§ 216.237 Modifications to a Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to the provisions of this subpart shall be made by the National Marine Fisheries Service until after notification and an opportunity for public comment has been provided. A renewal of a Letter of Authorization under § 216.236 without modification 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 § 216.230(b), a Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days of the action.

Subpart V—Taking and Importing Marine Mammals; U.S. Navy’s Atlantic Fleet Active Sonar Training (AFAST)

SOURCE: 74 FR 4876, Jan. 27, 2009, unless otherwise noted.


§ 216.240 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 AFAST Study Area, which extends east from the Atlantic Coast of the U.S. to 45° W. long. and south from the Atlantic and Gulf of Mexico Coasts to approximately 23° N. lat., excluding the Bahamas (see Figure 1–1 in the Navy’s Application).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the use of the following mid-frequency active sonar (MFAS) sources, high frequency active sonar (HFAS) sources, or explosive sonobuoys for U.S. Navy anti-submarine warfare (ASW), mine warfare (MIW) training, maintenance, or research, development, testing, and evaluation (RDT&E) in the amounts indicated below (±10 percent):

1. AN/SQS–53 (hull-mounted sonar)—up to 16070 hours over the course of 5 years (an average of 3214 hours per year).

2. AN/SQS–56 (hull-mounted sonar)—up to 8420 hours over the course of 5 years (an average of 1684 hours per year).

3. AN/SQS–56 or 53 (hull mounted sonar in object detection mode)—up to 1080 hours over the course of 5 years (an average of 216 hours per year).

4. AN/BQQ–10 or 5 (submarine sonar)—up to 49880 pings over the course of 5 years (an average of 9976 pings per year) (an average of 1 ping per two hours during training events, 60 pings per hour for maintenance).

5. AN/AQS–22 or 13 (helicopter dipping sonar)—up to 14760 dips over the course of 5 years (an average of 2952 dips per year—10 pings per five-minute dip).

6. SSQ–62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 29265 sonobuoys over the course of 5 years (an average of 5853 sonobuoys per year).

7. MK–48 (heavyweight torpedoes)—up to 160 torpedoes over the course of 5 years (an average of 32 torpedoes per year).

8. MK–46 or 54 (lightweight torpedoes)—up to 120 torpedoes over the course of 5 years (an average of 24 torpedoes per year).

9. AN/SSQ–110A (IEER explosive sonobuoy) and AN/SSQ–125 (AEER sonar sonobuoy)—up to 4300 sonobuoys, between these 2 sources, over the course of
§ 216.242 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.247, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §216.240(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 §216.240(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 §216.240(c) is limited to the following species, by the identified 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) North Atlantic right whale (Eubalaena glacialis)—3330 (an average of 666 annually).
      (B) Humpback whale (Megaptera novaeangliae)—21010 (an average of 4202 annually).
      (C) Minke whale (Balaenoptera acutorostrata)—2075 (an average of 415 annually).
      (D) Sei whale (Balaenoptera borealis)—5285 (an average of 1057 annually).
      (E) Fin whale (Balaenoptera physalus)—4410 (an average of 882 annually).
      (F) Bryde’s whale (Balaenoptera edeni)—180 (an average of 36 annually).
   (ii) Odontocetes:
      (A) Sperm whales (Physeter macrocephalus)—48790 (an average of 9758 annually).
      (B) Pygmy or dwarf sperm whales (Kogia breviceps or Kogia sima)—21920 (an average of 4384 annually).
      (C) Beaked Whales (Cuvier’s, True’s, Gervais’, Sowerby’s, Blainville’s, Northern bottlenose whale) (Ziphius cavirostris, Mesoplodon bidens, M. europaeus, M. bidens, M. densirostris,