

**§ 218.80**

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(ii) 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 § 218.72(c) of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within 30 days of the action.

**Subpart I—Taking and Importing Marine Mammals; U.S. Navy’s Atlantic Fleet Training and Testing (AFTT)**

SOURCE: 78 FR 73065, Dec. 4, 2013, unless otherwise noted.

**§ 218.80 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 AFTT Study Area, which is comprised of established operating and warning areas across the North Atlantic Ocean and the Gulf of Mexico (see Figure 1–1 in the Navy’s application). In addition, the Study Area also includes U.S. Navy pierside locations where sonar maintenance and testing occurs within the Study Area, and areas on the high seas that are not part of the range complexes, where training and testing may occur during vessel transit.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

- (1) Active Acoustic Sources Used During Annual Training:
  - (i) Mid-frequency (MF) Source Classes:
    - (A) MF1—an average of 9,844 hours per year.

- (B) MF1K—an average of 163 hours per year.
- (C) MF2—an average of 3,150 hours per year.
- (D) MF2K—an average of 61 hours per year.
- (E) MF3—an average of 2,058 hours per year.
- (F) MF4—an average of 927 hours per year.
- (G) MF5—an average of 14,556 sonobuoys per year.
- (H) MF11—an average of 800 hours per year.
- (I) MF12—an average of 687 hours per year.
- (ii) High-frequency (HF) and Very High-frequency (VHF) Source Classes:
  - (A) HF1—an average of 1,676 hours per year.
  - (B) HF4—an average of 8,464 hours per year.
- (iii) Anti-Submarine Warfare (ASW) Source Classes:
  - (A) ASW1—an average of 128 hours per year.
  - (B) ASW2—an average of 2,620 sonobuoys per year.
  - (C) ASW3—an average of 13,586 hours per year.
  - (D) ASW4—an average of 1,365 devices per year.
- (iv) Torpedoes (TORP) Source Classes:
  - (A) TORP1—an average of 54 torpedoes per year.
  - (B) TORP2—an average of 80 torpedoes per year.
- (2) Active Acoustic Sources Used During Annual Testing:
  - (i) LF:
    - (A) LF4—an average of 254 hours per year.
    - (B) LF5—an average of 370 hours per year.
  - (ii) MF:
    - (A) MF1—an average of 220 hours per year.
    - (B) MF1K—an average of 19 hours per year.
    - (C) MF2—an average of 36 hours per year.
    - (D) MF3—an average of 434 hours per year.
    - (E) MF4—an average of 776 hours per year.
    - (F) MF5—an average of 4,184 sonobuoys per year.

- (G) MF6—an average of 303 items per year.
- (H) MF8—an average of 90 hours per year.
- (I) MF9—an average of 13,034 hours per year.
- (J) MF10—an average of 1,067 hours per year.
- (K) MF12—an average of 144 hours per year.
- (iii) HF and VHF:
  - (A) HF1—an average of 1,243 hours per year.
  - (B) HF3—an average of 384 hours per year.
  - (C) HF4—an average of 5,572 hours per year.
  - (D) HF5—an average of 1,206 hours per year.
  - (E) HF6—an average of 1,974 hours per year.
  - (F) HF7—an average of 366 hours per year.
- (iv) ASW:
  - (A) ASW1—an average of 96 hours per year.
  - (B) ASW2—an average of 2,743 sonobuoys per year.
  - (C) ASW2—an average of 274 hours per year.
  - (D) ASW3—an average of 948 hours per year.
  - (E) ASW4—an average of 483 devices per year.
- (v) TORP:
  - (A) TORP1—an average of 581 torpedoes per year.
  - (B) TORP2—an average of 521 torpedoes per year.
- (vi) Acoustic Modems (M):
  - (A) M3—an average of 461 hours per year.
  - (B) [Reserved]
- (vii) Swimmer Detection Sonar (SD):
  - (A) SD1 and SD2—an average of 230 hours per year.
  - (B) [Reserved]
- (viii) Forward Looking Sonar (FLS):
  - (A) FLS2 and FLS3—an average of 365 hours per year.
  - (B) [Reserved]
- (ix) Synthetic Aperture Sonar (SAS):
  - (A) SAS1—an average of 6 hours per year.
  - (B) SAS2—an average of 3,424 hours per year.
- (3) Explosive Sources Used During Annual Training:
  - (i) Explosive Classes:
    - (A) E1 (0.1 to 0.25 lb NEW)—an average of 124,552 detonations per year.
    - (B) E2 (0.26 to 0.5 lb NEW)—an average of 856 detonations per year.
    - (C) E3 (>0.5 to 2.5 lb NEW)—an average of 3,132 detonations per year.
    - (D) E4 (>2.5 to 5 lb NEW)—an average of 2,190 detonations per year.
    - (E) E5 (>5 to 10 lb NEW)—an average of 14,370 detonations per year.
    - (F) E6 (>10 to 20 lb NEW)—an average of 500 detonations per year.
    - (G) E7 (>20 to 60 lb NEW)—an average of 322 detonations per year.
    - (H) E8 (>60 to 100 lb NEW)—an average of 77 detonations per year.
    - (I) E9 (>100 to 250 lb NEW)—an average of 2 detonations per year.
    - (J) E10 (>250 to 500 lb NEW)—an average of 8 detonations per year.
    - (K) E11 (>500 to 650 lb NEW)—an average of 1 detonations per year.
    - (L) E12 (>650 to 1,000 lb NEW)—an average of 133 detonations per year.
  - (ii) [Reserved]
- (4) Explosive Sources Used During Annual Testing:
  - (i) Explosive Classes:
    - (A) E1 (0.1 to 0.25 lb NEW)—an average of 25,501 detonations per year.
    - (B) E2 (0.26 to 0.5 lb NEW)—an average of 0 detonations per year.
    - (C) E3 (>0.5 to 2.5 lb NEW)—an average of 2,912 detonations per year.
    - (D) E4 (>2.5 to 5 lb NEW)—an average of 1,432 detonations per year.
    - (E) E5 (>5 to 10 lb NEW)—an average of 495 detonations per year.
    - (F) E6 (>10 to 20 lb NEW)—an average of 54 detonations per year.
    - (G) E7 >20 to 60 lb NEW)—an average of 0 detonations per year.
    - (H) E8 (>60 to 100 lb NEW)—an average of 11 detonations per year.
    - (I) E9 (>100 to 250 lb NEW)—an average of 0 detonations per year.
    - (J) E10 (>250 to 500 lb NEW)—an average of 10 detonations per year.
    - (K) E11 (>500 to 650 lb NEW)—an average of 27 detonations per year.
    - (L) E12 (>650 to 1,000 lb NEW)—an average of 0 detonations per year.
    - (M) E13 (>1,000 to 1,740 lb NEW)—an average of 0 detonations per year.
    - (N) E14 (>1,714 to 3,625 lb NEW)—an average of 4 detonations per year.
  - (ii) [Reserved]
- (5) Active Acoustic Source Used During Non-Annual Training:

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- (i) HF4—an average of 192 hours.
- (ii) [Reserved]
- (6) Active Acoustic Sources Used During Non-Annual Testing:
  - (i) LF5—an average of 240 hours.
  - (ii) MF9—an average of 480 hours.
  - (iii) HF5—an average of 240 hours.
  - (iv) HF6—an average of 720 hours.
  - (v) HF7—an average of 240 hours.
  - (vi) FLS2 and FLS3—an average of 240 hours.
  - (vii) SAS2—an average of 720 hours.
- (7) Explosive Sources Used During Non-Annual Training:
  - (i) E2 (0.26 to 0.5 lbs NEW)—an average of 2.
  - (ii) E4 (2.6 to 5 lbs NEW)—an average of 2.
- (8) Explosive Sources Used During Non-Annual Testing:
  - (i) E1 (0.1 to 0.25 lbs NEW)—an average of 600.
  - (ii) E16 (7,251 to 14,500 lbs NEW)—an average of 12.
  - (iii) E17 (14,501 to 58,000 lbs NEW)—an average of 4.

## §218.81 Effective dates and definitions.

(a) Regulations are effective December 3, 2013 and applicable to the Navy November 14, 2013 through November 13, 2018.

(b) The following definitions are utilized in these regulations:

(1) *Uncommon Stranding Event (USE)*—A stranding event that takes place within an OPAREA where a major training event (MTE) occurs 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 §218.81(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, *Kogia* spp., Risso's dolphin, melon-headed whale, pilot whale, North Atlantic right whale, humpback whale, sperm whale, blue whale, fin whale, or sei whale.

(iii) A group of two or more cetaceans of any species exhibiting indicators of distress.

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(2) *Shutdown*—The cessation of MFAS/HFAS operation or detonation of explosives within 14 nautical miles of any live, in the water, animal involved in a USE.

## §218.82 Permissible methods of taking.

(a) Under Letters of Authorization (LOAs) issued pursuant to §218.87, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.80, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in §218.80(c) is limited to the following species, by the identified method of take:

(1) Harassment (Level A and Level B) for all Training and Testing Activities:

(i) Mysticetes:

(A) Blue whale (*Balaenoptera musculus*)—817.

(B) Bryde's whale (*Balaenoptera edeni*)—5,079.

(C) Fin whale (*Balaenoptera physalus*)—25,239.

(D) North Atlantic right whale (*Eubalaena glacialis*)—955.

(E) Humpback whale (*Megaptera novaeangliae*)—9,196.

(F) Minke whale (*Balaenoptera acutorostrata*)—336,623.

(G) Sei whale (*Balaenoptera borealis*)—54,766.

(ii) Odontocetes:

(A) Atlantic spotted dolphin (*Stenella frontalis*)—994,221.

(B) Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—206,144.

(C) Blainville's beaked whale (*Mesoplodon densirostris*)—164,454.

(D) Bottlenose dolphin (*Tursiops truncatus*)—1,570,031.

(E) Clymene dolphin (*Stenella clymene*)—108,199.

(F) Common dolphin (*Delphinus* spp.)—2,562,969.

(G) Cuvier's beaked whale (*Ziphius cavirostris*)—204,945.

(H) False killer whale (*Pseudorca crassidens*)—4,062.