§ 218.34 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §216.106 of this chapter and §218.36 for activities described in §218.30(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

of the proposed Navy training activities (e.g., instances in which it is clear that munitions explosions caused the death), the Navy shall suspend its activities immediately and report such incident to NMFS.

(i) Air-to-Surface At-Sea Bombing Exercises (1,000-lbs explosive bombs):

(A) This activity shall only occur in the W–155A/B (hot box) area, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in §218.31(c).

(B) 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) altitude 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.

(C) A buffer zone of a 5,100-yard (4,663-m) radius shall be established around the intended target zone. The exercises shall be conducted only if the buffer zone is clear of marine mammals.

(D) At-sea BOMBEXs using live ordnance shall occur during daylight hours only.

(ii) Small Arms Training—Explosive hand grenades (such as the MK3A2 grenades):

(A) Lookouts shall visually survey for marine mammals prior to and during exercise.

(B) A 200-yd (182-m) radius buffer zone shall be established around the intended target zone. The exercises shall be conducted only if the buffer zone is clear of marine mammals.

(b) [Reserved]

(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);

(K) 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.), 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; and

(M) If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection.

(2) Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.

(i) Any time a towed hydrophone array is employed during shipboard surveys the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

(iii) The array should have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

(3) Marine mammal observers on Navy platforms:

(i) As required in §218.34(c)(1), MMOs who are selected for aerial or vessel surveys shall, to the extent practicable, be placed on a Navy platform during the exercises being monitored.

(ii) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise. Instead, MMOs should be employed during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the lookouts.

(v) The MMOs shall not be part of the Navy’s formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs should be the same as those collected by the survey team described in §218.34(c)(1)(iv).

(d) 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, any Navy training exercise utilizing 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).

(e) Annual GOMEX Range Complex Monitoring Plan Report—The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the GOMEX Range Complex Monitoring Plan. Data collection methods shall be standardized across
§218.35 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 §218.30(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.36 or a renewal under §218.37.

§218.36 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 §218.37 and the modification conditions in §218.38.

(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).