

§216.245

50 CFR Ch. II (10–1–13 Edition)

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 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 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.

§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 the characteristics of a proposal that factor into its priority.

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

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

(4) An adaptive management plan.

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

(d) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Navy shall consult the Stranding Response Plan to obtain more specific reporting requirements for specific circumstances.

(e) Annual 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 Southeastern 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.

§ 216.247 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 § 216.248 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).

[74 FR 4876, Jan. 27, 2009, as amended at 77 FR 4922, Feb. 1, 2012]

§ 216.248 Renewal of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under §§ 216.106 and 216.247 for the activ-

ity 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

(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: