
Subpart S—Taking Marine Mammals Incidental to U.S. Naval Surface Warfare Center Panama City Division Mission Activities

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Subpart A—Taking Marine Mammals Incidental to U.S. Navy Training in the Virginia Capes Range Complex (VACAPES Range Complex)

§ 218.1 Specified activity, 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 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 VACAPES Range Complex Operation Area (OPAREA), which is located in the coastal and offshore waters of the western North Atlantic Ocean adjacent to Delaware, Maryland, Virginia, and North Carolina. The northernmost boundary of the VACAPES Range Complex OPAREA lies 3 nm from the shoreline at the boundary separating state and Federal waters.

(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 detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training events indicated in paragraph (c)(1)(ii) of this section:

   (i) Underwater Explosives:

   (A) AGM–114 (Hellfire missile)
   (B) AGM–65 E/F (Maverick missile)
   (C) MK–83/GBU–32 (1,000 lb High Explosive bomb)
   (D) Airborne Mine Neutralization system (AMNS)
   (E) 20 lb NEW charges
   (F) AGM–88 (HARM)
   (G) 5” Naval Gunfire

   (ii) Training Events:

   (A) Mine Exercise (MINEX) (Mine Neutralization [AMNS])—up to 150 exercises over the course of 5 years (an average of 30 per year);
   (B) Mine Exercise (MINEX) (Mine Neutralization [20 lb NEW charges])—up to 120 exercises over the course of 5 years (an average of 24 per year);
   (C) Bombing Exercise (BOMBEX) (Air-to-Surface)—up to 100 exercises over the course of 5 years (an average of 20 per year);
   (D) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 100 exercises over the course of 5 years (an average of 20 per year);
   (E) Missile Exercise (MISSILEX) (Air-to-Surface; Maverick, HE)—up to 100 exercises over the course of 5 years (an average of 20 per year); and
   (F) FIREX with IMPASS—up to 110 exercises over the course of 5 years (an average of 22 per year).

(d) Regulations are effective June 8, 2009 and are applicable to the Navy on June 5, 2009 through June 4, 2014.
not intentionally, take marine mammals within the area described in §218.1(b), provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

(b) The activities identified in §218.1(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 §218.1(c) is limited to the following species, by the indicated method of take and the indicated number of times:

1. Level B Harassment:
   (i) Mysticetes:
      (A) Humpback whale (Megaptera novaeangliae)—10 (an average of 2 annually); and
      (B) Fin whale (Balaenoptera physalus)—10 (an average of 2 annually).
   (ii) Odontocetes:
      (A) Sperm whale (Physeter macrocephalus)—10 (an average of 2 annually);
      (B) Pygmy or dwarf sperm whales (Kogia sp.)—15 (an average of 3 annually);
      (C) Rough-toothed dolphin (Steno bredanensis)—5 (an average of 1 annually);
      (D) Bottlenose dolphin (Tursiops truncatus)—145 (an average of 29 annually);
      (E) Pantropical spotted dolphin (Stenella attenuata)—350 (an average of 70 annually);
      (F) Striped dolphin (S. coeruleoalba)—340 (an average of 68 annually);
      (G) Clymene dolphin (S. clymene)—165 (an average of 33 annually);
      (H) Atlantic spotted dolphin (S. frontalis)—215 (an average of 43 annually);
      (I) Common dolphin (Delphinus delphis)—10,965 (an average of 2,193 annually);
      (J) Risso’s dolphin (Grampus griseus)—80 (an average of 16 annually); and
      (K) Pilot whales (Globicephala sp.)—50 (an average of 10 annually).

2. Level A Harassment (injury):
   (i) Common dolphin—100 (an average of 20 annually);
   (ii) Pantropical spotted dolphin—5 (an average of 1 annually); and
   (iv) Striped dolphin—15 (an average of 3 annually).

§ 218.3 Prohibitions.

Notwithstanding takings contemplated in §218.2 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.7, no person in connection with the activities described in §218.1 may:

(a) Take any marine mammal not specified in §218.2(c);
(b) Take any marine mammal specified in §218.2(c) other than by incidental take as specified in §218.2(c)(1) and (2);
(c) Take a marine mammal specified in §218.2(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal;
(d) Violate, or fail to comply with, the terms, conditions, and requirements of this Subpart or a Letter of Authorization issued under §216.106 of this chapter and §218.7.

§ 218.4 Mitigation.

(a) When conducting training activities identified in §218.1(c), the mitigation measures contained in the Letter of Authorization issued under §216.106 of this chapter and §218.7 must be implemented. These mitigation measures include, but are not limited to:

1. General Maritime Measures:
   (i) Personnel Training—Lookouts
      (A) All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews shall complete Marine Species Awareness Training (MSAT).
      (B) Navy lookouts shall undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).
      (C) 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