 1710020408. Outlet(s) = Salmon River (Lat 45.0474, Long –123.0031) upstream to endpoint(s) in: Alder Brook (45.0318, –123.8426); Bear Creek
(44.9785, –123.8580); Boulder Creek
(45.0428, –123.7817); Calkins Creek
(45.0508, –123.9615); Crowley Creek
(45.0540, –123.9819); Curl Creek
(45.0150, –123.9198); Deer Creek
(45.0196, –123.8091); Frazer Creek
(45.0096, –123.9576); Gardner Creek
(45.0352, –123.9001); Indian Creek
(45.0495, –123.8010); Little Salmon River
(45.0546, –123.7473); McMullen Creek
(44.9829, –123.8682); Panther Creek
(45.0208, –123.8878); Panther Creek,
(45.0208, –123.8878); Panther Creek,
(45.0208, –123.8878); Panther Creek,
(45.0355, –123.8129); Rowdy Creek
(44.4062, –123.5815); Honey Grove Creek
(44.3874, –123.5978); North Fork Alsea River
(44.4527, –123.6102); Parker Creek Upstream to point(s) in: Big Creek
(44.7074, –124.0615); D River
(44.9684, –124.0172); Fogarty Creek
(44.6558, –124.0427); Coal Creek
(44.7047, –124.0099); Devils Lake
(44.9907, –123.9773); Fogarty Creek
(44.8563, –124.0153); Jeffries Creek
(44.6425, –124.0315); Moolack Creek
(44.6931, –124.0150); North Depoe Bay
(44.8157, –124.0510); Rock Creek
(44.9689, –123.9317); South Depoe Bay
(44.7838, –124.0126); Salmon Creek
(44.8400, –124.0184); Schoolhouse Creek
(44.8634, –124.0151); South Fork Spencer Creek
(44.7323, –123.9974); Spencer Creek
(44.7453, –124.0276); Unnamed
(44.8280, –124.0318); Unnamed
(44.9666, –123.9731); Unnamed
(44.9974, –123.9706); Wade Creek
(44.7166, –124.0057).

(5) Alsea Subbasin 17100205—(i) Upper Alsea River Watershed 1710020501. Outlet(s) = Alsea River, South Fork (Lat 44.3767, Long –123.1224) upstream to endpoint(s) in: Alder Creek
(44.4329, –123.5522); Banton Creek
(44.3317, –123.6020); Brown Creek
(44.3151, –123.6250); Bummer Creek
(44.3020, –123.9765); Cabin Creek
(44.4431, –123.5328); Crooked Creek
(44.4579, –123.5099); DuBucose Creek
(44.3436, –123.5527); Ernest Creek
(44.4234, –123.3275); Hayden Creek
(44.4062, –123.5815); Honey Grove Creek
(44.3874, –123.5978); North Fork Alsea River
(44.4527, –123.6102); Parker Creek
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(44.470, –123.5978); Peak Creek (44.2262, –123.7982); Unnamed
(44.3558, –123.4993); Record Creek (44.2239, –123.8559); Unnamed
(44.3254, –123.6331); Seeley Creek (44.2327, –123.8344); Unnamed
(44.4051, –123.5177); Swamp Creek (44.2356, –123.8178); Unnamed
(44.3007, –123.6198); Tobe Creek (44.2447, –123.6460); Unnamed
(44.3273, –123.5719); Trout Creek (44.2500, –123.8074); Unnamed
(44.3084, –123.5163); Unnamed (44.2511, –123.9011); Unnamed
(44.3108, –123.6225); Unnamed (44.2551, –123.8733); Unnamed
(44.3098, –123.5670); Unnamed (44.2614, –123.8652); Unnamed
(44.4574, –123.5001); Unnamed (44.2625, –123.8635); Unnamed
(44.3708, –123.5741); Unnamed (44.2694, –123.8180); Unnamed
(44.3713, –123.5656); Unnamed (44.2695, –123.7429); Unnamed
(44.3786, –123.5529); Unnamed (44.2696, –123.8497); Unnamed
(44.4570, –123.5492); Unnamed (44.2752, –123.7616); Unnamed
(44.4518, –123.6296); Yew Creek (44.2760, –123.7121); Unnamed
(44.4581, –123.5373); Zahn Creek (44.2775, –123.8895); Unnamed
(44.4381, –123.5425). (44.2802, –123.7097); Unnamed

(ii) Five Rivers/Lobster Creek Watershed 1710025602. Outlet(s) = Five Rivers
(Lat 44.3584, Long –123.8279) upstream to endpoint(s) in: Alder Creek
124.0043) upstream to end-point(s) in: Alder Creek (44.2895, –123.9083); Unnamed
(44.2947, –123.8105); Bear Creek (44.2940, –123.7358); Unnamed
(44.2824, –123.9123); Bear Creek (44.2954, –123.7602); Unnamed
(44.3988, –123.7930); Bear Creek (44.2995, –123.7760); Unnamed
(44.2589, –123.6647); Briar Creek (44.3024, –123.9064); Unnamed
(44.3184, –123.6602); Buck Creek (44.3066, –123.8838); Unnamed
(44.2428, –123.8989); Camp Creek (44.3070, –123.8280); Unnamed
(44.2685, –123.7552); Cascade Creek (44.3129, –123.7763); Unnamed
(44.3193, –123.9073); Cascade Creek, (44.3214, –123.8161); Unnamed
North Fork (44.3299, –123.8932); Cedar Creek (44.3237, –123.9020); Unnamed
Creek (44.2782, –123.7753); Cherry Creek (44.2852, –123.7382); Unnamed
(44.3061, –123.8140); Coal Creek (44.3289, –123.8354); Unnamed
(44.2081, –123.6484); Cook Creek (44.3336, –123.7431); Unnamed
(44.2777, –123.6445); Cougar Creek (44.3346, –123.7721); Wilkinson Creek
(44.2723, –123.8678); Crab Creek (44.3296, –123.7249); Wilson Creek
(44.2458, –123.8755); Crazy Creek (44.3085, –123.8990).
(44.2955, –123.7927); Crooked Creek (iii) Drift Creek Watershed 1710025603.
(44.3154, –123.7896); Elk Creek Outlet(s) = Drift (Lat 44.4157,
(44.3432, –123.7909); Pendall Creek Long –124.0043) upstream to end-
(44.2764, –123.7890); Five Rivers point(s) in: Boulder Creek
(44.2080, –123.8025); Green River (44.4344, –123.8705); Bush Creek
(44.2286, –123.8751); Green River, East (44.5315, –123.8631); Cape Horn Creek
Fork (44.2255, –123.8143); Jasper Creek (44.5153, –123.7844); Cedar Creek
(44.2777, –123.7336); Little Lobster Creek (44.4742, –123.9699); Cougar Creek
(44.2961, –123.6296); Lobster Creek, East (44.4405, –123.9144); Deer Creek
Fork (44.2552, –123.5897); Lobster Creek, (44.5514, –123.8778); Drift Creek
South Fork (44.2326, –123.6090); Lobster Creek (44.4688, –123.7859); Ellen Creek
Creek (44.2237, –123.6195); Lord Creek (44.4415, –123.9413); Flynn Creek
(44.2411, –123.7631); Martha Creek (44.5498, –123.8520); Gold Creek
(44.2822, –123.6781); Meadow Creek (44.4778, –123.8802); Gopher Creek
(44.2925, –123.6592); Phillips Creek (44.5217, –123.7787); Horse Creek
(44.3998, –123.7613); Preacher Creek (44.5347, –123.9072); Lyndon Creek
(44.2482, –123.7440); Prindel Creek (44.4395, –123.9801); Needle Branch
(44.2346, –123.7849); Ryan Creek (44.5154, –123.8537); Nettle Creek
(44.2576, –123.7911); Summers Creek (44.4940, –123.7845); Slickrock Creek
(44.2589, –123.7627); Swamp Creek (44.4757, –123.9007); Trout Creek
(44.3274, –123.8407); Unnamed (44.4965, –123.9113); Trout Creek, East
(44.2945, –123.7007); Unnamed Fork (44.4705, –123.9290); Unnamed
(44.2129, –123.7919); Unnamed (44.4995, –123.8488); Unnamed

732
(44.4386, −123.9200); Unnamed (44.4477, −124.0130); Sudan Creek
(44.4409, −123.8738); Unnamed (44.3817, −123.9717); Sulmon Creek
(44.4832, −123.9570); Unnamed (44.3285, −123.7008); Sulmon Creek
(44.4966, −123.9340); Unnamed North Fork (44.3421, −123.6374); Sulmon
(44.4872, −123.9518); Unnamed Creek, South Fork (44.3339, −123.6709);
(44.4875, −123.9460); Unnamed Swede Fork (44.3852, −124.0285);
(44.5111, −123.9227); Unnamed Unnamed (44.3319, −123.9318); Unnamed
(44.5187, −123.7960); Unnamed (44.3556, −123.9484); Unnamed
(44.5260, −123.7848); Unnamed (44.3393, −123.9360); Unnamed
(44.5263, −123.8868); Unnamed (44.3413, −123.9294); Unnamed
(44.5326, −123.8453); Unnamed (44.3490, −123.9658); Unnamed
(44.5387, −123.8440); Unnamed (44.3548, −123.6574); Unnamed
(44.5488, −123.8694); Unnamed (44.3599, −123.6363); Unnamed
(44.5724, −123.9216); Unnamed (44.3597, −123.9402); Unnamed
(iv) Lower Alsea River Watershed
1710026504. Outlet(s) = Alsea River (Lat 44.3586, −123.6562); Unnamed
1710026504. Outlet(s) = Alsea River (Lat 44.3586, −123.6562); Unnamed
44.4165, Long −124.0829) upstream to (44.3600, −123.6514); Unnamed
endpoint(s) in: Alsea River (44.3656, −123.9085); Unnamed
(44.3767, −123.6024); Arnold Creek (44.3689, −123.9629); Unnamed
(44.3922, −123.9593); Barclay Creek (44.3794, −123.8298); Unnamed
(44.4055, −123.8659); Bear Creek (44.3800, −123.9134); Unnamed
(44.3729, −123.9623); Bear Creek (44.3814, −123.7650); Unnamed
(44.3843, −123.7704); Beaty Creek (44.3822, −124.0555); Unnamed
(44.4044, −123.6043); Benner Creek (44.3823, −124.0451); Unnamed
(44.3534, −123.7447); Brush Creek (44.3869, −123.6050); Unnamed
(44.3826, −123.8537); Bull Run Creek (44.4051, −124.0527); Unnamed
(44.4745, −123.7439); Canal Creek (44.4166, −123.8149); Unnamed
(44.3222, −123.9460); Canal Creek, East (44.4537, −123.7247); Walker Creek
Fork (44.4354, −123.9161); Carns Canyon (44.4583, −124.0271); Weist Creek
(44.4027, −123.7550); Cedar Creek (44.3967, −124.0256); West Creek
(44.3875, −123.7946); Cove Creek (44.3588, −123.9493).
(44.4403, −123.7107); Cow Creek
(v) Beaver Creek/Waldport Bay Watershed
1710026505. Outlet(s) = Beaver
1710026505. Outlet(s) = Beaver
44.4165, Long −124.0829) upstream to
44.4661, −123.6933); George Creek endpoint(s) in: Beaver Creek, North
(44.3556, −123.8603); Grass Creek Fork, Trib G (44.3509, −123.9195); Beaver
(44.3077, −123.8786); Hatchery Creek (44.4816, −123.9853);
(44.3652, −123.7269); Hatchery Creek
(44.4121, −123.8734); Hoover Creek (44.4644, −124.0332); Bowers Creek
(44.3618, −123.8583); Lake Creek (44.5312, −124.0117); Bunnel Creek
(44.3345, −123.8725); Lint Creek (44.5178, −124.0265); Deer Creek
(44.3850, −124.0490); Maltby Creek (44.5057, −124.0721); Elkhorn Creek
(44.3933, −123.8770); Meadow Fork (44.5013, −123.9572); Elkhorn Creek
(44.3764, −123.8879); Mill Creek (44.4976, −123.9685); Lewis Creek
(44.4046, −123.6496); Minotti Creek (44.5326, −123.9532); North Fork Beaver
(44.3750, −123.7718); Nye Creek Creek (44.5149, −123.8988); Oliver Creek
(44.4326, −123.7648); Oxstable Creek (44.4660, −124.0471); Peterson Creek
(44.3912, −123.9603); Phillips Creek (44.5419, −123.9738); Pumphouse Creek
(44.3624, −123.7786); Red Creek (44.5278, −124.0569); Simpson Creek
(44.3722, −123.9162); Risley Creek (44.5255, −124.0390); Thiel Creek
(44.4097, −123.9380); Schoolhouse Creek (44.5408, −124.0254); Tracy Creek
(44.3897, −123.6545); Scott Creek, East (44.5411, −124.0500); Unnamed
Fork (44.4252, −123.7897); Scott Creek, West Fork (44.4212, −123.8225); Skinner (44.5189, −124.0638); Unnamed
Creek (44.3565, −123.9734); Skunk Creek (44.5225, −123.9313); Unnamed
(44.3986, −123.8012); Slide Creek (44.5256, −123.9399); Unnamed
(44.3896, −123.8419); Starr Creek (44.5435, −124.0221); Unnamed

733
(44.561, – 124.0311); Unnamed Trib A (44.1601, – 124.0231); Bob Creek
(44.5472, – 124.0591); Unnamed (44.2346, – 124.0235); Cape Creek
(44.5482, – 124.0249); Unnamed (44.1351, – 124.0174); Cape Creek, North
(44.5519, – 124.0279); Unnamed Fork (44.1458, – 124.0489); Cummins
(44.5592, – 124.0531); Worth Creek (44.2557, – 124.0104); Fryingpan
Creek (44.1723, – 124.0401); Leavage Creek (44.0745, – 124.0588); Little Cummins
1710020506. Outlet(s) = Yachts River Watershed (44.2614, – 124.0851); McKinney
(Creek (44.2187, – 124.9965); Mercer Creek (44.2095, – 123.9607);
Lat 124.1070) upstream to endpoint(s) in: Axtell Creek (44.0712, – 124.0796); Mill Creek
(44.3084, – 123.9915); Beam Creek (44.2106, – 124.0747); Quarry Creek
(44.3142, – 124.0124); Bend Creek (44.0681, – 124.1124); Rath Creek
(44.2826, – 124.0077); Carson Creek (44.0747, – 124.0901); Rock Creek
(44.3160, – 124.0050); Dawson Creek (44.1882, – 124.0310); Tenmile Creek
(44.2892, – 124.0133); Depew Creek (44.2143, – 123.9351); Tenmile Creek.
(44.3395, – 123.9631); Earley Creek South Fork (44.2095, – 123.9607);
(44.3510, – 123.9885); Fish Creek Unnamed (44.1771, – 124.0908); Unnamed
(44.3259, – 123.9592); Glines Creek (44.0606, – 124.0805); Unnamed
(44.3436, – 123.9756); Grass Creek (44.0624, – 124.0532); Unnamed
(44.2073, – 123.9109); Helms Creek (44.0658, – 124.0802); Unnamed
(44.2777, – 123.9954); Keller Creek (44.0690, – 124.0490); Unnamed
(44.2601, – 123.9485); Little Beamer Creek (44.0748, – 124.0478); Unnamed
(44.2993, – 124.0213); Reedy Creek (44.0814, – 124.0464); Unnamed
(44.3083, – 124.0460); South Beamer Creek (44.0958, – 124.0559); Unnamed
(44.2852, – 124.0325); Stump Creek (44.1283, – 124.0242); Unnamed
(44.2566, – 123.9624); Unnamed (44.1352, – 124.0941); Unnamed
(44.2596, – 123.9279); Unnamed (44.1712, – 124.0558); Unnamed
(44.2657, – 123.9585); Unnamed (44.1715, – 124.0636); Unnamed
(44.2660, – 123.9183); Unnamed (44.2011, – 123.9634); Unnamed
(44.2684, – 123.9711); Unnamed (44.2048, – 123.9971); Unnamed
(44.2837, – 123.9268); Unnamed (44.2146, – 124.0358); Unnamed
(44.2596, – 123.9316); Unnamed (44.2185, – 124.0270); Unnamed
(44.3065, – 123.9324); Unnamed (44.2229, – 123.9398); Wapiti Creek
(44.3163, – 123.9428); Unnamed (44.1216, – 124.0448); Wildcat Creek
(44.3186, – 123.9568); Unnamed (44.2339, – 123.9632).
(44.3259, – 123.9578); Unnamed (viii) Big Creek/Vingie Creek Watershed
(44.3431, – 123.9711); West Fork Williamson Creek (44.3230, – 124.0008); 1710020508. Outlet(s) = Big Creek (Lat
Yachats River (44.2468, – 123.9329); (44.3742, Long – 124.0896) upstream to
Yachats River, North Fork Yachats River, (44.3678, – 124.0740); South Fork
School Fork (44.3145, – 123.9341). Big Creek (44.3388, – 124.0597); Unnamed
(1710020507. Outlet(s) = Berry Creek (Lat
44.0949, Long – 124.1221); Big Creek (vi) Cummins Creek/Tenmile Creek/ 44.0949, – 124.0683).
(44.1767, – 124.1148); Bob Creek Upper Siuslaw River Watershed
(44.2448, – 124.1118); Cape Creek
(44.1336, – 124.1211); Cummins Creek (Lat 44.0033, Long – 123.6545) upstream to
(44.2033, – 124.1075); Rock Creek
(44.1833, – 124.1149); Sutton Creek
(44.0605, – 124.1269); Tenmile Creek
(44.2245, – 124.1083) upstream to endpoint(s) in: Bailey Creek
(44.3947, – 124.6582); Bottle Creek
(44.1037, – 124.0530); Berry Creek
(44.0896, – 124.0865); Big Creek
(44.1866, – 123.9781); Big Creek, South
(43.9230, −123.5342); Cabin Creek (43.8159, −123.1694); Unnamed
(43.8970, −123.6754); Camp Creek (43.7796, −123.2019); Unnamed
(43.9154, −123.4904); Canyon Creek (43.7810, −123.2818); Unnamed
(43.9780, −123.6096); Clay Creek (43.8278, −123.2610); Unnamed
(43.8766, −123.5721); Collins Creek (43.8519, −123.2773); Unnamed
(43.8913, −123.6047); Conger Creek (43.8559, −123.5520); Unnamed
(43.8066, −123.4524); Doe Creek (43.8670, −123.6022); Unnamed
(43.8957, −123.3558); Doe Hollow Creek (43.8876, −123.5114); Unnamed
(43.8487, −123.4603); Dogwood Creek (43.8902, −123.5609); Unnamed
(43.8958, −123.3811); Douglas Creek (43.8893, −123.4171); Unnamed
(43.8705, −123.2836); Edris Creek (43.8968, −123.4731); Unnamed
(43.9224, −123.5531); Esmond Creek (43.8992, −123.4033); Unnamed
(43.8018, −123.5772); Esmond Creek, Trib 1 (43.9066, −123.4837); Unnamed
(43.9290, −123.6518); Esmond Creek, Trib B (43.9303, −123.6434); Unnamed
(43.8657, −123.2562); Fawn Creek (43.9519, −123.6886); Unnamed
(43.8743, −123.2992); Fawn Creek (43.9784, −123.6815); Unnamed
(43.9436, −123.6088); Fryingpan Creek (43.9656, −123.7145); Whittaker Creek
(43.8329, −123.4241); Fryingpan Creek (43.9490, −123.7094); Whittaker Creek,
(43.8422, −123.4318); Gardner Creek (43.9545, −123.7121).
(43.8024, −123.2582); Haight Creek
(43.8406, −123.4862); Haskins Creek Outlet(s) = Wolf Creek (Lat 43.9548.
(43.8785, −123.5851); Hawley Creek Long −123.6205) upstream to end-
(43.8599, −123.1558); Hawley Creek, point(s) in: Bill Lewis Creek
North Fork (43.8717, −123.1751); Holland Creek (43.9357, −123.5708); Cabin Creek
(43.8775, −123.4156); Jeans Creek (43.9226, −123.4081); Esmond Creek
(43.8616, −123.4714); Johnson Creek (43.9790, −123.4352); Eames Creek, Trib C
(43.8822, −123.5332); Kelly Creek (43.9056, −123.4371); Elkhorn Creek
(43.8338, −123.1739); Kline Creek (43.9513, −123.3934); Fish Creek
(43.9034, −123.6655); Leopold Creek (43.9238, −123.3872); Gall Creek
(43.9199, −123.6690); Leopold Creek, Trib A (43.9363, −123.9650); Letz Creek, Trib B (43.9650, −123.5285); Grenshaw Creek
(43.7990, −123.3248); Lick Creek (43.9676, −123.6465); Lick Creek
(43.8366, −123.2695); Little Siuslaw Creek (43.9407, −123.5796); Oat Creek, Trib A
(43.8048, −123.3412); Lucas Creek (43.9566, −123.5052); Oat Creek, Trib C
(43.8202, −123.2233); Luanye Creek (43.9618, −123.4902); Oat Creek
(43.9155, −123.5006); Luanye Creek, Trib A (43.9780, −123.4761); Panther Creek
(43.9179, −123.5206); Michaels Creek (43.9529, −123.3744); Pittenger Creek
(43.8624, −123.5417); Mill Creek (43.9713, −123.5494); Saleratus Creek
(43.9028, −123.6258); Norris Creek (43.9976, −123.5675); Saleratus Creek.
(43.8434, −123.2006); North Creek Trib A (43.9776, −123.5797); Swamp Creek
(43.9223, −123.5752); North Fork Siuslaw River (43.9777, −123.4197); Swing Log Creek
River (43.8513, −123.2302); Oxbow Creek (43.9351, −123.3399); Unnamed
(43.8384, −123.5433); Oxbow Creek, Trib C (43.9035, −123.3358); Unnamed
(43.8492, −123.5465); Pheasant Creek (43.9943, −123.3958); Unnamed
(43.9120, −123.4247); Pheasant Creek,
Trib 2 (43.9115, −123.4411); Pugh Creek (43.9608, −123.6204); Unnamed
(43.9480, −123.5940); Russell Creek (43.9693, −123.4846); Van Curen Creek
(43.8813, −123.3425); Russell Creek, Trib A (43.8619, −123.3498); Sandy Creek
(43.7862, −123.2538); Shaw Creek
(43.8817, −123.3299); Siuslaw River, East Trib (43.8723, −123.5378); Siuslaw River,
North Fork, Upper Trib (44.0099, −123.5206); Cattle Creek
(43.8483, −123.2275); Smith Creek (44.0099, −123.5475); Fish Creek
(43.8045, −123.3665); South Fork Siuslaw River (43.9777, −123.5918); Haynes Creek
(43.9142, −123.6241); Tucker Creek (44.1000, −123.5578); Kirk Creek
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(44.0282, –123.6270); Knapp Creek (44.1176, –123.5846); Unnamed
(44.1006, –123.5801); Miller Creek (44.1355, –123.5473); Unnamed
(44.0767, –123.6034); Pataha Creek (44.1355, –123.6125); Unnamed
(43.9914, –123.5361); Potato Patch Creek (44.1382, –123.5539); Unnamed
(43.9936, –123.5812); Salt Creek (44.1464, –123.5843); Unnamed
(44.0386, –123.5021); Shady Creek (44.1659, –123.5658); Unnamed
(44.0647, –123.5838); Shultz Creek (44.1725, –123.5981); Unnamed
(44.0220, –123.6320); Unnamed (44.1750, –123.6914); Unnamed
(43.9890, –123.5468); Unnamed (44.1770, –123.5697); Unnamed
(44.0210, –123.4805); Unnamed (44.1782, –123.5419); Unnamed
(44.0233, –123.4996); Unnamed (44.1798, –123.5834); Unnamed
(44.0242, –123.4796); Unnamed (44.1847, –123.5862); Unnamed
(44.0253, –123.4963); Unnamed (44.2042, –123.5700); Unnamed
(44.1983, –123.5311); Unnamed (44.2143, –123.5973); Unnamed
(44.0305, –123.5275); Unnamed (44.2258, –123.4493); Unnamed
(44.0479, –123.6199); Unnamed (44.2269, –123.5478); Unnamed
(44.0604, –123.5624); Unnamed (44.2328, –123.5285); Unnamed
(44.0674, –123.6075); Unnamed (44.2403, –123.5358); Unnamed
(44.0720, –123.5590); Unnamed (44.2431, –123.5105); Unnamed
(44.0839, –123.5777); Unnamed (44.2437, –123.5793); Unnamed
(44.0858, –123.5787); Unnamed (44.2461, –123.5180); Unnamed
(44.0860, –123.5741); Unnamed (44.2484, –123.5501); Unnamed
(44.0865, –123.5955); Unnamed (44.2500, –123.5691); Unnamed
(44.0945, –123.5838); Unnamed (44.2573, –123.4736); Unnamed
(44.0959, –123.5962); Walker Creek (44.2670, –123.4840); Wheeler Creek
(44.0469, –123.6312); Walker Creek, Trib (44.1232, –123.6778)

C (44.0418, –123.6048); Wildcat Creek

(43.9892, –123.4308); Wildcat Creek, Trib ZH (43.9994, –123.4975); Wildcat Creek, Trib ZI (44.0065, –123.4681).

(v) Deadwood Creek Watershed 1710020605. Outlet(s) = Deadwood Creek
(44.1006, –123.6034) upstream to endpoint(s) in: Alpha Creek (44.1679, –123.6951); Bear Creek (44.1685, –123.6627); Bear Creek, South Fork (44.1467, –123.6743); Buck Creek (44.1158, –123.6921); Conrad Creek (44.2580, –123.6885); Deadwood Creek, Deadwood Creek (44.1883, –123.4918); Druggs Creek

(44.1996, –123.5926); Fish Creek

(44.1679, –123.5149); Green Creek

(44.1389, –123.7930); Greenleaf Creek

(44.1766, –123.6391); Hula Creek

(44.1202, –123.7087); Johnson Creek

(44.1037, –123.7327); Lake Creek

(44.2618, –123.5148); Lamb Creek

(44.1401, –123.5991); Leaver Creek

(44.0754, –123.6285); Leibo Canyon

(44.2439, –123.4648); Little Lake Creek

(44.1655, –123.6004); McCoy Creek

(44.0889, –123.6875); Nelson Creek

(44.1229, –123.5558); North Fork Fish Creek (44.1355, –123.5437); Pontius Creek

(44.2313, –123.5909); Pope Creek

(44.2118, –123.5319); Post Creek

(44.1828, –123.5259); Stakely Canyon

(44.2513, –123.4690); Steinhauser Creek

(44.1276, –123.6594); Swamp Creek

(44.2150, –123.5687); Swartz Creek

(44.2304, –123.4461); Target Canyon

(vi) Indian Creek/Lake Creek Watershed 1710020606. Outlet(s) = Indian Creek (44.0808, Long –123.7891) upstream

(44.1048, –123.6540); Unnamed
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to endpoint(s) in: Cremo Creek (44.0135, –124.0609); Unnamed
(44.1424, –123.8144); Elk Creek (44.0166, –124.0371); Unnamed
(44.1253, –123.8821); Gibson Creek (44.0194, –124.0631); Unnamed
(44.1548, –123.8132); Herman Creek (44.0211, –124.0663); Unnamed
(44.2089, –123.8220); Indian Creek (44.0258, –124.0594); Unnamed
(44.2086, –123.9171); Indian Creek, North Fork (44.0304, –124.0129); Unnamed
(44.2383, –123.9016); Indian Creek, West Fork (44.0277, –124.0670); Unnamed
(44.2014, –123.9075); Long Creek (44.0337, –124.0707); Unnamed
(44.1395, –123.8800); Maria Creek (44.0342, –124.0056); Unnamed
(44.1954, –123.9219); Pyle Creek (44.0370, –124.0391); Unnamed
(44.1792, –123.8623); Rogers Creek (44.0419, –124.0013); Unnamed
(44.1851, –123.9397); Smoot Creek (44.0441, –124.0321); Unnamed
(44.1562, –123.8419); Taylor Creek (44.0579, –124.0077); Unnamed
(44.1864, –123.8115); Unnamed (44.0986, –124.0192); Unnamed
(44.1643, –123.8993); Unnamed (44.0892, –123.9925); Unnamed
(44.1727, –123.8154); Unnamed (44.0941, –123.9131); Unnamed
(44.1795, –123.9180); Unnamed (44.0976, –124.0033); Unnamed
(44.1886, –123.9062); Unnamed (44.1046, –123.9632); Unnamed
(44.1905, –123.8633); Unnamed (44.1476, –123.8959); Unnamed
(44.1967, –123.8972); Unnamed (44.1386, –123.9150); West Branch North Creek
(44.2088, –123.8381); Unnamed Fork Siuslaw River (44.1616, –123.9616); Unnamed
(44.2146, –123.8528); Unnamed Wilhelm Creek (44.1408, –123.9774); Unnamed
(44.2176, –123.8462); Unnamed (viii) Lower Siuslaw River Watershed
(44.2267, –123.8912); Velvet Creek 1710020608. Outlet(s) = Siuslaw River
(44.1295, –123.8087); (Lat 44.0160, Long –124.1327) upstream to endpoint(s) in: Barber Creek
(44.0294, –123.7598); Beech Creek
(44.0588, –123.6980); Berkshire Creek
(44.0508, –123.8890); Bernhardt Creek
Billie Creek (44.0971, –124.0362); Castle Creek (44.0584, –124.9497); Cedar Creek
(44.1534, –123.9045); Condon Creek (44.0432, –123.7796); Brush Creek, East
(44.1138, –123.9894); Coon Creek (43.9655, –123.9352); Brush Creek
(44.0664, –124.0318); Deer Creek (43.9653, –123.9352); Brush Creek
(44.1297, –123.9475); Drew Creek (43.9654, –123.9304); Cleveland Creek
(44.1239, –123.9801); Drew Creek (43.9643, –124.0313); Dinner Creek
(44.1113, –123.9854); Elma Creek (44.0108, –123.8069); Divide Creek
(44.1803, –123.9434); Hanson Creek (44.0516, –123.9421); Duncan Inlet
(44.1876, –123.9528); Haring Creek (44.0081, –123.9921); Hadsall Creek
(44.0307, –124.0462); Lawrence Creek (49.9846, –123.8221); Hadsall Creek, Trib
(44.1710, –123.9504); Lindsay Creek Trib E (43.9812, –123.8359); Hason Creek
(44.0389, –124.0591); McLeod Creek (44.0364, –123.9628); Hoffman Creek
(44.1050, –123.8805); Morris Creek (43.9808, –123.9412); Hollenbeck Creek
(44.0711, –124.0306); Porter Creek (44.0321, –123.8672); Hood Creek
(44.1150, –123.9611); Russell Creek (43.9966, –123.7995); Karmowsky Creek
(44.0680, –123.9848); Sam Creek (43.9847, –123.9658); Knowles Creek
(44.1751, –123.9527); Slover Creek (43.9492, –123.7315); Knowles Creek, Trib
(44.0213, –124.0531); South Russell Creek L (43.9717, –123.7830); Lawson Creek,
(44.0515, –123.9840); Taylor Creek Trib B (43.9612, –123.9659); Meadow
(44.1279, –123.9529); Uncle Creek (44.0311, –123.6490); Munsell Creek
(44.1080, –124.0174); Unnamed (44.0277, –124.0788); Old Man Creek
(43.9900, –124.0789); Unnamed (44.0543, –123.8022); Pat Creek
(43.9907, –124.0759); Unnamed (44.0659, –123.7245); Patterson Creek
(43.9953, –124.0514); Unnamed (43.9984, –124.0234); Rice Creek
(43.9958, –124.0623); Unnamed (44.0075, –123.8519); Rock Creek
(43.9999, –124.0694); Unnamed (44.0169, –123.6512); South Fork Waite
(44.0018, –124.0596); Unnamed Creek (43.9929, –123.7105); San Antone
(44.0450, –124.0595); Unnamed Creek (44.0564, –123.6515); Shoemaker
(44.0106, –124.0650); Unnamed Creek (44.0669, –123.8977); Shuttlete Creek

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(43.9939, −124.0339); Siuslaw River (43.9198, −123.9293); Bear Creek Trib
(44.0033, −123.6545); Skunk Hollow (43.9030, −123.9881); Bear Creek, South
(43.9830, −124.0626); Smith Creek Fork (43.9017, −123.9555); Bell Creek
(44.0393, −123.6674); Spencer Creek (43.8541, −123.9718); Billy Moore Creek
(44.0676, −123.8899); Sulphur Creek (43.8876, −123.9604); Carle Creek
(43.9822, −123.8015); Sweet Creek (43.9015, −124.0210); Carter Creek
(43.9463, −123.9016); Sweet Creek, Trib A (43.9457, −124.0123); Dismal Swamp
(44.0047, −123.8907); Sweet Creek, Trib D (43.8096, −124.0871); Elbow Lake Creek
(43.9860, −123.8811); Thompson Creek (43.7886, −124.1490); Fiddle Creek
(44.0974, −123.8615); Turner Creek (43.9132, −123.9164); Fivemile Creek
(44.0096, −123.7607); Unnamed (43.8297, −123.9776); Grant Creek
(43.9391, −124.0434); Unnamed (43.9373, −124.0278); Harry Creek
(43.9396, −124.0337); Unnamed (43.8544, −124.0220); Henderson Canyon
(43.9393, −124.0487); Unnamed (43.8648, −123.9654); Henderson Creek
(43.9340, −124.0529); Unnamed (43.9427, −123.9704); John Sims Creek
(43.9367, −124.0632); Unnamed (43.8262, −124.0792); King Creek
(43.9374, −124.0442); Unnamed (43.8804, −124.0300); Lake Creek
(43.9481, −124.0530); Unnamed (43.8437, −124.0765); Leitell Creek
(43.9507, −124.0622); Unnamed (43.8318, −124.0200); Mallard Creek
(43.9507, −124.0533); Unnamed (43.7775, −124.0852); Maple Creek
(43.9571, −124.0658); Unnamed (43.9314, −123.916); Maple Creek, North
(43.9576, −124.0491); Unnamed Prong (43.9483, −123.9510); Miles Canyon
(43.9587, −124.0988); Unnamed (43.8643, −124.0097); Miller Creek
(43.9601, −124.0927); Unnamed (43.9265, −124.0663); Mills Creek
(43.9615, −124.0527); Unnamed (43.8866, −124.0397); Morris Creek
(43.9618, −124.0875); Unnamed (43.9025, −123.9541); Perkins Creek
(43.9624, −123.7499); Unnamed (43.8257, −124.0449); Rider Creek
(43.9662, −123.7639); Unnamed (43.9210, −123.9700); Roache Creek
(43.9664, −123.9252); Unnamed (43.9087, −124.0049); Schrum Creek
(43.9718, −124.0389); Unnamed (43.9194, −124.0492); Schultz Creek
(43.9720, −124.0075); Unnamed (43.9245, −123.9371); Stokes Creek
(43.9751, −124.0090); Unnamed (43.9161, −123.9964); Tenmile Creek
(43.9784, −124.0191); Unnamed (43.9419, −123.9447); Unnamed
(43.9796, −123.9150); Unnamed (43.8928, −124.0461); Unnamed
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(44.0666, −123.9129); Wilson Creek (43.8065, −124.1362); Unnamed
(44.0836, −123.8792); Unnamed (43.8112, −124.0608); Unnamed

(7) Siltcoos Subbasin 17100207—(l)
Waohink River/Siltcoos River/Tahkenitch
Lake Frontal Watershed 17100207. Outcome(s) = Siltcoos River (Lat 43.8766, Unnamed
Long −124.1548); Tahkenitch Creek (43.8321, −124.0128); Unnamed
(43.8013, −124.1689) upstream to end
point(s) in: Alder Creek (43.8322, −124.0669); Unnamed
(43.8667, −124.0114); Bear Creek (43.8330, −124.0217); Unnamed

738
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| (43.8407, -124.1051) | Creek            | (43.3322, Long -123.0025) up-
| (43.8489, -124.0634) | Unnamed          | to endpoint(s) in: Conley Creek |
| (43.8500, -123.9852) | Unnamed          | (43.3594, -122.9663); Harrington Creek |
| (43.8504, -124.1248) | Unnamed          | (43.4151, -122.9550); Kelly Creek |
| (43.8504, -124.0024) | Unnamed          | (43.3952, -122.9912); McComas Creek |
| (43.8507, -124.0511) | Unnamed          | (43.3536, -122.9923); Miller Creek |
| (43.8599, -124.1231) | Unnamed          | (43.3864, -122.9371); Rock Creek |
| (43.8596, -124.0438) | Unnamed          | (43.4247, -122.9055); Rock Creek, East Fork |
| (43.8605, -124.1211) | Unnamed          | (43.3807, -122.8270); Rock Creek, East Fork, North Fork |
| (43.8669, -124.0717) | Unnamed          |                               |
| (43.8670, -124.0327) | Unnamed          |                               |
| (43.8707, -124.0689) | Unnamed          |                               |
| (43.8802, -124.0605) | Unnamed          |                               |
| (43.8862, -124.0570) | Unnamed          |                               |
| (43.8913, -123.9380) | Unnamed          |                               |
| (43.8919, -124.0771) | Unnamed          |                               |
| (43.8976, -124.0725) | Unnamed          |                               |
| (43.9032, -124.0651) | Unnamed          |                               |
| (43.9045, -124.0548) | Unnamed          |                               |
| (43.9057, -124.0606) | Unnamed          |                               |
| (43.9065, -124.0656) | Unnamed          |                               |
| (43.9105, -124.0453) | Unnamed          |                               |
| (43.9106, -124.0203) | Unnamed          |                               |
| (43.9202, -124.0786) | Unnamed          |                               |
| (43.9299, -124.0734) | Unnamed          |                               |
| (43.9237, -124.0155) | Unnamed          |                               |
| (43.9249, -124.0074) | Unnamed          |                               |
| (43.9274, -124.0759) | Unnamed          |                               |
| (43.9275, -124.0308) | Unnamed          |                               |
| (43.9360, -124.0892) | Unnamed          |                               |
| (43.9365, -124.0297) | Unnamed          |                               |
| (43.9424, -124.0981) | Unnamed          |                               |
| (43.9438, -124.0929) | Unnamed          |                               |
| (43.9453, -124.0732) | Unnamed          |                               |
| (43.9518, -123.9953) | Unnamed          |                               |
| (43.9518, -123.9953) | Unnamed          |                               |
| (4.8 North Fork Umpqua Subbasin 1710030101) Boulder Creek Watershed 1710030106. Outlet(s) = Boulder Creek (Lat 43.3036, Long -122.5272) upstream to endpoint(s) in: Boulder Creek (Lat 43.3126, Long -122.5247).
| (ii) Middle North Umpqua Watershed 1710030107. Outlet(s) = North Umpqua River (Lat 43.3322, Long -123.0025) upstream to endpoint(s) in: Calf Creek (43.2852, -122.6229); Copeland Creek (43.2653, -122.5325); Deception Creek (43.2766, -122.5850); Dry Creek (43.2667, -122.6016); Honey Creek (43.3181, -122.9414); Limpy Creek (43.3020, -122.6795); North Umpqua River (43.3027, -122.4938); Panther Creek (43.3019, -122.6801); Steamboat Creek (43.3491, -122.7281); Susan Creek (43.3444, -122.9308); Williams Creek (43.3431, -122.7724). |
| (9) South Fork Umpqua Subbasin 1710030201. Jackson Creek Watershed 1710030202. Outlet(s) = Jackson Creek (Lat 42.9084, Long -122.7924) upstream to endpoint(s) in: Beaver Creek (Lat 42.9084, Long -122.7924); Jackson Creek (Lat 42.9965, Long -122.6459); Ralph Creek (Lat 42.9744, Long -122.6976); Squaw Creek (Lat 42.9684, Long -122.6913); Tallow Creek (Lat 42.9814, Long -122.6965); Whiskey Creek (Lat 42.9958, Long -122.7035). |
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42.9593, Long – 122.7262); Winters Creek
   (Lat 42.9380, Long – 122.8271).

(ii) Middle South Umpqua River Watershed
   1710030203. Outlet(s) = South Umpqua River
   (Lat 42.9272, Long – 122.9504) upstream to
   endpoint(s) in: Boulder Creek (43.1056, – 122.7379);
   Budd Creek (43.0506, – 122.8185); Deadman Creek
   (43.0049, – 122.8967); Dompier Creek
   (42.9553, – 122.9166); Dumont Creek
   (43.0719, – 122.8224); Francis Creek
   (43.0202, – 122.8321); South Umpqua River
   (43.0481, – 122.6996); Sam Creek
   (43.0037, – 122.8224); Slick Creek
   (43.0986, – 122.7867).

(iii) Elk Creek/South Umpqua Watershed
   1710030204. Outlet(s) = Elk Creek
   (Lat 42.9272, Long – 122.9504) upstream to
   endpoint(s) in: Brownie Creek (Lat 42.9394, – 122.8746);
   Callahan Creek (Lat 42.8778, Long – 122.9609);
   Camp Creek (Lat 42.8667, Long – 122.8958);
   Dixon Creek (Lat 42.8931, Long – 122.9152);
   Drew Creek (Lat 42.8862, Long – 122.9358); Flat Creek
   (Lat 42.8294, Long – 122.8250); Joe Hall Creek
   (Lat 42.8756, Long – 122.8202); Tom Creek
   (Lat 42.8389, Long – 122.8959).

(iv) South Umpqua River Watershed
   1710030205. Outlet(s) = South Umpqua River
   (Lat 42.9476, Long – 123.3366) upstream to
   endpoint(s) in: Alder Creek
   (42.9109, – 123.2991); Canyon Creek
   (42.8798, – 123.2410); Canyon Creek, West Fork
   (42.8757, – 123.2734); Canyon Creek, West Fork, Trib A
   (42.8834, – 123.2947); Coffee Creek
   (42.9416, – 122.9993); Comer Creek
   (43.0539, – 123.0012); Days Creek, Trib 1
   (43.0351, – 123.0532); Doe Hollow
   (42.9805, – 123.0812); Fate Creek
   (42.9943, – 123.1028); Green Gulch
   (43.0040, – 123.1276); Hatchet Creek
   (42.9251, – 122.9757); Jordan Creek
   (42.9224, – 123.3086); Lavadoure Creek
   (42.9545, – 123.1049); Lick Creek
   (42.9213, – 123.0261); May Creek
   (43.0153, – 123.0725); Morgan Creek
   (42.9635, – 123.2469); O’Shea Creek
   (42.9631, – 123.2486); Perdue Creek
   (43.0038, – 123.1192); Poole Creek
   (43.9291, – 123.1106); Poole Creek, East Fork
   (42.9147, – 123.0966); South Umpqua River
   (42.9272, – 122.9504); Shively Creek
   (42.8688, – 123.1635); Shively Creek, East Fork
   (42.8793, – 123.1194); Small Creek
   (42.9631, – 123.2539); St. John Creek
   (42.9598, – 123.0514); Stinger Gulch Creek
   (42.9590, – 123.1851); Stouts Creek, East Fork
   (42.9090, – 123.0424); Stouts Creek, West Fork
   (42.8531, – 123.0167); Sweat Creek
   (42.9293, – 123.1899); Wood Creek
   (43.0048, – 123.1486).

(v) Middle Cow Creek Watershed
   1710030207. Outlet(s) = Cow Creek
   (Lat 42.8114, Long – 123.5947) upstream to
   endpoint(s) in: Bear Creek
   (42.8045, – 123.3635); Booth Gulch
   (42.7804, – 123.2282); Bull Run Creek
   (42.7555, – 123.2366); Clear Creek
   (42.6218, – 123.3610); Cow Creek
   (42.8487, – 123.1780); Dads Creek
   (42.7650, – 123.5401); East Fork
   Whitehorse Creek (42.7925, – 123.1448);
   Fortune Branch (42.8051, – 123.2971);
   Hogum Creek (42.7574, – 123.1853);
   Lawson Creek (42.7896, – 123.3732); Little Bull Run Creek
   (42.7532, – 123.2479); McCullough Creek (42.7951, – 123.4421);
   Mynatt Creek (42.8034, – 123.2828); Panther Creek
   (42.7409, – 123.4990); Perkins Creek
   (42.7331, – 123.4997); Quines Creek
   (42.7278, – 123.2396); Rattlesnake Creek
   (42.7106, – 123.4774); Ripple Creek
   (42.7575, – 123.6260); Section Creek
   (42.7300, – 123.4373); Skull Creek
   (42.7527, – 123.5779); Staveout Creek
   (42.7541, – 123.1953); Stevens Creek
   (42.7255, – 123.4835); Susan Creek
   (42.8035, – 123.5762); Swamp Creek
   (42.7616, – 123.3518); Tennessee Gulch
   (42.7265, – 123.2591); Totten Creek
   (42.7448, – 123.4610); Unnamed
   (42.7964, – 123.4200); Unnamed
   (42.8101, – 123.3150); Whitehorse Creek
   (42.7772, – 123.1532); Wildcat Creek
   (42.7738, – 123.2978); Windy Creek
   (42.8221, – 123.3296); Wood Creek
   (42.8141, – 123.4111); Woodford Creek
   (42.7458, – 123.3180).

(vi) West Fork Cow Creek Watershed
   1710030208. Outlet(s) = West Fork Cow Creek
   (Lat 42.8118, Long – 123.0066) upstream to
   endpoint(s) in: Bear Creek
   (42.7662, – 123.6741); Bobby Creek
   (42.8199, – 123.7196); Elk Valley Creek
   (42.8681, – 123.7133); Elk Valley Creek,
   East Fork (42.8696, – 123.6812); Goat
   Trail Creek (42.8002, – 123.6829); Gold
   Mountain Creek (42.8639, – 123.7787); No
   Sweat Creek (42.8024, – 123.7061); Panther
   Creek (42.8596, – 123.7506); Slaughter
   Pen Creek (42.8224, – 123.6555); Sweat
   Creek (42.8018, – 123.6955); Walker Creek
   (42.8228, – 123.7614); Wallace Creek
   (42.8311, – 123.7696); West Fork Cow Creek
   (42.8329, – 123.7733).
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(vii) Lower Cow Creek Watershed 1770030209. Outlet(s) = Cow Creek (Lat 43.1089, -123.1929); Frozen Creek, Left Fork (43.1157, -123.2306); Harrison Young Brook (43.0610, -123.2860); Lally Noott Creek (43.0890, -123.0597); Lee Creek

(42.9052, -123.3385); Boulder Creek (43.1333, -123.1477); Letitia Creek
(42.8607, -123.5494); Brush Creek (43.0710, -123.0907); Little Lick
(42.8236, -123.4309); Buck Creek (43.0492, -123.2324); Long Wiley Creek
(42.8093, -123.4979); Buck Creek (43.0594, -123.1067); Louis Creek
(42.9347, -123.5163); Cattle Creek (43.1165, -123.0783); North Myrtle Creek
(42.8751, -123.5374); Cedar Gulch (43.1498, -123.1219); Riser Creek
(42.8457, -123.5038); Council Creek (43.1276, -123.0703); Rock Creek
(42.8929, -123.4306); Cow Creek (43.0729, -123.2620); South Myrtle Creek
(42.8114, -123.5947); Darby Creek (43.0850, -123.0133); School Hollow
(42.8553, -123.6123); Doe Creek (43.0563, -123.1753); Short Wiley Creek
(42.9333, -123.5057); Gravel Creek (43.0589, -123.1158); Slide Creek
(42.8596, -123.4598); Iron Mountain (43.1110, -123.1078); Unnamed
Creek (42.9035, -123.5175); Island Creek (43.1138, -123.1721); Weaver Creek
(42.8857, -123.4749); Jerry Creek (43.1102, -123.0576).

(42.9517, -123.4099); Little Dads Creek (43.0729, -123.2620); South Myrtle Creek
(42.8802, -123.5655); Martin Creek (43.0850, -123.0133); School Hollow
(42.8800, -123.4763); Middle Creek, South Fork (42.8288, -123.3870); Panther Creek
(42.8417, -123.4492); Peavine Creek (43.0729, -123.2620); South Myrtle Creek
(42.8275, -123.4610); Russell Creek (43.0729, -123.2620); South Myrtle Creek
(42.9094, -123.3797); Salt Creek (43.0729, -123.2620); South Myrtle Creek
(42.9462, -123.4830); Shoestring Creek (43.0904, -123.5543); Bushnell
(42.9221, -123.3613); Smith Creek (43.0492, -123.2324); Long Wiley Creek
(42.8489, -123.4765); Smith Creek, East Fork (43.0192, -123.4309); Byron Creek
(42.9236, -123.5482); Table Creek (43.0904, -123.5543); Bushnell
(42.9114, -123.5695); Union Creek (43.0326, -123.4792); Unnamed
(42.8769, -123.5853); Coarse Gold Creek (43.0291, -123.5742); Willow Creek
(42.6091, -123.4800).

(viii) Middle South Umpqua River Watershed 1770030210. Outlet(s) = South Umpqua River (Lat 43.1172, Long -123.4273) upstream to endpoint(s) in: Adams Creek (43.0724, -123.4776); Barrett Creek (43.0415, -123.4451); Clark Creek (43.0492, -123.2897); East Willis Creek (43.0151, -123.3845); Judd Creek (42.9652, -123.4060); Kent Creek (42.0900, -123.4792); Lane Creek (42.9704, -123.4001); Porter Creek (42.0444, -123.4597); Rice Creek (42.0181, -123.4779); Richardson Creek (43.0666, -123.2881); South Umpqua River (42.9476, -123.3368); Squaw Creek (43.0815, -123.4688); Van Dine Creek (43.0326, -123.3473); West Willis Creek (43.0172, -123.4355).

(ix) Myrtle Creek Watershed 1770030211. Outlet(s) = North Myrtle Creek (Lat 43.0231, Long -123.2951) upstream to endpoint(s) in: Ben Branch Creek (43.0544, -123.1618); Big Lick (43.0778, -123.2175); Bilger Creek (43.1118, -123.2372); Buck Fork Creek (43.1145, -123.2897); Cedar Hollow (43.0096, -123.2297); Frozen Creek (43.1102, -123.0576).
Stockel Creek (43.2205, – 123.4392); Tuck-er Creek (43.1238, – 123.2378); Unnamed (43.2184, – 123.1709); Willow Creek (43.2543, – 123.5143).

(10) Umpqua Subbasin 17100303(i) Upper Umpqua River Watershed 1710030301. Outlet(s) = Umpqua River (Lat 43.6329, Long 123.1709); Waggoner Creek (Lat 43.4708, Long 123.5765); Calapooya Creek Watershed 1710030303; Middle Fork South Umpqua River Watershed 1710030303(i). Outlet(s) = Middle Fork South Umpqua River (Lat 43.5752, Long 123.1297).

(ii) Calapooya Creek Watershed 1710030302. Outlet(s) = Calapooya Creek (Lat 43.4707, – 123.6655).
(43.6356, −123.1794); Curtis Creek (43.6885, −123.6966); Umpqua River
(43.6839, −123.1734); Dodge Canyon (43.6329, −123.5662); Unnamed
(43.6225, −123.2509); Elk Creek (43.6011, −123.7084); Unnamed
(43.5097, −123.1620); Ellenburg Creek (43.5998, −123.6803); Unnamed
(43.7378, −123.3296); Fitch Creek (43.6143, −123.6674); Unnamed
(43.6986, −123.3152); Five Point Canyon (43.6453, −123.7619); Unnamed
(43.5707, −123.3526); Flagler Creek (43.6461, −123.8064); Unnamed
(43.5729, −123.3382); Green Creek (43.6923, −123.7534); Unnamed
(43.6851, −123.4688); Green Ridge Creek (43.7068, −123.6109); Unnamed
(43.5920, −123.3958); Halo Creek (43.7084, −123.7156); Unnamed
(43.5990, −123.2658); Hancock Creek (43.7098, −123.6300); Unnamed
(43.6314, −123.5186); Hanlon Creek (43.7274, −123.6026); Weatherly Creek
(43.6190, −123.2765); Hardscrabble Creek (43.7205, −123.6680); Wells Creek
(43.6063, −123.3750); Huntington Creek (43.6959, −123.7946); Unnamed
(43.5882, −123.2806); Jack Creek
(43.7071, −123.3819); Johnny Creek 1710390306. Outlet(s) = Smith River (Lat
(43.7083, −123.3972); Johnson Creek (43.7968, Long −123.7565) upstream to
(43.6830, −123.2715); Lancaster Creek endpoint(s) in: Ambersom Creek
(43.6424, −123.4501); Lane Creek (43.7787, −123.4944); Argue Creek
(43.5483, −123.1221); Loes Creek (43.7656, −123.6959); Beaver Creek
(43.6610, −123.1888); Little Sand Creek (43.7865, −123.6949); Beaver Creek
(43.7655, −123.2778); Little Tom Folley (43.8081, −123.4941); Big Creek
Creek (43.6999, −123.5393); McClintock Creek (43.7372, −123.7112); Blackwell Creek
(43.6664, −123.2703); Parker Creek (43.8145, −123.7460); Blind Creek
(43.6823, −123.4178); Pass Creek (43.7518, −123.6551); Burn Creek
(43.7277, −123.1529); Pheasant Creek (43.8044, −123.5802); Carpenter Creek
(43.7758, −123.2099); Rock Creek (43.7947, −123.7238); Clabber Creek
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(43.6796, −123.2213); Sand Creek (43.7508, −123.4997); Cleverger Creek
(43.7709, −123.2912); Shingle Mill Creek (43.7826, −123.4087); Coldwater Creek
(43.5314, −123.1906); Simpson Creek (43.8316, −123.7232); Deer Creek
(43.6029, −123.2558); Smith Creek (43.8109, −123.5362); Devils Club Creek
(43.6851, −123.3179); Squaw Creek (43.7916, −123.6148); Elk Creek
(43.8010, −123.4284); Taylor Creek (43.8004, −123.4347); Halfway Creek
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(43.6823, −123.2404); Wilson Creek (43.8079, −123.6033); Marsh Creek
(43.5699, −123.2681); Wise Creek (43.7831, −123.6185); Moosetown Creek
(43.6079, −123.2772); Yoncalla Creek (43.7326, −123.6613); Moosetown Creek,
(43.6563, −123.2935); East Fork (43.7185, −123.6483); North Sister Creek (43.8492, −123.5771); Panther Creek (43.8295, −123.4464); Pearl Creek (43.8263, −123.5350); Peterson Creek (43.7575, −123.3947); Plank Creek
(43.6680, −123.7520); Butler Creek (43.7635, −123.3980); Redford Creek
(43.6925, −123.7757); Cedar Creek (43.7878, −123.3520); Rock Creek
(43.7027, −123.6451); House Creek (43.7733, −123.6222); Russell Creek
(43.7107, −123.6378); Little Mill Creek (43.8538, −123.6971); South Sister Creek
(43.6729, −123.8252); Little Paradise (43.8366, −123.5611); Salmonberry Creek
Creek (43.6981, −123.5630); Paradise Creek (43.8085, −123.4482); Scare Creek
(43.7301, −123.5738); Patterson Creek (43.7631, −123.7260); Sleezer Creek
(43.7076, −123.6977); Purdy Creek (43.7355, −123.3711); Slideout Creek
(43.6851, −123.7777); Sawyer Creek (43.7831, −123.5685); Smith River Little
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(43.9023, –123.8241); Unnamed (43.2971, –123.6354); Little Cow Creek
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(43.7419, –123.8905); West Branch North Fork Smith River (43.9113, –123.8958).
(43.2920, –123.7623); Susan Creek

(vii) Lower Umpqua River Watershed
1770030398. Outlet(s) = Umpqua River (43.2110, –123.7786); Unnamed
(Lat 43.4696, Long –124.2025) upstream to endpoint(s) in: Alder Creek
(43.6340, –124.0843); Bear Creek (43.2284, –123.7818); Unnamed
(43.7053, –123.9529); Butler Creek (43.2548, –123.8569); Unnamed
(43.7157, –124.0059); Charlotte Creek (43.2713, –123.8320); Unnamed
(43.6320, –123.9307); Dean Creek (43.2902, –123.6662); Unnamed
(43.6214, –123.9740); Dry Creek (43.3168, –123.6491); Unnamed
(43.6369, –124.0555); Franklin Creek (43.3692, –123.8320); Unnamed
(43.6850, –123.8639); Hakki Creek (43.3698, –123.8321); Unnamed
(43.6711, –124.0161); Indian Charlie Creek (43.3806, –123.8327); Unnamed
(43.6611, –123.9404); Johnson Creek (43.3846, –123.8058); Unnamed
(43.6711, –123.9760); Koepe Slough (43.3887, –123.7927); Unnamed
(43.6909, –124.0294); Little Franklin (43.3651, –123.7073); Wilson Creek
Creek (43.6853, –123.8863); Luder Creek (43.2083, –123.6691).

(43.6423, –123.9046); Miller Creek (ii) Millicoma River Watershed
1710030402. Outlet(s) = West Fork
(43.6528, –124.0140); Oar Creek
1710030402. Outlet(s) = West Fork
(43.6620, –124.0289); Providence Creek Millicoma River (Lat 43.4242, Long
(43.7083, –124.1289); Schoolfield Creek –124.0288) upstream to endpoint(s) in:
(43.6253, –124.0112); Umpqua River Bealah Creek (43.4271, –123.8445); Buck
(43.6556, –123.6752); Unnamed Creek (43.5659, –123.9765); Cougar Creek
(43.6599, –123.9572); Unnamed Creek (43.5803, –123.8788); Crane Creek
(43.6865, –124.1146); Unnamed Creek (43.5545, –123.9297); Dagget Creek
(43.6904, –124.0506); Unnamed Creek (43.4862, –124.0557); Darius Creek
(43.6940, –124.0340); Unnamed Creek (43.4741, –123.9407); Deer Creek
(43.7069, –123.9824); Unnamed Creek (43.6207, –123.9616); Deer Creek, Trib A
(43.7242, –123.9369); Winchester Creek (43.6100, –123.9761); Deer Creek, Trib B
(43.6657, –124.1247); Wind Creek, South Fork (43.6191, –123.9482); Devils Elbow Creek
Fork (43.6346, –124.0897); East Fork
Millicoma River (43.4204, –123.8330); Elk Creek (43.5441, –123.9175); Fish Creek
(43.5415, –123.9351); Hodges Creek

(43.2728, –123.8472); Bottom Creek
(43.3751, –123.7065); Bottom Creek.
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(43.2353, –123.7106); Fall Creek (43.4293, –123.0400); Rodine Creek
(43.4106, –123.7512); Fivemile Creek (43.4443, –123.9789); Schumacher Creek
(43.2411, –123.6307); Gods Thumb Creek (43.4842, –124.0380); Totten Creek
(43.3440, –123.7013); Goatberry Creek (43.4809, –124.0457); Trout Creek
(43.2452, –123.7081); Hatcher Creek (43.5398, –123.9814); Unnamed
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(43.4686, – 124.0143); Unnamed (43.2706, – 124.2109); Haywood Creek
(43.5156, – 123.9366); Unnamed (43.3067, – 124.3419); Hendrickson Creek
(43.5396, – 123.9373); Unnamed (43.3907, – 124.0594); Isthmus Slough
(43.5450, – 123.9305); West Fork (43.2622, – 124.2049); Joe Ney Slough
Millcomica River (43.5617, – 123.8788).

(iii) Lakeside Frontal Watershed

1710090409. Outlet(s) = Tenmile Creek (43.4063, 124.1383); Kentuck Creek
(43.5618, – 124.2308) upstream to endpoint(s) in: Adams Creek (43.4930, – 124.0764); Laxstrom Gulch
(43.5382, – 124.1081); Alder Creek (43.3372, – 124.1350); Lillian Creek
(43.6012, – 124.0272); Alder Gulch (43.3550, – 124.1330); Mart Davis Creek
(43.5892, – 124.0665); Benson Creek (43.3911, – 124.0627); Matson Creek
(43.5813, – 124.0086); Big Creek (43.3011, – 124.1161); McKnight Creek
(43.6085, – 124.1522); Blucks Creek (43.3941, – 123.9901); Mettman Creek
(43.6365, – 124.1188); Clear Creek (43.4574, – 124.1299); Millcomica River
(43.6040, – 124.1871); Hatchery Creek (43.4242, – 124.0288); Monkey Ranch
(43.5275, – 124.0761); Johnson Creek Gulch (43.3392, – 124.1458); Morgan Creek
(43.5410, – 124.0018); Murphy Creek (43.3460, – 124.0038); North Slough
(43.6243, – 124.0334); Noble Creek (43.3032, – 124.1468); Noble Creek
(43.5897, – 124.0347); Parker Creek (43.2397, – 124.1665); Packard Creek
(43.6471, – 124.1246); Roberts Creek (43.4058, – 124.0211); Palouse Creek
(43.5557, – 124.0294); Saunders Creek (43.5123, – 124.0667); Panther Creek
(43.5417, – 124.2136); Shutter Creek (43.2733, – 124.1222); Pony Slough
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(43.6466, – 124.1511); Unnamed Slough (43.3154, – 124.2225); Smith Creek
(43.5081, – 124.0382); Unnamed (43.3579, – 124.1951); Snedden Creek
(43.6353, – 124.1670); Wilkins Creek (43.3272, – 124.2177); Southport Slough
(43.6304, – 124.0819); Parker Creek (43.2981, – 124.2194); Stock Slough
(43.6533, – 124.1333); Winter Creek (43.3277, – 124.1195); Storey Creek
(iv) Coos Bay Watershed 1710090404.

Outlet(s) = Big Creek (Lat 43.3326, Long –124.3739); Coos Bay (43.3544, – 124.3384)
upstream to endpoint(s) in: Bear Creek (43.2756, – 124.9457); Unnamed
(43.5048, – 124.1059); Bessey Creek (43.5200, – 124.1812); Unnamed
(43.3944, – 124.0253); Big Creek (43.2274, – 124.3236); Unnamed
(43.2834, – 124.3374); Big Creek (43.2607, – 124.2984); Unnamed
(43.3980, – 123.9396); Big Creek, Trib A (43.2772, – 124.3246); Unnamed
(43.2999, – 124.3711); Big Creek, Trib B (43.2776, – 124.3148); Unnamed
(43.2854, – 124.3570); Blossom Gulch (43.2832, – 124.1532); Unnamed
(43.3988, – 124.2140); Boatman Gulch (43.3988, – 124.1962); Unnamed
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(43.2864, – 124.1762); Cardwell Creek (43.2894, – 124.2034); Unnamed
(43.2793, – 124.1277); Catching Creek (43.2914, – 124.2917); Unnamed
(43.2513, – 124.1586); Coalbank Creek (43.2942, – 124.1027); Unnamed
(43.3154, – 124.2563); Coos Bay (43.2864, – 124.2847); Unnamed
(43.3566, – 124.1586); Daniels Creek (43.3001, – 124.3022); Unnamed
(43.3038, – 124.0725); Davis Creek (43.3034, – 124.2001); Unnamed
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(43.3146, – 124.3415); Ferry Creek (43.3149, – 124.1347); Unnamed
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<td>-123.9040</td>
<td>Smith Creek</td>
<td></td>
</tr>
<tr>
<td>43.0566</td>
<td>-124.0337</td>
<td>Swamp Creek</td>
<td></td>
</tr>
<tr>
<td>43.0634</td>
<td>-123.9070</td>
<td>Alder Creek (43.2771, -123.9207); Blair</td>
<td></td>
</tr>
<tr>
<td>43.0016</td>
<td>-123.9550</td>
<td>Cherry Creek</td>
<td></td>
</tr>
<tr>
<td>43.0941</td>
<td>-123.9894</td>
<td>Cherry Creek, South Fork (43.2154, -123.9353);</td>
<td></td>
</tr>
<tr>
<td>43.0610</td>
<td>-123.9892</td>
<td>Cherry Creek</td>
<td></td>
</tr>
</tbody>
</table>
§ 226.212  
50 CFR Ch. II (10–1–12 Edition)

Coak Creek (43.2270, -124.0324); Coquille River, Little North Fork (43.2988, -123.9410); Coquille River, North Fork (43.2974, -123.8791); Coquille River, North Fork, Trib E (43.1881, -124.0764); Coquille River, North Fork, Trib I (43.2932, -123.8920); Coquille River, North Fork, Trib Y (43.3428, -123.9678); Evans Creek (43.2868, -124.0561); Fruin Creek (43.3016, -123.9198); Garage Creek (43.1508, -124.1020); Giles Creek (43.3129, -124.0357); Honcho Creek (43.2928, -123.8954); Hudson Creek (43.2575, -123.9604); Jerusalem Creek (43.1844, -124.0539); Johns Creek (43.0760, -124.0498); Little Cherry Creek (43.2007, -123.9594); Llewellyn Creek (43.1094, -124.1063); Llewellyn Creek, Trib A (43.0869, -124.0955); Lost Creek (43.1768, -124.1047); Lost Creek (43.2451, -123.9745); Mast Creek (43.2264, -124.0207); Middle Creek (43.2332, -123.8726); Moon Creek (43.2902, -123.9493); Moon Creek, Trib A (43.2976, -123.9837); Moon Creek, Trib A–1 (43.2944, -123.9753); Neely Creek (43.2960, -124.0380); Park Creek (43.2508, -123.8661); Park Creek, Trib B (43.2702, -123.8782); Schoolhouse Creek (43.1637, -124.0949); Steele Creek (43.2203, -124.1018); Steinnon Creek (43.2234, -124.1076); Unnamed (43.2575, -124.0576); Unnamed (43.1905, -124.0759); Unnamed Creek (43.2047, -124.0314); Unnamed Creek (43.2127, -124.1101); Unnamed Creek (43.2165, -124.9144); Unnamed Creek (43.2439, -123.9275); Unnamed Creek, Trib A (43.2444, -124.0868); Unnamed Creek, Trib C (43.2930, -124.0848); Unnamed Creek (43.2582, -124.0794); Unnamed Creek (43.2584, -124.8846); Unnamed Creek (43.2625, -124.0474); Unnamed Creek (43.2665, -123.9289); Unnamed Creek (43.2673, -124.0967); Vaughs Creek (43.2378, -123.9106); Whitley Creek (43.2399, -124.0115); Wilmer Creek (43.1393, -124.0640); Wood Creek (43.1392, -124.1274); Wood Creek, North Fork (43.1454, -124.1211); Coquille Watershed (43.2073, -124.0937); Coquille River Watershed (43.1700, -124.3056); Outlet(s) = Beaver Creek (42.8767, -124.3370); Carlton Creek (42.8594, -124.2382); Cold Creek (42.7824, -124.2070); Crystal Creek (42.8404, -124.4501); Dry Creek (42.7763, -124.3726); Edson Creek (42.8253, -124.3782); Hays Creek (42.8455, -124.1790); Little Dry Creek (42.8802, -124.3838); Murphy Canyon (43.2154, -124.2731); Bill Creek (43.2154, -124.1541); Lost Creek (43.2988, -124.3126); Coquille River, Little North Fork (43.2988, -124.1921); Calloway Creek (43.2060, -124.1684); Caufield Creek (43.1389, -124.1372); China Creek (43.2170, -124.2076); Cold Creek (43.2308, -124.1419); Coquille River, North Fork (43.0805, -124.1405); Coquille River, Trib A (43.2032, -124.2930); Cunningham Creek (43.2349, -124.1378); Dutch John Creek (43.1744, -124.1781); Dye Creek (43.0853, -124.2519); Hall Creek, Trib A (43.0853, -124.2519); Hall Creek, Trib A (43.0842, -124.1745); Harlin Creek (43.1326, -124.1633); Hatchet Slough (43.1879, -124.3000); Lampa Creek (43.0531, -124.2065); Little Bear Creek (43.0407, -124.2783); Little Bear Creek (43.1201, -124.2290); Mack Creek (43.1401, -124.3232); Man Creek (43.0604, -124.3306); Monroe Creek (43.0705, -124.2905); Offield Creek (43.1587, -124.3273); Pulaski Creek (43.1398, -124.2184); Randleman Creek (43.0684, -124.3039); Rich Creek (43.1764, -124.1369); Rock Robinson (43.0860, -124.2306); Rollan Creek (43.1266, -124.2563); Sevenmile Creek (43.2157, -124.3350); Sevenmile Creek (43.1833, -124.3187); Sevenmile Creek (43.2081, -124.3340); Sevenmile Creek (43.1084, -124.2727); Sevenmile Creek (43.1371, -124.1852); Sevenmile Creek (43.1924, -124.1378); Sevenmile Creek (43.1997, -124.3346); Sevenmile Creek (43.2281, -124.2190); Sevenmile Creek (43.1105, -124.2915); Sevenmile Creek (42.8543, -124.5427) upstream to endpoint(s) in: (1) Sixes Subbasin 17100306'(i) Sixes River Watershed 171003063. Outlet(s) = Sixes River (Lat 42.8543, Long 124.5427) upstream to endpoint(s) in: Alder Creek (42.8404, -124.4501); Dry Creek (42.7763, -124.3726); Edson Creek (42.8253, -124.3782); Hays Creek (42.8455, -124.1790); Little Dry Creek (42.8802, -124.3838); Murphy Canyon (43.2154, -124.2731); Bill Creek (43.2154, -124.1541); Sixes River
National Marine Fisheries Service/NOAA, Commerce § 226.212

(42.8232, –124.1704); Sixes River, Middle Fork (42.7651, –124.1782); Sixes River, North Fork (42.8878, –124.2320); South Fork Sixes River (42.8028, –124.3022); Sugar Creek (42.8217, –124.2035); Unnamed (42.8189, –124.3567); Unnamed (42.7952, –124.3918); Unnamed (42.8276, –124.4629).

(ii) New River Frontal Watershed

1710030604. Outlet(s) = New River (Lat 43.0007, Long –124.4557); Twomile Creek (43.0440, –124.4415) upstream to endpoint(s) in: Bethel Creek (42.9519, –124.3954); Boulder Creek (42.8974, –124.5050); Butte Creek (42.9458, –124.4096); Conner Creek (42.9814, –124.4215); Davis Creek (42.9657, –124.3986); Floras Creek (42.9127, –124.3933); Fourmile Creek (42.9887, –124.3077); Fourmile Creek, South Fork (42.9642, –124.3734); Langlois Creek (42.9238, –124.4570); Little Creek (43.0030, –124.3562); Long Creek (42.9828, –124.3770); Lower Twomile Creek (43.0223, –124.4080); Morton Creek (42.9437, –124.4234); New River (42.8563, –124.4602); North Fourmile Creek (42.9900, –124.3176); Redibough Creek (43.0251, –124.3659); South Twomile Creek (43.0047, –124.3672); Spring Creek (43.0163, –124.4299); Twomile Creek (43.0100, –124.3291); Unnamed (43.0209, –124.3386); Unnamed (43.0350, –124.3506); Unnamed (43.0378, –124.3481); Unnamed (43.0409, –124.3544); Unnamed (43.0439, –124.5486); Unnamed (42.8714, –124.4586); Unnamed (42.9029, –124.4222); Unnamed (42.9031, –124.4581); Unnamed (42.9294, –124.4421); Unnamed (42.9347, –124.4559); Unnamed (42.9737, –124.3363); Unnamed (42.9800, –124.3432); Unnamed (42.9880, –124.4505).

(14) Maps of critical habitat for the Oregon Coast coho salmon ESU follow:
Final Critical Habitat for the Oregon Coast Coho Salmon ESU

Legend

- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 09 = Watershed code - last 2 digits of 17100203xx

Area of Detail
Final Critical Habitat for the
Oregon Coast Coho Salmon ESU

SIUSLAW SUBBASIN
17100206

Legend

- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 08 = Watershed code - last 2 digits of 17100206xx

Area of Detail
Final Critical Habitat for the Oregon Coast Coho Salmon ESU

COOS SUBBASIN
17100304

Legend

Cities / Towns

Critical Habitat

Subbasin Boundary

Watershed Boundaries

01 - 04 = Watershed code - last 2 digits of 17100304xx
§ 226.213 Critical habitat for Johnson’s seagrass.

Critical habitat is designated to include substrate and water in the following ten portions of the Indian River Lagoon and Biscayne Bay within the current range of Johnson’s seagrass.
§ 226.213

(a) A portion of the Indian River, Florida, north of Sebastian Inlet Channel, defined by the following coordinates:

Northwest corner: 27°51'15.93"N, 80°27'55.49"W
Northeast corner: 27°51'16.57"N, 80°27'33.05"W
Southwest corner: 27°51'06.85"N, 80°27'59.48"W
Southeast corner: 27°51'11.56"N, 80°27'47.35"W

(b) A portion of the Indian River, Florida, south of the Sebastian Inlet Channel, defined by the following coordinates:

Northwest corner: 27°51'01.32"N, 80°27'46.10"W
Northeast corner: 27°51'02.69"N, 80°27'45.27"W
Southwest corner: 27°50'59.08"N, 80°27'41.84"W
Southeast corner: 27°51'01.07"N, 80°27'49.50"W

(c) A portion of the Indian River Lagoon in the vicinity of the Port Pierce Inlet. This site is located on the north side of the entrance channel just west of a small mangrove vegetated island where the main entrance channel bifurcates to the north. The area is defined by the following coordinates:

Northwest corner: 27°28'06.00"N, 80°18'49.89"W
Northeast corner: 27°28'04.56"N, 80°18'42.25"W
Southwest corner: 27°28'02.86"N, 80°18'49.06"W
Southeast corner: 27°28'01.46"N, 80°18'42.42"W

(d) A portion of the Indian River Lagoon, Florida, north of the St. Lucie Inlet, from South Nettles Island to the Florida Oceanographic Institute, defined by the following coordinates and excluding the Federally-marked navigation channel of the Intracoastal Waterway (ICW):

Northwest corner: 27°16'44.04"N, 80°14'00.00"W
Northeast corner: 27°16'44.04"N, 80°12'51.33"W
Southwest corner: 27°12'49.70"N, 80°11'46.80"W
Southeast corner: 27°12'49.70"N, 80°11'42.50"W

(e) Hobe Sound beginning at State Road 708 (27°03'49.90"N, 80°07'20.57"W) and extending south to 27°00'00.00"N, 80°05'32.54"W and excluding the federally-marked navigation channel of the ICW.

(f) Jupiter Inlet at a site located just west of the entrance to Zeek’s Marina on the south side of Jupiter Inlet and defined by the following coordinates (note a south central point was included to better define the shape of the southern boundary):

Northwest corner: 26°56'43.34"N, 80°04'37.84"W
Northeast corner: 26°56'40.93"N, 80°04'42.61"W
Southwest corner: 26°56'40.73"N, 80°04'48.65"W
South central point: 26°56'38.11"N, 80°04'45.83"W
Southeast corner: 26°56'38.31"N, 80°04'42.41"W

(g) A portion of Lake Worth, Florida, just north of Bingham Island defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northwest corner: 26°40'44.00"N, 80°02'39.00"W
Northeast corner: 26°40'40.00"N, 80°02'34.00"W
Southwest corner: 26°40'32.00"N, 80°02'44.00"W
Southeast corner: 26°40'33.00"N, 80°02'35.00"W

(h) A portion of Lake Worth Lagoon, Florida, located just north of the Boynton Inlet, on the west side of the ICW, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northwest corner: 26°33'28.00"N, 80°02'54.00"W
Northeast corner: 26°33'30.00"N, 80°03'04.00"W
Southwest corner: 26°32'59.00"N, 80°03'11.00"W
Southeast corner: 26°32'58.00"N, 80°02'58.00"W

(i) A portion of northeast Lake Wyman, Boca Raton, Florida, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northwest corner: 26°22'27.00"N, 80°04'23.00"W
Northeast corner: 26°22'27.00"N, 80°04'18.00"W
Southwest corner: 26°22'05.00"N, 80°04'16.00"W
Southeast corner: 26°22'05.00"N, 80°04'18.00"W

(j) A portion of Northern Biscayne Bay, Florida, defined by the following:
The northern boundary of Biscayne Bay Aquatic Preserve, NE 162nd Street, and including all parts of the Biscayne Bay Aquatics Preserve as defined in 18.002 of the Florida Administrative Code (F.A.C.) excluding the Oleta River, Miami River and Little River beyond their mouths, the federally-marked navigation channel of the ICW, and all existing federally authorized navigation channels, basins, and berths at the Port of Miami to the currently documented southernmost range of Johnson’s seagrass, Central Key Biscayne (25°45’N).
Figure 5

[Map showing the locations of Jupiter Island and Jupiter Inlet with the Atlantic Ocean and Critical Habitat indicated.]
Figure 8

Lake Wyman Critical Habitat

Atlantic Ocean

Boca Raton

Lake Wyman

Lat: 26 22 27
Long: 80 04 23

Lat: 26 22 27
Long: 80 04 18

Lat: 26 22 05
Long: 80 04 16

Lat: 26 22 05
Long: 80 04 18

0 0.1 0.2 Miles

= Critical Habitat
§ 226.214 Critical habitat for Gulf sturgeon.

Gulf sturgeon is under the joint jurisdiction of the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS). The FWS will maintain primary responsibility for recovery actions and NMFS will assist in and continue to fund recovery actions pertaining to estuarine and marine habitats. In riverine units, the FWS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. In estuarine units, we
will divide responsibility based on the action agency involved. The FWS will consult with the Department of Transportation, the Environmental Protection Agency, the U.S. Coast Guard, and the Federal Emergency Management Agency. NMFS will consult with the Department of Defense, U.S. Army Corps of Engineers, Minerals Management Service and any other Federal agencies not mentioned here explicitly. In marine units, NMFS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. Any Federal projects that extend into the jurisdiction of both the Services will be consulted on by the FWS with internal coordination with NMFS. Each agency will conduct its own intra-agency consultations as necessary.

The primary constituent elements essential for the conservation of Gulf sturgeon are those habitat components that support feeding, resting, and sheltering, reproduction, migration, and physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements include: abundant prey items within riverine habitats for larval and juvenile life stages, and within estuarine and marine habitats and substrates for juvenile, subadult, and adult life stages; riverine spawning sites with substrates suitable for egg deposition and development, such as limestone outcrops and cut limestone banks, bedrock, large gravel or cobble beds, marl, soapstone or hard clay; riverine aggregation areas, also referred to as resting, holding, and staging areas, used by adult, subadult, and/or juveniles, generally, but not always, located in holes below normal riverbed depths, believed necessary for minimizing energy expenditures during fresh water residency and possibly for osmoregulatory functions; a flow regime (i.e., the magnitude, frequency, duration, seasonality, and rate-of-change of fresh water discharge over time) necessary for normal behavior, growth, and survival of all life stages in the riverine environment, including migration, breeding site selection, courtship, egg fertilization, resting, and staging; and necessary for maintaining spawning sites in suitable condition for egg attachment, eggs sheltering, resting, and larvae staging; water quality, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; sediment quality, including texture and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; and safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats (e.g., a river unobstructed by any permanent structure, or a dammed river that still allows for passage).

The river reaches within Units 1 to 7 as critical habitat lie within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

The downstream limit of the riverine units is the mouth of each river. The mouth is defined as rkm 0 (rmi 0). Although the interface of fresh and saltwater, referred to as the saltwater wedge, occurs within the lower-most reach of a river, for ease in delineating critical habitat units, we are defining the boundary between the riverine and estuarine units as rkm 0 (rmi 0).

Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water (MHW) (33 CFR 329.12(a)(2)). All bays and estuaries within Units 8 to 14, therefore, lie below the MHW lines. Where precise determination of the actual location becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, may be used only where an estimate is needed.
of the line reached by the mean high water.

The term 72 COLREGS is defined as demarcation lines which delineate those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 and those waters upon which mariners shall comply with the Inland Navigation Rules (33 CFR 80.01). The waters inside of these lines are Inland Rules waters and the waters outside the lines are COLREGS waters. These lines are defined in 33 CFR part 80, and have been used for identification purposes to delineate boundary lines of the estuarine and marine habitat Units 8, 9, 11, and 12.

Critical habitat does not include existing developed sites such as dams, piers, marinas, bridges, boat ramps, exposed oil and gas pipelines, oil rigs, and similar structures or designated public swimming areas.

Critical habitat units are depicted for Louisiana, Mississippi, Alabama and Florida on the maps below. The textual unit descriptions below are definitive sources for determining the critical habitat boundaries. General location maps by unit are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) Unit 1: Pearl River System in St. Tammany and Washington Parishes in Louisiana and Walthall, Hancock, Pearl River, Marion, Lawrence, Simpson, Copiah, Hinds, Rankin, and Pike Counties in Mississippi. (1) Unit 1 includes the Pearl River main stem from the spillway of the Ross Barnett Dam, Hinds and Rankin Counties, Mississippi, downstream to where the main stem river drainage discharges at its mouth joining Lake Borgne, Little Lake, or The Rigolets in Hancock County, Mississippi, and St. Tammany Parish, Louisiana. It includes the main stems of the East Pearl River, West Pearl River, West Middle River, Holmes Bayou, Wilson Slough, downstream to where these main stem river drainages discharge at the mouths of Lake Borgne, Little Lake, or The Rigolets. Unit 1 also includes the Bogue Chitto River main stem, a tributary of the Pearl River, from Mississippi State Highway 570, Pike County, Mississippi, downstream to its confluence with the West Pearl River, St. Tammany Parish, Louisiana. The lateral extent of Unit 1 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 1 follow:
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(b) Unit 2: Pascagoula River System in Forrest, Perry, Greene, George, Jackson, Clarke, Jones, and Wayne Counties, Mississippi. (1) Unit 2 includes all of the Pascagoula River main stem and its distributaries, portions of the Bouie, Leaf, and Chickasawhay tributaries, and all of the Big Black Creek tributary. It includes the Bouie River main stem beginning on the southern-most road crossing of Interstate 59, Forrest County, Mississippi, downstream to its confluence with the Leaf River, Forrest County, Mississippi. The Leaf River main stem beginning from Mississippi State Highway 588, Jones County, Mississippi, downstream to its confluence with the Chickasawhay River, George County, Mississippi is included. The main stem of the Chickasawhay River from the mouth of Oaky Creek, Clarke County, Mississippi, downstream to its confluence with the Leaf River, George County, Mississippi is included. Unit 2 also includes Big Black Creek main stem from its confluence with Black and Red Creeks, Jackson County, Mississippi, to its confluence with the Pascagoula River, Jackson County, Mississippi. All of the main stem of the Pascagoula River from its confluence with the Leaf and Chickasawhay Rivers, George County, Mississippi, to the discharge of the East and West Pascagoula Rivers into Pascagoula Bay, Jackson County, Mississippi, is included. The lateral extent of Unit 2 is the ordinary high water line on each bank of the associated rivers and shorelines.
(2) Major shipping channels in this unit are excluded under section 4(b)(2) of the Act.

(3) Maps of Unit 2 follow:

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Map 2.4

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(c) Unit 3: Escambia River System in Santa Rosa and Escambia Counties, Florida and Escambia, Conecuh, and Covington Counties, Alabama. (1) Unit 3 includes the Conecuh River main stem beginning just downstream of the spillway of Point A Dam, Covington County, Alabama, downstream to the Florida State line, where its name changes to the Escambia River, Escambia County, Alabama, and Escambia and Santa Rosa Counties, Florida. It includes the entire main stem of the Escambia River downstream to its discharge into Escambia Bay and Macky Bay, Escambia and Santa Rosa Counties, Florida. All of the distributaries of the Escambia River including White River, Little White River, Simpson River, and Dead River, Santa Rosa County, Florida are included. The Sepulga River main stem from Alabama County Road 42, Conecuh and Escambia Counties, Alabama, downstream to its confluence with the Conecuh River, Escambia County, Alabama, is also included. The lateral extent of Unit 3 is the ordinary high water line on each bank of the associated lakes, rivers, and shorelines. 

(2) Maps of Unit 3 follow:
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(d) **Unit 4: Yellow River System in Santa Rosa and Okaloosa Counties, Florida and Covington County, Alabama.** (1) Unit 4 includes the Yellow River main stem from Alabama State Highway 55, Covington County, Alabama, downstream to its discharge at Blackwater Bay, Santa Rosa County, Florida. All Yellow River distributaries (including Weaver River and Skim Lake) discharging into Blackwater Bay are included. The Shoal River main stem, a Yellow River tributary, from Florida Highway 85, Okaloosa County, Florida, to its confluence with the Yellow River, is included. The Blackwater River from its confluence with Big Coldwater Creek, Santa Rosa County, Florida, downstream to its discharge into Blackwater Bay is included. Wright Basin and Cooper Basin, Santa Rosa County, on the Blackwater River are included. The lateral extent of Unit 4 is the ordinary high water line on each bank of the associated lakes, rivers, and shorelines.

(2) Maps of Unit 4 follow:

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
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(e) **Unit 5: Choctawhatchee River System in Holmes, Washington, and Walton Counties, Florida and Dale, Coffee, Geneva, and Houston Counties, Alabama.** (1) Unit 5 includes the Choctawhatchee River main stem from its confluence with the west and east fork of the Choctawhatchee River, Dale County, Alabama, downstream to its discharge at Choctawhatchee Bay, Walton County, Florida. The distributaries discharging into Choctawhatchee Bay known as Mitchell River, Indian River, Cypress River, and Bells Leg are included. The Boynton Cutoff, Washington County, Florida, which joins the Choctawhatchee River main stem, and Holmes Creek, Washington County, Florida, are included. The section of Holmes Creek from Boynton Cutoff to the mouth of Holmes Creek, Washington County, Florida, is included. The Pea River main stem, a Choctawhatchee River tributary, from the Elba Dam, Coffee County, Alabama, to its confluence with the Choctawhatchee River, Geneva County, Alabama, is included. The lateral extent of Unit 5 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 5 follow:

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
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This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(f) Unit 6: Apalachicola River System in Franklin, Gulf, Liberty, Calhoun, Jackson, and Gadsen Counties, Florida. (1) Unit 6 includes the Apalachicola River mainstem, beginning from the Jim Woodruff Lock and Dam, Gadsden and Jackson Counties, Florida, downstream to its discharge at East Bay or Apalachicola Bay, Franklin County, Florida. All Apalachicola River distributaries, including the East River, Little St. Marks River, St. Marks River, Franklin County, Florida, to their discharge into East Bay and/or Apalachicola Bay are included. The entire main stem of the Brothers River, Franklin and Gulf Counties, Florida, a tributary of the Apalachicola River, is included. The lateral extent of Unit 6 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 6 follow:
Unit 6
Apalachicola River Critical Habitat Unit

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
Unit 7: Suwannee River System in Hamilton, Suwannee, Madison, Lafayette, Gilchrist, Levy, Dixie, and Columbia Counties, Florida.  

(1) Unit 7 includes the Suwannee River main stem, beginning from its confluence with Long Branch Creek, Hamilton County, Florida, downstream to the mouth of the Suwannee River. It includes all the Suwannee River distributaries, including the East Pass, West Pass, Wadley Pass, and Alligator Pass, Dixie and Levy Counties, Florida, to their discharge into the Suwannee Sound or the Gulf of Mexico. The Withlacoochee River main stem from Florida State Road 6, Madison and Hamilton Counties, Florida, to its confluence with the Suwannee River is included. The lateral extent of Unit 7 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 7 follow:

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(h) Unit 8: Lake Pontchartrain, Lake St. Catherine, The Rigolets, Little Lake, Lake Borgne, and Mississippi Sound in Jefferson, Orleans, St. Tammany, and St. Bernard Parish, Louisiana, Hancock, Jackson, and Harrison Counties in Mississippi, and in Mobile County, Alabama.

(1) Unit 8 encompasses Lake Pontchartrain east of the Lake Pontchartrain Causeway, all of Little Lake, The Rigolets, Lake St. Catherine, Lake Borgne, including Heron Bay, and the Mississippi Sound. Critical habitat follows the shorelines around the perimeters of each included lake. The Mississippi Sound includes adjacent open bays including Pascagoula Bay, Point aux Chenes Bay, Grand Bay, Sandy Bay, and barrier island passes, including Ship Island Pass, Dog Keys Pass, Horn Island Pass, and Petit Bois Pass. The northern boundary of the Mississippi Sound is the shorelines of the mainland between Heron Bay Point, MS and Point aux Pins, AL. Designated critical habitat excludes St. Louis Bay, north of the railroad bridge across its mouth; Biloxi Bay, north of the U.S. Highway 90 bridge; and Back Bay of Biloxi. The southern boundary follows along the broken shoreline of Lake Borgne created by low swampland islands from Malheureux Point to Isle au Pitre. From the northeast point of Isle au Pitre, the boundary continues in a straight north-northeast line to the point 1 nm (1.9 km) seaward of the western most extremity of Cat Island (30°13'N, 89°10'W). The southern boundary continues 1 nm (1.9 km) offshore of the barrier islands and offshore of the 72 COLREGS lines at barrier island
passes (defined at 33 CFR 80.815 (c)), (d) and (e) to the eastern boundary. Between Cat Island and Ship Island there is no 72 COLREGS line. We therefore, have defined that section of the southern boundary as 1 nm (1.9 km) offshore of a straight line drawn from the southern tip of Cat Island to the western tip of Ship Island. The eastern boundary is the line of longitude 88°18.8″W from its intersection with the shore (Point aux Pins) to its intersection with the southern boundary. The lateral extent of Unit 8 is the MHW line on each shoreline of the included water bodies or the entrance to rivers, bayous, and creeks.

(2) Major shipping channels in this unit, as identified on standard navigation charts and marked by buoys, are excluded under section 4(b)(2) of the Act.

(3) Maps of Unit 8 follow:
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(1) Unit 9: Pensacola Bay System in Escambia and Santa Rosa Counties, Florida. (1) Unit 9 includes Pensacola Bay and its adjacent main bays and coves. These include Big Lagoon, Escambia Bay, East Bay, Blackwater Bay, Bayou Grande, Macky Bay, Saultsmar Cove, Bass Hole Cove, and Catfish Basin. All other bays, bayous, creeks, and rivers are excluded at their mouths. The western boundary is the Florida State Highway 292 Bridge crossing Big Lagoon to Perdido Key. The southern boundary is the 72 COLREGS line between Perdido Key and Santa Rosa Island (defined at 33 CFR 80.810(g)). The eastern boundary is the Florida State Highway 399 Bridge at Gulf Breeze, FL. The lateral extent of Unit 9 is the MHW line on each included bay's shoreline.

(2) Major shipping channels in this unit, as identified on standard navigation charts and marked by buoys, are excluded under section 4(b)(2) of the Act.

(3) A Map of Unit 9 follows:
(j) Unit 10: Santa Rosa Sound in Escambia, Santa Rosa, and Okaloosa Counties, Florida. (1) Unit 10 includes the Santa Rosa Sound, bounded on the west by the Florida State Highway 399 bridge in Gulf Breeze, FL. The eastern boundary is the U.S. Highway 98 bridge.
in Fort Walton Beach, FL. The northern and southern boundaries of Unit 10 are formed by the shorelines to the MHW line or by the entrance to rivers, bayous, and creeks.

(2) A Map of Unit 10 follows:
(k) Unit 11: Florida Nearshore Gulf of Mexico Unit in Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf Counties, Florida. (1) Unit 11 includes a portion of the Gulf of Mexico as defined by the following boundaries. The western boundary is the line of longitude 87°20.0′W (approximately 1 nm (1.9 km) west of Pensacola Pass) from its intersection with the shore to its intersection with the southern boundary. The northern boundary is the MHW of the mainland shoreline and the 72 COLREGS lines at passes as defined at 30 CFR 80.810(a–g). The southern boundary is 1 nm (1.9 km) offshore of the northern boundary. The eastern boundary is the line of longitude 85°17.0′W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary.

(2) A Map of Unit 11 follows:
(1) Unit 12: Choctawhatchee Bay in Okaloosa and Walton Counties, Florida. Unit 12 includes the main body of Choctawhatchee Bay, Hogtown Bayou, Jolly Bay, Bunker Cove, and Grassy Cove. All other bayous, creeks, rivers are excluded at their mouths/entrances. The western boundary is the...
U.S. Highway 98 bridge at Fort Walton Beach, FL. The southern boundary is the 72 COLREGS line across East (Destin) Pass as defined at 33 CFR 80.810(f). The lateral extent of Unit 12 is the MHW line on each shoreline of the included water bodies.

(2) A Map of Unit 12 follows:
(m) Unit 13: Apalachicola Bay in Gulf and Franklin County, Florida. (1) Unit 13 includes the main body of Apalachicola Bay and its adjacent sounds, bays, and the nearshore waters of the Gulf of Mexico. These consist of St. Vincent Sound, including Indian Lagoon; Apalachicola Bay including Horseshoe Cove and All Tides Cove; East Bay including Little Bay and Big Bay; and St George Sound, including Rattlesnake Cove and East Cove. Barrier Island passes (Indian Pass, West Pass, and East Pass) are also included. Sike’s cut is excluded from the lighted buoys on the Gulf of Mexico side to the day boards on the bay side. The southern boundary includes water extending into the Gulf of Mexico 1 nm (1.9 km) from the MHW line of the barrier islands and from 72 COLREGS lines between the barrier islands (defined at 33 CFR 80.805(e–h)). The western boundary is the line of longitude 85°17.0′W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary. The eastern boundary is formed by a straight line drawn from the shoreline of Lanark Village at 29°53.1′N, 84°35.0′W to a point that is 1 nm (1.9 km) offshore from the northeastern extremity of Dog Island at 29°49.6′N, 84°33.2′W. The lateral extent of Unit 13 is the MHW line on each shoreline of the included water bodies or the entrance of excluded rivers, bayous, and creeks.

(2) A Map of Unit 13 follows:
(n) Unit 14: Suwannee Sound in Dixie and Levy Counties, Florida. (1) Unit 14 includes Suwannee Sound and a portion of adjacent Gulf of Mexico waters extending 9 nm from shore (16.7 km) out to the State territorial water boundary. Its northern boundary is formed by a straight line from the
northern tip of Big Pine Island (at approximately 29°23’N, 83°12’W) to the Federal-State boundary at 29°17’N, 83°21’W. The southern boundary is formed by a straight line from the southern tip of Richards Island (at approximately 83°04’W, 29°11’N) to the Federal-State boundary at 83°18’W, 29°04’N. The lateral extent of Unit 14 is the MHW line along the shorelines and the mouths of the Suwannee River (East and West Pass), its distributaries, and other rivers, creeks, or water bodies.

(2) A Map of Unit 14 follows:
This map is provided only for illustrative purposes of Gulf sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
§ 226.215 Critical habitat for the North Pacific Right Whale (Eubalaena japonica).

(a) Primary Constituent Elements. The primary constituent elements of the North Pacific right whale are the copepods Calanus marshallae, Neocalanus cristatus, and N. plumchrís, and the euphausiid Thysanoessa raschii, in areas of the North Pacific Ocean in which North Pacific right whales are known or believed to feed, as described in paragraphs (b) and (c) of this section.

(b) Bering Sea. An area described by a series of straight lines connecting the following coordinates in the order listed:

- 58° 00’ N/168° 00’ W
- 58° 00’ N/163° 00’ W
- 56° 30’ N/161° 45’ W
- 55° 00’ N/166° 00’ W
- 56° 00’ N/168° 00’ W
- 58° 00’ N/168° 00’ W.

(c) Gulf of Alaska. An area described by a series of straight lines connecting the following coordinates in the order listed:

- 57° 03’ N/153° 00’ W
- 57° 18’ N/151° 30’ W
- 57° 00’ N/151° 30’ W
- 56° 45’ N/153° 00’ W
- 57° 03’ N/153° 00’ W.

(d) Maps of critical habitat for the North Pacific right whale follow:
Critical habitat is designated for both elkhorn and staghorn corals as described in this section. The textual descriptions of critical habitat in paragraphs (b) and (c) of this section are the definitive source for determining the critical habitat boundaries. The overview maps in paragraph (d) of this section are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) Physical Feature Essential to the Conservation of Threatened Corals. The physical feature essential to the conservation of elkhorn and staghorn corals is: substrate of suitable quality and availability to support larval settlement and recruitment, and reattachment and recruitment of asexual fragments. “Substrate of suitable quality and availability” is defined as natural consolidated hard substrate or dead coral skeleton that is free from fleshy or turf macroalgae cover and sediment cover.

(b) Critical Habitat Areas. Critical habitat includes one specific area of the Atlantic Ocean offshore of Palm Beach, Broward, Miami-Dade, and Monroe counties, Florida, and three specific areas of the Atlantic Ocean and Caribbean Sea offshore of the U.S. Territories of Puerto Rico and the U.S. Virgin Islands. The boundaries of each specific critical habitat area are described below. Except as specified below, the seaward boundary is the 98-ft (30 m) depth contour and the shoreward boundary is the line of mean low water (MLW; 33 CFR 2.20). Within these boundaries, discrete areas of water deeper than 98 ft (30 m) are not included.

(1) Florida Area: The Florida area contains three sub-areas.

(i) The shoreward boundary for Florida sub-area A begins at the 6-ft (1.8 m) contour at the south side of Boynton Inlet, Palm Beach County at 26° 32′ 42.5″ N; then runs due east to the point of intersection with the 98-ft (30 m) contour; then follows the 98-ft (30 m) contour to the point of intersection with the 98-ft (30 m) contour and longitude 82° 45′ W; then follows the 98-ft (30 m) contour west around the Dry Tortugas, to the northern point of intersection with longitude 82° 45′ W; then runs due west to the point of intersection with the 98-ft (30 m) contour and longitude 82° 45′ W; then runs due east to the point of intersection with the 98-ft (30 m) contour; then follows the 98-ft (30 m) contour to the beginning point.

(ii) The shoreward boundary of Florida sub-area B begins at the MLW line at 25° 45′ 55″ N, Government Cut, Miami-Dade County; then runs due east to the point of intersection with the 98-ft (30 m) contour; then follows the 98-ft (30 m) contour to the point of intersection with longitude 82° W; then runs due north to the point of intersection with the South Atlantic Fishery Management Council (SAPMC) boundary at 24° 31′ 35.75″ N; then follows the SAPMC boundary to a point of intersection with the MLW line at Key West, Monroe County; then follows the MLW line, the SAPMC boundary (see 50 CFR 600.105(c)), and the COLREGS line (see 33 CFR 80.727, 730, 735, and 740) to the beginning point.

(iii) The seaward boundary of Florida sub-area C (the Dry Tortugas) begins at the northern intersection of the 98-ft (30 m) contour and longitude 82° 45′ W; then follows the 98-ft (30 m) contour west around the Dry Tortugas, to the southern point of intersection with longitude 82° 45′ W; then runs due north to the beginning point.

(2) Puerto Rico Area: All areas surrounding the islands of the Commonwealth of Puerto Rico, 98 ft (30 m) in depth and shallower, seaward of the COLREGS line (see 33 CFR 80.738).

(3) St. Thomas/St. John Area: All areas surrounding the islands of St. Thomas and St. John, U.S. Virgin Islands, and smaller surrounding islands, 98 ft (30 m) in depth and shallower.

(4) St. Croix Area: All areas surrounding the island of St. Croix, U.S. Virgin Islands, 98 ft (30 m) in depth and shallower.

(c) Areas not included in critical habitat. Critical habitat does not include the following particular areas where they overlap with the areas described in paragraph (b) of this section:

(1) Pursuant to ESA section 4(a)(3)(B), all areas subject to the 2008 Naval Air Station Key West Integrated Natural Resources Management Plan.

(2) Pursuant to ESA section 3(5)(A)(i), all areas containing existing (already constructed) federally authorized or permitted man-made structures
such as aids-to-navigation (ATONs), artificial reefs, boat ramps, docks, pilings, maintained channels, or marinas.

(3) Pursuant to ESA section 3(5)(A)(i), all waters identified as existing (already constructed) federally authorized channels and harbors as follows:

- (i) Palm Beach Harbor.
- (ii) Hillsboro Inlet.
- (iii) Port Everglades.
- (iv) Miami Harbor.
- (v) Key West Harbor.
- (vi) Arecibo Harbor.
- (vii) San Juan Harbor.
- (viii) Fajardo Harbor.
- (ix) Ponce Harbor.
- (x) Mayaguez Harbor.
- (xi) St. Thomas Harbor.
- (xii) Christiansted Harbor.

(d) Areas excluded from critical habitat. Pursuant to ESA Section 4(b)(2), all waters of the Restricted Anchorage Area as described at 33 CFR 334.580, beginning at a point located at 26° 05' 30" N, 80° 06' 30" W; proceed west to 26° 05' 30" N, 80° 06' 30" W; thence, southerly to 26° 03' 00" N, longitude 80° 06' 42" W; thence, east to latitude 26° 03' 00" N, 80° 05' 44" W, thence, south to 26° 01' 36" N, 80° 05' 44" W; thence, east to 26° 01' 36" N, 80° 03' 30" W; thence, north to the point of beginning.

(e) Overview maps of designated critical habitat for elkhorn and staghorn corals follow.
Critical Habitat for Elkhorn and Staghorn Corals
Area 2: Puerto Rico and Associated Islands

Legend
| Critical Habitat |

Area of Detail

Critical habitat is designated to include all perennial rivers, streams, and estuaries and lakes connected to the marine environment within the range of the Gulf of Maine Distinct Population Segment of Atlantic Salmon (GOM DPS), except for those particular areas within the range which are specifically excluded. Within the GOM DPS, the primary constituent elements

[73 FR 72236, Nov. 26, 2008]
(PCEs) for Atlantic salmon include sites for spawning and incubation, sites for juvenile rearing, and sites for migration. The essential physical and biological features of habitat are those features that allow Atlantic salmon to successfully use sites for spawning and rearing and sites for migration. These features include substrate of suitable size and quality; rivers and streams of adequate flow, depth, water temperature and water quality; rivers, streams, lakes and ponds with sufficient space and diverse, abundant food resources to support growth and survival; waterways that allow for free migration of both adult and juvenile Atlantic salmon; and diverse habitat and native fish communities in which salmon interact with while feeding, migrating, spawning, and resting.

(a) The GOM DPS is divided into three salmon habitat recovery units (SHRUs) within the range of the GOM DPS: These are the Downeast Coastal SHRU, the Penobscot Bay SHRU, and the Merrymeeting Bay SHRU. Critical habitat is being considered only in specific areas currently occupied by the species. Critical habitat specific areas are identified by hydrological unit codes (HUC) and counties within the States of Maine. Hydrological units are those defined by the Department of Interior (DOI), U.S. Geological Survey (USGS) publication, “Hydrologic Unit Maps” Water Supply Paper (Seaber et al., 1994) and the following DOI, USGS 1:500,000 scale hydrologic unit map: State of Maine. These documents are incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and the maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/Federal_register/code_of_federal_regulations/ibr_locations.html.

(b) Critical habitat is designated in the Maine counties and towns for the three SHRUs described in paragraphs (b)(1) and (2) of this section. The textual descriptions of critical habitat for each SHRU are included in paragraphs (b)(3) through (6) of this section, and these descriptions are the definitive source for determining the critical habitat boundaries. A general location map (Figure 1) is provided at the end of paragraph (b)(2) and is for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

1 Maine counties and towns affected.

Critical habitat is designated for the following SHRUs in the following counties and towns.

(i) Counties and towns partially or entirely within areas containing critical habitat in the Downeast Coastal SHRU:

<table>
<thead>
<tr>
<th>Sub-basin County Town</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coastal Pensacot Clifton, Eddington, Grand Falls Twp, Greenfield Twp, Summit Twp.</td>
</tr>
<tr>
<td>Wash- hington Hancock ... Wallaham, Bucksport, Dedham, Eastbrook, Ellsworth, Fletchers Landing Twp, Franklin, Great Pond, Hancock, Lamoin, Mariaville, Opton Twp, Orland, Osborn, Trenton Otis, Sullivan, Suny, T10 SD, T16 MD, T22 MD, T28 MD, T32 MD, T34 MD, T35 MD, T38 MD, T40 MD, T41 MD, T7 SD, T9 SD.</td>
</tr>
<tr>
<td>Hancock ... Astin, Alexander, Baileyville, Baring Plt, Beddington, Centerville Twp, Charlotte, Cherryfield, Columbia, Columbia Falls, Cooper, Crawford, Cutler, Deblois, Dennyville, Deversaux Twp, East Machias, Edmunds Twp, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion Twp, Marshfield, Meddybemp, Milbridge, No 14 Twp, No 21 Twp, Northfield, Princeton, Roque Bluffs, Sakom Twp, Steuben, Trescott Twp, Whil- ing, Whitemelf, Wesley T18 ED BPP, T16 MD BPP, T19 ED BPP, T19 MD BPP, T24 MD BPP, T25 MD BPP, T26 ED BPP, T27 ED BPP, T30 MD BPP, T31 MD BPP, T36 MD BPP, T37 MD BPP, T42 MD BPP, T43 MD BPP.</td>
</tr>
<tr>
<td>Wash- hington. Addison, Alexander, Baileyville, Baring Plt, Beddington, Centerville Twp, Charlotte, Cherryfield, Columbia, Columbia Falls, Cooper, Crawford, Cutler, Deblois, Dennyville, Deversaux Twp, East Machias, Edmunds Twp, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion Twp, Marshfield, Meddybemp, Milbridge, No 14 Twp, No 21 Twp, Northfield, Princeton, Roque Bluffs, Sakom Twp, Steuben, Trescott Twp, Whil- ing, Whitemelf, Wesley T18 ED BPP, T16 MD BPP, T19 ED BPP, T19 MD BPP, T24 MD BPP, T25 MD BPP, T26 ED BPP, T27 ED BPP, T30 MD BPP, T31 MD BPP, T36 MD BPP, T37 MD BPP, T42 MD BPP, T43 MD BPP.</td>
</tr>
</tbody>
</table>

(ii) Counties and towns partially or entirely within areas containing critical habitat in the Penobscot Bay SHRU:
<table>
<thead>
<tr>
<th>Sub-basin</th>
<th>County</th>
<th>Town</th>
</tr>
</thead>
<tbody>
<tr>
<td>Piscataquis</td>
<td>Penobscot</td>
<td>T4 Indian Purchase Twp, Long A Twp, Sebecos PI, Mattamuskeet Twp, Maxfield, Laggange, Charleston, Howland, T3 R9 NWP, Edinburg, Hopkins Academy Grant Twp, Garland, WELS, T4 R9 WELS, T6 R6 WELS</td>
</tr>
<tr>
<td>Piscataquis</td>
<td>Somerset</td>
<td>Squaretown Twp, Mayfield Twp, Brighton PI, East Moxie Twp, Bald Mountain Twp T2 R2.</td>
</tr>
<tr>
<td>East Branch</td>
<td>Penobscot</td>
<td>Aroostook PI, T7 R5 WELS. Mount Chase, East Millinocket, Grindstone Twp, Herseytown Twp, Medway, Patten, Silderton Twp T2 R7 WELS, Stacysville, T1 R6 WELS, T2 R8 WELS, T3 R7 WELS, T3 R8 WELS, T4 R7 WELS, T4 R8 WELS, T5 R7 WELS, T5 R8 WELS, T6 R6 WELS, T6 R7 WELS, T6 R8 WELS, T7 R6 WELS, T7 R7 WELS, T7 R8 WELS, T8 R6 WELS, T8 R7 WELS, T8 R8 WELS.</td>
</tr>
<tr>
<td>Penobscot</td>
<td>Penobscot</td>
<td>Aroostook PI, T7 R5 WELS. Mount Katahdin Twp, Nessourdnahunk Twp, Trout Brook Twp, T3 R10 WELS, T4 R10 WELS, T4 R9 WELS, T5 R11 WELS, T5 R9 WELS, T6 R10 WELS, T6 R11 WELS, T7 R10 WELS, T7 R11 WELS, T7 R12 WELS, T7 R9 WELS.</td>
</tr>
<tr>
<td>Mattawamkeag</td>
<td>Penobscot</td>
<td>Aroostook PI, T7 R5 WELS. Mount Katahdin Twp, Nessourdnahunk Twp, Trout Brook Twp, T3 R10 WELS, T4 R10 WELS, T4 R9 WELS, T5 R11 WELS, T5 R9 WELS, T6 R10 WELS, T6 R11 WELS, T7 R10 WELS, T7 R11 WELS, T7 R12 WELS, T7 R9 WELS.</td>
</tr>
</tbody>
</table>

(iii) Counties and towns partially or entirely within areas containing critical habitat in the Merrymeeting Bay SHRU:
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<table>
<thead>
<tr>
<th>Sub-basin</th>
<th>County</th>
<th>Town</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower Androscoggin</td>
<td></td>
<td>Auburn, Durham, Greene, Leeds, Lewiston, Lisbon, Sabattus, Sallas, Wales, Brunswick, Freeport.</td>
</tr>
<tr>
<td></td>
<td>Kennebec</td>
<td>Litchfield, Monmouth</td>
</tr>
<tr>
<td></td>
<td>Sagadahoc</td>
<td>Bath, Bowdoin, Bowdoinham, Richmond, Topsham.</td>
</tr>
<tr>
<td>Merrymeeting Bay</td>
<td>Androscoggin</td>
<td>Livermore Falls.</td>
</tr>
<tr>
<td></td>
<td>Lincoln</td>
<td>Aina, Dresden, Whitefield, Wiscasset.</td>
</tr>
<tr>
<td></td>
<td>Sagadahoc</td>
<td>Bowdoinham, Perkins Twp Swan Island, Richmond, Woolwich.</td>
</tr>
<tr>
<td></td>
<td>Somerset</td>
<td>Arrowsic, Bath, Bowdoinham, Georgetown, Phippsburg, West Bath, Woolwich.</td>
</tr>
<tr>
<td>Coastal Drainages East of Small Point</td>
<td>Cum-berland.</td>
<td>Brunswick.</td>
</tr>
</tbody>
</table>

(2) **Critical habitat boundaries.** Critical habitat includes the stream channels within the designated stream reaches, and includes a lateral extent as defined by the ordinary high-water line (33 CFR 329.11). In areas where the ordinary high-water line has not been defined, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on an annual flood series. Critical habitat in estuaries is defined by the perimeter of the water body as displayed on standard 1:24,000 scale topographic maps or the elevation of extreme high water, whichever is greater.
(i) HUC 10 watersheds in the Penobscot Bay SHRU analyzed for critical habitat, those that meet the criteria for critical habitat, and those excluded under ESA section 4(b)(2):

<table>
<thead>
<tr>
<th>Penobscot Bay SHRU</th>
<th>HUC 10 Code</th>
<th>HUC 10 Name</th>
<th>Status</th>
<th>Economic (E), Military (M), or Tribal (T) exclusions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>0102000101</td>
<td>North Branch Penobscot River</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>0102000102</td>
<td>Seeboomock Lake</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Figure 1

HUC 10 watersheds analyzed for critical habitat and specific areas designated as critical habitat.
§226.217  50 CFR Ch. II (10–1–12 Edition)

<table>
<thead>
<tr>
<th>Penobscot Bay SHRU</th>
<th>HUC 10 Code</th>
<th>HUC 10 Name</th>
<th>Status</th>
<th>Economic (E), Military (M), or Tribal (T) exclusions</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>0102000103</td>
<td>WEST Branch Penobscot River at Chesuncook Lake</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>0102000104</td>
<td>Caucomgomok Lake</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>0102000105</td>
<td>Chesuncook Lake</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>0102000106</td>
<td>Nesowadnusne River</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>0102000107</td>
<td>Nahamakanta Stream</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>0102000108</td>
<td>Jo-Mary Lake</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>0102000109</td>
<td>West Branch Penobscot River (3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>010200110</td>
<td>West Branch Penobscot River (4)</td>
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(ii) HUC 10 watersheds in the criteria for critical habitat, and those Merrymeting Bay SHRU analyzed for critical habitat, those that meet the

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<th>HUC 10 name</th>
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<td>010300116</td>
<td>Kennebec River at Waterville Dam</td>
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critical habitat, and those that meet
Atlantic salmon to successfully use
features of the habitat that are essen-
features that allow
migration. These features include:
(i) Deep, oxygenated pools and cover
(e.g., boulders, woody debris, vegeta-
tion, etc.), near freshwater spawning
sites, necessary to support adult mi-
grants during the summer while they
await spawning in the fall;
(ii) Freshwater spawning sites that
contain clean, permeable gravel and
cobble substrate with oxygenated
water and cool water temperatures to

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(iii) HUC 10 watersheds in the criteria for critical habitat, and
Downeast Coastal SHRU analyzed for those excluded under ESA section
critical habitat, and those that meet 4(b)(2):

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(3) Primary constituent elements. Within
in the GOM DPS, the primary con-
stituent elements (PCEs) for the con-
servation of Atlantic salmon include
sites for spawning and incubation, sites
for juvenile rearing, and sites for mi-
gration. The physical and biological
features of the habitat that are essent-
ial to the conservation of Atlantic
salmon are those features that allow
Atlantic salmon to successfully use
sites for spawning and rearing and sites
for migration. These features include:

(i) Deep, oxygenated pools and cover
(e.g., boulders, woody debris, vegeta-
tion, etc.), near freshwater spawning
sites, necessary to support adult mi-
grants during the summer while they
await spawning in the fall;
(ii) Freshwater spawning sites that
contain clean, permeable gravel and
cobble substrate with oxygenated
water and cool water temperatures to
(iii) Freshwater spawning and rearing sites with clean gravel in the presence of cool, oxygenated water and diverse substrate to support emergence, territorial development, and feeding activities of Atlantic salmon fry;

(iv) Freshwater rearing sites with space to accommodate growth and survival of Atlantic salmon parr, and population densities needed to support sustainable populations;

(v) Freshwater rearing sites with a combination of river, stream, and lake habitats, that accommodate parr’s ability to occupy many niches and to maximize parr production;

(vi) Freshwater rearing sites with cool, oxygenated water to support growth and survival of Atlantic salmon parr;

(vii) Freshwater rearing sites with diverse food resources to support growth and survival of Atlantic salmon parr;

(viii) Freshwater and estuary migratory sites free from physical and biological barriers that delay or prevent access to spawning grounds needed to support a recovered population;

(ix) Freshwater and estuary migration sites with abundant, diverse native fish communities to serve as a protective buffer against predation;

(x) Freshwater and estuary migration sites free from physical and biological barriers that delay or prevent emigration of smolts to the marine environment;

(xi) Freshwater and estuary migration sites with sufficiently cool water temperatures and water flows that coincide with diurnal cues to stimulate smolt migration;

(xii) Freshwater rearing sites with water chemistry needed to support sea water adaptation of smolts; and

(xiii) Freshwater and marine sites with diverse, abundant assemblages of native fish communities to enhance survivorship as Atlantic salmon smolts emigrating through the estuary.

(4) Habitat that meets the definition of critical habitat in occupied habitat areas on Passamaquoddy Tribal Indian lands and Fee lands or lands held in Trust by the Penobscot Indian Reservation within the range of the GOM DPS are excluded from designation.

Per request of the Penobscot Tribe, critical habitat does include occupied habitat that makes up the Penobscot Indian Reservation. The Indian lands specifically excluded from critical habitat are those defined in the Secretarial Order 3206, including:

(i) Lands held in Trust by the United States for the benefit of any Indian Tribe;

(ii) Lands held in trust by the United States for the benefit of any Indian Tribe or individual subject to restrictions by the United States against alienation;

(iii) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(iv) Fee lands within the reservation boundaries owned by individual Indians.

The rivers, streams, lakes, and estuaries on approximately 9,500 acres (38.4 sq km) of lands held by the Passamaquoddy Tribe and approximately 60,500 acres (244.8 sq km) of Fee lands and land held in Trust for the Penobscot Tribe within the areas occupied by the GOM DPS are excluded from critical habitat designation based on the principles of the Secretarial Order discussed above. Per request of the Penobscot Nation, the rivers, lakes, and streams within the approximately 4,400-acre (17.8 sq km) Penobscot Reservation are included as critical habitat.

(5) Areas that do not meet the definition of critical habitat under section 4(a)(3)(B)(i). Critical habitat does not include the following areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a). These areas that are not included are:

(i) The 435 acres (1.8 sq km) of the Brunswick Naval Air Station in Brunswick Maine within the Little Androscoggin HUC 10 watershed in the Merrymeeting Bay SHRU; and

(ii) The 5,328 acres (21.5 sq km) of the Brunswick Naval Air Stations cold weather survival, evasion, resistance, and escape school within the Sandy River HUC 10 watershed in the Merrymeeting Bay SHRU.
(6) Areas excluded under ESA Section 4(b)(2). (i) The 396 acres (1.6 sq km) of the Great Pond Outdoor Adventure Center in the Graham Lake HUC 10 watershed in the Downeast Coastal SHRU;

(ii) The 3,000 acres (12.1 sq km) of the Naval Computer and Telecommunications Area Master Station Atlantic Detachment in the Roques Bluffs Coastal HUC 10 in the Downeast Coastal SHRU;

(iii) The Bath Iron Works ship building facility that provides the design, building, and support of complex Navy warships, including AEGIS Class Destroyers. The excluded area extends from U.S. Route 1 bridge over the Kennebec River down river to 50 feet below the south side of BIW’s dry dock, but does not include any portion of Hanson Bay or the thoroughfare between Hanson Bay and the Kennebec River. The specific area excluded from designation lies within a box between four points with the following coordinates: Point 1: N 43° 54′ 39.8″, W 069° 48′ 43.5″; Point 2: N 43° 54′ 40″, W 069° 48′ 17.8″; Point 3: N 43° 54′ 0.0″, W 069° 48′ 26″;

(iv) The Belfast Bay HUC 10 Watershed (HUC 105000219);

(v) The Passadumkeag River HUC 10 Watershed (HUC 102000503); and

(vi) The Molunkus Stream HUC 10 Watershed (HUC 102000306).

(7) Description of critical habitat. Critical habitat is designated to include the areas defined in the following hydrological units in the three SHRUs with the exception of those particular areas specifically identified:

(i) Downeast Coastal SHRU. Critical habitat area (in sq km), areas excluded under ESA section 4(b)(2) (in sq km), and exclusion type, by HUC 10 watersheds:

<table>
<thead>
<tr>
<th>Sub-basin</th>
<th>HUC 10 code</th>
<th>HUC 10 watershed name</th>
<th>Critical habitat</th>
<th>Excluded areas [type]*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>River, stream and estuary (km)</td>
<td>Lake (sq. km)</td>
</tr>
<tr>
<td>Coastal Washington Hancock sub-basin</td>
<td>0105000201</td>
<td>Densys River ..................</td>
<td>218</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>0105000203</td>
<td>Grand Manan Channel ..........</td>
<td>641</td>
<td>15.5</td>
</tr>
<tr>
<td></td>
<td>0105000204</td>
<td>East Machias River ..........</td>
<td>575</td>
<td>16 [T]</td>
</tr>
<tr>
<td></td>
<td>0105000205</td>
<td>Machias River ...............</td>
<td>991</td>
<td>0.1 [T]</td>
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<tr>
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<td>0105000206</td>
<td>Roque Bluffs Coastal .......</td>
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<tr>
<td></td>
<td>0105000207</td>
<td>Chandler River ..............</td>
<td>154</td>
<td>13(M)</td>
</tr>
<tr>
<td></td>
<td>0105000208</td>
<td>Pleasant River ..............</td>
<td>325</td>
<td>6.5 [M]</td>
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<tr>
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<td>0105000209</td>
<td>Narraguagus River ..........</td>
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<tr>
<td></td>
<td>0105000210</td>
<td>Tunk Stream .................</td>
<td>117</td>
<td>13(M)</td>
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<tr>
<td></td>
<td>0105000212</td>
<td>Graham Lake ..................</td>
<td>974</td>
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<td></td>
<td>0105000213</td>
<td>Union River Bay .............</td>
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<td>23(M)</td>
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<td>0105000211</td>
<td>Bois Bubert Coastal ..........</td>
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<td>0105000214</td>
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<td>0105000215</td>
<td>Mt. Desert Coastal ..........</td>
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(ii) Penobscot Bay SHRU. Critical habitat area (in sq km), areas excluded under ESA section 4(b)(2) (in sq km), and exclusion type, by HUC 10 watersheds:
§ 226.217

<table>
<thead>
<tr>
<th>Sub-basin</th>
<th>HUC 10 Code</th>
<th>HUC 10 Watershed Name</th>
<th>River, stream and estuary (km)</th>
<th>Lake (sq. km)</th>
<th>River, stream and estuary (km)</th>
<th>Lake (sq. km)</th>
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</thead>
<tbody>
<tr>
<td>East Branch Penobscot sub-basin</td>
<td>0102000202</td>
<td>Grand Lake</td>
<td>326</td>
<td>30</td>
<td>6[T]</td>
<td>0.5[T]</td>
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<tr>
<td></td>
<td>0102000203</td>
<td>Matagamon</td>
<td>179</td>
<td>3</td>
<td>1[T]</td>
<td></td>
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<tr>
<td></td>
<td>0102000204</td>
<td>Penobscot River (2)</td>
<td>418</td>
<td>31</td>
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<td></td>
<td>0102000205</td>
<td>Seboeis River</td>
<td>588</td>
<td>5</td>
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<td>3[T]</td>
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<tr>
<td></td>
<td>0102000201</td>
<td>Webster Brook</td>
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<td>West Branch Penobscot sub-basin</td>
<td>0102000101</td>
<td>North Branch</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0102000102</td>
<td>Penobscot River</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>0102000103</td>
<td>Seboeomook Lake</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>0102000104</td>
<td>W. Br. Penobscot R. at Chesuncook</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0102000105</td>
<td>Caucomgomok Lake</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>0102000106</td>
<td>Chesuncook Lake</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>0102000107</td>
<td>Nesowadnehunk Stream</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>0102000108</td>
<td>Nahamakanta Stream</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>0102000109</td>
<td>Jo-Mary Lake</td>
<td></td>
<td></td>
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<tr>
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<td>0102000110</td>
<td>West Branch Pensilcot River (3)</td>
<td></td>
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<td>0102000110</td>
<td>West Branch Pensilcot River (4)</td>
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<tr>
<td>Mattawamkeag River sub-basin</td>
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<td>West Branch Mattawamkeag River</td>
<td></td>
<td></td>
<td>657</td>
<td>22</td>
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<td>Mattawamkeag River</td>
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<td></td>
<td>0102000303</td>
<td>Mattawamkeag River (1)</td>
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<td></td>
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<td></td>
<td>0102000305</td>
<td>Mattawamkeag River (2)</td>
<td></td>
<td></td>
<td>451</td>
<td>8</td>
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<tr>
<td></td>
<td>0102000306</td>
<td>Mattawamkeag River (3)</td>
<td></td>
<td></td>
<td>226</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>0102000304</td>
<td>Molunkus Stream</td>
<td></td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0102000401</td>
<td>Piscataquis River (1)</td>
<td></td>
<td>676</td>
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<td>15</td>
</tr>
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<td></td>
<td>0102000402</td>
<td>Piscataquis River (3)</td>
<td></td>
<td>382</td>
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<td>6</td>
</tr>
</tbody>
</table>
(iii) Merrymeeting Bay SHRU. Critical habitat area (in sq km), areas excluded under ESA section 4(b)(2) (in sq km), and exclusion type, by HUC 10 watershed:

<table>
<thead>
<tr>
<th>Sub basin</th>
<th>HUC 10 code</th>
<th>HUC 10 watershed name</th>
<th>Critical habitat</th>
<th>Excluded areas [type]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>River, stream and estuary (km)</td>
<td>Lake (sq. km)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>River, stream and estuary (km)</td>
<td>Lake (sq. km)</td>
</tr>
<tr>
<td>Kennebec River</td>
<td>01030000101</td>
<td>South Branch Moose River.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>above the Forks sub-basin.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000102</td>
<td>Moose River (2) above Attean Pond.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000103</td>
<td>Moose River (3) at Long Pond.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000104</td>
<td>Braska Lake.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000105</td>
<td>Moosehead Lake.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000106</td>
<td>Kennebec River (2) above The Forks.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dead River sub-basin.</td>
<td>0103000201</td>
<td>North Branch Dead River.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000202</td>
<td>South Branch Dead River.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000203</td>
<td>Flagstaff Lake.</td>
<td></td>
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<tr>
<td></td>
<td>0103000204</td>
<td>Dead River.</td>
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<td></td>
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<tr>
<td>Merrymeeting Bay sub-basin.</td>
<td>0103000305</td>
<td>Sandy River ................................</td>
<td>1,215</td>
<td>15.8</td>
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<tr>
<td></td>
<td>0103000306</td>
<td>Kennebec River at Waterville Dam.</td>
<td>794</td>
<td>14</td>
</tr>
</tbody>
</table>

— considered unoccupied at the time of listing
§ 226.218 Critical habitat for the U.S. DPS of smalltooth sawfish (Pristis pectinata).

Critical habitat is designated for the U.S. DPS of smalltooth sawfish as described in this section. The textual descriptions in paragraph (b) of this section are the definitive source for determining the critical habitat boundaries. The maps of the critical habitat units provided in paragraph (d) of this section are for illustrative purposes only.

(a) Physical and biological features essential to the conservation of the endangered U.S. DPS of smalltooth sawfish. The physical and biological features essential to the conservation of the U.S. DPS of smalltooth sawfish, which provide nursery area functions are: red mangroves and shallow euryhaline habitats characterized by water depths between the Mean High Water line and 3 ft (0.9 m) measured at Mean Lower


<table>
<thead>
<tr>
<th>Sub basin</th>
<th>HUC 10 code</th>
<th>HUC 10 watershed name</th>
<th>Critical habitat</th>
<th>Excluded areas [type]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>River, stream and estuary (km)</td>
<td>Lake (sq. km)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Upper Androscoggin sub-basin.</th>
</tr>
</thead>
<tbody>
<tr>
<td>0104000101</td>
</tr>
<tr>
<td>0104000102</td>
</tr>
<tr>
<td>0104000103</td>
</tr>
<tr>
<td>0104000104</td>
</tr>
<tr>
<td>0104000105</td>
</tr>
<tr>
<td>0104000106</td>
</tr>
<tr>
<td>0104000210</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Lower Androscoggin sub-basin.</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
<tr>
<td>0104000202</td>
</tr>
<tr>
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</table>

<table>
<thead>
<tr>
<th>Coastal Drainages East of Small Point sub-basin.</th>
</tr>
</thead>
<tbody>
<tr>
<td>0105000302</td>
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<tr>
<td>0105000305</td>
</tr>
<tr>
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</tr>
<tr>
<td>0105000307</td>
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<tr>
<td>0105000303</td>
</tr>
<tr>
<td>0105000304</td>
</tr>
</tbody>
</table>

[74 FR 29333, June 19, 2009, as amended at 74 FR 39904, Aug. 10, 2009]
Low Water (MLLW). These features are included in critical habitat within the boundaries of the specific areas in paragraph (b) of this section, except where the features were not physically accessible to sawfish at the time of this designation (September 2009); for example, areas where existing water control structures prevent sawfish passage to habitats beyond the structure.

(b) Critical habitat boundaries. Critical habitat includes two areas (units) located along the southwest coast of peninsular Florida. The northern unit is the Charlotte Harbor Estuary Unit and the southern unit is the Ten Thousand Islands/Everglades (TTI/E) Unit. The units encompass portions of Charlotte, Lee, Collier, Monroe, and Miami-Dade Counties.

(1) Charlotte Harbor Estuary Unit. The Charlotte Harbor Estuary Unit is located within Charlotte and Lee Counties. The unit includes Charlotte Harbor, Gasparilla Sound, Pine Island Sound, Matlacha Pass, San Carlos Bay, Estero Bay, and the Caloosahatchee River. The unit is defined by the following boundaries. It is bounded by the Peace River at the eastern extent at the mouth of Shell Creek at 81°59.467′ W, and the northern extent of the Charlotte Harbor Preserve State Park at 26°58.933′ N. At the Myakka River the unit is bounded by the SR–776 Bridge and in Gasparilla Sound by the SR–771 Bridge. The COLREGS–72 lines between Gasparilla Island, Lacosta Island, North Captiva Island, Captiva Island, Sanibel Island, and the northern point of Estero Island are used as the coastal boundary for the unit. The southern extent of the unit is the Estero Bay Aquatic Preserve, which is bounded on the south by the Lee/Collier County line. Inland waters are bounded by SR–867 (McGregor Boulevard) from Punta Rassa Road to SR–80 near Fort Myers, then by SR–80 (Palm Beach Boulevard) to Orange River Boulevard, then by Orange River Boulevard to Buckingham Road, then by Buckingham Road to SR–80, and then following SR–80 until it is due south of the Franklin Lock and Dam (S–79), which is the eastern boundary on the Caloosahatchee River and a structural barrier for sawfish access. Additional inland water boundaries north and west of the lock are bounded by North Franklin Lock Road to North River Road, then by North River Road to SR–31, then by SR–31 to SR–78 near Cape Coral, then by SR–78 to SR–765, then by SR–765 to US–41, then by US–41 to US–17 (Marion Avenue) in Punta Gorda, then by US–17 to Riverside Drive, and then by Riverside Drive to the eastern extent of the Peace River at 81°59.467′ W. From the northern extent of the Charlotte Harbor Preserve State Park at 26°58.933′ N, inland waters are bounded westward along that latitude to Harbor View Road, then by Harbor View Road to US–41, then by US–41 to SR–776, then by SR–776 to the Myakka River Bridge.

(2) Ten Thousand Islands/Everglades Unit (TTI/E). The TTI/E Unit is located within Collier, Monroe, and Miami-Dade Counties, Florida. The unit includes waters within Everglades National Park (ENP), including Florida Bay, in the vicinity of Everglades City, within the Cape Romano-Ten Thousand Islands Aquatic Preserve (AP), and within the portion of Rookery Bay AP south of SR–92. The boundaries match the portion of Rookery Bay AP south of SR–92, and the Cape Romano-Ten Thousand Islands Aquatic Preserve AP. The unit boundaries also closely match the ENP boundaries with the following two exceptions: the unit boundary connects points 55 and 57 as illustrated in the critical habitat map that follows, which extend beyond the ENP boundary; and the unit boundary is located inside the ENP boundary between points 77 and 2, omitting the northeast portion of the ENP. The boundary of the unit is comprised of the following connected points, listed by point number in the ID field, degrees North latitude, degrees West longitude, and brief description of the boundary.

<p>| Table 2—List of Latitude and Longitude Boundary Points |</p>
<table>
<thead>
<tr>
<th>ID</th>
<th>Latitude</th>
<th>Longitude</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>25.2527</td>
<td>−80.7988</td>
<td>Main Park Road (SR–9366) at Nine Mile Pond.</td>
</tr>
<tr>
<td>2</td>
<td>25.2874</td>
<td>−80.5736</td>
<td>Everglades National Park boundary.</td>
</tr>
<tr>
<td>ID</td>
<td>Latitude</td>
<td>Longitude</td>
<td>Description</td>
</tr>
<tr>
<td>-----</td>
<td>----------</td>
<td>-----------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>9</td>
<td>25.1432</td>
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<td>Everglades National Park boundary at ICW.</td>
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<tr>
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<tr>
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<tr>
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<tr>
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<td>25.0676</td>
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<tr>
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<tr>
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<td>25.0262</td>
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<td>Everglades National Park boundary at ICW.</td>
</tr>
<tr>
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<td>25.0168</td>
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<td>Everglades National Park boundary at ICW.</td>
</tr>
<tr>
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<tr>
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<td>Everglades National Park boundary.</td>
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<td>–81.1620</td>
<td>Everglades National Park boundary at Middle Cape Sable.</td>
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<td>Everglades National Park boundary at Little Shark River.</td>
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<tr>
<td>42</td>
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<td>–81.5205</td>
<td>Everglades National Park boundary at Cape Romano—Ten Thousand Islands Aquatic Preserve.</td>
</tr>
<tr>
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<td>Rookery Bay Aquatic Preserve boundary (southwest corner).</td>
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<tr>
<td>44</td>
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<td>–81.7468</td>
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</tr>
<tr>
<td>45</td>
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<td>–81.6907</td>
<td>Rookery Bay Aquatic Preserve boundary.</td>
</tr>
<tr>
<td>46</td>
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<tr>
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### TABLE 2—LIST OF LATITUDE AND LONGITUDE BOUNDARY POINTS—Continued

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<th>ID</th>
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</tbody>
</table>

(c) *Areas not included in critical habitat.* Critical habitat does not include the following particular areas where they overlap with the areas described in paragraph (b) of this section:

1. Pursuant to ESA section 3(5)(A)(i), all areas containing existing (already constructed) federally authorized or permitted man-made structures such as channels or canals maintained at depths greater than 3 ft. at MLLW, boat ramps, docks, and marinas deeper than 3 ft. at MLLW.

2. Pursuant to ESA section 3(5)(A)(i), all waters identified as existing (already constructed) federally authorized channels as follows:
   - (i) Charlotte Harbor.
   - (ii) Ft. Myers Beach (Matanzas Pass).
   - (iii) Portions of the Gulf Intracoastal Waterway in the Caloosahatchee River.

(d) *Maps.* Overview maps of designated critical habitat for the U.S. DPS of smalltooth sawfish follow.
Smalltooth Sawfish Critical Habitat - Charlotte Harbor Estuary Unit

Legend

- Cities/Towns
- Major Roads
- County Boundary
- Open Water Critical Habitat
- Inland Water Critical Habitat

This map is provided for illustrative purposes only of smalltooth sawfish critical habitat. For the precise legal definition of critical habitat, please refer to the narrative description.
Smalltooth Sawfish Critical Habitat
Ten Thousand Islands/Everglades Unit

Legend
- Critical Habitat Boundary Points
- Cities/Towns
- Major Roads
- County Boundary
- Open Water Critical Habitat
- Inland Water Critical Habitat

This map is provided for illustrative purposes only of smalltooth sawfish critical habitat. For the precise legal definition of critical habitat, please refer to the narrative description.

[74 FR 45373, Sept. 2, 2009]

Critical habitat is designated for the Southern Distinct Population Segment of North American green sturgeon (Southern DPS) as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview maps are provided for general guidance purposes only and not as a definitive source for determining critical habitat boundaries.

(a) Critical habitat boundaries. Critical habitat in freshwater riverine areas includes the stream channels and a lateral extent as defined by the ordinary high-water line (33 CFR 329.11). In areas for which the ordinary high-water line has not been defined pursuant to 33 CFR 329.11, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series. Critical habitat in bays and estuaries includes tidally influenced areas as defined by the elevation of mean higher high water. The boundary between coastal marine areas and bays and estuaries are delineated by the COLREGS lines (33 CFR 80). Critical habitat in coastal marine areas is defined by the zone between the 60 fathom (fm) depth bathymetry line and the line on shore reached by mean lower low water (MLLW), or to the COLREGS lines.

(1) Coastal marine areas: All U.S. coastal marine waters out to the 60 fm depth bathymetry line (relative to MLLW) from Monterey Bay, California (36°38′12″ N./121°56′13″ W.) north and east to include waters in the Strait of Juan de Fuca, Washington. The Strait of Juan de Fuca includes all U.S. marine waters: in Clallam County east of a line connecting Cape Flattery (48°23′10″ N./124°43′32″ W.), Tatoosh Island (48°23′30″ N./124°44′12″ W.), and Bonilla Point, British Columbia (48°35′30″ N./124°43′00″ W.); in Jefferson and Island counties north and west of a line connecting Point Wilson (48°08′38″ N./122°45′07″ W.) and Partridge Point (48°13′29″ N./122°46′11″ W.); and in San Juan and Skagit counties south of lines connecting the U.S.-Canada border (48°27′27″ N./121°09′46″ W.) and Point 48°28′56″ N./121°05′33″ W.), Cattle Point (48°27′11″ N./122°57′39″ W.) and Davis Point (48°27′21″ N./122°56′03″ W.), and Fidalgo Head (48°29′34″ N./122°42′07″ W.) and Lopez Island (48°28′43″ N./122°49′08″ W.).

(2) Freshwater riverine habitats: Critical habitat is designated to include the following freshwater riverine areas in California:

(i) Sacramento River, California. From the Sacramento I-Street Bridge (40°9′10″ N./122°12′9″ W.) upstream to Keswick Dam (40°36′39″ N./122°26′46″ W.), including the waters encompassed by the Yolo Bypass and the Sutter Bypass areas and the lower American River from the confluence with the mainstream Sacramento River upstream to 38°35′47″ N./121°28′36″ W. (State Route 160 bridge over the American River).

(ii) Lower Feather River, California. From the confluence with the mainstream Sacramento River upstream to Fish Barrier Dam (39°31′13″ N./121°32′51″ W.).

(iii) Lower Yuba River, California. From the confluence with the mainstream Feather River upstream to Daguerre Dam (39°12′32″ N./121°35′53″ W.).

(3) Sacramento-San Joaquin Delta, California: Critical habitat is designated to include the Sacramento-San Joaquin Delta including all waterways up to the elevation of mean higher high water within the area defined in California Water Code Section 12200, except for the following excluded areas: Clifton Court and California Aqueduct Intake Channel (all reaches upstream from the Clifton Court Radial Gates at 37°49′47″ N./121°33′25″ W.); Delta-Mendota Canal (upstream from 37°48′58″ N./121°33′30″ W.); Fivemile Slough (all reaches upstream from its confluence with Fourteenmile Slough at 38°06′50″ N./121°22′09″ W.); Indian Slough and Werner Cuts (all reaches between the entrance to Discovery Bay at 37°55′8″ N./121°35′12″ W. and the junction of Werner Cut and Rock Slough at 37°58′14″ N./121°35′41″ W.); Italian Slough (all reaches upstream from 37°51′39″ N./122°07′02″ W. and Partridge Point (48°13′29″ N./122°46′11″ W.); and in San Juan and Skagit counties south of lines connecting the U.S.-Canada border (48°27′27″ N./121°09′46″ W.) and Point 48°28′56″ N./121°05′33″ W.), Cattle Point (48°27′11″ N./122°57′39″ W.) and Davis Point (48°27′21″ N./122°56′03″ W.), and Fidalgo Head (48°29′34″ N./122°42′07″ W.) and Lopez Island (48°28′43″ N./122°49′08″ W.).

(2) Freshwater riverine habitats: Critical habitat is designated to include the following freshwater riverine areas in California:

(i) Sacramento River, California. From the Sacramento I-Street Bridge (40°9′10″ N./122°12′9″ W.) upstream to Keswick Dam (40°36′39″ N./122°26′46″ W.), including the waters encompassed by the Yolo Bypass and the Sutter Bypass areas and the lower American River from the confluence with the mainstream Sacramento River upstream to 38°35′47″ N./121°28′36″ W. (State Route 160 bridge over the American River).

(ii) Lower Feather River, California. From the confluence with the mainstream Sacramento River upstream to Fish Barrier Dam (39°31′13″ N./121°32′51″ W.).

(iii) Lower Yuba River, California. From the confluence with the mainstream Feather River upstream to Daguerre Dam (39°12′32″ N./121°35′53″ W.).

(3) Sacramento-San Joaquin Delta, California: Critical habitat is designated to include the Sacramento-San Joaquin Delta including all waterways up to the elevation of mean higher high water within the area defined in California Water Code Section 12200, except for the following excluded areas: Clifton Court and California Aqueduct Intake Channel (all reaches upstream from the Clifton Court Radial Gates at 37°49′47″ N./121°33′25″ W.); Delta-Mendota Canal (upstream from 37°48′58″ N./121°33′30″ W.); Fivemile Slough (all reaches upstream from its confluence with Fourteenmile Slough at 38°06′50″ N./121°22′09″ W.); Indian Slough and Werner Cuts (all reaches between the entrance to Discovery Bay at 37°55′8″ N./121°35′12″ W. and the junction of Werner Cut and Rock Slough at 37°58′14″ N./121°35′41″ W.); Italian Slough (all reaches upstream from 37°51′39″ N./
121°34'53" W.; Rock Slough (all reaches upstream from the junction with the Old River at 37°56'22" N./121°34'40" W.); Sand Mound Slough (all reaches upstream from 37°58'37" N./121°37'19" W.); Sacramento Deep Water Ship Channel (upstream from the confluence with Cache Slough at 38°14'13" N./121°40'23" W.); Sevenmile Slough (all reaches between Threemile Slough at 38°06'55" N./121°40'55" W. and Jackson Slough at 38°06'59" N./121°37'44" W.); Snodgrass Slough (all reaches upstream from Lakeport Creek at 38°13'39" N./121°30'46" W.); Tom Paine Slough (all reaches upstream from its confluence with Middle River at 37°47'25" N./121°25'08" W.); Trapper Slough (all reaches upstream from 37°53'36" N./121°29'15" W.); Unnamed oxbow loop (upstream from the confluence with the San Joaquin River at 37°43'9" N./121°16'36" W.); Unnamed oxbow loop (upstream from the confluence with the San Joaquin River at 37°46'9" N./121°18'6" W.).

(4) Coastal bays and estuaries: Critical habitat is designated to include the following coastal bays and estuaries in California, Oregon, and Washington:

(i) San Francisco Bay, San Pablo Bay, and Suisun Bay in California. All tidally influenced areas of San Francisco Bay, San Pablo Bay, and Suisun Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide end point in: Adobe Creek (38°12'42" N./122°36'6" W.); Alameda Creek (37°36'47" N./122°41'8" W.); Arroyo Corte Madera del Presidio (37°53'43" N./122°31'48" W.); Black John Slough (38°6'12" N./122°33'42" W.); Black John Slough (38°7'59" N./122°32'54" W.); Carneros Creek (38°13'52" N./122°18'49" W.); Colma Creek (37°36'6" N./122°53'59" W.); Coyote Creek (37°52'49" N./122°31'31" W.); Coyote Creek (37°27'17" N./121°55'36" W.); Coyote Creek, unnamed waterway (37°27'56" N./121°55'40" W.); Coyote Creek, unnamed waterway (37°26'23" N./121°57'29" W.); Coyote Creek, unnamed waterway (37°27'15" N./121°56'12" W.); Coyote Hills Slough (37°34'26" N./122°33'36" W.); Deverton Creek (38°13'38" N./121°53'47" W.); Gallinas Creek (38°0'50" N./122°32'24" W.); Gallinas Creek, South Fork (38°0'4" N./122°32'9" W.); Green Valley Creek (38°13'52" N./121°57'51" W.); Hastings Slough (38°1'30" N./122°3'35" W.); Huichica Creek, unnamed tributary (38°12'36" N./122°21'35" W.); Mt. Eden Creek (37°37'6" N./122°7'23" W.); Mud Slough, unnamed waterway (37°29'48" N./121°57'14" W.); Mud Slough, unnamed waterway (37°28'48" N./121°57'37" W.); Newark Slough (37°31'36" N./122°3'24" W.); Newark Slough, unnamed waterway (37°31'51" N./122°47" W.); Novato Creek (38°5'50" N./122°33'52" W.); Petaluma River (38°14'53" N./122°38'17" W.); Petaluma River, unnamed tributary (38°12'36" N./122°34'23" W.); Railroad Slough (38°13'30" N./122°30'46" W.); Richardson Bay, unnamed tributary (37°54'2" N./122°31'36" W.); San Antonio Creek, unnamed tributary (38°9'45" N./122°34'1" W.); San Clemente Creek (37°59'12" N./122°30'25" W.); San Francisco Bay shoreline (37°40'44" N./122°10'13" W.); San Franciscoquito Creek (37°27'10" N./122°7'40" W.); San Pablo Bay shoreline (38°2'44" N./122°15'44" W.); San Pablo Creek (37°58'6" N./122°22'42" W.); San Rafael Creek (37°56'5" N./122°31'35" W.); Seal Slough (37°34'9" N./122°17'30" W.); Suisun Marsh (38°2'28" N./121°57'55" W.); Suisun Marsh (38°2'50" N./121°58'39" W.); Suisun Marsh (38°2'42" N./121°56'16" W.); Suisun Marsh (38°2'30" N./121°55'18" W.); Suisun Marsh, Grizzly Bay shoreline (38°5'33" N./122°9'35" W.); Suisun Marsh, Grizzly Bay shoreline (38°7'49" N./121°58'54" W.); Suisun Marsh, Grizzly Bay shoreline (38°8'19" N./121°59'31" W.); Suisun Marsh, Grizzly Bay shoreline (38°8'6" N./121°59'33" W.); Tolay Creek (38°49'12" N./122°26'49" W.); Tolay Creek (38°49'6" N./122°26'49" W.); Walnut Creek (38°9'16" N./122°2'41" W.); Wildcat Creek (37°57'26" N./122°22'45" W.).

(ii) Humboldt Bay, California. All tidally influenced areas of Humboldt Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide end point in: Elk River (40°43'45" N./124°11'15" W.); Elk River (40°45'9" N./124°10'57" W.); Elk River (40°45'7" N./124°10'58" W.); Eureka Slough (40°48'14" N./124°7'15" W.); Eureka Slough (40°48'13" N./124°8'29" W.); Eureka Slough (40°48'14" N./124°8'22" W.); Eureka Slough (40°49'9" N./124°8'14" W.); Freshwater Creek (40°46'33" N./124°4'48" W.); Freshwater Slough (40°47'18" N./124°6'54" W.); Freshwater Slough (40°47'10" N./124°6'15" W.); Freshwater Slough (40°48'3" N./124°6'53" W.); Gannon Slough (40°50'48" N./124°15'16" W.).
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124°45′ W.); Gannon Slough (40°56′37″ N./124°45′32″ W.); Jacoby Creek (40°56′22″ N./124°41′6″ W.); Jacoby Creek (40°56′25″ N./124°45′6″ W.); Liscomb Slough (40°52′35″ N./124°8′14″ W.); Mad River Slough (40°53′14″ N./124°8′9″ W.); Mad River Slough (40°53′59″ N./124°8′1″ W.); Mad River Slough (40°54′1″ N./124°8′9″ W.); McDaniel Slough (40°51′54″ N./124°8′52″ W.); McDaniel Slough (40°51′39″ N./124°6′2″ W.); Rocky Gulch/Washington Gulch (40°49′52″ N./124°4′56″ W.); Salmon Creek (40°44′12″ N./124°13′10″ W.); Unnamed tributary (40°46′26″ N./124°15′45″ W.); White Slough (40°41′56″ N./124°12′18″ W.).

(iii) Coos Bay, Oregon. All tidally influenced areas of Coos Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Alder Creek (45°16′31″ N./124°9′26″ W.); Catching Creek (45°16′31″ N./124°9′11″ W.); Coalbank Slough (45°21′10″ N./124°13′17″ W.); Coos River, South Fork (45°22′32″ N./123°59′34″ W.); Coos Slough (45°16′33″ N./124°18′52″ W.); Daniels Creek (45°21′10″ N./124°5′29″ W.); Davis Creek (45°17′29″ N./124°14′30″ W.); Day Creek (45°18′59″ N./124°18′24″ W.); Delmar Creek (45°15′24″ N./124°13′32″ W.); Deton Creek (45°24′15″ N./124°3′52″ W.); Elliot Creek (45°17′45″ N./124°17′45″ W.); Goat Creek (45°15′42″ N./124°12′58″ W.); Haynes Inlet (45°27′56″ N./124°11′22″ W.); Hayward Creek (45°19′7″ N./124°19′59″ W.); Joe Ney Slough (45°20′12″ N./124°17′39″ W.); John B Creek (45°16′59″ N./124°18′27″ W.); Kentuck Slough (45°25′19″ N./124°11′19″ W.); Larson Slough (45°27′43″ N./124°11′38″ W.); Lillian Creek (45°21′41″ N./124°8′41″ W.); Mart Davis Creek (45°22′38″ N./124°5′38″ W.); Matson Creek (45°18′37″ N./124°8′16″ W.); Millicoma River, East Fork (45°25′50″ N./124°12′13″ W.); Millicoma River, West Fork (45°25′48″ N./124°2′50″ W.); Noble Creek (45°15′16″ N./124°12′54″ W.); North Slough (45°29′26″ N./124°13′14″ W.); Pony Creek (45°24′6″ N./124°13′55″ W.); Seelander Creek (45°17′15″ N./124°13′55″ W.); Shinglehouse Slough (45°19′4″ N./124°13′14″ W.); Stock Slough (45°19′58″ N./124°8′22″ W.); Talbot Creek (45°17′11″ N./124°17′49″ W.); Theodore Johnson Creek (45°16′16″ N./124°19′22″ W.); Unnamed Creek (45°17′24″ N./124°17′56″ W.); Unnamed Creek (45°18′27″ N./124°7′53″ W.); Unnamed Creek (45°21′12″ N./124°9′17″ W.); Vogel Creek (45°22′10″ N./124°8′49″ W.); Wasson Creek (43°16′3″ N./124°19′23″ W.); Willanch Slough (43°24′5″ N./124°11′27″ W.); Wilson Creek (43°16′51″ N./124°9′2″ W.); Winchester Creek (43°15′49″ N./124°19′10″ W.).

(iv) Winchester Bay, Oregon. All tidally influenced areas of Winchester Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Brainard Creek (43°44′46″ N./124°1′39″ W.); Butler Creek (43°42′50″ N./124°1′30″ W.); Edick Creek (43°47′46″ N./123°58′40″ W.); Frantz Creek (43°44′50″ N./124°5′25″ W.); Hudson Slough (43°44′56″ N./124°4′33″ W.); Joyce Creek (43°45′32″ N./124°1′49″ W.); Noel Creek (43°46′21″ N./124°6′6″ W.); Oar Creek (43°40′26″ N./124°3′41″ W.); Otter Creek (43°43′28″ N./124°0′4″ W.); Providence Creek (43°43′13″ N./124°7′44″ W.); Scholfield Creek (43°40′36″ N./124°5′38″ W.); Silver Creek (43°40′37″ N./124°9′21″ W.); Smith River (43°47′48″ N./123°5′33″ W.); Smith River, North Fork (43°48′17″ N./123°5′59″ W.); Umpqua River (43°40′3″ N./124°48′32″ W.); Unnamed Creek (43°40′6″ N./124°10′44″ W.); Unnamed Creek (43°40′14″ N./124°9′26″ W.); Winchester Creek (43°40′20″ N./124°8′49″ W.).

(vi) Yaquina Bay, Oregon. All tidally influenced areas of Yaquina Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Babcock Creek (44°33′33″ N./123°5′42″ W.); Big Elk Creek (44°35′23″ N./123°5′43″ W.); Boone Slough (44°35′5″ N./123°5′50″ W.); Depot Creek (44°38′30″ N./123°5′34″ W.); Flesher Slough (44°34′0″ N./123°5′35″ W.); Johnson Slough (44°34′60″ N./123°5′10″ W.); King Slough (44°35′35″ N./124°1′55″ W.); McCaffrey Slough (44°35′56″ N./124°1′10″ W.); Mill Creek (44°35′7″ N./123°5′35″ W.); Montgomery Creek (44°35′8″ N./123°5′6″ W.); Nute Slough (44°35′19″ N./123°5′73″ W.); Olalla Creek (44°36′48″ N./123°5′30″ W.); Parker Slough (44°36′21″ N./124°0′50″ W.); Poole Slough (44°35′27″ N./123°5′46″ W.); Yaquina River (44°39′4″ N./123°5′26″ W.).

(vi) Nehalem Bay, Oregon. All tidally influenced areas of Yaquina Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Alder Creek (45°42′32″ N./123°5′12″ W.); Anderson Creek (45°44′25″ N./123°5′412″ W.);
N.123°52'26" W.); Coal Creek (45°44'39" N./123°51'57" W.); Foley Creek (45°41'48" N./123°50'53" W.); Gallagher Slough (45°42'4" N./123°52'50" W.); Messhouse Creek (45°40'0" N./123°53'32" W.); Nehalem River (45°41'48" N./123°49'31" W.); Nehalem, River, North Fork (45°47'11" N./123°49'19" W.); Unnamed Creek (45°44'35" N./123°51'53" W.); Unnamed Creek (45°44'53" N./123°51'12" W.); Unnamed Creek (45°45'6" N./123°50'56" W.); Unnamed Creek (45°44'11" N./123°51'40" W.); Unnamed Creek (45°44'7" N./123°51'40" W.); Unnamed Creek (45°43'44" N./123°52'35" W.).

(vii) Lower Columbia River estuary, Washington and Oregon. All tidally influenced areas of the lower Columbia River estuary from the mouth upstream to river kilometer 74, up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Bear Creek (46°10'0" N./123°40'6" W.); Big Creek (46°10'33" N./123°35'30" W.); Blind Slough/Gnat Creek (46°10'47" N./123°31'45" W.); Chinook River (46°18'14" N./123°58'11" W.); Deep Creek (46°19'3" N./123°42'23" W.); Driscoll Slough (46°18'35" N./123°23'34" W.); Ferris Creek (46°19'5" N./123°39'8" W.); Grays River (46°21'34" N./123°35'5" W.); Hunt Creek (46°11'46" N./123°26'30" W.); Jim Crow Creek (46°16'19" N./123°33'26" W.); John Day River (46°9'13" N./123°43'16" W.); John Day River (46°9'10" N./123°43'27" W.); Klaskamhine River (46°5'33" N./123°44'52" W.); Lewis and Clark River (46°5'32" N./123°51'4" W.); Marys Creek (46°10'12" N./123°40'17" W.); Seal Slough (46°19'20" N./123°40'15" W.); Sisson Creek (46°18'25" N./123°43'46" W.); Skamokawka Creek (46°19'11" N./123°27'20" W.); Skipanon River (46°9'31" N./123°53'34" W.); Walla River (46°19'28" N./123°59'11" W.); Wallooskee River (46°17" N./123°46'25" W.); Westport Slough/Clatskanie River (46°8'4" N./123°13'31" W.); Youns River (46°4'11" N./123°47'9" W.).

(viii) Willapa Bay, Washington. All tidally influenced areas of Willapa Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Bear River (46°26'5" N./123°56'8" W.); Bone River (46°39'29" N./123°54'2" W.); Cedar River (46°45'37" N./123°0'3" W.); Naselle River (46°22'32" N./123°49'19" W.); Middle Nehalem River (46°28'42" N./123°51'13" W.); North Nehalem River (46°30'56" N./123°52'27" W.); South Nehalem River (46°28'37" N./123°53'15" W.); Nisquialkum River (46°36'39" N./123°53'34" W.); North River (46°46'51" N./123°50'54" W.); Palix River, Middle Fork (46°36'46" N./123°52'29" W.); Palix River, North Fork (46°36'10" N./123°52'26" W.); Palix River, South Fork (46°34'30" N./123°53'42" W.); Stuart Slough (46°41'9" N./123°52'16" W.); Willapa River (46°38'50" N./123°38'50" W.).

(ix) Grays Harbor, Washington. All tidally influenced areas of Grays Harbor up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Andrews Creek (46°49'23" N./124°1'23" W.); Beaver Creek (46°54'20" N./123°58'53" W.); Campbell Creek (46°56'9" N./123°53'12" W.); Campbell Slough (47°2'45" N./124°3'40" W.); Chapin Creek (46°56'18" N./123°52'30" W.); Charley Creek (46°56'35" N./123°49'53" W.); Chehalis River (46°56'16" N./123°35'38" W.); Chenois Creek (47°2'36" N./124°0'54" W.); Elk River (46°50'8" N./123°59'8" W.); Gillis Slough (47°2'34" N./124°2'29" W.); Grass Creek (47°1'41" N./124°0'40" W.); Hoquiam River (47°33" N./123°55'34" W.); Hoquiam River, East Fork (47°37" N./123°51'25" W.); Humpitulls River (47°5'42" N./124°3'34" W.); Indian Creek (46°55'55" N./123°53'47" W.); Jessie Slough (47°3'23" N./124°3'0" W.); Johns River (46°52'28" N./123°57'2" W.); Newskah Creek (46°56'30" N./123°50'38" W.); O'Leary Creek (46°54'51" N./123°57'24" W.); Stafford Creek (46°55'1" N./123°54'28" W.); Wishkah River (47°2'39" N./124°47'20" W.); Wyonochee River (46°58'19" N./123°36'57" W.).

(b) Primary constituent elements. The primary constituent elements essential for the conservation of the Southern DPS of green sturgeon are:

(i) For freshwater riverine systems:

(i) Food resources. Abundant prey items for larval, juvenile, subadult, and adult life stages.

(ii) Substrate type or size (i.e., structural features of substrates). Substrates suitable for egg deposition and development (e.g., bedrock sills and shelves, cobble and gravel, or hard clean sand, with interstices or irregular surfaces to "collect" eggs and provide protection from predators, and free of excessive...
silt and debris that could smother eggs during incubation), larval development (e.g., substrates with interstices or voids providing refuge from predators and from high flow conditions), and subadults and adults (e.g., substrates for holding and spawning).

(iii) Water flow. A flow regime (i.e., the magnitude, frequency, duration, seasonality, and rate-of-change of fresh water discharge over time) necessary for normal behavior, growth, and survival of all life stages.

(iv) Water quality. Water quality, including temperature, salinity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages.

(v) Migratory corridor. A migratory pathway necessary for the safe and timely passage of Southern DPS fish within riverine and estuarine habitats (e.g., an unobstructed river or dammed river that still allows for safe and timely passage).

(vi) Depth. Deep (≥ 5 m) holding pools for both upstream and downstream holding of adult or subadult fish, with adequate water quality and flow to maintain the physiological needs of the holding adult or subadult fish.

(vii) Sediment quality. Sediment quality (i.e., chemical characteristics) necessary for normal behavior, growth, and viability of all life stages.

(2) For estuarine habitats:

(i) Food resources. Abundant prey items within estuarine habitats and substrates for juvenile, subadult, and adult life stages.

(ii) Water flow. Within bays and estuaries adjacent to the Sacramento River (i.e., the Sacramento-San Joaquin Delta and the Suisun, San Pablo, and San Francisco bays), sufficient flow into the bay and estuary to allow adults to successfully orient to the incoming flow and migrate upstream to spawning grounds.

(iii) Water quality. Water quality, including temperature, salinity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages.

(iv) Migratory corridor. A migratory pathway necessary for the safe and timely passage of Southern DPS fish within estuarine habitats and between estuarine and riverine or marine habitats.

(v) Depth. A diversity of depths necessary for shelter, foraging, and migration of juvenile, subadult, and adult life stages.

(vi) Sediment quality. Sediment quality (i.e., chemical characteristics) necessary for normal behavior, growth, and viability of all life stages.

(3) For nearshore coastal marine areas:

(i) Migratory corridor. A migratory pathway necessary for the safe and timely passage of Southern DPS fish within marine and between estuarine and marine habitats.

(ii) Water quality. Nearshore marine waters with adequate dissolved oxygen levels and acceptably low levels of contaminants (e.g., pesticides, organochlorines, elevated levels of heavy metals) that may disrupt the normal behavior, growth, and viability of subadult and adult green sturgeon.

(iii) Food resources. Abundant prey items for subadults and adults, which may include benthic invertebrates and fishes.

(c) Sites owned or controlled by the Department of Defense. Critical habitat does not include the following areas owned or controlled by the Department of Defense, or designated for its use, in the States of California, Oregon, and Washington:

(1) Mare Island U.S. Army Reserve Center, San Pablo Bay, CA;

(2) Strait of Juan de Fuca naval air-to-surface weapon range, restricted area, WA;

(3) Strait of Juan de Fuca and Whidbey Island naval restricted area, WA;

(4) Admiralty Inlet naval restricted area, Strait of Juan de Fuca, WA; and

(5) Navy 3 operating area, Strait of Juan de Fuca, WA.

(d) Indian lands. Critical habitat does not include any Indian lands of the following Federally-recognized Tribes in the States of California, Oregon, and Washington:

(1) Cachil DeHe Band of Wintun Indians of the Colusa Indian Community, California;

(2) Cher-Ae Heights Trinidad Rancheria, California;

(3) Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw, Oregon;

(e) Overview maps of final critical habitat for the Southern DPS of green sturgeon follow:
§ 226.220 Critical habitat for the Cook Inlet beluga whale (Delphinapterus leucas).

Critical habitat is designated in Cook Inlet, Alaska, for the Cook Inlet beluga whale as described in paragraphs (a) and (b) of this section. The textual description of this critical habitat is the definitive source for determining the critical habitat boundaries. General location maps are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries. Critical habitat does not include manmade structures and the land on which they rest within the designated boundaries described in paragraphs (a)(1) and (2) of this section that were in existence as of May 11, 2011.

(a) Critical Habitat Boundaries. Critical habitat includes two specific marine areas in Cook Inlet, Alaska. These areas are bounded on the upland by Mean High Water (MHW) datum, except for the lower reaches of four tributary rivers. Critical habitat shall not extend into the tidally-influenced channels of tributary waters of Cook Inlet, with the exceptions noted in the descriptions of each critical habitat area.

(1) Area 1. All marine waters of Cook Inlet north of a line from the mouth of Threemile Creek (61°08.5′ N., 151°04.4′ W.) connecting to Point Possession (61°02.1′ N., 150°24.3′ W.), including waters of the Susitna River south of 61°20.0′ N., the Little Susitna River south of 61°18.0′ N., and the Chickaloon River north of 60°53.0′ N.

(2) Area 2. All marine waters of Cook Inlet south of a line from the mouth of Threemile Creek (61°08.5′ N., 151°04.4′ W.) to Point Possession (61°02.1′ N., 150°24.3′ W.) and north of 60°15.0′ N., including waters within 2 nautical miles seaward of MHW along the western shoreline of Cook Inlet between 60°15.0′ N. and the mouth of the Douglas River (59°04.0′ N., 153°46.0′ W.); all waters of Kachemak Bay east of 151°40.0′ W.; and waters of the Kenai River below the Warren Ames bridge at Kenai, Alaska.

(b) A map of the designated critical habitat for Cook Inlet beluga whale follows (Figure 1).
(c) Primary constituent elements. The primary constituent elements essential to the conservation of the Cook Inlet beluga whale are:

(1) Intertidal and subtidal waters of Cook Inlet with depths <30 feet (MLLW) and within 5 miles of high and medium flow anadromous fish streams.
(2) Primary prey species consisting of four species of Pacific salmon (Chinook, sockeye, chum, and coho), Pacific eulachon, Pacific cod, walleye pollock, saffron cod, and yellowfin sole.

(3) Waters free of toxins or other agents of a type and amount harmful to Cook Inlet beluga whales.

(4) Unrestricted passage within or between the critical habitat areas.

(5) Waters with in-water noise below levels resulting in the abandonment of critical habitat areas by Cook Inlet beluga whales.

(d) Sites owned or controlled by the Department of Defense, or of interest to national security. Critical habitat does not include the following areas owned by the Department of Defense or for which the Secretary has determined to exclude for reasons of national security:

(1) All property and overlying waters of Joint Base Elmendorf-Richardson between Mean Higher High Water and Mean High Water; and

(2) All waters off the Port of Anchorage which are east of a line connecting Cairn Point (61°15.4′ N., 149°52.8′ W.) and Point MacKenzie (61°14.3′ N., 149°59.2′ W.) and north of a line connecting Point MacKenzie and the north bank of the mouth of Ship Creek (61°13.6′ N., 149°53.8′ W.).

[76 FR 20212, Apr. 11, 2011]

§226.221 Critical habitat for black abalone (Haliotis cracherodii).

Critical habitat is designated for black abalone as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview maps are provided for general guidance purposes only and not as a definitive source for determining critical habitat boundaries.

(a) Critical habitat boundaries—(1) Coastal Marine Areas: The critical habitat designation for black abalone within each coastal marine area below along the California coast is defined by four latitude and longitude coordinates that set the northern and southern boundaries, as well as by bathymetric specifications that set the shoreward and seaward boundaries. The northern boundary is the straight line between the northern coordinates and the southern boundary is the straight line between the southern coordinates, extending out as far as the seaward boundary, defined by the −6 m depth bathymetry line (relative to mean lower low water (MLLW)), and the shoreward boundary, defined by the line that marks mean higher high water (MHHW). Critical habitat only includes rocky intertidal and subtidal habitats within these areas from the MHHW line to a depth of −6 m relative to MLLW, as well as the marine waters above the rocky habitats.

(i) Del Mar Landing Ecological Reserve in Sonoma County to Point Bonita in Marin County, California: northern coordinates: 38°44′25.04″ N., 123°30′52.067″ W. and 38°44′25.946″ N., 123°30′19.175″ W.; southern coordinates: 37°49′3.404″ N., 122°31′56.339″ W. and 37°49′3.062″ N., 122°31′50.549″ W.

(ii) South of San Francisco Bay in San Francisco County to National Bridges State Beach in Santa Cruz County, California: northern coordinates: 37°47′17.078″ N., 122°31′13.59″ W. and 37°47′17.524″ N., 122°30′21.458″ W.; southern coordinates: 36°57′11.547″ N., 121°58′36.276″ W. and 36°57′15.208″ N., 121°58′31.424″ W.

(iii) Pacific Grove in Monterey County to Cayucos in San Luis Obispo County, California: northern coordinates: 36°36′41.16″ N., 121°53′30.453″ W. and 36°36′41.616″ N., 121°53′47.763″ W.; southern coordinates: 35°26′22.887″ N., 120°54′6.264″ W. and 35°26′23.708″ N., 120°53′39.427″ W.

(iv) Montaña de Oro State Park in San Luis Obispo County, California to just south of Government Point in Santa Barbara County, California: northern coordinates: 35°17′15.72″ N., 120°53′30.537″ W. and 35°17′15.965″ N., 120°52′59.583″ W.; southern coordinates: 34°27′12.95″ N., 120°22′10.341″ W. and 34°27′25.11″ N., 120°22′23.731″ W.

(v) Palos Verdes Peninsula extending from the Palos Verdes/Torrance border to Los Angeles Harbor in southwestern Los Angeles County, California: northern coordinates: 33°48′22.268″ N., 118°23′35.504″ W.; southern coordinates: 33°42′10.303″ N., 118°16′50.17″ W. and 33°42′25.816″ N., 118°16′41.059″ W.

(2) Coastal Offshore Islands: The black abalone critical habitat areas surrounding the coastal offshore islands listed below are defined by a seaward...
boundary that extends offshore to the 
−6 m depth bathymetry line (relative 
to MLLW), and a shoreward boundary 
that is the line marking MHHW. Crit-
cial habitat only includes rocky inte-
tidal and subtidal habitats from 
MHHW to a depth of −6 m relative to 
MLLW, including the marine waters 
above the rocky substrate.

(i) Farallon Islands, San Francisco 
County, California.

(ii) Ano Nuevo Island, San Mateo Coun-
ty, California.

(iii) San Miguel Island, Santa Barbara 
County, California.

(iv) Santa Rosa Island, Santa Barbara 
County, California.

(v) Santa Cruz Island, Santa Barbara 
County, California.

(vi) Anacapa Island, Ventura County, 
California.

(vii) Santa Barbara Island, Santa Bar-
bara County, California.

(viii) Santa Catalina Island, Los Ange-
les County, California.

(b) Primary constituent elements. The 
primary constituent elements essential 
for the conservation of the black aba-
alone are:

(1) Rocky substrate. Suitable rocky 
substrate includes rocky benches 
formed from consolidated rock of var-
ious geological origins (e.g., igneous, 
metamorphic, and sedimentary) that 
contain channels with macro- and 
micro-crevices or large boulders (great-
er than or equal to 1 m in diameter) 
and occur from MHHW to a depth of −6 
m relative to MLLW. All types of relief 
(high, medium and low; 0.5 to greater 
than 2 m vertical relief) support black 
abalone.

(2) Food resources. Abundant food re-
sources including bacterial and diatom 
films, crustose coralline algae, and a 
source of detrital macroalgae, are re-
quired for growth and survival of all 
stages of black abalone. The primary 
macroalgae consumed by juvenile and 
adult black abalone are giant kelp 
(Macroystis pyrifera) and feather boa 
kelp (Egregia menziesii) in southern 
California (i.e., south of Point Concep-
tion) habitats, and bull kelp 
(Nereocystis leutkeana) in central and 
northern California habitats (i.e., north 
of Santa Cruz), although Macroystis 
and Egregia may be more prominent in 
the habitat and diet in areas south of 
Santa Cruz. Southern sea palm (Eisenia 
arborea), elk kelp (Pelagophycus porra), 
stalked kelp (Pterygophora californica), 
and other brown kelps (Laminaria sp.) 
may also be consumed by black aba-
alone.

(3) Juvenile settlement habitat. Rocky 
intertidal and subtidal habitat con-
taining crustose coralline algae and 
crevices or cryptic biogenic structures 
(e.g., urchins, mussels, chiton holes, 
conspecifics, anemones) is important 
for successful larval recruitment and 
juvenile growth and survival of black 
abalone less than approximately 25 mm 
shell length. Adult abalone may facili-
tate larval settlement and metamor-
phosis by grazing down algal competi-
tors and thereby promoting the main-
tenance of substantial substratum 
cover by crustose coralline algae, 
outcompeting encrusting sessile inver-
tebrates (e.g. tube worms and tube 
snails) for space and thereby promoting 
the maintenance of substantial sub-
stratum cover by crustose coralline 
algae as well as creating space for set-
tling abalone, and emitting chemical 
cues that may induce settlement of ab-
alone larvae.

(4) Suitable water quality. Suitable 
water quality includes temperature 
(i.e., tolerance range: 12 to 25 °C; opti-
mal range: 18 to 22 °C), salinity (i.e., 
30 to 35 ppt), pH (i.e., 7.5 to 8.5), and 
other chemical characteristics necessary 
for normal settlement, growth, behavior, 
and viability of black abalone.

(5) Suitable nearshore circulation pat-
terns. Suitable circulation patterns are 
those that retain eggs, sperm, fertilized 
eggs, and ready-to-settle larvae within 
100 km from shore so that successful 
fertilization and settlement to shallow 
intertidal habitat can take place.

(c) Overview maps of black abalone 
critical habitat follow:
§ 226.222 Critical habitat for the southern Distinct Population Segment of eulachon (Thaleichthys pacificus).

Critical habitat is designated for the southern Distinct Population Segment of eulachon (southern DPS) as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview maps are provided for general guidance only and not as a definitive source for determining critical habitat boundaries. In freshwater areas, critical habitat includes the stream channel and a lateral extent as
defined by the ordinary high-water line (33 CFR 329.11). In areas where the ordinary high-water line has not been defined, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series. In estuarine areas, critical habitat includes tidally influenced areas as defined by the elevation of mean high water.

(a) Critical habitat boundaries. Critical habitat is designated to include the following areas in California, Oregon, and Washington:

1. Mad River, California. From the mouth of the Mad River (40°57'37" N./124°7'36" W.) upstream to the confluence with the North Fork Mad River (40°52'32" N./123°59'30" W.).

2. Redwood Creek, California. From the mouth of Redwood Creek (41°17'35" N./124°5'30" W.) upstream to the confluence with Tom McDonald Creek (41°12'25" N./124°6'39" W.).

3. Klamath River, California. From the mouth of the Klamath River (41°32'52" N./124°4'58" W.) upstream to the confluence with Omogar Creek (41°29'13" N./123°57'39" W.).

4. Umpqua River, Oregon. From the mouth of the Umpqua River (43°40'7" N./124°13'6" W.) upstream to the confluence with Mill Creek (43°39'20" N./123°52'35" W.).

5. Tenmile Creek, Oregon. From the mouth of Tenmile Creek (44°13'34" N./124°6'45" W.) upstream to the Highway 101 bridge crossing (44°13'27" N./124°6'33" W.).

6. Sandy River, Oregon. From the confluence with the Columbia River upstream to the confluence with Gordon Creek (45°29'45" N./122°16'41" W.).

7. Columbia River, Oregon and Washington. From the mouth of the Columbia River (46°14'46" N./124°43'3" W.) upstream to Bonneville Dam (45°38'40" N./121°56'28" W.).

8. Grays River, Washington. From the confluence with the Columbia River upstream to Covered Bridge Road (46°21'18" N./123°34'52" W.).

9. Skamokawa Creek, Washington. From the confluence with the Columbia River upstream to Peterson Road Bridge (46°18'52" N./123°27'10" W.).

10. Elochoman River, Washington. From the confluence with the Columbia River upstream to Monroe Road bridge crossing (46°13'33" N./123°21'34" W.).

11. Cowlitz River, Washington. From the confluence with the Columbia River upstream to the Cowlitz Salmon Hatchery barrier dam (46°30'45" N./122°38'0" W.).

12. Toutle River, Washington. From the confluence with the Cowlitz River upstream to Tower Road Bridge (46°20'4" N./122°50'26" W.).

13. Kalamu River, Washington. From the confluence with the Columbia River upstream to the confluence with the Cowlitz River (46°21'22" N./122°46'7" W.).

14. Lewis River, Washington. Lewis River mainstem, from the confluence with the Columbia River upstream to Merwin Dam (45°57'24" N./122°33'22" W.).

15. Quinault River, Washington. From the mouth of the Quinault River (47°20'38" N./124°18'2" W.) upstream to 47°19'58" N./124°15'1" W.

16. Elwha River, Washington. From the mouth of the Elwha River (48°8'51" N./123°34'1" W.) upstream to Elwha Dam (48°8'42" N./123°33'22" W.).

(b) Physical or biological features essential for conservation. The physical or biological features essential for conservation of the southern DPS of eulachon are:

1. Freshwater spawning and incubation sites with water flow, quality and temperature conditions and substrate supporting spawning and incubation.

2. Freshwater and estuarine migration corridors free of obstruction and with water flow, quality and temperature conditions supporting larval and adult mobility, and with abundant prey items supporting larval feeding after the yolk sac is depleted.

3. Nearshore and offshore marine foraging habitat with water quality and available prey, supporting juveniles and adult survival.
(c) Indian lands. Critical habitat does not include any Indian lands of the following Federally-recognized Tribes in the States of California, Oregon, and Washington:
   (1) Lower Elwha Tribe, Washington;
   (2) Quinault Tribe, Washington;
   (3) Yurok Tribe, California; and
   (4) Resighini Rancheria, California.

(d) Maps of critical habitat for the southern DPS of eulachon follow:
TABLE 1 TO PART 226—MAJOR STELLAR SEA LION ROOKERY SITES

Major Steller sea lion rookery sites are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clockwise direction from the first set of
geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

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1 Includes an associated 20 NM aquatic zone.

2 Associated 20 NM aquatic zone lies entirely within one of the three special foraging areas.
Table 2 to Part 226—Major Stellar Sea Lion Haulout Sites in Alaska

Table 2 to Part 226—Major Stellar Sea Lion Haulout Sites in Alaska are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the basepoint.

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<td>146 50.0W</td>
</tr>
<tr>
<td></td>
<td>The Needle 1</td>
<td>60 07.0N</td>
<td>147 37.0W</td>
</tr>
<tr>
<td>Southeast Alaska:</td>
<td>Benjamin L</td>
<td>58 33.5N</td>
<td>134 54.5W</td>
</tr>
<tr>
<td></td>
<td>Bial Rock</td>
<td>56 43.0N</td>
<td>135 20.5W</td>
</tr>
<tr>
<td></td>
<td>Biorka L</td>
<td>56 50.0N</td>
<td>135 34.0W</td>
</tr>
<tr>
<td></td>
<td>Cape Addington</td>
<td>55 26.5N</td>
<td>133 49.5W</td>
</tr>
<tr>
<td></td>
<td>Cape Cross</td>
<td>57 55.0N</td>
<td>136 34.0W</td>
</tr>
<tr>
<td></td>
<td>Cape Ommaney</td>
<td>56 10.5N</td>
<td>134 42.5W</td>
</tr>
<tr>
<td></td>
<td>Coronation L</td>
<td>55 56.0N</td>
<td>134 17.0W</td>
</tr>
<tr>
<td></td>
<td>Gran Point</td>
<td>59 08.0N</td>
<td>135 14.5W</td>
</tr>
<tr>
<td></td>
<td>Lull Point</td>
<td>57 18.5N</td>
<td>134 48.5W</td>
</tr>
<tr>
<td></td>
<td>Sunset L</td>
<td>57 30.5N</td>
<td>133 25.0W</td>
</tr>
<tr>
<td></td>
<td>Timbered L</td>
<td>55 42.0N</td>
<td>133 48.0W</td>
</tr>
</tbody>
</table>

1 Includes an associated 20 NM aquatic zone.
2 Associated 20 nm aquatic zone lies entirely within one of the three special foraging areas.

### TABLE 3 TO PART 226—HYDROLOGIC UNITS CONTAINING CRITICAL HABITAT FOR SNAKE RIVER SOCKEYE SALMON AND SNAKE RIVER SPRING/SUMMER AND FALL CHINOOK SALMON

<table>
<thead>
<tr>
<th>Hydrologic unit name</th>
<th>Hydrologic unit number</th>
<th>Sockeye salmon</th>
<th>Spring/summer chinook salmon</th>
<th>Fall chinook salmon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hells Canyon</td>
<td>17060101</td>
<td></td>
<td>17060101</td>
<td></td>
</tr>
<tr>
<td>Imnaha</td>
<td>17060102</td>
<td></td>
<td>17060102</td>
<td></td>
</tr>
<tr>
<td>Lower Snake—Asotin</td>
<td>17060103</td>
<td>17060103</td>
<td>17060103</td>
<td></td>
</tr>
<tr>
<td>Wallowa</td>
<td>17060105</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower Grande Ronde</td>
<td>17060106</td>
<td></td>
<td>17060106</td>
<td></td>
</tr>
<tr>
<td>Palouse</td>
<td>17060107</td>
<td></td>
<td></td>
<td>17060108</td>
</tr>
<tr>
<td>Lower Snake—Tucannon</td>
<td>17060107</td>
<td></td>
<td></td>
<td>17060108</td>
</tr>
<tr>
<td>Wallowa</td>
<td>17060106</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pahsimiromi</td>
<td>17060201</td>
<td>17060202</td>
<td></td>
<td>17060202</td>
</tr>
<tr>
<td>Pahsimiromi</td>
<td>17060201</td>
<td>17060202</td>
<td></td>
<td>17060202</td>
</tr>
<tr>
<td>Middle Salmon—Panther</td>
<td>17060203</td>
<td>17060203</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lemhi</td>
<td>17060204</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Upper Middle Fork Salmon</td>
<td>17060205</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower Middle Fork Salmon</td>
<td>17060206</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Middle Salmon—Chamberlain</td>
<td>17060207</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Fork Salmon</td>
<td>17060208</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower Salmon</td>
<td>17060209</td>
<td>17060209</td>
<td>17060209</td>
<td></td>
</tr>
<tr>
<td>Little Salmon</td>
<td>17060210</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clearwater</td>
<td>17060306</td>
<td></td>
<td></td>
<td>17060306</td>
</tr>
<tr>
<td>Lower North Fork Clearwater</td>
<td>17060308</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Hydrologic units and names taken from DOI, USGS 1:500,000 scale hydrologic unit maps (available from USGS); State of Oregon, 1974; State of Washington, 1974; State of Idaho, 1974.

[58 FR 68552, Dec. 28, 1993]

### TABLE 4 [RESERVED]

### TABLE 5 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CENTRAL CALIFORNIA COAST COHO SALMON, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

<table>
<thead>
<tr>
<th>Hydrologic unit name</th>
<th>Hydrologic unit No.</th>
<th>Counties and tribal lands contained in hydrologic unit and within the range of ESU ¹, ²</th>
<th>Dams (reservoirs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Lorenzo-Soquel</td>
<td>18060001</td>
<td>Santa Cruz (CA), San Mateo (CA)</td>
<td>Newell Dam (Loch Lomond).</td>
</tr>
<tr>
<td>San Francisco Coastal</td>
<td>18050006</td>
<td>San Mateo (CA).</td>
<td></td>
</tr>
<tr>
<td>South.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>San Pablo Bay</td>
<td>18050002</td>
<td>Marin (CA), Napa (CA)</td>
<td>Phoenix Dam (Phoenix Lake).</td>
</tr>
<tr>
<td>Tomales-Drake Bays</td>
<td>18050005</td>
<td>Marin (CA), Sonoma (CA)</td>
<td>Peters Dam (Kent Lake); Seeger Dam (Nicasio Reservoir).</td>
</tr>
<tr>
<td>Bodega Bay</td>
<td>18010111</td>
<td>Marin (CA), Sonoma (CA).</td>
<td>Warm Springs Dam (Lake Sonoma); Coyote Dam (Lake Mendocino).</td>
</tr>
<tr>
<td>Russian</td>
<td>18010104</td>
<td>Sonoma (CA), Mendocino (CA)—Cloverdale Rancheria; Coyote Valley Rancheria; Dry Creek Rancheria; Guadalupe Rancheria; Hopland Rancheria; Lytton Rancheria; Pinoleville Rancheria; Stewarts Point Rancheria.</td>
<td></td>
</tr>
<tr>
<td>Gualala-Salmon</td>
<td>18010109</td>
<td>Sonoma (CA), Mendocino (CA).</td>
<td></td>
</tr>
<tr>
<td>Big-Navarro-Garcia</td>
<td>18010108</td>
<td>Mendocino (CA)—Manchester/Point Arena Rancheria.</td>
<td></td>
</tr>
</tbody>
</table>

¹ Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

² Tribal lands are specifically excluded from critical habitat for this ESU.

[64 FR 24061, May 5, 1999]
TABLE 6 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR SOUTHERN OREGON/NORTHERN CALIFORNIA COASTS COHO SALMON, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

<table>
<thead>
<tr>
<th>Hydrologic unit name</th>
<th>Hydrologic unit No.</th>
<th>Counties and tribal lands contained in hydrologic unit and within the range of ESU ¹ ²</th>
<th>Dams (reservoirs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mattole</td>
<td>18010107</td>
<td>Humboldt (CA), Mendocino (CA), Laytonville Rancheria; Sherwood Valley Rancheria</td>
<td></td>
</tr>
<tr>
<td>South Fork Eel</td>
<td>18010106</td>
<td>Mendocino (CA), Humboldt (CA), Trinity (CA)</td>
<td></td>
</tr>
<tr>
<td>Lower Eel</td>
<td>18010105</td>
<td>Mendocino (CA), Humboldt (CA), Trinity (CA)</td>
<td></td>
</tr>
<tr>
<td>Middle Fork Eel</td>
<td>18010104</td>
<td>Mendocino (CA), Trinity (CA), Glenn (CA), Lake (CA)—Round Valley Reservation</td>
<td></td>
</tr>
<tr>
<td>Upper Eel</td>
<td>18010103</td>
<td>Mendocino (CA), Glenn (CA), Lake (CA)—Round Valley Reservation</td>
<td></td>
</tr>
<tr>
<td>Mad-Redwood</td>
<td>18010102</td>
<td>Humboldt (CA), Trinity (CA)—Big Lagoon Rancheria; Blue Lake Rancheria</td>
<td>Scott Dam (Lake Pillsbury)</td>
</tr>
<tr>
<td>Smith</td>
<td>18010101</td>
<td>Del Norte (CA), Curry (OR)—Elk Valley Rancheria; Smith River Rancheria</td>
<td></td>
</tr>
<tr>
<td>South Fork Trinity</td>
<td>18010212</td>
<td>Humboldt (CA), Trinity (CA)</td>
<td></td>
</tr>
<tr>
<td>Trinity</td>
<td>18010211</td>
<td>Humboldt (CA), Trinity (CA)—Hoopa Valley Reservation</td>
<td></td>
</tr>
<tr>
<td>Salmon</td>
<td>18010210</td>
<td>Siskiyou (CA)</td>
<td>Lewiston Dam (Lewiston Reservoir)</td>
</tr>
<tr>
<td>Lower Klamath</td>
<td>18010209</td>
<td>Del Norte (CA), Humboldt (CA), Siskiyou (CA)—Kanik Reservation; Resighini Rancheria; Yurok Reservation</td>
<td></td>
</tr>
<tr>
<td>Scott</td>
<td>18010208</td>
<td>Siskiyou (CA)—Quartz Valley Reservation</td>
<td></td>
</tr>
<tr>
<td>Shasta</td>
<td>18010207</td>
<td>Siskiyou (CA)</td>
<td></td>
</tr>
<tr>
<td>Upper Klamath</td>
<td>18010206</td>
<td>Siskiyou (CA), Jackson (OR)</td>
<td></td>
</tr>
<tr>
<td>Chetco</td>
<td>17100312</td>
<td>Curry (OR), Del Norte (CA)</td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>17100311</td>
<td>Curry (OR), Josephine (OR), Del Norte (CA)</td>
<td></td>
</tr>
<tr>
<td>Lower Rogue</td>
<td>17100310</td>
<td>Curry (OR), Josephine (OR), Jackson (OR), Siskiyou (CA)</td>
<td></td>
</tr>
<tr>
<td>Applegate</td>
<td>17100309</td>
<td>Josephine (OR), Jackson (OR), Siskiyou (CA)</td>
<td></td>
</tr>
<tr>
<td>Middle Rogue</td>
<td>17100308</td>
<td>Josephine (OR), Jackson (OR)</td>
<td></td>
</tr>
<tr>
<td>Upper Rogue</td>
<td>17100307</td>
<td>Jackson (OR), Klamath (OR), Douglas (OR)</td>
<td></td>
</tr>
<tr>
<td>Sixes</td>
<td>17100306</td>
<td>Curry (OR).</td>
<td></td>
</tr>
</tbody>
</table>

¹ Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

² Tribal lands are specifically excluded from critical habitat for this ESU.

[64 FR 24061, May 5, 1999]
FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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LXIV Merit Systems Protection Board (Parts 7400—7499)
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**Chapter II—Continued**

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(Regulations published from January 1, 2012, through October 1, 2012)

### 2012

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#### 50 CFR

**Chapter II**

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