

§216.170

EFFECTIVE DATE NOTE: At 74 FR 1484, Jan. 12, 2009, subpart P was added, effective Jan. 5, 2009 through Jan. 5, 2014.

§216.170 Specified activity and specified geographical region.

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

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the Hawaii Operational Area, which extends from 16 to 43° N. lat. and from 150 to 179° degrees W. long.

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

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources for U.S. Navy anti-submarine warfare (ASW) training in the amounts indicated below (± 10 percent):

(i) AN/SQS-53 (hull-mounted sonar)—up to 6420 hours over the course of 5 years (an average of 1284 hours per year)

(ii) AN/SQS-56 (hull-mounted sonar)—up to 1915 hours over the course of 5 years (an average of 383 hours per year)

(iii) AN/AQS-22 (helicopter dipping sonar)—up to 5050 dips over the course of 5 years (an average of 1010 dips per year)

(iv) SSQ-62 (sonobuoys)—up to 12115 sonobuoys over the course of 5 years (an average of 2423 sonobuoys per year)

(v) MK-48 (torpedoes)—up to 1565 torpedoes over the course of 5 years (an average of 313 torpedoes per year)

(vi) AN/BQQ-10 (submarine mounted sonar)—up to 1000 hours over the course of 5 years (an average of 200 per year)

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section 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).

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(C) Maverick (78.5 lbs).

(D) Harpoon (448 lbs).

(E) MK-82 (238 lbs).

(F) MK-83 (574 lbs).

(G) MK-84 (945 lbs).

(H) MK-48 (851 lbs).

(I) Demolition Charges (20 lbs).

(J) EER/IEER (5 lbs).

(ii) Training Events:

(A) Mine Neutralization—up to 340 exercises over the course of 5 years (an average of 68 per year).

(B) Air-to-Surface MISSILEX—up to 250 exercises over the course of 5 years (an average of 50 per year).

(C) Surface-to-Surface MISSILEX—up to 60 exercises over the course of 5 years (an average of 12 per year).

(D) BOMBEX—up to 195 exercises over the course of 5 years (an average of 38 per year).

(E) SINKEX—up to 30 exercises over the course of 5 years (an average of 6 per year).

(F) Surface-to-Surface GUNEX—up to 455 exercises over the course of 5 years (an average of 91 per year).

(G) Naval Surface Fire Support—up to 140 exercises over the course of 5 years (an average of 28 per year).

§216.171 Effective dates and definitions.

(a) Regulations are effective January 5, 2009 through January 5, 2014.

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

(1) *Uncommon Stranding Event (USE)*—A stranding event that takes place during a major training exercise and involves any one of the following:

(i) Two or more individuals of any cetacean species (not including mother/calf pairs, unless of species of concern listed in next bullet) found dead or live on shore within a two day period and occurring on same shore lines or facing shorelines of different islands.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: Beaked whale of any species, *Kogia* sp., Risso's dolphin, melon-headed whale, pilot whales, humpback whales, sperm whales, blue whales, fin whales, sei whales, or monk seal.

(iii) A group of 2 or more cetaceans of any species exhibiting indicators of distress.

(2) *Shutdown* (this definition specifically applies only to the word as used in §216.174(a)(1)(xxviii)(A)(I) and (2))—The cessation of MFAS operation or detonation of explosives within 14 nm of any live, in the water animal involved in a USE.

§216.172 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.177, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §216.170(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.170(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §216.170(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment (± 10 percent of the number of takes indicated below):

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—49470 (an average of 9894 annually).

(B) Minke whale (*Balaenoptera acutorostrata*)—320 (an average of 64 annually).

(C) Sei whale (*Balaenoptera borealis*)—230 (an average of 46 annually).

(D) Fin whale (*Balaenoptera physalus*)—230 (an average of 46 annually).

(E) Bryde's whale (*Balaenoptera edeni*)—320 (an average of 64 annually).

(ii) Odontocetes:

(A) Sperm whales (*Physeter macrocephalus*)—3905 (an average of 781 annually).

(B) Pygmy sperm whales (*Kogia breviceps*)—4325 (an average of 865 annually).

(C) Dwarf sperm whale (*Kogia sima*)—10610 (an average of 2122 annually).

(D) Cuvier's beaked whale (*Ziphius cavirostris*)—5750 (an average of 1150 annually).

(E) Blainville's beaked whale (*Mesoplodon densirostris*)—1785 (an average of 357 annually).

(F) Longman's beaked whale (*Indopacetus pacificus*)—525 (an average of 105 annually).

(G) Rough-toothed dolphin (*Steno bredanensis*)—5385 (an average of 1077 annually).

(H) Bottlenose dolphin (*Tursiops truncatus*)—3670 (an average of 734 annually).

(I) Pan-tropical dolphins (*Stenella attenuata*)—10995 (an average of 2199 annually).

(J) Spinner dolphins (*Stenella longirostris*)—2105 (an average of 421 annually).

(K) Striped dolphins (*Stenella coeruleoalba*)—16045 (an average of 3209 annually).

(L) Risso's dolphin (*Grampus griseus*)—2485 (an average of 497 annually).

(M) Melon-headed whale (*Peponocephala electra*)—2985 (an average of 597 annually).

(N) Fraser's dolphin (*Lagenodelphis hosei*)—6235 (an average of 1247 annually).

(O) Pygmy killer whale (*Feresa attenuata*)—980 (an average of 196 annually).

(P) False killer whale (*Pseudorca crassidens*)—230 (an average of 46 annually).

(Q) Killer whale (*Orcinus orca*)—230 (an average of 46 annually).

(R) Short-finned pilot whale (*Globicephala macrorhynchus*)—8990 (an average of 1798 annually).

(iii) Pinnipeds: Hawaiian monk seal (*Monachus schauinslandi*)—550 (an average of 110 annually).

(2) Level A Harassment and/or mortality of no more than 10 individuals total of each of the species listed below over the course of the 5-year regulations: Bottlenose dolphin (*Tursiops truncatus*), Pygmy and Dwarf sperm whales (*Kogia breviceps* and *sima*), Melon-headed whale (*Peponocephala electra*), Pantropical spotted dolphin (*Stenella attenuata*), Pygmy killer whale (*Feresa attenuata*), Short-finned pilot whale (*Globicephala*