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effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include the following:

(A) Results from the Holder'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.

(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 comments.

(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 §217.222(b), an LOA may be modified without prior notice or opportunity for public comment. Notice of such action will be published in the FEDERAL REGISTER within 30 days of the action.

[74 FR 35143, July 20, 2009, as amended at 76 FR 16318, Mar. 23, 2011; 76 FR 34172, June 13, 2011; 77 FR 31544, May 29, 2012; 78 FR 20816, Apr. 8, 2013; 78 FR 63402, Oct. 24, 2013; 78 FR 75507, Dec. 12, 2013; 79 FR 10026, Feb. 24, 2014; 79 FR 32684, June 6, 2014]

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

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

Subpart A [Reserved]

Subpart B—Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Joint Logistics Over-the-Shore (JLOTS) Training Activities in Virginia and North Carolina

SOURCE: 80 FR 31321, June 2, 2015, unless otherwise noted.

EFFECTIVE DATE NOTE: At 80 FR 31321, June 2, 2015, subpart B was added, effective June 2, 2015, through June 2, 2020.

§ 218.10 Specified activity and 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 JLOTS training areas, which is in nearshore shallow waters at the Joint Expeditionary Base (JEB) Little Creek-Fort Story in Virginia and at Camp Lejeune in North Carolina.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the JLOTS training activities in the JLOTS training areas, which may occur any time of year, but not more than once annually at JEB Little Creek-Fort Story, and once annually at Camp Lejeune.

§ 218.11 Effective dates.

Regulations in this subpart are effective June 2, 2015, through June 2, 2020.

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§ 218.12 Permissible methods of taking.

(a) Under Letters of Authorization (LOAs) issued pursuant to § 218.17, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by sound in the water from pile driving activities within the area described in § 218.10, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate LOA.

(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 Level B behavioral harassment:

(1) Bottlenose dolphin (*Tursiops truncatus*)/Northern North Carolina Estuarine System: 250 (50 per year);

(2) Bottlenose dolphin (*Tursiops truncatus*)/Southern North Carolina Estuarine System: 300 (60 per year); and

(3) Atlantic spotted dolphin (*Stenella frontalis*)/Western North Atlantic: 250 (50 per year).

§ 218.13 Prohibitions.

Notwithstanding takings contemplated in § 218.12 and authorized by an LOA issued under § 216.106 of this chapter and § 218.17, no person in connection with the activities described in § 218.10 may:

(a) Take any marine mammal not specified in § 218.12(c);

(b) Take any marine mammal specified in § 218.12(c) other than by incidental take as specified in § 218.12(c);

(c) Take a marine mammal specified in § 218.12(c) if a finding is made that such taking is having 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 an LOA issued under § 216.106 of this chapter and § 218.17.

§ 218.14 Mitigation.

(a) When conducting training and testing activities identified in § 218.10, the mitigation measures contained in

the LOA issued under § 216.106 of this chapter and § 218.17 must be implemented. These mitigation measures include, but are not limited to:

(1) *Establishing mitigation zone.* (i) A mitigation zone of 60 yards (55 m) around the pile being driven must be established.

(ii) Visual observation must be conducted starting 30 minutes prior to, during, and until 30 minutes after the ELCAS (M) exercise within the mitigation zone. The exercise must not commence if concentrations of floating vegetation (Sargassum) are observed in the mitigation zone.

(2) *Soft starts.* (i) Soft starts, or gradually ramping up the power of pile driving hammer, must be performed during impact installation each day.

(ii) During a soft start, an initial set of strikes from the impact hammer at reduced energy are performed before it is able to be operated at full power and speed.

(3) *Shutdown measures.* (i) Pile driving must cease if a marine mammal is visually detected within or approaching the mitigation zone.

(ii) Pile driving may resume if any one of the following conditions is met:

(A) The animal is observed exiting the mitigation zone,

(B) The animal is thought to have exited the mitigation zone based on its course and speed, or

(C) The mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(b) *Marine species awareness training.*

(1) All personnel standing watch on the bridge, Commanding Officers, Executive Officers, and Lookouts must successfully complete the Marine Species Awareness Training prior to standing watch or serving as a Lookout.

(2) The Marine Species Awareness Training must be designed to improve the effectiveness of visual observations for marine resources, including marine mammals.

(3) The training must provide information on sighting cues, visual observation tools and techniques, and sighting notification procedures.

(c) *Vessels.* Vessels must avoid approaching marine mammals head on and must maneuver to maintain a mitigation zone of 500 yards (457 m)

around observed whales and 200 yards (183 m) around all other marine mammals (except bow riding dolphins), providing it is safe to do so.

(d) *North Atlantic Right Whale Protection.* When transiting within the following areas between November 1 and April 30, the Navy must practice increased vigilance, exercise extreme caution, and proceed at the slowest speed that is consistent with safety, mission, and training objectives:

(1) Chesapeake Bay: Within a 20 nm radius of the following (as measured seaward from the COLREGS lines): 37°00'36.9" North/075°57'50.5" West.

(2) Morehead City, North Carolina: Within a 20 nm radius of the following (as measured seaward from the COLREGS lines): 34°41'32.0" North/076°40'08.3" West.

(3) Wilmington, North Carolina, through South Carolina, and to Brunswick, Georgia: Within a continuous area 20 nautical miles from shore and west back to shore bounded by 34°10'30" North/077°49'12" West; 33°56'42" North/077°31'30" West; 33°36'30" North/077°47'06" West; 33°28'24" North/078°32'30" West; 32°59'06" North/078°50'18" West; 31°50'00" North/080°33'12" West; 31°27'00" North/080°51'36" West.

§ 218.15 Requirements for monitoring and reporting.

(a) *Monitoring measures*—(1) *Standard watch personnel.* (i) Ships operated by or for the Navy must have personnel assigned to stand watch at all times, day and night, when moving through the water.

(ii) Watch personnel must undertake extensive training in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent, including on-the-job instruction and a formal Personal Qualification Standard program (or equivalent program for supporting contractors or civilians), to certify that they have demonstrated all necessary skills (such as detection and reporting of floating or partially submerged objects).

(iii) While on watch, watch personnel must employ visual search techniques, including the use of binoculars, using a scanning method in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent.

(iv) After sunset and prior to sunrise, watch personnel must employ night visual search techniques, which could include the use of night vision devices.

(v) A primary duty of watch personnel is to detect and report all objects and disturbances sighted in the water that may be indicative of a threat to the ship and its crew, such as debris, a periscope, surfaced submarine, or surface disturbance.

(vi) Per safety requirements, watch personnel also report any marine mammals sighted that have the potential to be in the direct path of the ship as a standard collision avoidance procedure. Because watch personnel are primarily posted for safety of navigation, range clearance, and man-overboard precautions, they are not normally posted while ships are moored to a pier.

(vii) When anchored or moored to a buoy, a watch team is still maintained but with fewer personnel than when underway.

(viii) When moored or at anchor, watch personnel may maintain security and safety of the ship by scanning the water for any indications of a threat.

(ix) While underway, Navy ships (with the exception of submarines) greater than 65 ft. (20 m) in length have at least two watch personnel; Navy ships less than 65 ft. (20 m) in length, surfaced submarines, and contractor ships have at least one watch person. While underway, watch personnel are alert at all times and have access to binoculars. Due to limited manning and space limitations, small boats and some craft transferring cargo from ship to shore do not have dedicated watch personnel, and the boat crew is responsible for maintaining the safety of the boat and surrounding environment.

(x) All vessels use extreme caution and proceed at a “safe speed” so they can take proper and effective action to avoid a collision with any sighted object or disturbance and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(2) *Lookouts.* (i) Lookouts must perform similar duties to standard watch personnel, and are also responsible for satisfying mitigation requirements.

(ii) The Navy must have one Lookout positioned on the platform (which could include a small boat, the elevated causeway, or the shore) that must maximize the potential for sightings during pile driving and pile removal.

(iii) The Lookout positioned on the elevated causeway or the shore must be dedicated solely to diligent observation of the air and surface of the water. They must have multiple observation objectives, which include but are not limited to detecting the presence of biological resources and recreational or fishing boats, observing the mitigation zone, and monitoring for equipment and personnel safety concerns.

(iv) A Lookout positioned on a small boat may include a member of the boat crew, and may be responsible for tasks in addition to observing the air or surface of the water (*e.g.*, navigation of a rigid hull inflatable boat). However, a boat Lookout must, to the maximum extent practicable and consistent with safety and training requirements, comply with the observation objectives described above for a Lookout positioned on the elevated causeway or the shore.

(v) Lookouts must also perform visual observation starting 30 minutes prior to, during, and 30 minutes after the exercise within a mitigation zone of 60 yards (55 m) around the pile being driven.

(3) *Integrated comprehensive monitoring program.* (i) The Navy must use the existing Integrated Comprehensive Monitoring Program (ICMP) and its new “study-based” approach.

(ii) [Reserved]

(b) *Reporting measures—(1) General notification of injured or dead marine mammals.* (i) Navy personnel must 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.

(ii) The Navy must provide NMFS with species identification 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 photographs or video (if available).

(2) *Annual monitoring and exercise report.* (i) Reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects must be posted to the *Navy's Marine Species Monitoring web portal* as they become available.

(ii) Progress and results from all monitoring activity conducted within the JLOTS training area must be summarized in an annual report. This report must detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(iii) Draft reports should be combined with the Navy's Atlantic Fleet Training and Testing exercise and monitoring reports and submitted to NMFS for review by February 13 (for exercises) and April 1 (for monitoring) each year. NMFS will review the report and provide comments for incorporation within 3 months.

§ 218.16 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. Navy must apply for and obtain either an initial LOA in accordance with § 218.17.

§ 218.17 Letters of Authorization.

(a) An LOA, unless suspended or revoked, must be valid for a period of time not to exceed the period of validity of this subpart.

(b) Each LOA must 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 of the LOA will be based on a determination that the total number of marine mammals taken by the activity as a whole must have no more than a negligible impact on the af-

ected species or stock of marine mammal(s).

§ 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 LOA by NMFS, issued pursuant to § 216.106 of this chapter and § 218.17 and subject to the provisions of this subpart must be made until after notification and an opportunity for public comment has been provided.

(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 § 218.12(c), an LOA issued pursuant to § 216.106 of this chapter and § 218.17 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–D [Reserved]

Subpart E—Taking Marine Mammals Incidental to U.S. Marine Corps Training Exercises at Brant Island Bombing Target and Piney Island Bombing Range, Pamlico Sound, North Carolina

SOURCE: 80 FR 13284, Mar. 13, 2015, unless otherwise noted.

EFFECTIVE DATE NOTE: At 80 FR 13284, Mar. 13, 2015, subpart E was added, effective March 13, 2015, through March 12, 2020.

§ 218.40 Specified activity and location of specified activities.

(a) Regulations in this subpart apply only to the U.S. Marine Corps (Marine Corps) for the incidental taking of marine mammals that occurs in the area outlined in paragraph (b) of this section incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Marine Corps is only authorized if it occurs within the Brant Island Target (BT-9) and Piney Island Bombing Range (BT-11) bombing targets at

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the Marine Corps Air Station Cherry Point Range Complex located within Pamlico Sound, North Carolina (as depicted in Figure 3-1 of the Marine Corps' request for regulations and Letter of Authorization). The BT-9 area is a water-based bombing target and mining exercise area located approximately 52 kilometers (km) (32.3 miles (mi)) northeast of Marine Air Corps Station Cherry Point. The BT-11 area encompasses a total of 50.6 square kilometers (km²) (19.5 square miles (mi²)) on Piney Island located in Carteret County, North Carolina.

(c) The taking of marine mammals by the Marine Corps is only authorized if it occurs incidental to the following activities within the annual amounts of use:

(1) The level of training activities in the amounts indicated here:

(i) Surface-to-Surface Exercises—up to 471 vessel-based sorties annually at BT-9 and BT-11; and

(ii) Air-to-Surface Exercises—up to 14,586 air-based based sorties annually at BT-9 and BT-11.

(2) The use of the following live ordnance for Marine Corps training activities at BT-9, in the total amounts over the course of the five-year rule indicated here:

(i) 30 mm HE—17,160 rounds;

(ii) 40 mm HE—52,100 rounds;

(iii) 2.75-inch Rocket—1,100 rounds;

(iv) 5-inch Rocket—340 rounds; and

(v) G911 Grenade—720 rounds.

(3) The use of the following inert ordnance for Marine Corps training activities at BT-9 and BT-11, in the total amounts over the course of the five-year rule indicated here:

(i) Small arms excluding .50 cal (7.62 mm)—2,628,050 rounds at BT-9 and 3,054,785 rounds at BT-11;

(ii) 0.50 Caliber arms—2,842,575 rounds at BT-9 and 1,833,875 rounds at BT-11;

(iii) Large arms (up to 25 mm)—602,025 rounds at BT-9 and 1,201,670 rounds at BT-11;

(iv) Rockets, inert (2.75-inch rocket, 2.75-inch illumination, 2.75-inch white phosphorus, 2.75-inch red phosphorus; 5-inch rocket, 5-inch illumination, 5-inch white phosphorus, 5-inch red phosphorus)—4,220 rounds at BT-9 and 27,960 rounds at BT-11;

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(v) Bombs, inert (BDU-45 practice bomb, MK-76 practice bomb, MK-82 practice bomb, MK-83 practice bomb)—4,055 rounds at BT-9 and 22,114 rounds at BT-11; and

(vi) Pyrotechnics—4,496 rounds at BT-9 and 8,912 at BT-11.

§218.41 Effective dates.

Regulations in this subpart are effective from March 13, 2015 until March 12, 2020.

§218.42 Permissible methods of taking.

(a) Under a Letter of Authorization issued pursuant to §216.106 of this chapter and §218.47, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment only within the area described in §218.40(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The incidental take of marine mammals under the activities identified in §218.40(c) is limited to the following species, by the indicated method of take and the indicated number over a five-year period:

(1) Level B Harassment:

(i) Atlantic bottlenose dolphin (*Tursiops truncatus*)—1,615.

(ii) [Reserved]

(2) Level A Harassment:

(i) Atlantic bottlenose dolphin—170.

(ii) [Reserved]

§218.43 Prohibitions.

No person in connection with the activities described in §218.40 shall:

(a) Take any marine mammal not specified in §218.42(c);

(b) Take any marine mammal specified in §218.42(c) other than by incidental take as specified in §218.42(c)(1) and (2);

(c) Take a marine mammal specified in §218.42(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 § 218.47.

§ 218.44 Mitigation.

(a) When conducting operations identified in § 218.40(c), the mitigation measures contained in the Letter of Authorization issued under § 216.106 of this chapter and § 218.47 must be implemented. These mitigation measures include, but are not limited to:

(b) Training Exercises at BT-9 and BT-11:

(1) Safety Zone:

(i) The Marine Corps shall establish and monitor a safety zone for marine mammals comprising the entire Rattan Bay area at BT-11.

(ii) The Marine Corps shall establish and monitor a safety zone for marine mammals comprising a radius of 914 meters (m) (3,000 feet) around the target area at BT-9.

(2) For training exercises, the Marine Corps shall comply with the monitoring requirements, including pre-mission and post-mission monitoring, set forth in § 218.45(c).

(3) When detonating explosives or delivering ordnance:

(i) If personnel observe any marine mammals within the safety zone prescribed in paragraph (b)(1) of this section, or if personnel observe marine mammals that are on a course that will put them within the designated safety zone prior to surface-to-surface or air-to-surface training exercises, the Marine Corps shall delay ordnance delivery and/or explosives detonations until all marine mammals are no longer within the designated safety zone.

(ii) If personnel cannot reacquire marine mammals detected in the safety zone after delaying training missions, the Marine Corps shall not commence activities until the next verified location of the animal is outside of the safety zone and the animal is moving away from the mission area.

(iii) If personnel are unable to monitor the safety zone prescribed in paragraph (b)(1) of this section, then the Marine Corps shall delay training exercises.

(iv) If daytime weather and/or sea conditions preclude adequate surveillance for detecting marine mammals,

then the Marine Corps shall postpone training exercises until adequate sea conditions exist for adequate monitoring of the safety zone prescribed in paragraph (b)(1) of this section.

(4) Pre-Mission and Post-Mission Monitoring:

(i) Range operators shall conduct or direct visual surveys to monitor BT-9 or BT-11 for marine mammals before and after each exercise. Range operation and control personnel shall monitor the target area through two tower-mounted safety and surveillance cameras.

(ii) Range operators shall use the surveillance camera's night vision (*i.e.*, infrared) capabilities to monitor BT-9 or BT-11 for marine mammals during night-time exercises.

(iii) For BT-9, in the event that a marine mammal is sighted within the 914-m (3,000-ft) radius around the target area, personnel shall declare the area as fouled and cease training exercises. Personnel shall commence operations in BT-9 only until the marine mammal moves beyond and on a path away from the 914-m (3,000 ft) radius from the BT-9 target.

(iv) For BT-11, in the event that a marine mammal is sighted anywhere within the confines of Rattan Bay, personnel shall declare the water-based targets within Rattan Bay as fouled and cease training exercises. Personnel shall commence operations in BT-11 only after the animal has moved out of Rattan Bay.

(5) Range Sweeps for Safety Zone Monitoring and Delay of Exercises:

(i) The Marine Corps shall conduct a range sweep the morning of each exercise day prior to the commencement of range operations.

(ii) The Marine Corps shall also conduct a range sweep after each exercise following the conclusion of range operations.

(iii) Marine Corps Air Station personnel shall conduct the sweeps by aircraft at an altitude of 100 to 300 m (328 to 984 ft) above the water surface, at airspeeds between 60 to 100 knots.

(iv) The path of the sweeps shall run down the western side of BT-11, circle around BT-9, and then continue down the eastern side of BT-9 before leaving the area.

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(v) The maximum number of days that shall elapse between pre- and post-exercise monitoring events shall be approximately 3 days, and will normally occur on weekends.

(6) Cold Pass by Aircraft:

(i) For waterborne targets, the pilot must perform a low-altitude visual check immediately prior to ordnance delivery at the bombing targets both day and night to ensure the target area is clear of marine mammals. This is referred to as a “cold” or clearing pass.

(ii) Pilots shall conduct the cold pass with the aircraft (helicopter or fixed-winged) flying straight and level at altitudes of 61 to 914 m (200 to 3,000 ft) over the target area.

(iii) If marine mammals are present in the target area during a range sweep, cold pass, or visual surveillance with the camera, the Range Controller shall deny ordnance delivery to the target as conditions warrant. If marine mammals are not present in the target area, the Range Controller may grant clearance to the pilot as conditions warrant.

(7) Vessel Operation:

(i) All vessels used during training operations shall abide by NMFS’ Southeast Regional Viewing Guidelines designed to prevent harassment to marine mammals (<http://www.nmfs.noaa.gov/pr/education/southeast/>).

(ii) [Reserved]

§ 218.45 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.47 for activities described in § 218.40(c) is required to conduct the monitoring and reporting measures specified in this section and § 218.44 and any additional monitoring measures contained in the Letter of Authorization.

(b) The Holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service, and any other Federal, state, or local agency monitoring 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 Director, Office of Protected Re-

sources, National Marine Fisheries Service, or designee, by letter or telephone (301-427-8401), at least 2 weeks prior to any modification to the activity identified in § 218.40(c) that has the potential to result in the serious injury, mortality, or Level A or Level B harassment of a marine mammal that was not identified and addressed previously.

(c) Monitoring Procedures for Missions at BT-9 and BT-11:

(1) The Holder of this Authorization shall:

(i) Designate qualified on-site individual(s) to record the effects of training exercises on marine mammals that inhabit Pamlico Sound;

(ii) Require operators of small boats, and other personnel monitoring for marine mammals from watercraft to take the Marine Species Awareness Training (Version 2), provided by the Department of the Navy.

(iii) Instruct pilots conducting range sweeps on marine mammal observation techniques during routine Range Management Department briefings. This training would make personnel knowledgeable of marine mammals, protected species, and visual cues related to the presence of marine mammals and protected species.

(iv) Continue the Long-Term Monitoring Program to obtain abundance, group dynamics (*e.g.*, group size, age census), behavior, habitat use, and acoustic data on the bottlenose dolphins which inhabit Pamlico Sound, specifically those around BT-9 and BT-11.

(v) Continue the Passive Acoustic Monitoring (PAM) Program to provide additional insight into how dolphins use BT-9 and BT-11 and to monitor for vocalizations.

(vi) Continue to refine the real-time passive acoustic monitoring system at BT-9 to allow automated detection of bottlenose dolphin whistles.

(d) Reporting:

(1) Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization shall conduct all of the monitoring and reporting required under the LOA and shall submit an annual and comprehensive report to the Director, Office of Protected Resources, National Marine

Fisheries Service by a date certain to be specified in the LOA. This report must include the following information:

(i) Date and time of each training exercise;

(ii) A complete description of the pre-exercise and post-exercise activities related to mitigating and monitoring the effects of the training exercises on marine mammal populations;

(iii) Results of the Marine Corps monitoring, including numbers by species/stock of any marine mammals injured or killed as a result of the training exercises and number of marine mammals (by species, if possible) that may have been harassed due to presence within the applicable safety zone;

(iv) A detailed assessment of the effectiveness of the sensor-based monitoring in detecting marine mammals in the area of the training exercises; and

(v) Results of coordination with coastal marine mammal stranding networks. The Marine Corps shall coordinate with the local NMFS Stranding Coordinator to discuss any unusual marine mammal behavior and any stranding, beached (live or dead), or floating marine mammals that may occur at any time during training activities or within 24 hours after completion of training.

(2) The Marine Corps will submit an annual report to NMFS by June 1st of each year starting in 2016. The first report will cover the time period from issuance of the March 2015 Letter of Authorization through March 12, 2016. Each annual report after that time will cover the time period from March 13 through March 12, annually.

(3) The Marine Corps shall submit a draft comprehensive report on all marine mammal monitoring and research conducted during the period of these regulations to the Director, Office of Protected Resources, NMFS at least 180 days prior to expiration of these regulations or 180 days after the expiration of these regulations if the Marine Corps will not request new regulations.

(i) The draft comprehensive report will be subject to review and comment by NMFS. Prior to acceptance by NMFS, the Marine Corps must address any recommendations made by NMFS,

within 60 days of its receipt, in the final comprehensive report.

(ii) [Reserved]

(4) General Notification of Injured or Dead Marine Mammals:

(i) The Marine Corps shall systematically observe training operations for injured or disabled marine mammals. In addition, the Marine Corps shall monitor the principal marine mammal stranding networks and other media to correlate analysis of any dolphin strandings that could potentially be associated with BT-9 or BT-11 training operations.

(ii) Marine Corps personnel shall notify NMFS immediately, or as soon as clearance procedures allow, if personnel find an injured, stranded, or dead marine mammal during or shortly after, and in the vicinity of, any training operations. The Marine Corps 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).

(iii) In the event that an injured, stranded, or dead marine mammal is found by Marine Corps personnel that is not in the vicinity of, or found during or shortly after operations, the Marine Corps personnel will report the same information listed above as soon as operationally feasible and clearance procedures allow.

(5) General Notification of a Ship Strike:

(i) In the event of a vessel strike, at any time or place, the Marine Corps shall do the following:

(ii) 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);

(iii) Report to NMFS as soon as operationally feasible the size and length of the animal, an estimate of the injury status (*e.g.*, dead, injured but alive, injured and moving, unknown, etc.), vessel class/type, and operational status;

(iv) Report to NMFS the vessel length, speed, and heading as soon as feasible; and

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(v) Provide NMFS with a photo or video, if equipment is available.

§ 218.46 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined at § 216.103 of this chapter) conducting the activities identified in § 218.40 must apply for and obtain either an initial Letter of Authorization in accordance with § 216.106 of this chapter and § 218.47 or a renewal under § 218.48.

§ 218.47 Letter of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the Marine Corps must apply for and obtain a Letter of Authorization.

(b) A Letter of Authorization, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If a Letter of Authorization expires prior to the expiration date of these regulations, the Marine Corps must apply for and obtain a renewal of the Letter of Authorization.

(d) In the event of any changes to the activity or to mitigation and monitoring measures required by a Letter of Authorization, the Marine Corps must apply for and obtain a modification of the Letter of Authorization as described in § 218.48.

(e) The Letter of Authorization 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 Letter of Authorization 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 Letter of Authorization shall be published in the FEDERAL REGISTER within 30 days of a determination.

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§ 218.48 Renewals and Modifications of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.47 for the activity identified in § 218.40 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 § 218.47(c)(1)), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous Letter of Authorization under these regulations were implemented.

(b) For Letter of Authorization 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 § 218.47(c)(1)) 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 Letter of Authorization in the FEDERAL REGISTER, including the associated analysis illustrating the change, and solicit public comment before issuing the Letter of Authorization.

(c) A Letter of Authorization issued under § 216.106 of this chapter and § 218.47 for the activity identified in § 218.40 may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Marine Corps 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.

(i) Possible sources of data that could contribute to the decision to modify

the mitigation, monitoring, or reporting measures in a Letter of Authorization include:

(A) Results from the Marine Corps' monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent Letters of Authorization.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed Letter of Authorization 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 § 218.42(c), a Letter of Authorization may be modified without prior notice or opportunity for public comment. NMFS will publish a notice in the FEDERAL REGISTER within 30 days subsequent to the action.

Subparts F–G [Reserved]

Subpart H—Taking and Importing Marine Mammals; U.S. Navy's Hawaii-Southern California Training and Testing (HSTT)

SOURCE: 78 FR 78152, Dec. 24, 2013, unless otherwise noted.

EFFECTIVE DATE NOTE: At 78 FR 78152, Dec. 24, 2013, subpart H was added, effective Dec. 24, 2013, through Dec. 24, 2018.

§ 218.70 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 HSTT Study Area, which is comprised of established operating and warning areas across the

north-central Pacific Ocean, from Southern California west to Hawaii and the International Date Line (see Figure 1-1 in the Navy's application). The Study Area includes three existing range complexes: the Southern California (SOCAL) Range Complex, Hawaii Range Complex (HRC), and Silver Strand Training Complex (SSTC). In addition, the Study Area includes other areas where training and testing activities occur, including the pierside locations in San Diego Bay and Pearl Harbor, the transit corridor between SOCAL and Hawaii, and throughout the San Diego Bay.

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

(1) Non-impulsive Sources Used During Training:

(i) Mid-frequency (MF) Source Classes:

(A) MF1—an average of 11,588 hours per year.

(B) MF1K—an average of 88 hours per year.

(C) MF2—an average of 3,060 hours per year.

(D) MF2K—an average of 34 hours per year.

(E) MF3—an average of 2,336 hours per year.

(F) MF4—an average of 888 hours per year.

(G) MF5—an average of 13,718 items per year.

(H) MF11—an average of 1,120 hours per year.

(I) MF12—an average of 1,094 hours per year.

(ii) High-frequency (HF) and Very High-frequency (VHF) Source Classes:

(A) HF1—an average of 1,754 hours per year.

(B) HF4—an average of 4,848 hours per year.

(iii) Anti-Submarine Warfare (ASW) Source Classes:

(A) ASW1—an average of 224 hours per year.

(B) ASW2—an average of 1,800 items per year.

(C) ASW3—an average of 16,561 hours per year.

(D) ASW4—an average of 1,540 items per year.

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(iv) Torpedoes (TORP) Source Classes:

(A) TORP1—an average of 170 items per year.

(B) TORP2—an average of 400 items per year.

(2) Non-impulsive Sources Used During Testing:

(i) Low-frequency (LF) Source Classes:

(A) LF4—an average of 52 hours per year.

(B) LF5—an average of 2,160 hours per year.

(C) LF6—an average of 192 hours per year.

(ii) Mid-frequency (MF):

(A) MF1—an average of 180 hours per year.

(B) MF1K—an average of 18 hours per year.

(C) MF2—an average of 84 hours per year.

(D) MF3—an average of 392 hours per year.

(E) MF4—an average of 693 hours per year.

(F) MF5—an average of 5,024 items per year.

(G) MF6—an average of 540 items per year.

(H) MF8—an average of 2 hours per year.

(I) MF9—an average of 3,039 hours per year.

(J) MF10—an average of 35 hours per year.

(K) MF12—an average of 336 hours per year.

(iii) High-frequency (HF) and Very High-frequency (VHF):

(A) HF1—an average of 1,025 hours per year.

(B) HF3—an average of 273 hours per year.

(C) HF4—an average of 1,336 hours per year.

(D) HF5—an average of 1,094 hours per year.

(E) HF6—an average of 3,460 hours per year.

(iv) ASW:

(A) ASW1—an average of 224 hours per year.

(B) ASW2—an average of 2,260 items per year.

(C) ASW2—an average of 255 hours per year.

(D) ASW3—an average of 1,278 hours per year.

(E) ASW4—an average of 477 items per year.

(v) TORP:

(A) TORP1—an average of 701 items per year.

(B) TORP2—an average of 732 items per year.

(vi) Acoustic Modems (M):

(A) M3—an average of 4,995 hours per year.

(B) [Reserved]

(vii) Swimmer Detection Sonar (SD):

(A) SD1—an average of 38 hours per year.

(B) [Reserved]

(viii) Airguns (AG):

(A) AG—an average of 5 airgun uses per year.

(B) [Reserved]

(ix) Synthetic Aperture Sonar (SAS):

(A) SAS1—an average of 2,700 hours per year.

(B) SAS2—an average of 4,956 hours per year.

(C) SAS3—an average of 3,360 hours per year.

(3) Annual Number of Impulsive Source Detonations During Training:

(i) Explosive Classes:

(A) E1 (0.1 lb to 0.25 lb NEW)—an average of 19,840 detonations per year.

(B) E2 (1.26 lb to 0.5 lb NEW)—an average of 1,044 detonations per year.

(C) E3 (>0.5 lb to 2.5 lb NEW)—an average of 3,020 detonations per year.

(D) E4 (>2.5 lb to 5 lb NEW)—an average of 668 detonations per year.

(E) E5 (>5 lb to 10 lb NEW)—an average of 8,154 detonations per year.

(F) E6 (>10 lb to 20 lb NEW)—an average of 538 detonations per year.

(G) E7 (>20 lb to 60 lb NEW)—an average of 407 detonations per year.

(H) E8 (>60 lb to 100 lb NEW)—an average of 64 detonations per year.

(I) E9 (>100 lb to 250 lb NEW)—an average of 16 detonations per year.

(J) E10 (>250 lb to 500 lb NEW)—an average of 19 detonations per year.

(K) E11 (>500 lb to 650 lb NEW)—an average of 8 detonations per year.

(L) E12 (>650 lb to 1,000 lb NEW)—an average of 224 detonations per year.

(M) E13 (>1,000 lb to 1,740 lb NEW)—an average of 9 detonations per year.

(ii) [Reserved]

(4) Impulsive Source Detonations During Testing:

(i) Explosive Classes:

(A) E1 (0.1 lb to 0.25 lb NEW)—an average of 14,501 detonations per year.

(B) E2 (0.26 lb to 0.5 lb NEW)—an average of 0 detonations per year.

(C) E3 (>0.5 lb to 2.5 lb NEW)—an average of 2,990 detonations per year.

(D) E4 (>2.5 lb to 5 lb NEW)—an average of 753 detonations per year.

(E) E5 (>5 lb to 10 lb NEW)—an average of 202 detonations per year.

(F) E6 (>10 lb to 20 lb NEW)—an average of 37 detonations per year.

(G) E7 (>20 lb to 60 lb NEW)—an average of 21 detonations per year.

(H) E8 (>60 lb to 100 lb NEW)—an average of 12 detonations per year.

(I) E9 (>100 lb to 250 lb NEW)—an average of 0 detonations per year.

(J) E10 (>250 lb to 500 lb NEW)—an average of 31 detonations per year.

(K) E11 (>500 lb to 650 lb NEW)—an average of 14 detonations per year.

(L) E12 (>650 lb to 1,000 lb NEW)—an average of 0 detonations per year.

(M) E13 (>1,000 lb to 1,740 lb NEW)—an average of 0 detonations per year.

(ii) Pile Driving: No more than four events per year.

§ 218.71 Effective dates and definitions.

(a) The regulations in this subpart are effective December 24, 2013, through December 24, 2018.

(b) The following definitions are utilized in this subpart:

(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 paragraph (b)(1)(ii) of this section 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, humpback whale, sperm whale, blue whale, fin whale, sei whale, or monk seal.

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

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

§ 218.72 Permissible methods of taking.

(a) Under Letters of Authorization (LOAs) issued pursuant to § 218.77, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.70, 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 § 218.70(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*)—23,699.

(B) Bryde's whale (*Balaenoptera edeni*)—1,287.

(C) Fin whale (*Balaenoptera physalus*)—9,656.

(D) Gray whale (*Eschrichtius robustus*), Eastern North Pacific—60,590.

(E) Gray whale (*Eschrichtius robustus*), Western North Pacific—60.

(F) Humpback whale (*Megaptera novaeangliae*)—51,000.

(G) Minke whale (*Balaenoptera acutorostrata*)—4,425.

(H) Sei whale (*Balaenoptera borealis*)—3,251.

(ii) Odontocetes:

(A) Baird's beaked whale (*Berardius bairdii*)—27,325.

(B) Blainville's beaked whale (*Mesoplodon densirostris*)—52,972.

(C) Bottlenose dolphin (*Tursiops truncatus*), California Coastal—5,600.

(D) Bottlenose dolphin (*Tursiops truncatus*), CA/OR/WA—145,125.

(E) Bottlenose dolphin (*Tursiops truncatus*), Hawaii pelagic—20,995.

(F) Bottlenose dolphin (*Tursiops truncatus*), Oahu—3,879.

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(G) Bottlenose dolphin (*Tursiops truncatus*), 4-Islands region—999.
(H) Bottlenose dolphin (*Tursiops truncatus*), Kauai and Niihau—960.
(I) Bottlenose dolphin (*Tursiops truncatus*), Hawaii Island—666.
(J) Cuvier's beaked whale (*Ziphius cavirostris*)—349,130.
(K) Dwarf sperm whale (*Kogia sima*)—113,525.
(L) Dall's porpoise (*Phocoenoida dalli*)—210,925.
(M) False killer whale (*Pseudorca crassidens*), Main Hawaiian Islands insular—240.
(N) False killer whale (*Pseudorca crassidens*)—3,147.
(O) Fraser's dolphin (*Lagenodelphis hosei*)—9,034.
(P) Killer whale (*Orcinus orca*)—2,762.
(Q) *Kogia* spp.—71,070.
(R) Long-beaked common dolphin (*Delphinus capensis*)—604,715.
(S) Longman's beaked whale (*Indopacetus pacificus*)—19,476.
(T) Melon-headed whale (*Peponocephala electra*)—7,353.
(U) Mesoplodon beaked whales—11,695.
(V) Northern right whale dolphin (*Lissodelphis borealis*)—286,635.
(W) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)—216,885.
(X) Pantropical spotted dolphin (*Stenella attenuata*)—51,864.
(Y) Pygmy killer whale (*Feresa attenuata*)—2,908.
(Z) Pygmy sperm whale (*Kogia breviceps*)—1,683.
(AA) Risso's dolphin (*Grampus griseus*)—481,677.
(BB) Rough-toothed dolphin (*Steno bredanensis*)—24,815.
(CC) Short-beaked common dolphin (*Delphinus delphis*)—5,610,700.
(DD) Short-finned pilot whale (*Globicephala macrorhynchus*)—46,680.
(EE) Sperm whale (*Physeter macrocephalus*)—17,235.
(FF) Spinner dolphin (*Stenella longirostris*)—11,900.
(GG) Striped dolphin (*Stenella coerulealba*)—39,487.
(iii) Pinnipeds:
(A) California sea lion (*Zalophus californianus*)—699,605.
(B) Guadalupe fur seal (*Arctocephalus townsendi*)—14,360.

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(C) Harbor seal (*Phoca vitulina*)—34,025.
(D) Hawaiian monk seal (*Monachus schauinslandi*)—8,124.
(E) Northern elephant seal (*Mirounga angustirostris*)—126,275.
(F) Northern fur seal (*Callorhinus ursinus*)—105,895.
(3) Mortality (or lesser Level A injury) for all Training and Testing Activities:
(i) No more than 130 mortalities applicable to any small odontocete (i.e., dolphin) or pinniped (with the exception of Hawaiian monk seal) species from an impulse source.
(ii) No more than 10 beaked whale mortalities.
(iii) No more than 15 large whale injuries or mortalities or serious injuries from vessel strike.

§ 218.73 Prohibitions.

Notwithstanding takings contemplated in § 218.72 and authorized by an LOA issued under §§ 216.106 and 218.77 of this chapter, no person in connection with the activities described in § 218.70 may:

- (a) Take any marine mammal not specified in § 218.72(c);
- (b) Take any marine mammal specified in § 218.72(c) other than by incidental take as specified in § 218.72(c);
- (c) Take a marine mammal specified in § 218.72(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 an LOA issued under §§ 216.106 and 218.77.

§ 218.74 Mitigation.

(a) When conducting training and testing activities, as identified in § 218.70, the mitigation measures contained in the LOA issued under §§ 216.106 and 218.77 of this chapter must be implemented. These mitigation measures include, but are not limited to:

- (1) Lookouts—The following are protective measures concerning the use of Lookouts.
 - (i) Lookouts positioned on ships will be dedicated solely to diligent observation of the air and surface of the water.

Their observation objectives will include, but are not limited to, detecting the presence of biological resources and recreational or fishing boats, observing mitigation zones, and monitoring for vessel and personnel safety concerns.

(ii) Lookouts positioned in aircraft or on small boats will, to the maximum extent practicable and consistent with aircraft and boat safety and training and testing requirements, comply with the observation objectives described above in § 218.74 (a)(1)(i).

(iii) Lookout measures for non-impulsive sound:

(A) With the exception of ships less than 65 ft (20 m) in length and ships which are minimally manned, ships using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea will have two Lookouts at the forward position of the ship. For the purposes of this rule, low-frequency active sonar does not include surveillance towed array sensor system low-frequency active sonar.

(B) While using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea, vessels less than 65 ft (20 m) in length and ships which are minimally manned will have one Lookout at the forward position of the vessel due to space and manning restrictions.

(C) Ships conducting active sonar activities while moored or at anchor (including pierside testing or maintenance) will maintain one Lookout.

(D) Surface ships or aircraft conducting high-frequency or non-hull-mounted mid-frequency active sonar activities associated with anti-submarine warfare and mine warfare activities at sea will have one Lookout.

(iv) Lookout measures for explosives and impulsive sound:

(A) Aircraft conducting IEER sonobuoy activities will have one Lookout.

(B) Explosive sonobuoys with 0.6 to 2.5 lb net explosive weight will have one Lookout.

(C) Surface vessels conducting anti-swimmer grenade activities will have one Lookout.

(D) During general mine countermeasure and neutralization activities using up to a 500-lb net explosive weight detonation (bin E10 and below), vessels greater than 200 ft will have two Lookouts, while vessels less than 200 ft or aircraft will have one Lookout.

(E) General mine countermeasure and neutralization activities using a 501 to 650-lb net explosive weight detonation (bin E11), will have two Lookouts. One Lookout will be positioned in an aircraft and one in a support vessel.

(F) During activities involving diver-placed mines under positive control, activities using up to a 500 lb net explosive weight (bin E10) detonation will have a total of two Lookouts (one Lookout positioned on two small boats, or one small boat in combination with either a helicopter or shore-based. The shore-based observer would be stationed at an elevated on-shore position and would only be used during activities conducted in very shallow waters.

(G) When mine neutralization activities using diver-placed charges with up to a 29-lb net explosive weight detonation (bin E7) are conducted with a time-delay firing device, four Lookouts will be used. Two Lookouts will be positioned in each of two small rigid hull inflatable boats or on one boat. In addition, when aircraft are used, the pilot or member of the aircrew will serve as an additional Lookout. The divers placing the charges on mines will report all marine mammal sightings to their dive support vessel or Range Safety Officer.

(H) Surface vessels or aircraft conducting small- and medium-caliber gunnery exercises against a surface target will have one Lookout.

(I) Surface vessels conducting large-caliber gunnery exercises against a surface target will have one Lookout.

(J) Aircraft conducting missile exercises (including rockets) against surface targets will have one Lookout.

(K) Aircraft conducting bombing exercises will have one Lookout.

(L) During explosive torpedo testing, one Lookout will be used and positioned in an aircraft.

(M) During sinking exercises, two Lookouts will be used. One Lookout will be positioned in an aircraft and one on a surface vessel.

(N) Each surface vessel supporting at-sea explosive testing will have at least one Lookout.

(O) During pile driving, one Lookout will be used and positioned on the platform that will maximize the potential for marine mammal sightings (e.g., the shore, an elevated causeway, or on a small boat).

(P) Surface vessels conducting explosive and non-explosive large-caliber gunnery exercises will have one Lookout. This may be the same Lookout used during large-caliber gunnery exercises with a surface target.

(v) Lookout measures for physical strike and disturbance:

(A) While underway, surface ships will have at least one Lookout.

(B) During activities using towed in-water devices, when towed from a manned platform, one Lookout will be used.

(C) Activities involving non-explosive practice munitions (e.g., small-, medium-, and large-caliber gunnery exercises) using a surface target will have one Lookout.

(D) During activities involving non-explosive bombing exercises, one Lookout positioned in an aircraft will be used.

(E) During activities involving non-explosive missile exercises (including rockets) using a surface target, one Lookout will be used.

(2) *Mitigation Zones*—The following are protective measures concerning the implementation of mitigation zones.

(i) Mitigation zones will be measured as the radius from a source and represent a distance to be monitored.

(ii) Visual detections of marine mammals within a mitigation zone will be communicated immediately to a watch station for information dissemination and appropriate action.

(iii) Mitigation zones for non-impulsive sound:¹

(A) When marine mammals are visually detected, the Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmission levels are limited to at least 6 dB below normal operating levels, for

sources that can be powered down, if any detected marine mammals are within 1,000 yd (914 m) of the sonar dome (the bow).

(B) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions are limited to at least 10 dB below the equipment's normal operating level, for sources that can be powered down, if any detected marine mammals are within 500 yd (457 m) of the sonar dome.

(C) The Navy shall ensure that low-frequency sonar and hull-mounted mid-frequency active sonar transmissions are ceased, for sources that can be turned off during the activity, if any visually detected marine mammals are within 200 yd (183 m) of the sonar dome. Transmissions will not resume until one of the following conditions is met: the animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source; the mitigation zone has been clear from any additional sightings for a period of 30 minutes; the ship has transited more than 2,000 yd (1.8 km) beyond the location of the last sighting; or the ship concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave (and there are no other marine mammal sightings within the mitigation zone). Active transmission may resume when dolphins are bow riding because they are out of the main transmission axis of the active sonar while in the shallow-wave area of the bow.

(D) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions are ceased for sources that cannot be powered down during the activity, if any visually detected marine mammals are within 200 yd (183 m) of the source. Transmissions will not resume until one of the following conditions is met: the animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source; the mitigation zone has been clear from any additional sightings for a period of

¹The mitigation zone would be 200 yd (183 m) for low-frequency non-hull mounted sources in bins LF4 and LF5.

30 minutes; the ship has transited more than 400 yd (366 m) beyond the location of the last sighting.

(E) When marine mammals are visually detected, the Navy shall ensure that high-frequency and non-hull-mounted mid-frequency active sonar transmission levels are ceased if any visually detected marine mammals are within 200 yd (183 m) of the source. Transmissions will not resume until one of the following conditions is met: the animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source; the mitigation zone has been clear from any additional sightings for a period of 10 minutes for an aircraft-deployed source; the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a vessel-deployed source; the vessel or aircraft has repositioned itself more than 400 yd (366 m) away from the location of the last sighting; or the vessel concludes that dolphins are deliberately closing to ride the vessel's bow wave (and there are no other marine mammal sightings within the mitigation zone).

(iv) Mitigation zones for explosive and impulsive sound:

(A) A mitigation zone with a radius of 600 yd (549 m) shall be established for IEER sonobuoys (bin E4).

(B) A mitigation zone with a radius of 350 yd (320 m) shall be established for explosive sonobuoys using 0.6 to 2.5 lb net explosive weight (bin E3).

(C) A mitigation zone with a radius of 200 yd (183 m) shall be established for anti-swimmer grenades (bin E2).

(D) A mitigation zone ranging from 600 yd (549 m) to 2,100 yd (1.9 km), dependent on charge size, shall be established for general mine countermeasure and neutralization activities using positive control firing devices. Mitigation zone distances are specified for charge size in Table 11-2 of the Navy's application.

(E) A mitigation zone ranging from 350 yd (320 m) to 850 yd (777 m), dependent on charge size, shall be established for mine countermeasure and neutralization activities using diver-placed positive control firing devices. Mitiga-

tion zone distances are specified for charge size in Table 11-2 of the Navy's application.

(F) A mitigation zone with a radius of 1,000 yd (914 m) shall be established for mine neutralization diver placed mines using time-delay firing devices (bin E7).

(G) A mitigation zone with a radius of 200 yd (183 m) shall be established for small- and medium-caliber gunnery exercises with a surface target (bin E2).

(H) A mitigation zone with a radius of 600 yd (549 m) shall be established for large-caliber gunnery exercises with a surface target (bin E5).

(I) A mitigation zone with a radius of 900 yd (823 m) shall be established for missile exercises (including rockets) with up to 250 lb net explosive weight and a surface target (up to bin E9).

(J) A mitigation zone with a radius of 2,000 yd (1.8 km) shall be established for missile exercises with 251 to 500 lb net explosive weight and a surface target (E10).

(K) A mitigation zone with a radius of 2,500 yd (2.3 km) shall be established for bombing exercises (up to bin E12).

(L) A mitigation zone with a radius of 2,100 yd (1.9 km) shall be established for torpedo (explosive) testing (up to bin E11).

(M) A mitigation zone with a radius of 2.5 nautical miles shall be established for sinking exercises (up to bin E12).

(N) A mitigation zone with a radius of 1,600 yd (1.4 km) shall be established for at-sea explosive testing (up to bin E5).

(O) A mitigation zone with a radius of 60 yd (55 m) shall be established for elevated causeway system pile driving.

(P) A mitigation zone with a radius of 70 yd (64 m) within 30 degrees on either side of the gun target line on the firing side of the vessel for explosive and non-explosive large-caliber gunnery exercises.

(v) Mitigation zones for vessels and in-water devices:

(A) A mitigation zone of 500 yd (457 m) for observed whales and 200 yd (183 m) for all other marine mammals (except bow riding dolphins) shall be established for all vessel movement, providing it is safe to do so.

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(B) A mitigation zone of 250 yd (229 m) for any observed marine mammal shall be established for all towed in-water devices that are towed from a manned platform, providing it is safe to do so.

(vi) Mitigation zones for non-explosive practice munitions:

(A) A mitigation zone of 200 yd (183 m) shall be established for small, medium, and large caliber gunnery exercises using a surface target with non-explosive practice munitions.

(B) A mitigation zone of 1,000 yd (914 m) shall be established for bombing exercises with non-explosive practice munitions.

(C) A mitigation zone of 900 yd (823 m) shall be established for missile exercises (including rockets) using a surface target.

(vii) Mitigation zones for the use of Navy sea lions:

(A) If a monk seal is seen approaching or within 100 m of a Navy sea lion, the handler will hold the Navy sea lion in the boat or recall the Navy sea lion immediately if it has already been released.

(3) Humpback Whale Cautionary Area:

(i) The Navy will maintain a 5-km (3.1-mi) buffer zone between December 15 and April 15 where conducting mid-frequency active sonar exercises will require authorization by the Commander, U.S. Pacific Fleet (CPF).

(ii) If authorized, the CPF will provide specific direction on required mitigation prior to operational units transiting to and training in the area.

(iii) The Navy will provide NMFS with advance notification of any mid-frequency active sonar training and testing activities in the humpback whale cautionary area between December 15 and April 15.

(4) Stranding Response Plan:

(i) The Navy shall abide by the letter of the “Stranding Response Plan for Major Navy Training Exercises in the HSTT Study Area,” to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in §218.71 (b)(1)) occurs during a Major Training Exercise (MTE) in the HSTT Study Area, the Navy shall im-

plement the procedures described below.

(1) The Navy shall implement a shutdown (as defined §218.71 (b)(2)) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the HSTT Study Area 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 the 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.

(4) 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 mid-frequency active sonar training activities or explosive detonations, though farther than 14 nautical miles 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 HSTT Study Area Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using mid-frequency active sonar, and marine mammal sightings information associated with training activities occurring within 80 nautical miles (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80-nautical miles (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.

(b) [Reserved]

§ 218.75 Requirements for monitoring and reporting.

(a) As outlined in the HSTT Study Area Stranding Communication Plan, the Holder of the Authorization must notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in § 218.70 is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 218.71.

(b) The Holder of the LOA must conduct all monitoring and required reporting under the LOA, including abiding by the HSTT Monitoring Plan.

(c) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security considerations allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, an Navy training or testing activity utilizing mid- or high-frequency active sonar, 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.

(d) Vessel Strike—In the event that a Navy vessel strikes a whale, the Navy shall do the following:

(1) Immediately report to NMFS (pursuant to the established Communication Protocol) the:

- (i) Species identification if known;
- (ii) Location (latitude/longitude) of the animal (or location of the strike if the animal has disappeared);
- (iii) Whether the animal is alive or dead (or unknown); and
- (iv) The time of the strike.

(2) As soon as feasible, the Navy shall report to or provide to NMFS, the:

- (i) Size, length, and description (critical if species is not known) of animal;
- (ii) An estimate of the injury status (e.g., dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.);
- (iii) Description of the behavior of the whale during event, immediately after the strike, and following the strike (until the report is made or the animal is no long sighted);
- (iv) Vessel class/type and operation status;
- (v) Vessel length
- (vi) Vessel speed and heading; and
- (vii) To the best extent possible, obtain

(3) Within 2 weeks of the strike, provide NMFS:

- (i) A detailed description of the specific actions of the vessel in the 30-minute timeframe immediately preceding the strike, during the event, and immediately after the strike (e.g., the speed and changes in speed, the direction and changes in the direction, other maneuvers, sonar use, etc., if not classified); and
- (ii) A narrative description of marine mammal sightings during the event and immediately after, and any information as to sightings prior to the strike, if available; and
- (iii) Use established Navy shipboard procedures to make a camera available to attempt to capture photographs following a ship strike.

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(e) Annual HSTT Monitoring Plan Report—(1) The Navy shall submit an annual report for the HSTT Monitoring Plan in April of each year, describing the implementation and results from the previous calendar year. Data collection methods will be standardized across range complexes and study areas to allow for comparison in different geographic locations. Although additional information will be gathered, the protected species observers collecting marine mammal data pursuant to the HSTT Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in §218.75. (2) As an alternative, the Navy may submit a multi-Range Complex annual Monitoring Plan report to fulfill this requirement. Such a report would describe progress of knowledge made with respect to monitoring plan study questions across all Navy ranges associated with the ICMP. Similar study questions shall be treated together so that progress on each topic shall be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions.

(f) Annual HSTT Exercise and Testing Reports—The Navy shall submit preliminary reports detailing the status of authorized sound sources within 21 days after the end of the annual authorization cycle. The Navy shall submit detailed reports 3 months after the anniversary of the date of issuance of the LOA. The detailed annual reports shall contain information on Major Training Exercises (MTE), Sinking Exercise (SINKEX) events, and a summary of sound sources used, as described below. The analysis in the detailed reports will be based on the accumulation of data from the current year's report and data collected from previous reports. The detailed reports shall contain information identified in paragraphs (e)(1) through (e)(5) of this section.

(1) Major Training Exercises/SINKEX:

(i) This section shall contain the reporting requirements for Coordinated and Strike Group exercises and SINKEX. Coordinated and Strike

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Group Major Training Exercises include:

(A) Sustainment Exercise (SUSTAINEX).

(B) Integrated ASW Course (IAC).

(C) Composite Training Unit Exercises (COMPTUEX).

(D) Joint Task Force Exercises (JTFEX).

(E) Undersea Warfare Exercise (USWEX).

(ii) Exercise information for each MTE:

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location (operating area).

(D) Number of items or hours (per the LOA) of each sound source bin (impulsive and non-impulsive) used in the exercise.

(E) Number and types of vessels, aircraft, etc., participating in exercise.

(F) Individual marine mammal sighting info for each sighting for each MTE:

(1) Date/time/location of sighting.

(2) Species (if not possible, indication of whale/dolphin/pinniped).

(3) Number of individuals.

(4) Initial detection sensor.

(5) Indication of specific type of platform the observation was made from (including, for example, what type of surface vessel or testing platform).

(6) Length of time observers maintained visual contact with marine mammal(s).

(7) Sea state.

(8) Visibility.

(9) Sound source in use at the time of sighting.

(10) Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from sound source.

(11) Mitigation implementation—whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was; or whether navigation was changed or delayed.

(12) If source in use is a hull-mounted sonar, relative bearing of animal from ship and estimation of animal's motion relative to ship (opening, closing, parallel).

(13) 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 closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.), and if any calves present.

(G) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(iii) Exercise information for each SINKEX:

(A) List of the vessels and aircraft involved in the SINKEX.

(B) Location (operating area).

(C) Chronological list of events with times, including time of sunrise and sunset, start and stop time of all marine species surveys that occur before, during, and after the SINKEX, and ordnance used.

(D) Visibility and/or weather conditions, wind speed, cloud cover, etc. throughout exercise if it changes.

(E) Aircraft used in the surveys, flight altitude, and flight speed and the area covered by each of the surveys, given in coordinates, map, or square miles.

(F) Passive acoustic monitoring details (number of sonobuoys, area and depth that was heard, detections of biologic activity, etc.).

(G) Individual marine mammal sighting info for each sighting that required mitigation to be implemented:

(1) Date/time/location of sighting.

(2) Species (if not possible, indication of whale/dolphin/pinniped).

(3) Number of individuals.

(4) Initial detection sensor.

(5) Indication of specific type of platform the observation was made from (including, for example what type of surface vessel or platform).

(6) Length of time observers maintained visual contact with marine mammal(s).

(7) Sea state.

(8) Visibility.

(9) Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from the target.

(10) Mitigation implementation—whether the SINKEX was stopped or delayed and length of delay.

(11) 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.), and if any calves present.

(H) List of the ordnance used throughout the SINKEX and net explosive weight (NEW) of each weapon and the combined ordnance NEW.

(2) Summary of Sources Used.

(i) This section shall include the following information summarized from the authorized sound sources used in all training and testing events:

(A) Total annual hours or quantity (per the LOA) of each bin of sonar or other non-impulsive source;

(B) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive bin;

(C) Total annual airgun use; and

(D) Improved Extended Echo-Ranging System (IEER)/sonobuoy summary, including:

(1) Total expended/detonated rounds (buoys).

(2) Total number of self-scuttled IEER rounds.

(3) Sonar Exercise Notification—The Navy shall submit to NMFS (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:

(i) Location of the exercise.

(ii) Beginning and end dates of the exercise.

(iii) Type of exercise (e.g., RIMPAC, USWEX, or Multi Strike Group).

(4) Geographic Information Presentation—The reports shall present an annual (and seasonal, where practical) depiction of training exercises and testing bin usage geographically across the Study Area.

(5) Special Reporting Requirements—To the extent practicable, and as it applies to the specific Study Area, these reports will also include:

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(i) The total hours (from 15 December through 15 April) of hull-mounted active sonar operation occurring in the dense humpback areas generally shown on the Mobley map (73 FR 35510, 35520) plus a 5-km buffer, but not including the Pacific Missile Range Facility (as illustrated in the HSTT FEIS/OEIS).

(ii) The total estimated annual hours of hull-mounted active sonar operation conducted in the Humpback Whale Cautionary Area between 15 December and 15 April.

(6) 5-year Close-out Exercise and Testing Report—This report will be included as part of the 2019 annual exercise or testing report. This report will provide the annual totals for each sound source bin with a comparison to the annual allowance and the 5-year total for each sound source bin with a comparison to the 5-year allowance. Additionally, if there were any changes to the sound source allowance, this report will include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the FEIS and final rule determinations. The report will be submitted 3 months after the expiration of the rule. NMFS will submit comments on the draft close-out report, if any, within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

§218.76 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by §216.106) conducting the activity identified in §218.70(c) (the U.S. Navy) must apply for and obtain either an initial LOA in accordance with §218.77 or a renewal under §218.78.

§218.77 Letters of Authorization.

(a) An LOA, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart.

(b) Each LOA will set forth:

(1) Permissible methods of incidental taking;

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(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 LOA 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).

§218.78 Renewals and modifications of Letters of Authorization.

(a) A Letter of Authorization issued under §§216.106 and 218.77 for the activity identified in §218.70(c) will be renewed or modified upon request of 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 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 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 §216.106 and §218.77 of this chapter for the activity identified in §218.70(c) of this chapter may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the

existing mitigation, monitoring, or reporting measures (after consulting with the Navy regarding the practicality 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.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, and reporting measures in an LOA:

(A) Results from Navy's monitoring form the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(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.

(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 oc-

curs 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.

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(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.

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(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:

(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.

(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.

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(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.
(I) Fraser's dolphin (*Lagenodelphis hosei*)—11,816.
(J) Gervais' beaked whale (*Mesoplodon europaeus*)—164,663.
(K) Harbor porpoise (*Phocoena phocoena*)—11,072,415.
(L) Killer whale (*Orcinus orca*)—77,448.
(M) *Kogia* spp.—31,095.
(N) Melon-headed whale (*Peponocephala electra*)—111,360.
(O) Northern bottlenose whale (*Hyperoodon ampullatus*)—152,201.
(P) Pantropical spotted dolphin (*Stenella attenuata*)—393,316.
(Q) Pilot whale (*Globicephala* spp.)—581,032.
(R) Pygmy killer whale (*Feresa attenuata*)—8,041.
(S) Risso's dolphin (*Grampus griseus*)—1,306,404.
(T) Rough-toothed dolphin (*Steno bredanensis*)—5,911.
(U) Sowerby's beaked whale (*Mesoplodon bidens*)—63,156.
(V) Sperm whale (*Physeter macrocephalus*)—82,282.
(W) Spinner dolphin (*Stenella longirostris*)—115,310.
(X) Striped dolphin (*Stenella coerulealba*)—1,222,149.
(Y) True's beaked whale (*Mesoplodon mirus*)—99,123.
(Z) White-beaked dolphin (*Lagenorhynchus albirostris*)—16,400.
(iii) Pinnipeds:
(A) Gray seal (*Halichoerus grypus*)—14,511.
(B) Harbor seal (*Phoca vitulina*)—39,519.

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(C) Harp seal (*Pagophilus groenlandica*)—16,319.
(D) Hooded seal (*Cystophora cristata*)—1,472.
(E) Ringed seal (*Pusa hispida*)—1,795.
(F) Bearded seal (*Erignathus barbatus*)—161.
(2) Mortality (or lesser Level A injury) for all Training and Testing Activities:
(i) No more than 140 mortalities applicable to any small odontocete species from an impulse source.
(ii) No more than 10 beaked whale mortalities (2 per year).
(iii) No more than 11 large whale mortalities from vessel strike.
(iv) No more than 25 mortalities (no more than 20 in any given year) applicable to any small odontocete species from Ship Shock trials.

§ 218.83 Prohibitions.

Notwithstanding takings contemplated in § 218.82 and authorized by an LOA issued under §§ 216.106 of this chapter and 218.87, no person in connection with the activities described in § 218.80 may:

- Take any marine mammal not specified in § 218.82(c);
- Take any marine mammal specified in § 218.82(c) other than by incidental take as specified in § 218.82(c);
- Take a marine mammal specified in § 218.82(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or
- Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or an LOA issued under §§ 216.106 of this chapter and 218.87.

§ 218.84 Mitigation.

(a) When conducting training and testing activities, as identified in § 218.80, the mitigation measures contained in the LOA issued under §§ 216.106 and 218.87 must be implemented. These mitigation measures include, but are not limited to:

- Lookouts.** The following are protective measures concerning the use of lookouts.
 - Lookouts positioned on ships will be dedicated solely to diligent observation of the air and surface of the water.

Their observation objectives will include, but are not limited to, detecting the presence of biological resources and recreational or fishing boats, observing mitigation zones, and monitoring for vessel and personnel safety concerns.

(ii) Lookouts positioned in aircraft or on small boats will, to the maximum extent practicable and consistent with aircraft and boat safety and training and testing requirements, comply with the observation objectives described in § 218.84 (a)(1)(i).

(iii) Lookout measures for non-impulsive sound:

(A) With the exception of ships less than 65 ft (20 m) in length and ships that are minimally manned, ships using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea will have two Lookouts at the forward position of the ship. For the purposes of this rule, low-frequency active sonar does not include surveillance towed array sensor system low-frequency active sonar.

(B) While using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea, vessels less than 65 ft (20 m) in length and ships that are minimally manned will have one Lookout at the forward position of the vessel due to space and manning restrictions.

(C) Ships conducting active sonar activities while moored or at anchor (including pierside testing or maintenance) will maintain one Lookout.

(D) Surface ships or aircraft conducting high-frequency or non-hull-mounted mid-frequency active sonar activities associated with anti-submarine warfare and mine warfare activities at sea will have one Lookout.

(E) Surface ships or aircraft conducting high-frequency active sonar activities associated with anti-submarine warfare and mine warfare activities at sea will have one Lookout.

(iv) Lookout measures for explosives and impulsive sound:

(A) Aircraft conducting activities with IEER sonobuoys and explosive sonobuoys with 0.6 to 2.5 lbs net explosive weight will have one Lookout.

(B) Surface vessels conducting anti-swimmer grenade activities will have one Lookout.

(C) During general mine countermeasure and neutralization activities using up to a 500-lb net explosive weight detonation (bin E10 and below), vessels greater than 200 ft will have two Lookouts, while vessels less than 200 ft or aircraft will have one Lookout.

(D) General mine countermeasure and neutralization activities using a 501 to 650-lb net explosive weight detonation (bin E11), will have two Lookouts. One Lookout will be positioned in an aircraft and one in a support vessel.

(E) Mine neutralization activities involving diver-placed charges using up to 100-lb net explosive weight detonation (E8) conducted with a positive control device will have a total of two Lookouts. One Lookout will be positioned in each of the two support vessels, or one in a support vessel and one in a helicopter. All divers placing the charges on mines will support the Lookouts while performing their regular duties. The divers placing the charges on mines will report all marine mammal sightings to their dive support vessel or Range Safety Officer.

(F) When mine neutralization activities using diver-placed charges with up to a 20-lb net explosive weight detonation (bin E6) are conducted with a time-delay firing device, four Lookouts will be used. Two Lookouts will be positioned in each of two small rigid hull inflatable boats. In addition, when aircraft are used, the pilot or member of the aircrew will serve as an additional Lookout. The divers placing the charges on mines will report all marine mammal sightings to their dive support vessel or Range Safety Officer.

(G) Surface vessels conducting line charge testing will have one Lookout.

(H) Surface vessels or aircraft conducting small- and medium-caliber gunnery exercises against a surface target will have one Lookout.

(I) Surface vessels conducting large-caliber gunnery exercises against a surface target will have one Lookout.

(J) Aircraft conducting missile exercises (including rockets) against surface targets will have one Lookout.

(K) Aircraft conducting bombing exercises will have one Lookout.

(L) During explosive torpedo testing, one Lookout will be used and positioned in an aircraft.

(M) During sinking exercises, two Lookouts will be used. One Lookout will be positioned in an aircraft and one on a surface vessel.

(N) Prior to commencing, during, and after completion of ship shock trials using up to 10,000 lb. HBX charges, the Navy will have at least 10 Lookouts or trained marine species observers (or a combination thereof) positioned either in an aircraft or on multiple vessels (i.e., a Marine Animal Response Team boat and the test ship). If aircraft are used, there will be Lookouts or trained marine species observers positioned in an aircraft and positioned on multiple vessels. If vessels are the only platform, a sufficient number of additional Lookouts or trained marine species observers will be used to provide visual observation of the mitigation zone comparable to that achieved by aerial surveys.”

(O) Prior to commencing, during, and after completion of ship shock trials using up to 40,000 lb. HBX charges, the Navy will have at least 10 Lookouts or trained marine species observers (or a combination thereof) positioned in an aircraft and on multiple vessels (i.e., a Marine Animal Response Team boat and the test ship).

(P) Each surface vessel supporting at-sea explosive testing will have at least one lookout.

(Q) Surface vessels conducting explosive and non-explosive large-caliber gunnery exercises will have one lookout. This may be the same lookout used during large-caliber gunnery exercises with a surface target as described in § 218.84(a)(1)(iv)(I) and (a)(1)(v)(C).

(v) Lookout measures for physical strike and disturbance:

(A) While underway, surface ships will have at least one lookout.

(B) During activities using towed in-water devices that are towed from a manned platform, one lookout will be used.

(C) Activities involving non-explosive practice munitions (e.g., small-, medium-, and large-caliber gunnery exer-

cises) using a surface target will have one lookout.

(D) During activities involving non-explosive bombing exercises, one lookout will be used.

(E) During activities involving non-explosive missile exercises (including rockets) using a surface target, one lookout will be used.

(2) *Mitigation Zones.* The following are protective measures concerning the implementation of mitigation zones.

(i) Mitigation zones will be measured as the radius from a source and represent a distance to be monitored.

(ii) Visual detections of marine mammals within a mitigation zone will be communicated immediately to a watch station for information dissemination and appropriate action.

(iii) Mitigation zones for non-impulsive sound:

(A) When marine mammals are visually detected, the Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmission levels are limited to at least 6 dB below normal operating levels, for sources that can be powered down, if any detected marine mammals are within 1,000 yd (914 m) of the sonar dome (the bow).

(B) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions are limited to at least 10 dB below the equipment's normal operating levels, for sources that can be powered down, if any detected marine mammals are within 500 yd (457 m) of the sonar dome.

(C) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions are ceased, for sources that can be turned off during the activity, if any visually detected marine mammals are within 200 yd (183 m) of the sonar dome. Transmissions will not resume until one of the following conditions is met: the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 30 min., the ship has transited more than 2,000 yd (1.8 km) beyond the location of the

last sighting, or the ship concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave (and there are no other marine mammal sightings within the mitigation zone). Active transmission may resume when dolphins are bow riding because they are out of the main transmission axis of the active sonar while in the shallow-wave area of the bow.

(D) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions are ceased, for sources that cannot be powered down during the activity, if any visually detected marine mammals are within 200 yd (183 m) of the source. Transmissions will not resume until one of the following conditions is met: the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 30 min., the ship has transited more than 400 yd (366 m) beyond the location of the last sighting.

(E) When marine mammals are visually detected, the Navy shall ensure that high-frequency and non-hull-mounted mid-frequency active sonar transmission levels are ceased if any visually detected marine mammals are within 200 yd (183 m) of the source. Transmissions will not resume until one of the following conditions is met: the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 10 min. for an aircraft-deployed source, the mitigation zone has been clear from any additional sightings for a period of 30 min. for a vessel-deployed source, the vessel or aircraft has repositioned itself more than 400 yd. (366 m) away from the location of the last sighting, or the vessel concludes that dolphins are deliberately closing in to ride the vessel's bow wave (and there are no other marine mammal sightings within the mitigation zone).

(iv) Mitigation zones for explosive and impulsive sound:

(A) A mitigation zone with a radius of 600 yd (549 m) shall be established for IEER sonobuoys (bin E4).

(B) A mitigation zone with a radius of 350 yd (320 m) shall be established for explosive sonobuoys using 0.6 to 2.5 lb net explosive weight (bin E3).

(C) A mitigation zone with a radius of 200 yd (183 m) shall be established for anti-swimmer grenades (up to bin E2).

(D) A mitigation zone ranging from 600 yd (549 m) to 2,100 yd (1.9 km), dependent on charge size, shall be established for general mine countermeasure and neutralization activities using positive control firing devices. Mitigation zone distances are specified for charge size in Table 11-2 of the Navy's application.

(E) A mitigation zone ranging from 350 yd (320 m) to 850 yd (777 m), dependent on charge size, shall be established for mine countermeasure and neutralization activities using diver placed positive control firing devices. Mitigation zone distances are specified for charge size in Table 11-2 of the Navy's application.

(F) A mitigation zone with a radius of 1,000 yd (914 m) shall be established for mine neutralization diver placed mines using time-delay firing devices (up to bin E6).

(G) A mitigation zone with a radius of 900 yd (823 m) shall be established for ordnance testing (line charge testing) (bin E4).

(H) A mitigation zone with a radius of 200 yd (183 m) shall be established for small- and medium-caliber gunnery exercises with a surface target (up to bin E2).

(I) A mitigation zone with a radius of 600 yd (549 m) shall be established for large-caliber gunnery exercises with a surface target (bin E5).

(J) A mitigation zone with a radius of 900 yd (823 m) shall be established for missile exercises (including rockets) with up to 250 lb net explosive weight and a surface target (up to bin E9).

(K) A mitigation zone with a radius of 2,000 yd (1.8 km) shall be established for missile exercises with 251 to 500 lb net explosive weight and a surface target (E10).

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(L) A mitigation zone with a radius of 2,500 yd (2.3 km) shall be established for bombing exercises (up to bin E12).

(M) A mitigation zone with a radius of 2,100 yd (1.9 km) shall be established for torpedo (explosive) testing (up to bin E11).

(N) A mitigation zone with a radius of 2.5 nautical miles shall be established for sinking exercises (up to bin E12).

(O) A mitigation zone with a radius of 1,600 yd (1.4 km) shall be established for at-sea explosive testing (up to bin E5).

(P) A mitigation zone with a radius of 3.5 nautical miles shall be established for a shock trial.

(Q) A mitigation zone with a radius of 70 yd (64 m), within 30 degrees on either side of the gun target line on the firing side of the ship, shall be established for all explosive and non-explosive large-caliber gunnery exercises.

(v) Mitigation zones for vessels and in-water devices:

(A) A mitigation zone of 500 yd (457 m) for observed whales and 200 yd (183 m) for all other marine mammals (except bow riding dolphins) shall be established for all vessel movement, providing it is safe to do so.

(B) A mitigation zone of 250 yd (229 m) for any observed marine mammal shall be established for all towed in-water devices that are towed from a manned platform, providing it is safe to do so.

(vi) Mitigation zones for non-explosive practice munitions:

(A) A mitigation zone of 200 yd (183 m) shall be established for small, medium, and large caliber gunnery exercises using a surface target.

(B) A mitigation zone of 1,000 yd (914 m) shall be established for bombing exercises.

(C) A mitigation zone of 900 yd (823 m) shall be established for missile exercises (including rockets) using a surface target.

(3) Protective Measures Specific to North Atlantic Right Whales:

(i) North Atlantic Right Whale Calving Habitat off the Southeast United States.

(A) The Southeast Right Whale Mitigation Area is defined by a 5 nm (9.3 km) buffer around the coastal waters

between 31–15 N. lat. and 30–15 N. lat. extending from the coast out 15 nm (27.8 km), and the coastal waters between 30–15 N. lat. to 28–00 N. lat. from the coast out to 5 nm (9.3 km).

(B) Between November 15 and April 15, the following activities are prohibited within the Southeast Right Whale Mitigation Area:

(1) Low-frequency and hull-mounted mid-frequency active sonar (except in §218.84(a)(3)(i)(C)).

(2) High-frequency and non-hull mounted mid-frequency active sonar (except helicopter dipping).

(3) Missile activities (explosive and non-explosive).

(4) Bombing exercises (explosive and non-explosive).

(5) Underwater detonations.

(6) Improved extended echo ranging sonobuoy exercises.

(7) Torpedo exercises (explosive).

(8) Small-, medium-, and large-caliber gunnery exercises.

(C) Between November 15 and April 15, use of the following systems is to be minimized to the maximum extent practicable within the Southeast Right Whale Mitigation Area:

(1) Helicopter dipping using active sonar.

(2) Low-frequency and hull-mounted mid-frequency active sonar used for navigation training.

(3) Low-frequency and hull-mounted mid-frequency active sonar used for object detection exercises.

(D) Prior to transiting or training or testing in the Southeast Right Whale Mitigation Area, ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain the latest whale sightings and other information needed to make informed decisions regarding safe speed and path of intended movement. Submarines shall contact Commander, Submarine Force United States Atlantic Fleet for similar information.

(E) The following specific mitigation measures apply to activities occurring within the Southeast Right Whale Mitigation Area:

(1) When transiting within the Southeast Right Whale Mitigation Area, 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 North Atlantic right whale is sighted by a vessel, when the vessel is within 9 km (5 nm) of a sighting reported within the past 12 hours, or when operating at night or during periods of poor visibility.

(3) Vessels shall avoid head-on approaches to North Atlantic right whales(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 their ability to maneuver.

(4) Vessels shall minimize to the extent practicable north-south transits through the Southeast Right Whale Mitigation Area. If transit in a north-south direction is required during training or testing activities, the Navy shall implement the measures described in § 218.84(a)(3)(i)(E)(I) through (3).

(5) Ship, surfaced subs, and aircraft shall report any North Atlantic right whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the most convenient and fastest means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).

(ii) North Atlantic Right Whale Foraging Habitat off the Northeast United States:

(A) The Northeast Right Whale Mitigation Area consists of two areas: the Great South Channel and Cape Cod Bay. The Great South Channel is defined by the following coordinates: 41–40 N. Lat., 69–45 W. Long.; 41–00 N. Lat., 69–05 W. Long.; 41–38 N. Lat., 68–13 W. Long.; and 42–10 N. Lat., 68–31 W. Long. Cape Cod Bay is defined by the following coordinates: 42–04.8 N. Lat., 70–10 W. Long.; 42–10 N. Lat., 70–15 W. Long.; 42–12 N. Lat., 70–30 W. Long.; 41–46.8 N. Lat., 70–30 W. Long.; and on the south and east by the interior shoreline of Cape Cod.

(B) Year-round, the following activities are prohibited within the Northeast Right Whale Mitigation Area:

(1) Improved extended echo ranging sonobuoy exercises in or within 5.6 km (3 nm) of the mitigation area.

(2) Bombing exercises (explosive and non-explosive).

(3) Underwater detonations.

(4) Torpedo exercises (explosive).

(C) Year-round, use of the following systems is to be minimized to the maximum extent practicable within the Northeast Right Whale Mitigation Area:

(1) Low-frequency and hull-mounted mid-frequency active sonar.

(2) High-frequency and non-hull mounted mid-frequency active sonar, including helicopter dipping.

(D) Prior to transiting or training in the Northeast Right Whale Mitigation Area, ships and submarines shall contact the Northeast Right Whale Sighting Advisory System to obtain the latest whale sightings and other information needed to make informed decisions regarding safe speed and path of intended movement.

(E) The following specific mitigation measures apply to activities occurring within the Northeast Right Whale Mitigation Area:

(1) When transiting within the Northeast Right Whale Mitigation Area, 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 North Atlantic right whale is sighted by a vessel, when the vessel is within 9 km (5 nm) of a sighting reported within the past week, or when operating at night or during periods of poor visibility.

(3) When conducting TORPEXs, the following additional speed restrictions shall be required: during transit, surface vessels and submarines shall maintain a speed of no more than 19 km/hour (10 knots); during torpedo firing exercises, vessel speeds should, where feasible, not exceed 10 knots; when a submarine is used as a target, vessel speeds should, where feasible, not exceed 18 knots; when surface vessels are used as targets, vessels may

exceed 18 knots for a short period of time (e.g., 10–15 minutes).

(4) Vessels shall avoid head-on approaches to North Atlantic right whales(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 their ability to maneuver.

(5) Non-explosive torpedo testing shall be conducted during daylight hours only in Beaufort sea states of 3 or less to increase the probability of marine mammal detection.

(6) Non-explosive torpedo testing activities shall not commence if concentrations of floating vegetation (*Sargassum* or kelp patties) are observed in the vicinity.

(7) Non-explosive torpedo testing activities shall cease if a marine mammal is visually detected within the immediate vicinity of the activity. The tests may recommence when any one of the following conditions are met: the animal is observed exiting the immediate vicinity of the activity; the animal is thought to have exited the immediate vicinity based on a determination of its course and speed and the relative motion between the animal and the source; or the immediate vicinity of the activity has been clear from any additional sightings for a period of 30 minutes.

(iii) North Atlantic Right Whale Mid-Atlantic Migration Corridor:

(A) The Mid-Atlantic Right Whale Mitigation Area consists of the following areas:

(1) Block Island Sound: the area bounded by 40–51–53.7 N. Lat., 70–36–44.9 W. Long.; 41–20–14.1 N. Lat., 70–49–44.1 W. Long.; 41–4–16.7 N. Lat., 71–51–21 W. Long.; 41–35–56.5 N. Lat., 71–38–25.1 W. Long.; then back to first set of coordinates.

(2) New York and New Jersey: within a 37 km (20 nm) radius of the following (as measured seaward from the COLREGS lines) 40–29–42.2 N. Lat., 73–55–57.6 W. Long.

(3) Delaware Bay: within a 37 km (20 nm) radius of the following (as meas-

ured seaward from the COLREGS lines) 38–52–27.4 N. Lat., 75–01–32.1 W. Long.

(4) Chesapeake Bay: within a 37 km (20 nm) radius of the following (as measured seaward from the COLREGS lines) 37–00–36.9 N. Lat., 75–57–50.5 W. Long.

(5) Morehead City, North Carolina: within a 37 km (20 nm) radius of the following (as measured seaward from the COLREGS lines) 34–41–32 N. Lat., 76–40–08.3 W. Long.

(6) Wilmington, North Carolina, through South Carolina, and to Brunswick, Georgia: within a continuous area 37 km (20 nm) from shore and west back to shore bounded by 34–10–30 N. Lat., 77–49–12 W. Long.; 33–56–42 N. Lat., 77–31–30 W. Long.; 33–36–30 N. Lat., 77–47–06 W. Long.; 33–28–24 N. Lat., 78–32–30 W. Long.; 32–59–06 N. Lat., 78–50–18 W. Long.; 31–50 N. Lat., 80–33–12 W. Long.; 31–27 N. Lat., 80–51–36 W. Long.

(B) Between November 1 and April 30, when transiting within the Mid-Atlantic Right Whale Mitigation Area, 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.

(iv) Planning Awareness Areas:

(A) The Navy shall avoid planning major training exercises involving the use of active sonar in the specified planning awareness areas (PAAs—see Figure 5.3–1 in the AFTT FEIS/OEIS) where feasible. Should national security require the conduct of more than four major exercises (C2X, JTFEX, or similar scale event) in these areas (meaning all or a portion of the exercise) per year, or more than one within the Gulf of Mexico areas per year, the Navy shall provide NMFS with prior notification and include the information in any associated after-action or monitoring reports.

(4) Stranding Response Plan:

(i) The Navy shall abide by the current Stranding Response Plan for Major Navy Training Exercises in the Study Area, to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in § 218.71 (b)(1)) occurs during a Major Training Exercise (MTE) in the

AFTT Study Area, the Navy shall implement the procedures described, in paragraphs (a)(4)(i)(A)(I) through (4) of this section.

(1) The Navy shall implement a shutdown (as defined § 218.81(b)(2)) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the AFTT Study Area 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 the 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.

(4) 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 mid-frequency active sonar training activities or explosive detonations, though farther than 14 nautical miles 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 AFTT Study Area Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using mid-frequency active sonar, and marine mammal sightings information associated with training activities occurring within 80 nautical miles (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80-nautical miles (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.

(ii) [Reserved]

§ 218.85 Requirements for monitoring and reporting.

(a) As outlined in the AFTT Study Area Stranding Communication Plan, the Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 218.80 is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 218.81.

(b) The Holder of the LOA must conduct all monitoring and required reporting under the LOA, including abiding by the AFTT Monitoring Plan.

(c) 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 a Navy training or testing activity utilizing mid- or high-frequency active sonar or underwater explosive detonations. The Navy shall provide NMFS with species identification or description of the animal(s), the condition of

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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.

(d) Annual AFTT Monitoring Plan Report—The Navy shall submit an annual report of the AFTT Monitoring Plan on April 1 of each year describing the implementation and results from the previous calendar year. Data collection methods will be standardized across range complexes and study areas to allow for comparison in different geographic locations. Although additional information will be gathered, the protected species observers collecting marine mammal data pursuant to the AFTT Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in §218.85. As an alternative, the Navy may submit a multi-Range Complex annual Monitoring Plan report to fulfill this requirement. Such a report would describe progress of knowledge made with respect to monitoring plan study questions across all Navy ranges associated with the ICMP. Similar study questions shall be treated together so that progress on each topic shall be summarized across all Navy ranges. The report need not include analyses and content that do not provide direct assessment of cumulative progress on the monitoring plan study questions.

(e) Vessel Strike—In the event that a Navy vessel strikes a whale, the Navy shall do the following:

(1) Immediately report to NMFS (pursuant to the established Communication Protocol) the:

- (i) Species identification if known;
- (ii) Location (latitude/longitude) of the animal (or location of the strike if the animal has disappeared);
- (iii) Whether the animal is alive or dead (or unknown); and
- (iv) The time of the strike.

(2) As soon as feasible, the Navy shall report to or provide to NMFS, the:

- (i) Size, length, and description (critical if species is not known) of animal;
- (ii) An estimate of the injury status (e.g., dead, injured but alive, injured

and moving, blood or tissue observed in the water, status unknown, disappeared, etc.);

(iii) Description of the behavior of the whale during event, immediately after the strike, and following the strike (until the report is made or the animal is no longer sighted);

(iv) Vessel class/type and operation status;

(v) Vessel length

(vi) Vessel speed and heading; and

(vii) To the best extent possible, obtain

(3) Within 2 weeks of the strike, provide NMFS:

(i) A detailed description of the specific actions of the vessel in the 30-minute timeframe immediately preceding the strike, during the event, and immediately after the strike (e.g., the speed and changes in speed, the direction and changes in the direction, other maneuvers, sonar use, etc., if not classified); and

(ii) A narrative description of marine mammal sightings during the event and immediately after, and any information as to sightings prior to the strike, if available; and

(iii) Use established Navy shipboard procedures to make a camera available to attempt to capture photographs following a ship strike.

(f) Annual AFTT Exercise and Testing Report—The Navy shall submit “quick-look” reports detailing the status of authorized sound sources within 21 days after the end of the annual authorization cycle. The Navy shall submit detailed reports 3 months after the anniversary of the date of issuance of the LOA. The annual reports shall contain information on Major Training Exercises (MTE), Sinking Exercise (SINKEX) events, and a summary of sound sources used, as described in paragraphs (f)(2)(i)(A) through (C) of this section. The analysis in the reports will be based on the accumulation of data from the current year’s report and data collected from previous reports. These reports shall contain information identified in paragraphs (e)(1) through (5) of this section.

(1) Major Training Exercises/SINKEX—

(i) This section shall contain the reporting requirements for Coordinated

and Strike Group exercises and SINKEK. Coordinated and Strike Group Major Training Exercises:

(A) Sustainment Exercise (SUSTAINEX).

(B) Integrated ASW Course (IAC).

(C) Joint Task Force Exercises (JTFEX).

(D) Composite Training Unit Exercises (COMPTUEX).

(ii) Exercise information for each MTE:

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location (operating area).

(D) Number of items or hours (per the LOA) of each sound source bin (impulsive and non-impulsive) used in the exercise.

(E) Number and types of vessels, aircraft, etc., participating in exercise.

(F) Individual marine mammal sighting info for each sighting for each MTE:

(1) Date/time/location of sighting.

(2) Species (if not possible, indication of whale/dolphin/pinniped).

(3) Number of individuals.

(4) Initial detection sensor.

(5) Indication of specific type of platform the observation was made from (including, for example, what type of surface vessel or testing platform).

(6) Length of time observers maintained visual contact with marine mammal(s).

(7) Sea state.

(8) Visibility.

(9) Sound source in use at the time of sighting.

(10) Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from sound source.

(11) Mitigation implementation—whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was; or whether navigation was changed or delayed.

(12) If source in use is a hull-mounted sonar, relative bearing of animal from ship and estimation of animal's motion relative to ship (opening, closing, parallel).

(13) 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 closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.), and if any calves present.

(G) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(iii) Exercise information for each SINKEK:

(A) List of the vessels and aircraft involved in the SINKEK.

(B) Location (operating area).

(C) Chronological list of events with times, including time of sunrise and sunset, start and stop time of all marine species surveys that occur before, during, and after the SINKEK, and ordinance used.

(D) Visibility and/or weather conditions, wind speed, cloud cover, etc. throughout exercise if it changes.

(E) Aircraft used in the surveys, flight altitude, and flight speed and the area covered by each of the surveys, given in coordinates, map, or square miles.

(F) Passive acoustic monitoring details (number of sonobuoys, detections of biologic activity, etc.).

(G) Individual marine mammal sighting info for each sighting that required mitigation to be implemented:

(1) Date/time/location of sighting.

(2) Species (if not possible, indication of whale/dolphin/pinniped).

(3) Number of individuals.

(4) Initial detection sensor.

(5) Indication of specific type of platform the observation was made from (including, for example what type of surface vessel or platform).

(6) Length of time observers maintained visual contact with marine mammal(s).

(7) Sea state.

(8) Visibility.

(9) Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from the target.

(10) Mitigation implementation—whether the SINKEK was stopped or delayed and length of delay.

(11) 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.), and if any calves present.

(H) List of the ordnance used throughout the SINKEX and net explosive weight (NEW) of each weapon and the combined ordnance NEW.

(2) Summary of Sources Used.

(i) This section shall include the following information summarized from the authorized sound sources used in all training and testing events:

(A) Total annual hours or quantity (per the LOA) of each bin of sonar or other non-impulsive source.

(B) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive bin.

(C) Improved Extended Echo-Ranging System (IEER)/sonobuoy summary, including:

(1) Total expended/detonated rounds (buoys).

(2) Total number of self-scuttled IEER rounds.

(3) Sonar Exercise Notification—The Navy shall submit to NMFS (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 indicating:

(i) Location of the exercise.

(ii) Beginning and end dates of the exercise.

(iii) Type of exercise.

(4) Geographic Information Presentation—The reports shall present an annual (and seasonal, where practical) depiction of training exercises and testing bin usage geographically across the Study Area.

(g) 5-yr Close-out Exercise and Testing Report—This report will be included as part of the 2019 annual exercise or testing report. This report will provide the annual totals for each sound source bin with a comparison to the annual allowance and the 5-year total for each sound source bin with a comparison to the 5-year allowance. Additionally, if there were any changes to the sound source allowance, this re-

port will include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the FEIS and final rule determinations. The report will be submitted April 1 following the expiration of the rule. NMFS will submit comments on the draft close-out report, if any, within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

(h) Ship Shock Trial Report—The reporting requirements will be developed in conjunction with the individual test-specific mitigation plan for each ship shock trial. This will allow both the Navy and NMFS to take into account specific information regarding location, assets, species, and seasonality.

§218.86 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by §216.106) conducting the activity identified in §218.80(c) (the U.S. Navy) must apply for and obtain either an initial LOA in accordance with §218.87 or a renewal under §218.88.

§218.87 Letters of Authorization.

(a) An LOA, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart.

(b) Each LOA will set forth:

(1) Permissible methods of incidental taking;

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

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the LOA 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).

§ 218.88 Renewals and Modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 218.87 for the activity identified in § 218.80(c) will be renewed or modified upon request of 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 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 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 § 216.106 and § 218.87 of this chapter for the activity identified in § 218.80(c) of this chapter may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Navy 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.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Navy'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.

(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 § 218.82(c) 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 J—Taking and Importing Marine Mammals; U.S. Navy's Mariana Islands Training and Testing (MITT)

SOURCE: 80 FR 46163, Aug. 3, 2015, unless otherwise noted.

EFFECTIVE DATE NOTE: At 80 FR 46163, Aug. 3, 2015, subpart J was added, effective from Aug. 3, 2015, through Aug. 3, 2020.

§ 218.90 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 MITT Study Area, which includes the Mariana Islands Range Complex (MIRC) and areas to the north and west. The Study Area includes established ranges, operating areas, warning areas, and special use airspace in the region of the Mariana Islands that are part of the MIRC, its surrounding seas, and a transit corridor to the Hawaii Range Complex. The Study Area also includes Navy

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pierside locations where sonar maintenance and testing may occur.

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

(1) Non-impulsive Sources Used During Training and Testing:

(i) Low-frequency (LF) Source Classes:

(A) LF4—an average of 123 hours per year.

(B) LF5—an average of 11 hours per year.

(C) LF6—an average of 40 hours per year.

(ii) Mid-frequency (MF) Source Classes:

(A) MF1—an average of 1,872 hours per year.

(B) MF2—an average of 625 hours per year.

(C) MF3—an average of 192 hours per year.

(D) MF4—an average of 214 hours per year.

(E) MF5—an average of 2,588 items per year.

(F) MF6—an average of 33 items per year.

(G) MF8—an average of 123 hours per year.

(H) MF9—an average of 47 hours per year.

(I) MF10—an average of 231 hours per year.

(J) MF11—an average of 324 hours per year.

(K) MF12—an average of 656 hours per year.

(iii) High-frequency (HF) and Very High-frequency (VHF) Source Classes:

(A) HF1—an average of 113 hours per year.

(B) HF4—an average of 1,060 hours per year.

(C) HF5—an average of 336 hours per year.

(D) HF6—an average of 1,173 hours per year.

(iv) Anti-Submarine Warfare (ASW) Source Classes:

(A) ASW1—an average of 144 hours per year.

(B) ASW2—an average of 660 items per year.

(C) ASW3—an average of 3,935 hours per year.

(D) ASW4—an average of 32 items per year.

(v) Torpedoes (TORP) Source Classes:

(A) TORP1—an average of 115 items per year.

(B) TORP2—an average of 62 items per year.

(vi) Acoustic Modems (M):

(A) M3—an average of 112 hours per year.

(B) [Reserved]

(vii) Swimmer Detection Sonar (SD):

(A) SD1—an average 2,341 hours per year.

(B) [Reserved]

(2) Impulsive Source Detonations During Training and Testing:

(i) Explosive Classes:

(A) E1 (0.1 to 0.25 lb NEW)—an average of 10,140 detonations per year.

(B) E2 (0.26 to 0.5 lb NEW)—an average of 106 detonations per year.

(C) E3 (>0.5 to 2.5 lb NEW)—an average of 932 detonations per year.

(D) E4 (>2.5 to 5 lb NEW)—an average of 420 detonations per year.

(E) E5 (>5 to 10 lb NEW)—an average of 684 detonations per year.

(F) E6 (>10 to 20 lb NEW)—an average of 76 detonations per year.

(G) E8 (>60 to 100 lb NEW)—an average of 16 detonations per year.

(H) E9 (>100 to 250 lb NEW)—an average of 4 detonations per year.

(I) E10 (>250 to 500 lb NEW)—an average of 12 detonations per year.

(J) E11 (>500 to 650 lb NEW)—an average of 6 detonations per year.

(K) E12 (>650 to 2,000 lb NEW)—an average of 184 detonations per year.

(ii) [Reserved]

§218.91 Effective dates and definitions.

(a) Regulations in this subpart are effective August 3, 2015 through August 3, 2020.

(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 Exercise (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 paragraph (b)(1)(ii) of this section) 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 mammal species of concern: Beaked whale of any species, *Kogia* spp., Risso's dolphin, melon-headed whale, pilot 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.

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

§ 218.92 Permissible methods of taking.

(a) Under a Letter of Authorization (LOA) issued pursuant to § 218.97, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.90, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate LOA.

(b) The activities identified in § 218.90(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 § 218.90(c) is limited to the following species, by the identified method of take:

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

(i) Mysticetes:

(A) Blue whale (*Balaenoptera musculus*)—140 (an average of 28 annually)

(B) Bryde's whale (*Balaenoptera edeni*)—1,990 (an average of 398 annually)

(C) Fin whale (*Balaenoptera physalus*)—140 (an average of 28 annually)

(D) Humpback whale (*Megaptera novaeangliae*)—4,300 (an average of 860 annually)

(E) Minke whale (*Balaenoptera acutorostrata*)—505 (an average of 101 annually)

(F) Sei whale (*Balaenoptera borealis*)—1,595 (an average of 319 annually)

(G) Omura's whale (*Balaenoptera omurai*)—515 (an average of 103 annually)

(ii) Odontocetes:

(A) Blainville's beaked whale (*Mesoplodon densirostris*)—22,130 (an average of 4,426 annually)

(B) Bottlenose dolphin (*Tursiops truncatus*)—3,705 (an average of 741 annually)

(C) Cuvier's beaked whale (*Ziphius cavirostris*)—112,705 (an average of 22,541 annually)

(D) Dwarf sperm whale (*Kogia sima*)—71,085 (an average of 14,217 annually)

(E) False killer whale (*Pseudorca crassidens*)—2,775 (an average of 555 annually)

(F) Fraser's dolphin (*Lagenodelphis hosei*)—12,860 (an average of 2,572 annually)

(G) Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*)—19,485 (an average of 3,897 annually)

(H) Killer whale (*Orcinus orca*)—420 (an average of 84 annually)

(I) Longman's beaked whale (*Indopacetus pacificus*)—9,620 (an average of 1,924 annually)

(J) Melon-headed whale (*Peponocephala electra*)—10,425 (an average of 2,085 annually)

(K) Pantropical spotted dolphin (*Stenella attenuata*)—64,055 (an average of 12,811 annually)

(L) Pygmy killer whale (*Feresa attenuata*)—525 (an average of 105 annually)

(M) Pygmy sperm whale (*Kogia breviceps*)—27,895 (an average of 5,579 annually)

(N) Risso's dolphin (*Grampus griseus*)—2,525 (an average of 505 annually)

(O) Rough-toothed dolphin (*Steno bredanensis*)—9,095 (an average of 1,819 annually)

(P) Short-finned pilot whale (*Globicephala macrorhynchus*)—9,075 (an average of 1,815 annually)

(Q) Sperm whale (*Physeter macrocephalus*)—2,530 (an average of 506 annually)

(R) Spinner dolphin (*Stenella longirostris*)—2,945 (an average of 589 annually)

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(S) Striped dolphin (*Stenella coerulealba*)—16,490 (an average of 3,298 annually)

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

(i) Odontocetes:

(A) Dwarf sperm whale (*Kogia sima*)—205 (an average of 41 annually)

(B) Pygmy sperm whale (*Kogia breviceps*)—75 (an average of 15 annually)

(ii) [Reserved]

§218.93 Prohibitions.

Notwithstanding takings contemplated in §218.92 and authorized by an LOA issued under §§216.106 and 218.97 of this chapter, no person in connection with the activities described in §218.90 may:

(a) Take any marine mammal not specified in §218.92(c);

(b) Take any marine mammal specified in §218.92(c) other than by incidental take as specified in §218.92(c);

(c) Take a marine mammal specified in §218.92(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 an LOA issued under §§216.106 and 218.97.

§218.94 Mitigation.

(a) When conducting training and testing activities, as identified in §218.90, the mitigation measures contained in the LOA issued under §§216.106 and 218.97 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) *Lookouts*. The following are protective measures concerning the use of lookouts.

(i) Lookouts positioned on surface ships will be dedicated solely to diligent observation of the air and surface of the water. Their observation objectives will include, but are not limited to, detecting the presence of biological resources and recreational or fishing boats, observing mitigation zones, and monitoring for vessel and personnel safety concerns.

(ii) Lookouts positioned in aircraft or on boats will, to the maximum extent

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practicable and consistent with aircraft and boat safety and training and testing requirements, comply with the observation objectives described in paragraph (a)(1)(i) of this section.

(iii) Lookout measures for non-impulse sound:

(A) With the exception of vessels less than 65 ft (20 m) in length and ships that are minimally manned, ships using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea will have two lookouts at the forward position. For the purposes of this rule, low-frequency active sonar does not include surface towed array surveillance system low-frequency active sonar.

(B) While using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea, ships less than 65 ft (20 m) in length and ships that are minimally manned will have one lookout at the forward position of the vessel due to space and manning restrictions.

(C) Ships conducting active sonar activities while moored or at anchor (including pierside testing or maintenance) will maintain one lookout.

(D) Surface ships or aircraft conducting high-frequency or non-hull mounted mid-frequency active sonar activities associated with anti-submarine warfare and mine warfare activities at sea will have one lookout.

(iv) Lookout measures for explosives and impulse sound:

(A) Aircraft conducting IEER sonobuoy activities and explosive sonobuoy exercises will have one lookout.

(B) Surface vessels conducting anti-swimmer grenade activities will have one lookout.

(C) During general mine counter-measure and neutralization activities using up to a 20-lb net explosive weight detonation (bin E6 and below), vessels greater than 200 ft (61 m) will have two lookouts, while vessels less than 200 ft (61 m) or aircraft will have one lookout.

(D) Mine neutralization activities involving positive control diver-placed charges using up to a 20-lb net explosive weight detonation will have two lookouts. The divers placing the

charges on mines will report all marine mammal sightings to their supporting small boat or Range Safety Officer.

(E) When mine neutralization activities using diver-placed charges with up to a 20-lb net explosive weight detonation are conducted with a time-delay firing device, four lookouts will be used. Two lookouts will be positioned in each of two small rigid hull inflatable boats. When aircraft are used, the pilot or member of the aircrew will serve as an additional lookout. The divers placing the charges on mines will report all marine mammal sightings to their supporting small boat or Range Safety Officer.

(F) Surface vessels or aircraft conducting small- or medium-caliber gunnery exercises against a surface target will have one lookout.

(G) Aircraft conducting missile exercises (including rockets) against surface targets will have one lookout.

(H) Aircraft conducting bombing exercises will have one lookout.

(I) During explosive torpedo testing, one lookout will be used and positioned in an aircraft.

(J) During sinking exercises, two lookouts will be used. One lookout will be positioned in an aircraft and one on a surface vessel.

(K) Surface vessels conducting explosive and non-explosive large-caliber gunnery exercises will have one lookout.

(v) Lookout measures for physical strike and disturbance:

(A) While underway, surface ships will have at least one lookout.

(B) During activities using towed in-water devices, that are towed from a manned platform, one lookout will be used.

(C) Non-explosive small-, medium-, and large-caliber gunnery exercises using a surface target will have one lookout.

(D) Non-explosive bombing exercises will have one lookout.

(2) *Mitigation zones.* The following are protective measures concerning the implementation of mitigation zones.

(i) Mitigation zones will be measured as the radius from a source and represent a distance to be monitored.

(ii) Visual detections of marine mammals within a mitigation zone will be

communicated immediately to a watch station for information dissemination and appropriate action.

(iii) Mitigation zones for non-impulse sound:

(A) When marine mammals are visually detected, the Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmission levels are limited to at least 6 dB below normal operating levels (for sources that can be powered down during the activity) if any visually detected marine mammals are within 1,000 yd (914 m) of the source (*i.e.*, the bow).

(B) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions are limited to at least 10 dB below the equipment's normal operating level (for sources that can be powered down during the activity) if any detected marine mammals are sighted within 500 yd (457 m) of the source.

(C) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions (for sources that can be turned off during the activity) are ceased if any visually detected marine mammals are within 200 yd (183 m) of the sonar dome. Active transmission will recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source; the mitigation zone has been clear from any additional sightings for a period of 30 minutes; the ship has transited more than 2,000 yd. (1.8 kilometers [km]) beyond the location of the last sighting; or the ship concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave (and there are no other marine mammal sightings within the mitigation zone).

(D) If the source is not able to be powered down during the activity (*e.g.*, low-frequency sources within bins LF4 and LF5), mitigation will involve ceasing active transmission if a marine mammal is sighted within 200 yd. (183 m). Active transmission will recommence if any one of the following conditions is met: The animal is observed

exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source; the mitigation zone has been clear from any additional sightings for a period of 30 minutes; or the ship has transited more than 400 yd. (366 m) beyond the location of the last sighting.

(E) With the exception of activities involving platforms operating at high altitudes, when marine mammals are visually detected, the Navy shall ensure that high-frequency and non-hull-mounted mid-frequency active sonar transmission (for sources that can be turned off during the activity) is ceased if any visually detected marine mammals are within 200 yd (183 m) of the source. Active transmission will recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for an aircraft-deployed source, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a vessel-deployed source, the vessel or aircraft has repositioned itself more than 400 yd. (366 m) away from the location of the last sighting, or the vessel concludes that dolphins are deliberately closing in to ride the vessel's bow wave (and there are no other marine mammal sightings within the mitigation zone).

(F) Prior to start up or restart of active sonar, operators shall check that the mitigation zone radius around the sound source is clear of marine mammals.

(G) Generally, the Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(iv) Mitigation zones for explosive and impulse sound:

(A)(I) A mitigation zone with a radius of 600 yd (549 m) shall be established for IEER sonobuoys (bin E4). Mitigation would include pre-exercise aerial observation and passive acoustic

monitoring, which would begin 30 minutes before the first source/receiver pair detonation and continue throughout the duration of the exercise. The pre-exercise aerial observation would include the time it takes to deploy the sonobuoy pattern (deployment is conducted by aircraft dropping sonobuoys in the water). Explosive detonations would cease if a marine mammal is sighted within the mitigation zone. Detonations would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(2) Passive acoustic monitoring would be conducted with Navy assets, such as sonobuoys, already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to lookouts posted in aircraft and on vessels in order to increase vigilance of their visual observation.

(B)(I) A mitigation zone with a radius of 350 yd (320 m) shall be established for explosive sonobuoys using 0.5–2.5 lb net explosive weight (bin E3). Mitigation would include pre-exercise aerial monitoring during deployment of the field of sonobuoy pairs (typically up to 20 minutes) and continuing throughout the duration of the exercise within a mitigation zone of 350 yd (320 m) around an explosive sonobuoy. Explosive detonations would cease if a marine mammal is sighted within the mitigation zone. Detonations would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between

the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

(2) Passive acoustic monitoring would also be conducted with Navy assets, such as sonobuoys, already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to lookouts posted in aircraft in order to increase vigilance of their visual observation.

(C) A mitigation zone with a radius of 200 yd (183 m) shall be established for anti-swimmer grenades (bin E2). Mitigation would include visual observation from a small boat immediately before and during the exercise within a mitigation zone of 200 yd (183 m) around an anti-swimmer grenade. Ex-

plosive detonations would cease if a marine mammal is sighted within the mitigation zone. Detonations would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 30 minutes, or the activity has been repositioned more than 400 yd (366 m) away from the location of the last sighting.

(D) A mitigation zone ranging from 350 yd (320 m) to 800 yd (732 m), dependent on charge size and if the activity involves the use of diver-placed charges, shall be established for mine countermeasure and neutralization activities using positive control firing devices. Mitigation zone distances are specified for charge size in the following table.

Charge size net explosive weight (bins)	General mine countermeasure and neutralization activities using positive control firing devices ¹				Mine countermeasure and neutralization activities using diver placed charges under positive control ²			
	Predicted average range to TTS	Predicted average range to PTS	Predicted maximum range to PTS	Recommended mitigation zone	Predicted average range to TTS	Predicted average range to PTS	Predicted maximum range to PTS	Recommended mitigation zone
2.5–5 lb. (1.2–2.3 kg) (E4)	434 yd (474 m)	197 yd (180 m)	563 yd (515 m)	600 yd (549 m)	545 yd (498 m)	169 yd (155 m)	301 yd (275 m)	350 yd. (320 m).
5–10 lb. (2.7–4.5 kg) (E5)	525 yd (480 m)	204 yd (187 m)	649 yd (593 m)	800 yd (732 m)	587 yd (537 m)	203 yd (185 m)	464 yd (424 m)	500 yd. (457 m).
>10–20 lb. (5–9.1 kg) (E6)	766 yd (700 m)	288 yd (263 m)	648 yd (593 m)	800 yd (732 m)	647 yd (592 m)	232 yd (212 m)	469 yd (429 m)	500 yd. (457 m).

PTS: permanent threshold shift; TTS: temporary threshold shift.

¹ These mitigation zones are applicable to all mine countermeasure and neutralization activities conducted in all locations specified in Chapter 2 of the Navy's LOA application.

² These mitigation zones are only applicable to mine countermeasure and neutralization activities involving the use of diver placed charges. These activities are conducted in shallow-water and the mitigation zones are based only on the functional hearing groups with species that occur in these areas (mid-frequency cetaceans and sea turtles).

(1) During general mine countermeasure and neutralization activities, mitigation would include visual observation from one or more small boats or aircraft beginning 30 minutes before, during, and 30 minutes after (when helicopters are not involved in the activity) or 10 minutes before, during, and 10 minutes after (when helicopters are involved in the activity) the completion of the exercise within the mitigation zones around the detonation site.

(2) For activities involving diver-placed charges, visual observation would be conducted by either two small boats, or one small boat in combination with one helicopter. Boats would position themselves near the mid-point of the mitigation zone radius (but always outside the detonation plume radius and human safety zone) and travel in a circular pattern around the detonation location. When using two boats, each boat would be positioned on opposite sides of the detonation location,

separated by 180 degrees. If used, helicopters would travel in a circular pattern around the detonation location.

(3) For both general and diver-placed positive control mine countermeasure and neutralization activities, explosive detonations will cease if a marine mammal is sighted within the mitigation zone. Detonations will recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 30 minutes, when helicopters are not involved in the activity or the mitigation zone has been clear from any additional sightings for a period of 10 minutes when helicopters are involved in the activity.

(E) A mitigation zone with a radius of 1,000 yd (914 m) shall be established for mine countermeasure and neutralization activities using diver-placed time-delay firing devices (bin E6). Mine neutralization activities involving diver-placed charges would not include time-delay longer than 10 minutes. Mitigation would include visual observation from small boats or aircraft commencing 30 minutes before, during, and until 30 minutes after the completion of the exercise within a mitigation zone of 1,000 yd (914 m) around the detonation site. During activities using time-delay firing devices involving up to a 20 lb net explosive weight charge, visual observation will take place using two small boats. Fuse initiation would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(I) Survey boats would position themselves near the mid-point of the mitigation zone radius (but always outside the detonation plume radius/human safety zone) and travel in a circular pattern around the detonation loca-

tion. One lookout from each boat would look inward toward the detonation site and the other lookout would look outward away from the detonation site. When using two small boats, each boat would be positioned on opposite sides of the detonation location, separated by 180 degrees. If available for use, helicopters would travel in a circular pattern around the detonation location.

(2) [Reserved]

(F) A mitigation zone with a radius of 200 yd (183 m) shall be established for small- and medium-caliber gunnery exercises with a surface target (bin E2). Mitigation would include visual observation from a vessel or aircraft immediately before and during the exercise within a mitigation zone of 200 yd (183 m) around the intended impact location. Vessels would observe the mitigation zone from the firing position. When aircraft are firing, the aircrew would maintain visual watch of the mitigation zone during the activity. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing vessel, or the intended target location has been repositioned more than 400 yd (366 m) away from the location of the last sighting.

(G) A mitigation zone with a radius of 600 yd (549 m) shall be established for large-caliber gunnery exercises with a surface target (bin E5). Mitigation would include visual observation from a ship immediately before and during the exercise within a mitigation zone of 600 yd (549 m) around the intended impact location. Ships would observe the mitigation zone from the firing position. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is

met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(H) A mitigation zone with a radius of 900 yd (823 m) around the deployed target shall be established for missile exercises involving aircraft firing up to 250 lb net explosive weight using and a surface target (bin E9). When aircraft are firing, mitigation would include visual observation by the aircrew or supporting aircraft prior to commencement of the activity within a mitigation zone of 900 yd (823 m) around the deployed target. Firing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

(I) A mitigation zone with a radius of 2,000 yd (1.8 km) shall be established for missile exercises involving aircraft firing >250 to 500 lb net explosive weight using and a surface target (bin E10). When aircraft are firing, mitigation would include visual observation by the aircrew prior to commencement of the activity within a mitigation zone of 2,000 yd (1.8 km) around the intended impact location. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

(J) A mitigation zone with a radius of 2,500 yd (2.3 km) shall be established for bombing exercises (bin E12). Mitigation

would include visual observation from the aircraft immediately before the exercise and during target approach within a mitigation zone of 2,500 yd (2.3 km) around the intended impact location. Bombing would cease if a marine mammal is sighted within the mitigation zone. Bombing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

(K)(I) A mitigation zone with a radius of 2,100 yd (1.9 km) shall be established for torpedo (explosive) testing (except for aircraft operating at high altitudes) (bin E11). Mitigation would include visual observation by aircraft immediately before, during, and after the exercise within a mitigation zone of 2,100 yd (1.9 km) around the intended impact location. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

(2) In addition to visual observation, passive acoustic monitoring would be conducted with Navy assets, such as passive ships sonar systems or sonobuoys, already participating in the activity. Passive acoustic observation would be accomplished through the use of remote acoustic sensors or expendable sonobuoys, or via passive acoustic sensors on submarines when they participate in the proposed action. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive

acoustic detections would be reported to the lookout posted in the aircraft in order to increase vigilance of the visual observation and to the person in control of the activity for their consideration in determining when the mitigation zone is free of visible marine mammals.

(L) A mitigation zone with a radius of 2.5 nautical miles around the target ship hull shall be established for sinking exercises (bin E12). Mitigation would include aerial observation beginning 90 minutes before the first firing, visual observations from vessels throughout the duration of the exercise, and both aerial and vessel observation immediately after any planned or unplanned breaks in weapons firing of longer than 2 hours. Prior to conducting the exercise, the Navy would review remotely sensed sea surface temperature and sea surface height maps to aid in deciding where to release the target ship hull.

(I) The Navy would also monitor using passive acoustics during the exercise. Passive acoustic monitoring would be conducted with Navy assets, such as passive ships sonar systems or sonobuoys, already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to lookouts posted in aircraft and on vessels in order to increase vigilance of their visual observation. Lookouts will also increase observation vigilance before the use of torpedoes or unguided ordnance with a net explosive weight of 500 lb or greater, or if the Beaufort sea state is a 4 or above.

(2) The exercise would cease if a marine mammal is sighted within the mitigation zone. The exercise would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any ad-

ditional sightings for a period of 30 minutes. Upon sinking the vessel, the Navy would conduct post-exercise visual observation of the mitigation zone for 2 hours (or until sunset, whichever comes first).

(M) A mitigation zone with a radius of 70 yd (64 m) within 30 degrees on either side of the gun target line on the firing side of the vessel for explosive and non-explosive large-caliber gunnery exercises conducted from a ship. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 30 minutes, or the vessel has repositioned itself more than 140 yd (128 m) away from the location of the last sighting.

(v) Mitigation zones for vessels and in-water devices:

(A) A mitigation zone of 500 yd (457 m) for observed whales and 200 yd (183 m) for all other marine mammals (except bow riding dolphins) shall be established for all vessel movement, providing it is safe to do so.

(B) A mitigation zone of 250 yd (229 m) shall be established for all towed in-water devices that are towed from a manned platform, providing it is safe to do so.

(vi) Mitigation zones for non-explosive practice munitions:

(A) A mitigation zone of 200 yd (183 m) shall be established for non-explosive small-, medium-, and large-caliber gunnery exercises using a surface target. Mitigation would include visual observation immediately before and during the exercise within a mitigation zone of 200 m around the intended impact location. Firing would cease if a marine mammal is visually detected within the mitigation zone. Firing would recommence if any one of the following conditions are met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its

course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing vessel, or the intended target location has been repositioned more than 400 yd (366 m) away from the location of the last sighting and the animal's estimated course direction.

(B) A mitigation zone of 1,000 yd (914 m) shall be established for non-explosive bombing exercises. Mitigation would include visual observation from the aircraft immediately before the exercise and during target approach within a mitigation zone of 1000 yd (914 m) around the intended impact location. Bombing would cease if a marine mammal is visually detected within the mitigation zone. Bombing would recommence if any one of the following conditions are met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

(3) Stranding Response Plan:

(i) The Navy shall abide by the letter of the "Stranding Response Plan for Major Navy Training Exercises in the MITT Study Area," to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in §218.91) occurs during a Major Training Exercise (MTE) in the MITT Study Area, the Navy shall implement the procedures described below.

(1) The Navy shall implement a shutdown (as defined §218.91) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the MITT Study Area 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 the 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.

(4) 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 mid-frequency active sonar training activities or explosive detonations, though farther than 14 nautical miles 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.

(5) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the MITT Study Area Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using mid-frequency active sonar, and marine mammal sightings information associated with training activities occurring

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within 80 nautical miles (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80-nautical miles (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.

(b) [Reserved]

§218.95 Requirements for monitoring and reporting.

(a) As outlined in the MITT Study Area Stranding Communication Plan, the Holder of the Authorization must notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in §218.90 is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in §218.91.

(b) The Holder of the LOA must conduct all monitoring and required reporting under the LOA, including abiding by the MITT Monitoring Project Description.

(c) *General notification of injured or dead marine mammals.* Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security considerations allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, an Navy training or testing activity utilizing mid- or high-frequency active sonar, 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.

(d) *Vessel strike.* In the event that a Navy vessel strikes a whale, the Navy shall do the following:

(1) Immediately report to NMFS (pursuant to the established Communication Protocol) the:

(i) Species identification if known;

(ii) Location (latitude/longitude) of the animal (or location of the strike if the animal has disappeared);

(iii) Whether the animal is alive or dead (or unknown); and

(iv) The time of the strike.

(2) As soon as feasible, the Navy shall report to or provide to NMFS, the:

(i) Size, length, and description (critical if species is not known) of animal;

(ii) An estimate of the injury status (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.);

(iii) Description of the behavior of the whale during event, immediately after the strike, and following the strike (until the report is made or the animal is no longer sighted);

(iv) Vessel class/type and operation status;

(v) Vessel length

(vi) Vessel speed and heading; and

(vii) To the best extent possible, obtain

(3) Within 2 weeks of the strike, provide NMFS:

(i) A detailed description of the specific actions of the vessel in the 30-minute timeframe immediately preceding the strike, during the event, and immediately after the strike (*e.g.*, the speed and changes in speed, the direction and changes in the direction, other maneuvers, sonar use, etc., if not classified); and

(ii) A narrative description of marine mammal sightings during the event and immediately after, and any information as to sightings prior to the strike, if available; and

(iii) Use established Navy shipboard procedures to make a camera available to attempt to capture photographs following a ship strike.

(e) *Annual MITT monitoring program report.* (1) The Navy shall submit an annual report describing the implementation and results of the MITT Monitoring Program, described in §218.95. Data standards will be consistent to the extent appropriate across range complexes and study areas to allow for comparison in different geographic locations. Although additional information will be gathered, the protected species observers collecting marine mammal data pursuant to the MITT

Monitoring Program shall, at a minimum, provide the same marine mammal observation data required in this section.

(2) As an alternative, the Navy may submit a multi-range complex annual monitoring plan report to fulfill this requirement. Such a report would describe progress of knowledge made with respect to monitoring plan study questions across multiple Navy ranges associated with the ICMP. Similar study questions shall be treated together so that progress on each topic shall be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions. The report shall be submitted either 90 days after the calendar year, or 90 days after the conclusion of the monitoring year date to be determined by the Adaptive Management process.

(f) *Sonar exercise notification.* The Navy shall submit to NMFS (specific contact information to be provided in the LOA) either an electronic (preferably) or verbal report within 15 calendar days after the completion of any major exercise indicating:

(1) Location of the exercise.
(2) Beginning and end dates of the exercise.

(3) Type of exercise.

(g) *Annual MITT exercise and testing report.* The Navy shall submit preliminary reports detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of the LOA. The Navy shall submit a detailed report 3 months after the anniversary of the date of issuance of the LOA. The detailed annual report shall contain information on Major Training Exercises (MTE), Sinking Exercise (SINKEX) events, and a summary of sound sources used, as described below. The analysis in the detailed report will be based on the accumulation of data from the current year's report and data collected from previous reports. The detailed report shall contain information identified in § 218.95(e)(1) and (2).

(1) Major Training Exercises/SINKEX:

(i) This section shall contain the reporting requirements for Coordinated

and Strike Group exercises and SINKEX. Coordinated and Strike Group Major Training Exercises include:

(A) Joint Multi-Strike Group Exercise (Valiant Shield).

(B) Joint Expeditionary Exercise

(ii) Exercise information for each MTE:

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location (operating area).

(D) Number of items or hours (per the LOA) of each sound source bin (impulsive and non-impulsive) used in the exercise.

(E) Number and types of vessels, aircraft, etc., participating in exercise.

(F) Individual marine mammal sighting info for each sighting during each MTE:

(1) Date/time/location of sighting.

(2) Species (if not possible, indication of whale/dolphin).

(3) Number of individuals.

(4) Initial detection sensor.

(5) Indication of specific type of platform the observation was made from (including, for example, what type of surface vessel or testing platform).

(6) Length of time observers maintained visual contact with marine mammal(s).

(7) Sea state.

(8) Visibility.

(9) Sound source in use at the time of sighting.

(10) Indication of whether animal is <200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or >2,000 yd from sound source.

(11) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was; or whether navigation was changed or delayed.

(12) If source in use is a hull-mounted sonar, relative bearing of animal from ship, and estimation of animal's motion relative to ship (opening, closing, parallel).

(13) 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.) and if any calves present.

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(iv) Exercise information for each SINKEX:

(A) List of the vessels and aircraft involved in the SINKEX.

(B) Location (operating area).

(C) Chronological list of events with times, including time of sunrise and sunset, start and stop time of all marine species surveys that occur before, during, and after the SINKEX, and ordnance used.

(D) Visibility and/or weather conditions, wind speed, cloud cover, etc. throughout exercise if it changes.

(E) Aircraft used in the surveys, flight altitude, and flight speed and the area covered by each of the surveys, given in coordinates, map, or square miles.

(F) Passive acoustic monitoring details (number of sonobuoys, area, detections of biologic activity, etc.).

(G) Individual marine mammal sighting info for each sighting that required mitigation to be implemented:

(1) Date/time/location of sighting.

(2) Species (if not possible, indication of whale/dolphin).

(3) Number of individuals.

(4) Initial detection sensor.

(5) Indication of specific type of platform the observation was made from (including, for example, what type of surface vessel or platform).

(6) Length of time observers maintained visual contact with marine mammal(s).

(7) Sea state.

(8) Visibility.

(9) Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from the target.

(10) Mitigation implementation—Whether the SINKEX was stopped or delayed and length of delay.

(11) 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.), and if any calves present.

(H) List of the ordnance used throughout the SINKEX and net explosive weight (NEW) of each weapon and the combined NEW.

(2) *Summary of sources used.* (i) This section shall include the following information summarized from the authorized sound sources used in all training and testing events:

(A) Total annual or quantity (per the LOA) of each bin of sonar or other non-impulsive source;

(B) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive bin; and

(C) Improved Extended Echo-Ranging System (IEER)/sonobuoy summary, including:

(1) Total expended/detonated rounds (buoys).

(2) Total number of self-scuttled IEER rounds.

(3) *Geographic information presentation.* The reports shall present an annual (and seasonal, where practical) depiction of training exercises and testing bin usage geographically across the Study Area.

(h) *Five-year close-out exercise and testing report.*—This report will be included as part of the 2020 annual exercise or testing report. This report will provide the annual totals for each sound source bin with a comparison to the annual allowance and the 5-year total for each sound source bin with a comparison to the 5-year allowance. Additionally, if there were any changes to the sound source allowance, this report will include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the FEIS and final rule determinations. The report will be submitted 3 months after the expiration of the rule. NMFS will submit comments on the draft close-out report, if any, within 3 months of receipt. The report will be considered final after the Navy has addressed

NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

§ 218.96 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by § 216.106 of this chapter) conducting the activity identified in § 218.90(c) (the U.S. Navy) must apply for and obtain either an initial LOA in accordance with § 218.97 or a renewal under § 218.98.

§ 218.97 Letters of Authorization.

(a) An LOA, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart.

(b) The LOA will set forth:

(1) Permissible methods and extent 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 of the LOA 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).

§ 218.98 Renewals and modifications of Letters of Authorization.

(a) A Letter of Authorization issued under §§ 216.106 and 218.97 of this chapter for the activity identified in § 218.90(c) will be renewed or modified upon request of the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are within the scope of those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision 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 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) An LOA issued under §§ 216.106 and 218.97 of this chapter for the activity identified in § 218.94 of this chapter may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augmenting, changing, or reducing) the existing mitigation, monitoring, or reporting 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 the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, and reporting measures in an LOA:

(A) Results from Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOA.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS would 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 § 218.92(c), an LOA may be modified without prior notification and

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an opportunity for public comment. Notification would be published in the FEDERAL REGISTER within 30 days of the action.

Subparts J–K [Reserved]

Subpart L—Taking and Importing Marine Mammals; U.S. Navy’s Mariana Islands Training Range Complex (MIRC)

SOURCE: 75 FR 45547, Aug. 3, 2010, unless otherwise noted.

EFFECTIVE DATE NOTE: At 75 FR 45547, Aug. 3, 2010, subpart L was added, effective Aug. 3, 2010, through Aug. 3, 2015.

§ 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°02’24.8094” N. lat., 140°10’13.8642” E. long.; 20°3’27.5538” N. lat., 149°17’41.0388” E. long.; 7°0’30.0702” 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:

(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 10865 hours over the course of 5 years (an average of 2173 hours per year);

(ii) AN/SQS-56 (hull-mounted active sonar)—up to 705 hours over the course of 5 years (an average of 141 hours per year);

(iii) AN/SSQ-62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 8270 sonobuoys over the course of 5 years (an average of 1654 sonobuoys per year);

(iv) AN/AQS-22 (helicopter dipping sonar)—up to 2,960 dips over the course of 5 years (an average of 592 dips per year);

(v) AN/BQQ-10 (submarine hull-mounted sonar)—up to 60 hours over the course of 5 years (an average of 12 hours per year);

(vi) MK-48, MK-46, or MK-54 (torpedoes)—up to 200 torpedoes over the course of 5 years (an average of 40 torpedoes per year);

(vii) AN/SSQ-110 (IEER)—up to 530 buoys deployed over the course of 5 years (an average of 106 per year);

(viii) AN/SSQ-125 (AEER)—up to 530 buoys deployed over the course of 5 years (an average of 106 per year);

(ix) Range Finders—up to 1,400 hours over the course of 5 years (an average of 280 hours per year); and

(x) PUTR Transponder—up to 1,400 hours over the course of 5 years (an average of 280 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 (Net Explosive Weight (NEW)):

(A) 5” Naval Gunfire (9.5 lbs NEW);

(B) 76 mm rounds (1.6 lbs NEW);

(C) Maverick (78.5 lbs NEW);

(D) Harpoon (448 lbs NEW);

(E) MK-82 (238 lbs NEW);

(F) MK-83 (574 lbs NEW);

(G) MK-84 (945 lbs NEW);

(H) MK-48 (851 lbs NEW);

(I) Demolition Charges (10 lbs NEW);

(J) AN/SSQ-110A (IEER explosive sonobuoy—5 lbs NEW);

(K) Hellfire (16.5 lbs NEW);

(L) GBU 38/32/31.

(ii) Training Events:

(A) Gunnery Exercises (S–S GUNEX)—up to 60 exercises over the course of 5 years (an average of 12 per year);

(B) Bombing Exercises (BOMBEX)—up to 20 exercises over the course of 5 years (an average of 4 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 530 deployments over the course of 5 years (an average of 106 per year);

(E) Demolitions—up to 250 over the course of 5 years (an average of 50 per year); and

(F) Missile exercises (A–S MISSILEX)—up to 10 exercises over the course of 5 years (an average of 2 per year).

(d) The taking of marine mammals may also be authorized in an LOA for the activities and sources listed in §218.100(c) should the amounts (*i.e.*, hours, dips, number of exercises) vary from those estimated in §218.100(c), provided that the variation does not result in exceeding the amount of take indicated in §218.102.

[75 FR 45547, Aug. 3, 2010, as amended at 77 FR 4924, Feb. 1, 2012]

§218.101 Effective dates.

Amended regulations are effective February 1, 2012, through August 3, 2015.

[77 FR 4924, Feb. 1, 2012]

§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 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 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);

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(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*)—1,030 (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*)—4,715 (an average of 943 annually);

(N) Risso's dolphin (*Grampus griseus*)—33,865 (an average of 6,773 annually);

(O) Bottlenose dolphin (*Tursiops truncatus*)—855 (an average of 171 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) Spinner dolphin (*Stenella longirostris*)—10,720 (an average of 2,144 annually); and

(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

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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);

(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);

(c) Take a marine mammal specified in §218.102(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 218.107 of this chapter.

§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" (20 × 110) 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 yds (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 (457 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 look-outs.

(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 shall survey for marine mammals. Ordnance shall not be targeted to impact within 1,000 yds (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. 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 or 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 (457 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.

(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 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.

(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

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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 inves-

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tigative 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 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 (ex., 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;
- (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 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 (*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 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:

(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;

(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.

(h) *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).

[75 FR 45547, Aug. 3, 2010, as amended at 77 FR 4924, Feb. 1, 2012]

§ 218.108 Renewal of Letters of Authorization and adaptive management.

(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 timeframes 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

§ 218.109

§ 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

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not anticipated by these regulations or subsequent Letters of Authorization.

[75 FR 45547, Aug. 3, 2010, as amended at 77 FR 4924, Feb. 1, 2012]

§ 218.109 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 218.107 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);

(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).

[75 FR 45547, Aug. 3, 2010, as amended at 77 FR 4924, Feb. 1, 2012]

§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

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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 identified 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) Mesoplodont beaked whales—75 (an average of 15 annually);

(E) Cuvier’s beaked whales (*Ziphius cavirostris*)—70 (an average of 14 annually);

(F) Baird’s beaked whales (*Berardius bairdii*)—65 (an average of 13 annually);

(G) Short-finned pilot whale (*Globicephala macrorhynchus*)—10 (an average of 2 annually);

(H) Striped dolphin (*Stenella coeruleoalba*)—200 (an average of 40 annually);

(I) Short-beaked common dolphin (*Globicephala macrorhynchus*)—6280 (an average of 1256 annually);

(J) Risso’s dolphin (*Grampus griseus*)—500 (an average of 100 annually);

(K) Northern right whale dolphin (*Lissodelphis borealis*)—3705 (an average of 741 annually);

(L) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)—2855 (an average of 571 annually);

(M) Dall’s porpoise (*Phocoenoides dalli*)—23760 (an average of 4752 annually); and

(N) Harbor Porpoise (*Phocoena phocoena*)—596370 (an average of 119274 annually).

(ii) Pinnipeds:

(A) Northern elephant seal (*Mirounga angustirostris*)—1890 (an average of 378 annually);

(B) Pacific harbor seal (*Phoca vitulina*)—2930 (an average of 586 annually);

(C) California sea lion (*Zalophus californianus*)—1430 (an average of 286 annually);

(D) Northern fur seal (*Callorhinus ursinus*)—6825 (an average of 1365 annually); and

(E) Steller sea lion (*Eumetopias jubatus*)—600 (an average of 120 annually).

(5) Level A Harassment:

(i) Fin whale—5 (an average of 1 annually);

(ii) Sperm whale—5 (an average of 1 annually);

(iii) Dall's Porpoise—15 (an average of 3 annually);

(iv) Harbor Porpoise—5 (an average of 1 annually);

(v) Northern right whale dolphin—5 (an average of 1 annually);

(vi) Short-beaked common dolphin—10 (an average of 2 annually);

(vii) Northern elephant seal—10 (an average of 2 annually);

(viii) Pacific harbor seal—5 (an average of 1 annually); and

(ix) Northern fur seal—5 (an average of 1 annually).

EDITORIAL NOTE: At 75 FR 69319, Nov. 10, 2010, subpart M was added; at that time, §218.112 was added with two paragraphs (a)(4)(ii).

§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.

(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) available at <https://portal.navfac.navy.mil/go/navytraining-env-docs>.

(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 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 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” (20 × 110) 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, XO’s, 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 (Naval

Educational Training [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" (20 × 110) 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).

(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 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.

(2) 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 (497 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.

(3) 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.

(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 "Safety Zones" above, 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.

(J) 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 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 when the buffer zone is visible and

marine mammals are not detected within the target area and the buffer zone.

(ii) 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 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. Ordnance 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) Ordnance 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 stranding 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 ordnance 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 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, or 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 cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

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(J) Mammal monitoring shall continue until out of own-aircraft sensor range.

(b) [Reserved]

§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 (ex., 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

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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) [Reserved]

(h) *Sinking Exercises (SINKEXs)*—This section shall include the following information for each SINKEX completed that year:

- (1) Exercise Info:
 - (i) Location;
 - (ii) Date and time exercise began and ended;
 - (iii) Total hours of observation by watchstanders before, during, and after exercise;
 - (iv) Total number and types of rounds expended/explosives detonated;
 - (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 look-outs) information:
 - (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) Length of time observers maintained visual contact with marine mammal;
 - (vii) Wave height;
 - (viii) Visibility;
 - (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.

(xi) Observed behavior—Watchstanders will 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.

(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.

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(1) *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,

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§218.115 was added without a paragraph (k)(1) designation.

§218.116 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 §218.110(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).

[75 FR 45547, Aug. 3, 2010, as amended at 77 FR 4924, Feb. 1, 2012]

§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 not authorized by these regulations or subsequent Letters of Authorization.

[75 FR 45547, Aug. 3, 2010, as amended at 77 FR 4924, Feb. 1, 2012]

§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

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§ 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);

(x) SUS MK-84—up to 120 devices over the course of 5 years (an average of 24 per year);

(xi) PUTR Transponder—up to 400 hours over the course of 5 years (an average of 80 hours per year); and

(xii) MK-39 EMATT Targets—up to 60 devices over the course of 5 years (an average of 12 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 (Net Explosive Weight (NEW)):

(A) 5” Naval Gunfire (9.5 lbs NEW);

(B) 76 mm rounds (1.6 lbs NEW);

(C) Maverick (78.5 lbs NEW);

(D) MK-82 (238 lbs NEW);

(E) MK-83 (238 lbs NEW);

(F) MK-83 (574 lbs NEW);

(G) MK-84 (945 lbs NEW);

(H) MK-48 (851 lbs NEW);

(I) AN/SSQ-110A (IEER explosive sonobuoy—5 lbs NEW);

(ii) Training Events:

(A) Gunnery Exercises (S-S GUNEX)—up to 60 exercises over the course of 5 years (an average of 12 per year);

(B) Bombing Exercises (BOMBEX)—up to 180 exercises over the course of 5 years (an average of 36 per year);

(C) Sinking Exercises (SINKEX)—up to 10 exercises over the course of 5 years (a maximum of 2 per year);

(D) Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) Systems—up to 400 deployments over the course of 5 years (an average of 80 per year);

(E) Missile exercises (A-S MISSILEX)—up to 20 exercises over the course of 5 years (an average of 4 per year).

(d) The taking of marine mammals may be authorized in an LOA for the

activities and sources listed in § 218.120(c) should the amounts (*i.e.*, hours, dips, number of exercises) vary from those estimated in § 218.120(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.122(c).

§ 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 of Authorization 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 identified 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:

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(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)(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

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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 shall review the NMFS-approved Marine Species Awareness Training material prior to use of mid-frequency active sonar.

(vi) 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 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 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" (20 × 110) 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 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 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 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, mine-sweeping 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.

(xi) 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.

(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 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)(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) 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 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 see ordnance impact areas. Survey aircraft shall employ most effective search tactics and capabilities.

(iv) The exercise shall be conducted only if marine mammals 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 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 (1646 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 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 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:

(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 GoA TMAA), the Navy shall implement the procedures described below.

(A) The Navy shall implement a Shutdown (as defined in the Stranding Response Plan for GoA TMAA) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the GoA TMAA Stranding Communication Protocol that a USE (as defined in the Stranding Response Plan for the GoA TMAA) 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 the 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(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.

(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/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 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.

(b) [Reserved]

§218.125 Requirements for monitoring and reporting.

(a) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS is noti-

fied 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), the condition of the animal(s) (including carcass condition 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.

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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);

(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

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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.

(h) 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.

§218.127 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the peri-

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ods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in §218.128 and the modification conditions in §218.129.

(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).

[76 FR 25505, May 4, 2011, as amended at 77 FR 4925, Feb. 1, 2012]

§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).

[76 FR 25505, May 4, 2011, as amended at 77 FR 4925, Feb. 1, 2012]

§ 218.129 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 §§ 216.126 and 218.127 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 § 218.128, 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 § 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 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.

(C) Target simulator (surface vessels, submarines, torpedoes, and UUV engine noise): Acoustic energy from engines usually from 50 Hz to 10 kHz at SLs less than 170 dB re 1 microPa @ 1 m—up to 24.5 hours per year.

(2) Increased Tempo and Activities due to Range Extension: Estimates of annual range activities and operations are listed in the following table, but may vary provided that the variation does not result in exceeding the amount of take indicated in §218.171(c):

Range activity	Platform/system used	Proposed number of activities/year ¹		
		Keyport range site	DBRC site	QUTR site
Test Vehicle Propulsion	Thermal propulsion systems	5	130	30
	Electric/Chemical propulsion systems	55	140	30
Other Testing Systems and Activities.	Submarine testing	0	45	15
	Inert mine detection, classification and localization.	5	20	10
	Non-Navy testing	5	5	5
	Acoustic & non-acoustic sensors (magnetic array, oxygen).	20	10	5
	Countermeasure test	5	50	5
	Impact testing	0	10	5
	Static in-water testing	10	10	6
	UUV test	45	120	40

Range activity	Platform/system used	Proposed number of activities/year ¹		
		Keyport range site	DBRC site	QUTR site
Fleet Activities ² (excluding RDT&E).	Unmanned Aerial System (UAS) test	0	2	2
	Surface Ship activities	1	10	10
	Aircraft activities	0	10	10
	Submarine activities	0	30	30
Deployment Systems (RDT&E).	Diver activities	45	5	15
	Range support vessels:			
	Surface launch craft	35	180	30
	Special purpose barges	25	75	0
	Fleet vessels ³	15	20	20
	Aircraft (rotary and fixed wing)	0	10	20
	Shore and pier	45	30	30

¹ There may be several activities in 1 day. These numbers provide an estimate of types of range activities over the year.

² Fleet activities in the NAVSEA NUWC Keyport Range Complex do not include the use of surface ship and submarine hull-mounted active sonars.

³ As previously noted, Fleet vessels can include very small craft such as SEAL Delivery Vehicles.

(d) Amended regulations are effective February 1, 2012, through April 11, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in §218.170(c) should the amounts (e.g., hours, number of exercises) vary from those estimated in §218.170(c), provided that the variation does not result in exceeding the amount of take indicated in §218.171(c).

[76 FR 20274, Apr. 12, 2011, as amended at 77 FR 4925, Feb. 1, 2012]

§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);

(3) California sea lion (*Zalophus californianus*)—570 (an average of 114 annually);

(4) Northern elephant seal (*Mirounga angustirostris*)—70 (an average of 14 annually);

(5) Harbor seal (*Phoca vitulina richardsi*) (Washington Inland Waters stock)—27,340 (an average of 5,468 annually); and

(6) Harbor seal (*P. v. richardsi*) (Oregon/Washington Coastal stock)—505 (an average of 101 annually).

§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

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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.

(2) Lookout duties include looking for marine mammals.

(3) All sightings of marine mammals shall be reported to the Range Officer in charge of overseeing the activity.

(c) Visual surveillance shall be conducted just prior to all in-water exercises.

(1) Surveillance shall include, as a minimum, monitoring from all participating surface craft and, where available, adjacent shore sites.

(2) When cetaceans have been sighted in the vicinity of the operation, all range participants increase vigilance and take reasonable and practicable actions to avoid collisions and activities that may result in close interaction of naval assets and marine mammals.

(3) Actions may include changing speed and/or direction, subject to environmental and other conditions (*e.g.*, safety, weather).

(d) An “exclusion zone” shall be established and surveillance will be conducted to ensure that there are no marine mammals within this exclusion zone prior to the commencement of each in-water exercise.

(1) For cetaceans, the exclusion zone shall extend out 1,000 yards (914.4 m) from the intended track of the test unit.

(2) For pinnipeds, the exclusion zone shall extend out 100 yards (91 m) from the intended track of the test unit.

(e) Range craft shall not approach within 100 yards (91 m) of marine mammals, to the extent practicable considering human and vessel safety priorities. This includes marine mammals “hailed-out” on islands, rocks, and other areas such as buoys.

(f) In the event of a collision between a Navy vessel and a marine mammal, NUWC Keyport activities shall notify immediately the Navy chain of Command, which shall notify NMFS immediately.

(g) Passive acoustic monitoring for cetaceans will be implemented throughout the NUWC Keyport Range Complex during RDT&E testing activities involving active sonar transmissions when passive acoustic monitoring capabilities are being operated during the testing activity.

(h) Procedures for reporting marine mammal sightings on the NAVSEA NUWC Keyport Range Complex shall be promulgated, and sightings shall be entered into the Range Operating System and forwarded to NOAA/NMML Platforms of Opportunity Program.

(i) If there is clear evidence that a marine mammal is injured or killed as a result of the proposed Navy RDT&E activities, the Naval activities shall be immediately suspended and the situation immediately reported by personnel involved in the activity to the Ranger Officer, who will follow Navy procedures for reporting the incident to NMFS through the Navy’s chain-of-command.

(j) For nighttime RDT&E activities of active acoustic transmissions in the Keyport Range proposed extension area, the Navy shall conduct passive acoustic monitoring within the Agate Pass and south of University Point in southern Port Orchard Reach. If Southern Resident killer whales are detected in the vicinity of the Keyport Range Site, the Range Office shall be notified immediately and the active acoustic sources must be shutdown if killer whales are confirmed to approach at 1,000 yards from the source.

§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:

(I) 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:

(I) Vessel-based surveys shall be designed to maximize detections of ma-

rine 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.

(iii) 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.

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(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.

(4) An adaptive management plan.

(5) A method for standardizing data collection for NAVSEA NUWC Keyport Range Complex Extension and across range complexes.

(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 short-

ly 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, it 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 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 (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).

[76 FR 20274, Apr. 12, 2011, as amended at 77 FR 4925, Feb. 1, 2012]

§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 218.177 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

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from Keyport Range Complex Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§218.174(i)).

(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 Projective 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.

[76 FR 20274, Apr. 12, 2011, as amended at 77 FR 4925, Feb. 1, 2012]

§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.

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Subparts S–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.

EFFECTIVE DATE NOTE: At 77 FR 50316, Aug. 20, 2012, subpart X was added, effective Aug. 15, 2012, through Aug. 15, 2017.

§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 (b) 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 bairdii*), 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 (*Ziphiuscavirostris*), 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*), Gervais' beaked whale (*Mesoplodon europaeus*), ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*), Gray's beaked whale (*Mesoplodon grayi*), Heaviside's dolphin (*Cephalorhynchus heavisidii*), Hector's beaked whale (*Mesoplodon hectori*), Hector's dolphin (*Cephalorhynchus hectori*), Hourglass dolphin (*Lagenorhynchus cruciger*), Hubbs' beaked whale (*Mesoplodon carhubbsi*), harbor porpoise (*Phocoena phocoena*), Indo-Pacific bottlenose dolphin (*Tursiops aduncus*), killer whale (*Orca orcinus*), long-beaked common dolphin (*Delphinus capensis*), long-finned pilot whale (*Globicephalamelas*), Longman's beaked whale (*Indopacetus pacificus*), melon-headed whale (*Peponocephala electra*), northern bottlenose whale (*Hyperodon ampullatus*), northern right whale dolphin (*Lissodelphis borealis*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), pantropical spotted dolphin (*Stenella attenuata*), Peale's dolphin (*Lagenorhynchus australis*), Perrin's beaked whale (*Mesoplodon perrini*), pygmy beaked whale (*Mesoplodon peruvianus*), pygmy killer whale (*Feresa attenuata*), Risso's dol-

phin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Shepherd's beaked whale (*Tasmacetus shepardi*), short-beaked common dolphin (*Delphinus delphis*), short-finned pilot whale (*Globicephala macrorhynchus*), southern bottlenose whale (*Hyperodon planifrons*), southern right whale dolphin (*Lissodelphis peronii*), Sowerby's beaked whale (*Mesoplodon bidens*), spade-toothed beaked whale (*Mesoplodon traversii*), spectacled porpoise (*Phocoena dioptrica*), sperm whale (*Physeter macrocephalus*), spinner dolphin (*Stenella longirostris*), Stejneger's beaked whale (*Mesoplodon stejnegeri*), strap-toothed beaked whale (*Mesoplodon layardii*), striped dolphin (*Stenella coeruleoalba*), True's beaked whale (*Mesoplodon mirus*), white-beaked dolphin (*Lagenorhynchus albirostris*),

(3) *Pinnipeds*—Australian sea lion (*Neophoca cinerea*), California sea lion (*Zalophus californianus*), Galapagos fur seal (*Arctocephalus galapagoensis*), Galapagos sea lion (*Zalophus wolfebaeki*), gray seal (*Halichoerus grypus*), Guadalupe fur seal (*Arctocephalus townsendi*), harbor seal (*Phoca vitulina*), harp seal (*Pagophilus groenlandicus*), Hawaiian monk seal (*Monachus schauinslandi*), hooded seal (*Cystophora cristata*), Juan Fernandez fur seal (*Arctocephalus philippi*), Mediterranean monk seal (*Monachus monachus*), New Zealand fur seal (*Arctocephalus forsteri*), New Zealand fur seal (*Phocarcos hookeri*), northern elephant seal (*Mirounga angustirostris*), northern fur seal (*Callorhinus ursinus*), ribbon seal (*Phoca fasciata*), South African and Australian fur seals (*Arctocephalus pusillus*), South American fur seal (*Arctocephalus australis*), South American sea lion (*Otaria flavescens*), southern elephant seal (*Mirounga leonina*), spotted seal (*Phoca largha*), Steller sea lion (*Eumetopias jubatus*), subantarctic fur seal (*Arctocephalus tropicalis*).

§ 218.231 Effective dates.

Regulations are effective August 15, 2012 through August 15, 2017.

§ 218.232 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.238

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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) by the method of take indicated in paragraphs (c)(2) through (5) of this section.

(1) The Navy must maintain a running calculation/estimation of takes of each species over the effective period of these regulations.

(2) Level B harassment will not exceed 12 percent of any marine mammal stock listed in §218.230(b)(1) through (3) annually over the course of the five-year regulations. This annual per-stock cap of 12 percent applies regardless of the number of SURTASS LFA sonar vessels operating.

(3) Level A harassment of no more than six mysticetes (total), of any of the species listed in §218.230(b)(1) over the course of the five-year regulations.

(4) Level A harassment of no more than 25 odontocetes (total), of any of the species listed in §218.230(b)(2) over the course of the five-year regulations.

(5) Level A harassment of no more than 25 pinnipeds (total), of any of the species listed in §218.230(b)(3) over the course of the five-year regulations.

§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

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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 plus 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 §218.235:*

(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 μ Pa 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.

(f) *Geographic Restrictions on the SURTASS LFA Sonar Sound 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 μ Pa (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 μ Pa (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 (OBIs) for marine mammals (with specified periods) for SURTASS LFA sonar operations are the following:

Name of area	Location of area	Months of importance
(i) Georges Bank	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°13' W; 41°00' N, 66°24' W; 41°52' N, 65°47' W; 42°20' N, 66°06' W; 42°18' N, 67°23' W.	Year-round.
(ii) Roseway Basin Right Whale Conservation Area.	43°05' N, 65°40' W; 43°05' N, 65°03' W; 42°45' N, 65°40' W; 42°45' N, 65°03' W.	June through December, annually.
(iii) Great South Channel, U.S. Gulf of Maine, and Stellwagen Bank National Marine Sanctuary (NMS).	41°00.000' N, 69°05.000' W; 42°09.000' N, 67°08.400' W; 42°53.436' N, 67°43.873' W; 44°12.541' N, 67°16.847' W; 44°14.911' N, 67°08.936' W; 44°21.538' N, 67°03.663' W; 44°26.736' N, 67°09.596' W; 44°16.805' N, 67°27.394' W; 44°11.118' N, 67°56.398' W; 43°59.240' N, 68°08.263' W; 43°36.800' N, 68°46.496' W; 43°33.925' N, 69°19.455' W; 43°32.008' N, 69°44.504' W; 43°21.922' N, 70°06.257' W; 43°04.084' N, 70°21.418' W; 42°51.982' N, 70°31.965' W; 42°45.187' N, 70°23.396' W; 42°39.068' N, 70°30.188' W; 42°32.892' N, 70°35.873' W; 42°07.748' N, 70°28.257' W; 42°05.592' N, 70°02.136' W; 42°03.664' N, 69°44.000' W; 41°40.000' N, 69°45.000' W.	January 1 to November 14, annually.

Name of area	Location of area	Months of importance
(iv) Southeastern U.S. Right Whale Seasonal Habitat.	Critical Habitat Boundaries are coastal waters between 31°15' N and 30°15' N from the coast out 15 nautical miles (nmi); 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 nmi..	November 15 to April 15, annually.
(v) North Pacific Right Whale Critical Habitat.	57°03' N, 153°00' W; 57°18' N, 151°30' W; 57°00' N, 151°30' W; 56°45' N, 153°00' W. (50 CFR § 226.215).	March through August, annually.
(vi) Silver Bank and Navidad Bank.	Silver Bank: 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.	December through April, annually.
(vii) Coastal waters of Gabon, Congo and Equatorial Guinea.	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	June through October, annually.
(viii) Patagonian Shelf Break	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..	Year-round.
(ix) Southern Right Whale Seasonal Habitat.	Coastal waters between 42°00' S and 43°00' S from 12 to 15 nm including the enclosed bays of Golfo Nuevo, Golfo San Jose, and San Matias. Golfos San Jose and San Nuevo are within 22 km (14 mi; 12 nm) coastal exclusion zone	May through December, annually.
(x) Central California National Marine Sanctuaries.	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	June through November, annually.
(xi) Antarctic Convergence Zone	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.	October through March, annually.
(xii) Piltun and Chayvo offshore feeding grounds in the Sea of Okhotsk.	54°09.436' 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°28.230' W; 53°07.013' N, 143°35.481' W; 52°48.705' N, 143°38.447' W; 52°32.077' N, 143°37.788' W; 52°21.605' N, 143°34.163' 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°08.082' N, 143°51.301' W; 51°08.082' N, 144°16.742' W; 51°24.514' N, 144°11.139' W; 51°48.116' N, 144°10.809' 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.	June through November, annually.
(xiii) Coastal waters off Madagascar.	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°26'00.94" E; 24°15'28.07" S, 47°46'51.16" E; 22°18'00.74" S, 48°14'13.52" 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°19'35.34" S, 49°54'23.82" E; 16°45'41.71" S, 50°15'56.35" E.	July through September, annually for humpback whale breeding and November through December, annually for migrating blue whales.
(xiv) Madagascar Plateau, Madagascar Ridge, and Walters Shoal.	25°55'20.00" S, 44°05'15.45" E; 25°46'31.36" S, 47°22'35.90" E; 27°02'37.71" S, 48°03'31.08" E; 35°13'51.37" S, 46°26'19.98" E; 35°14'28.59" S, 42°35'49.20" E; 31°36'57.96" S, 42°37'49.35" E; 27°41'11.21" S, 44°30'11.01" E.	November through December, annually.

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Name of area	Location of area	Months of importance
(xv) Ligurian-Corsican-Provençal Basin and Western Pelagos Sanctuary in the Mediterranean Sea.	42°50.271' N, 06°31.883' E; 42°55.603' N, 06°43.418' E; 43°04.374' N, 06°52.165' E; 43°12.600' N, 07°10.440' E; 43°21.720' N, 07°19.380' E; 43°30.600' N, 07°32.220' E; 43°33.900' N, 07°49.920' E; 43°36.420' N, 08°05.580' E; 43°42.600' N, 08°22.140' E; 43°50.880' N, 08°34.500' E; 43°58.560' N, 08°47.700' E; 43°59.040' N, 08°56.040' E; 43°57.047' N, 09°03.540' E; 43°52.260' N, 09°08.520' E; 43°47.580' N, 09°13.500' E; 43°36.060' N, 09°16.620' E; 43°28.440' N, 09°05.820' E; 43°21.360' N, 09°02.100' E; 43°16.020' N, 08°57.240' E; 43°04.440' N, 08°47.580' E; 42°54.900' N, 08°35.400' E; 42°45.900' N, 08°27.540' E; 42°36.060' N, 08°22.020' E; 42°22.620' N, 08°15.849' E; 42°07.202' N, 08°17.174' E; 41°52.800' N, 08°15.720' E; 41°39.780' N, 08°05.280' E; 41°28.200' N, 08°51.600' E; 42°57.060' N, 06°19.860' E.	July to August, annually.
(xvi) Hawaiian Islands Humpback Whale NMS and Penguin Bank.	21°10'02.179" N, 157°30'58.217" W; 21°09'46.815" N, 157°30'22.367" W; 21°06'39.882" N, 157°31'00.778" W; 21°02'51.976" N, 157°30'30.049" W; 20°59'52.725" N, 157°29'28.591" W; 20°58'05.174" N, 157°27'35.919" W; 20°55'49.456" N, 157°30'58.217" W; 20°50'44.729" N, 157°42'42.418" W; 20°51'02.654" N, 157°44'45.333" W; 20°53'56.784" N, 157°46'04.716" W; 20°56'32.988" N, 157°45'33.987" W; 21°01'27.472" N, 157°43'10.586" W; 21°05'20.499" N, 157°39'27.802" W; 21°10'02.179" N, 157°30'58.217" W.	November through April, annually.
(xvii) Costa Rica Dome	Centered at 9° N and 88° W	Year-round.
(xviii) Great Barrier Reef Between 16° S and 21° S.	16°01.829" S, 145°38.783" E; 15°52.215" S, 146°20.936" E; 17°28.354" S, 146°59.392" E; 20°16.228" S, 151°39.674" E; 20°58.381" S, 150°30.897" E; 20°17.007" S, 149°38.247" E; 20°10.941" S, 149°18.247" E; 20°02.403" S, 149°12.623" E; 19°53.287" S, 149°03.986" E; 19°49.866" S, 148°52.135" E; 19°53.287" S, 148°44.302" E; 19°47.965" S, 148°36.870" E; 19°47.205" S, 148°26.024" E; 19°19.978" S, 147°39.626" E; 19°14.065" S, 147°37.014" E; 19°08.913" S, 147°31.993" E; 19°05.667" S, 147°24.160" E; 19°07.576" S, 147°18.134" E; 18°51.718" S, 146°51.219" E; 18°44.258" S, 146°54.031" E; 18°37.175" S, 146°51.420" E; 18°31.620" S, 146°43.385" E; 18°27.595" S, 146°40.573" E; 17°36.676" S, 146°20.488" E; 17°20.484" S, 146°16.671" E; 17°07.745" S, 146°13.056" E; 16°49.769" S, 146°11.047" E; 16°41.835" S, 146°03.817" E; 16°39.706" S, 145°54.979" E.	May through September, annually.
(xix) Bonney Upwelling on the south coast of Australia.	37°12'20.036" S, 139°31'17.703" E; 37°37'33.815" S, 139°42'42.508" E; 38°10'36.144" S, 140°22'57.345" E; 38°44'50.558" S, 141°33'50.342" E; 39°07'04.125" S, 141°11'00.733" E; 37°28'33.179" S, 139°10'52.263" E.	December through May, annually.
(xx) Northern Bay of Bengal and Head of Swatch-of-No-Ground.	20°59.735' N, 89°07.675" E; 20°55.494' N, 89°09.484" E; 20°52.883" N, 89°12.704" E; 20°55.275" N, 89°18.133" E; 21°04.558" N, 89°25.294" E; 21°12.655" N, 89°25.354" E; 21°13.279" N, 89°16.833" E; 21°06.347" N, 89°15.011" E.	Year-round.
(xxi) Olympic Coast NMS and Prairie, Barkley Canyon, and Nitnat Canyon.	Boundaries within 23 nm (26.5 m; 42.6 km) of the coast from 47°07' N to 48°30' N latitude. 48°30'01.995" N, 125°58'38.786" W; 48°16'55.605" N, 125°38'52.052" W; 48°23'07.353" N, 125°17'10.935" W; 48°12'38.241" 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°09'46.665" N, 126°25'48.758" W.	Olympic NMS: December, January, March, and May, annually. The Prairie, Barkley Canyon, and Nitnat Canyon: June through September, annually.

Name of area	Location of area			Months of importance
(xxii) Abrolhos Bank	16°35'34.909"	38°52'30.455";	16°35'31.619"	August through November, annually.
	38°43'41.069";	16°40'00.131"	37°23'52.492";	
	19°30'59.069"	37°23'52.446";	19°30'59.974"	
	39°33'38.351";	19°20'24.752"	39°30'33.03";	
	18°52'16.884"	39°32'31.789";	18°45'09.937"	
	39°32'27.709";	18°30'59.345"	39°30'59.669";	
	18°27'28.985"	39°30'13.453";	18°17'30.429"	
	39°26'21.073";	18°07'43.518"	39°19'52.924";	
	18°09'24.931"	39°16'24.913";	18°10'04.585"	
	39°12'30.425";	18°10'20.682"	38°39'06.185";	
	18°08'50.404"	38°35'00.059";	18°06'05.466"	
	38°31'41.385";	18°02'09.399"	38°29'26.179";	
	17°58'01.372"	38°28'45.409";	17°53'58.883"	
	38°29'34.612";	16°48'58.768"	38°55'23.768";	
	16°43'15.682"	38°53'40.007"		

(g) *Operational Exception for the SURTASS LFA Sonar Sound Field.* During military operations SURTASS LFA sonar transmissions may exceed 180 dB re: 1 μ Pa (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 systems.

§ 218.235 Requirements for monitoring.

(a) The Holder of a Letter of Authorization issued pursuant to §§ 216.106 and 218.238 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 top-side 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).

(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 after appropriate security reviews 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.

(d) The Navy will continue to assess the data collected by its undersea arrays 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 after appropriate security reviews will be made publically available. The Navy will provide a status update to NMFS when they submit their annual application.

(e) Following the Scientific Advisory Group's (SAG) submission of findings, and assuming the SAG recommends going forward with beaked whale and/or harbor porpoise monitoring/research, the Navy will either:

(1) Draft a plan of action outlining their strategy for implementing the SAG's recommendations; or

(2) Describe in writing why none of the SAG's recommendations are feasible and meet with NMFS to discuss any other potential options.

§218.237 Applications for Letters of Authorization.

(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

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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 Authoriza-

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tion 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 to the 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 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.

PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**Subpart A—Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research in the California Current**

Sec.

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