

§218.1

218.240 Modifications to Letters of Authorization.

218.241 Adaptive management.

AUTHORITY: 16 U.S.C. 1361 *et seq.*

SOURCE: 74 FR 28343, June 15, 2009, unless otherwise noted.

Subpart A—Taking Marine Mammals Incidental to U.S. Navy Training in the Virginia Capes Range Complex (VACAPES Range Complex)

§218.1 Specified activity, 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 VACAPES Range Complex Operation Area (OPAREA), which is located in the coastal and offshore waters of the western North Atlantic Ocean adjacent to Delaware, Maryland, Virginia, and North Carolina. The northernmost boundary of the VACAPES Range Complex OPAREA is located 37 nautical miles (nm) off the entrance to Delaware Bay at latitude 38°45' N, the farthest point of the eastern boundary is 184 nm east of Chesapeake Bay at longitude 72°41' W, and the southernmost point is 105 nm southeast of Cape Hatteras, North Carolina, at latitude of 34°19' N. The western boundary of the VACAPES Range Complex OPAREA lies 3 nm from the shoreline at the boundary separating state and Federal waters.

(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)

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(B) AGM-65 E/F (Maverick missile)

(C) MK-83/GBU-32 (1,000 lb High Explosive bomb)

(D) Airborne Mine Neutralization system (AMNS)

(E) 20 lb NEW charges

(F) AGM-88 (HARM)

(G) 5" Naval Gunfire

(ii) Training events (with approximated number of events)

(B) Mine Exercise (MINEX) (Mine Neutralization [20 lb NEW charges])—up to 120 exercises over the course of 5 years (an average of 24 per year);

(C) Bombing Exercise (BOMBEX) (Air-to-Surface)—up to 100 exercises over the course of 5 years (an average of 20 per year);

(D) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 300 exercises over the course of 5 years (an average of 60 per year);

(E) Missile Exercise (MISSILEX) (Air-to-Surface; Maverick, HE)—up to 100 exercises over the course of 5 years (an average of 20 per year); and

(F) FIREX with IMPASS—up to 110 exercises over the course of 5 years (an average of 22 per year).

(2) [Reserved]

(d) Amended regulations are effective from February 1, 2012, through June 4, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives or activities, listed in §218.1(c) should the amounts (e.g., number of exercises) vary from those estimated in §218.1(c), provided that the variation does not result in exceeding the amount of take indicated in §218.2(c).

[74 FR 28343, June 15, 2009, as amended at 76 FR 30554, May 26, 2011; 77 FR 4922, Feb. 1, 2012]

§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(b), provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.