

of this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.180(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 § 218.180(c) is limited to the following species, by the indicated method of take and the indicated number of times:

- (1) Level B Harassment:
 - (i) Sperm whale (*Physeter macrocephalus*)—10 (an average of 2 annually),
 - (ii) Risso's dolphin (*Grampus griseus*)—10 (an average of 2 annually);
 - (iii) Bottlenose dolphin (*Tursiops truncatus*)—3,070 (an average of 614 annually);
 - (iv) Atlantic spotted dolphin (*Stenella frontalis*)—2,355 (an average of 471 annually);
 - (v) Pantropical spotted dolphin (*S. attenuata*)—115 (an average of 23 annually);
 - (vi) Striped dolphin (*S. coeruleoalba*)—25 (an average of 5 annually);
 - (vii) Spinner dolphin (*S. longirostris*)—115 (an average of 23 annually);
 - (viii) Melon-headed whale (*Peponocephala electra*)—10 (an average of 2 annually);
 - (ix) Short-finned pilot whale (*Globicephala macrorhynchus*)—5 (an average of 1 annually);
 - (x) Clymene dolphin (*S. clymene*)—25 (an average of 5 annually);
- (2) Level A Harassment:
 - (i) Bottlenose dolphin (*Tursiops truncatus*)—10 (an average of 2 annually);
 - (ii) Atlantic spotted dolphin (*Stenella frontalis*)—10 (an average of 2 annually);
 - (iii) Pantropical spotted dolphin (*S. attenuata*)—5 (an average of 1 annually);
 - (ix) Spinner dolphin (*S. longirostris*)—5 (an average of 1 annually).

§ 218.182 Prohibitions.

Notwithstanding takings contemplated in § 218.181 and authorized by a Letter of Authorization issued under § 216.106 of this chapter and § 218.186, no

person in connection with the activities described in § 218.180 may:

- (a) Take any marine mammal not specified in § 218.181(b);
- (b) Take any marine mammal specified in § 218.181(b) other than by incidental take as specified in § 218.181(b)(1) and (2);
- (c) Take a marine mammal specified in § 218.181(b) 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 § 218.186.

§ 218.183 Mitigation.

When conducting RDT&E activities identified in § 218.180(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §§ 216.106 of this chapter and § 218.186 must be implemented. These mitigation measures include, but are not limited to:

(a) *Mitigation Measures for HFAS/MFAS Operations*: (1) Personnel Training: (i) All marine observers onboard platforms involved in NSW PCD RDT&E activities shall complete Marine Species Awareness Training (MSAT).

(ii) Marine observers 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.

(2) Marine Observer Responsibilities:

(i) On the bridge of surface vessels, there shall always be at least one to three marine species awareness trained observer(s) on watch whose duties include observing the water surface around the vessel.

(A) For vessels with length under 65 ft (20 m), there shall always be at least one marine observer on watch.

(B) For vessels with length between 65–200 ft (20–61 m), there shall always be at least two marine observers on watch.

(C) For vessels with length above 200 ft (61 m), there shall always be at least three marine observers on watch.

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(ii) Each marine observer shall have at their disposal at least one set of binoculars available to aid in the detection of marine mammals.

(iii) On surface vessels equipped with AN/SQQ-53C/56, pedestal mounted “Big Eye” (20 x 110) binoculars shall be present and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

(iv) Marine observers shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(v) Marine observers shall scan the water from the vessel to the horizon and be responsible for ensuring that all contacts in their sector follow the below protocols:

(A) In searching the assigned sector, the marine observer shall always start at the forward part of the sector and search aft (toward the back).

(B) To search and scan, the marine observer shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon.

(C) The marine observer shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars.

(D) The marine observer shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view.

(E) At the end of the sector search, the glasses would be lowered to allow the eyes to rest for a few seconds, and then the marine observer shall search back across the sector with the naked eye.

(vi) After sunset and prior to sunrise, marine observers shall employ Night Lookout Techniques in accordance with the Lookout Training Handbook.

(vii) At night, marine observers shall scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, marine observers shall look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision.

(viii) Marine observers shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Test Director or the Test Director’s designee.

(3) Operating Procedures:

(i) The Test Director or the Test Director’s designee shall maintain the logs and records documenting RDT&E activities should they be required for event reconstruction purposes. Logs and records will be kept for a period of 30 days following completion of a RDT&E mission activity.

(ii) A Record of Environmental Consideration shall be included in the Test Plan prior to the test event to further disseminate the personnel testing requirement and general marine mammal mitigation measures.

(iii) Test Directors 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 vessel.

(iv) All personnel engaged in passive acoustic sonar operation (including aircraft or surface vessels) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the Test Director or the Test Director’s designee for dissemination and appropriate action.

(v) During HFAS/MFAS mission activities, personnel shall utilize all available sensor and optical systems (such as Night Vision Goggles) to aid in the detection of marine mammals.

(vi) Navy aircraft participating in RDT&E activities at sea shall conduct and maintain surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(vii) Marine mammal detections shall be immediately reported to the Test Director or the Test Director’s designee for further dissemination to vessels in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the vessel will likely result in a closing of the distance to the detected marine mammal.

(viii) Safety Zones—When marine mammals are detected by any means

(aircraft, shipboard marine observer, or acoustically) the Navy will ensure that HFAS/MFAS 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 source (the bow).

(A) Vessels shall continue to limit maximum HFAS/MFAS transmission levels by this 6-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m) beyond the location of the last detection.

(B) The Navy shall ensure that HFAS/MFAS transmissions will be limited to at least 10 dB below the equipment's normal operating level if any detected animals are within 500 yards (457 m) of the sonar source. Vessels will continue to limit maximum ping levels by this 10-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m) beyond the location of the last detection.

(C) The Navy shall ensure that HFAS/MFAS transmissions are ceased if any detected marine mammals are within 200 yards (183 m) of the sonar source. HFAS/MFAS will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m) beyond the location of the last detection.

(D) Special conditions applicable for dolphins only: If, after conducting an initial maneuver to avoid close quarters with dolphins, the Officer of the Deck concludes that dolphins are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins continue to exhibit bow wave riding behavior.

(E) If the need for power-down should arise as detailed in "Safety Zones" above, 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 sonar was being operated).

(ix) 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.

(x) Sonar levels (generally)—Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet RDT&E objectives.

(b) *Mitigation Measures for Ordnance and Projectile Firing:* (1) No detonations over 34 kg (75 lb) shall be conducted in territorial waters, except the line charge detonation, which is a 107 m (350 ft).

(2) The number of live mine detonations shall be minimized and the smallest amount of explosive material possible to achieve test objectives will be used.

(3) Activities shall be coordinated through the Environmental Help Desk to allow potential concentrations of detonations in a particular area over a short time to be identified and avoided.

(4) Visual surveys and aerial surveys of the clearance zones specified in §218.183(b)(6)(i) through (iii) shall be conducted in accordance with §218.184(c) for all test operations that involve detonation events with large net explosive weight (NEW). Any protected species sighted will be reported.

(5) Line charge tests shall not be conducted during the nighttime.

(6) Additional mitigation measures shall be determined through the NSWC PCD's Environmental Review Process based on test activities including the size of detonations, test platforms, and environmental effects documented in the Navy's EIS/OEIS. Clearance zones must be determined based on the upper limit of different ranges of net explosive weight (NEW) used in the tests, as listed below:

(i) NEW between 76–600 lb: clearance zone is 2,863 m (9,393 ft);

(ii) NEW between 11–75 lb: clearance zone is 997 m (2,865 ft); and

(iii) NEW less than 11 lb—clearance zone is 345 m (1,132 ft).

(c) *Mitigation Measures for Surface Operations:* (1) While underway, vessels shall have at least one to three marine species awareness trained observers (based on vessel length) with binoculars. As part of their regular duties, marine observers shall watch for and

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report to the Test Director or Test Director's designee the presence of marine mammals.

(i) For vessels with length under 65 ft (20 m), there shall always be at least one marine observer on watch.

(ii) For vessels with length between 65–200 ft (20–61 m), there shall always be at least two marine observers on watch.

(iii) For vessels with length above 200 ft (61 m), there shall always be at least three marine observers on watch.

(2) Marine observers shall employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(3) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a “safe speed” (the minimum speed at which mission goals or safety will not be compromised) 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.

(4) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and shall implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Actions shall include changing speed and/or direction and are dictated by environmental and other conditions (*e.g.*, safety, weather).

(5) Naval vessels shall maneuver to keep at least 500 yd (460 m) away from any observed whale and avoid approaching whales head-on. This requirement does 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. Vessels shall take reasonable steps to alert other Navy vessels in the vicinity of the whale.

(6) Where operationally feasible and safe, vessels shall avoid closing to within 200-yd (183 m) of marine mammals other than whales.

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§ 218.184 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§ 216.106 and 218.186 for activities described in § 218.180(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 § 218.180(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 § 218.181(b).

(c) The Holder of the Letter of Authorization must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the NSWC PCD Study Area 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—Vessel, Aerial and Shore-based: The Holder of this Authorization shall visually survey a minimum of 2 HFAS/MFAS activities and 2 explosive events per year. If the 53C sonar was being operated, such activity must be monitored as one of the HFAS/MFAS activities. For explosive events, one of the monitoring measures shall be focused on a multiple detonation event.

(i) In accordance with all safety considerations, observations shall be maximized by working from all available platforms: Vessels, aircraft, land and/or in combination.

(ii) Vessel and aerial surveys shall be conducted two days before, during, and one to five days after the NSWC PCD mission activities on commercial vessels and aircraft.

(iii) Visual surveys shall be conducted during Navy mission activities that have been identified to provide the highest likelihood of success.

(iv) The visual survey team shall collect the same data that are collected by Navy marine observers, including but not limited to:

(A) Location of sighting;