

regulations or that result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) A LOA issued under §216.106 of this chapter and §217.256 for the activity identified in §217.250 may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in a LOA:

(A) Results from Navy's monitoring from previous years.

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in a LOA issued pursuant to §216.106 of this chapter and §217.256, a LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within thirty days of the action.

§§ 217.258–217.259 [Reserved]

#### Subpart AA–XXX [Reserved]

## PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

### Subparts A–B [Reserved]

#### Subpart C—Taking Marine Mammals Incidental to U.S. Navy Marine Structure Maintenance and Pile Replacement in Washington

- 218.20 Specified activity and specified geographical region.
- 218.21 Effective dates.
- 218.22 Permissible methods of taking.
- 218.23 Prohibitions.
- 218.24 Mitigation requirements.
- 218.25 Requirements for monitoring and reporting.
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#### Subpart D—Taking Marine Mammals Incidental to U.S. Navy Construction Activities at Naval Weapons Station Seal Beach, California

- 218.30 Specified activity and specified geographical region.
- 218.31 Effective dates.
- 218.32 Permissible methods of taking.
- 218.33 Prohibitions.
- 218.34 Mitigation requirements.
- 218.35 Requirements for monitoring and reporting.
- 218.36 Letters of Authorization.
- 218.37 Renewals and modifications of Letters of Authorization.
- 218.38–218.39 [Reserved]

### Subpart E [Reserved]

#### Subpart F—Taking of Marine Mammals Incidental to the U.S. Air Force 86 Fighter Weapons Squadron Conducting Long Range Strike Weapons System Evaluation Program at the Pacific Missile Range Facility at Kauai, Hawaii

- 218.50 Specified activity and specified geographical region.
- 218.51 Effective dates.
- 218.52 Permissible methods of taking.
- 218.53 Prohibitions.
- 218.54 Mitigation requirements.
- 218.55 Requirements for monitoring and reporting.
- 218.56 Letters of Authorization.
- 218.57 Renewals and Modifications of Letters of Authorization.

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218.58–218.59 [Reserved]

**Subpart G—Taking of Marine Mammals Incidental to Testing and Training Activities Conducted at the Eglin Gulf Test and Training Range in the Gulf of Mexico**

- 218.60 Specified activity and specified geographical region.
- 218.61 Effective dates.
- 218.62 Permissible methods of taking.
- 218.63 Prohibitions.
- 218.64 Mitigation requirements.
- 218.65 Requirements for monitoring and reporting.
- 218.66 Letters of Authorization.
- 218.67 Renewals and modifications of Letters of Authorization.
- 218.68–218.69 [Reserved]

**Subpart H—Taking and Importing Marine Mammals; U.S. Navy’s Hawaii-Southern California Training and Testing (HSTT)**

- 218.70 Specified activity and geographical region.
- 218.71 Effective dates.
- 218.72 Permissible methods of taking.
- 218.73 Prohibitions.
- 218.74 Mitigation requirements.
- 218.75 Requirements for monitoring and reporting.
- 218.76 Letters of Authorization.
- 218.77 Renewals and modifications of Letters of Authorization.
- 218.78–218.79 [Reserved]

**Subpart I—Taking and Importing Marine Mammals; U.S. Navy’s Atlantic Fleet Training and Testing (AFTT)**

- 218.80 Specified activity and specified geographical region.
- 218.81 Effective dates.
- 218.82 Permissible methods of taking.
- 218.83 Prohibitions.
- 218.84 Mitigation requirements.
- 218.85 Requirements for monitoring and reporting.
- 218.86 Letters of Authorization.
- 218.87 Renewals and modifications of Letters of Authorization.
- 218.88–218.89 [Reserved]

**Subpart J—Taking and Importing Marine Mammals; U.S. Navy’s Mariana Islands Training and Testing (MITT)**

- 218.90 Specified activity and geographical region.
- 218.91 Effective dates.
- 218.92 Permissible methods of taking.
- 218.93 Prohibitions.
- 218.94 Mitigation requirements.
- 218.95 Requirements for monitoring and reporting.
- 218.96 Letters of Authorization.

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218.97 Renewals and modifications of Letters of Authorization.

**Subparts K–N [Reserved]**

**Subpart O—Taking and Importing Marine Mammals; U.S. Navy’s Northwest Training and Testing (NWT) Study Area**

- 218.140 Specified activity and specified geographical region.
- 218.141 Applicability dates.
- 218.142 Permissible methods of taking.
- 218.143 Prohibitions.
- 218.144 Mitigation.
- 218.145 Requirements for monitoring and reporting.
- 218.146 Applications for Letters of Authorization
- 218.147 Letters of Authorization.
- 218.148 Renewal and Modifications of Letters of Authorization and Adaptive Management.

**Subpart P—Taking and Importing Marine Mammals; U.S. Navy’s Gulf of Alaska Temporary Maritime Activities Area (GOA TMAA) Study Area**

- 218.150 Specified activity and specified geographical region.
- 218.151 Effective dates and definitions.
- 218.152 Permissible methods of taking.
- 218.153 Prohibitions.
- 218.154 Mitigation.
- 218.155 Requirements for monitoring and reporting.
- 218.156 Applications for letters of authorization (LOA).
- 218.157 Letters of authorization (LOA).
- 218.158 Renewal and modifications of letters of authorization (LOA) and adaptive management.

**Subparts Q–W [Reserved]**

**Subpart X—Taking and Importing of Marine Mammals; U.S. Navy Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Training and Testing in the Central and Western North Pacific and Eastern Indian Oceans**

- 218.230 Specified activity, level of taking, and species/stocks.
- 218.231 Effective dates.
- 218.232 Permissible methods of taking.
- 218.233 Prohibitions.
- 218.234 Mitigation.
- 218.235 Requirements for monitoring.
- 218.236 Requirements for reporting.
- 218.237 Letter of Authorization.
- 218.238 Renewals and modifications of a Letter of Authorization.

## National Marine Fisheries Service/NOAA, Commerce

## § 218.24

AUTHORITY: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

SOURCE: 74 FR 28343, June 15, 2009, unless otherwise noted.

EFFECTIVE DATE NOTE: At 83 FR 5568, Feb. 8, 2018, the authority citation for part 218 was revised, effective Feb. 13, 2018, through Feb. 12, 2023.

### Subparts A–B [Reserved]

### Subpart C—Taking Marine Mammals Incidental to U.S. Navy Marine Structure Maintenance and Pile Replacement in Washington

SOURCE: 84 FR 15983, Apr. 17, 2019, unless otherwise noted.

EFFECTIVE DATE NOTE: At 84 FR 15983, Apr. 17, 2019, subpart C was added, effective May 17, 2019, through May 17, 2024.

#### § 218.20 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy (Navy) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to maintenance construction activities, as defined in a Letter of Authorization (LOA).

(b) The taking of marine mammals by the Navy may be authorized in a LOA only if it occurs within Washington inland waters in the vicinity of one of the following six naval installations: Naval Base Kitsap Bangor, Zelatched Point, Naval Base Kitsap Bremerton, Naval Base Kitsap Keyport, Naval Base Kitsap Manchester, and Naval Station Everett.

#### § 218.21 Effective dates.

Regulations in this subpart are effective from May 17, 2019 through May 17, 2024.

#### § 218.22 Permissible methods of taking.

Under LOAs issued pursuant to §§ 216.106 of this chapter and 218.26, the Holder of the LOA (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals

within the area described in § 218.20(b) by Level A or Level B harassment associated with maintenance construction activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

#### § 218.23 Prohibitions.

Notwithstanding takings contemplated in § 218.22 and authorized by a LOA issued under §§ 216.106 of this chapter and 218.26, no person in connection with the activities described in § 218.20 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 218.26;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

#### § 218.24 Mitigation requirements.

When conducting the activities identified in § 218.20(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 218.26 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) A copy of any issued LOA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of the issued LOA; and

(2) The Navy shall conduct briefings for construction supervisors and crews, the monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

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(b) *Shutdown zones.* (1) For all pile driving activity, the Navy shall implement a minimum shutdown zone of a 10 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease;

(2) For all pile driving activity, the Navy shall implement shutdown zones with radial distances as identified in any LOA issued under §§216.106 of this chapter and 218.26. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease;

(3) For all pile driving activity, the Navy shall designate monitoring zones with radial distances as identified in any LOA issued under §§216.106 of this chapter and 218.26. Anticipated observable zones within the designated monitoring zones shall be identified in annual Marine Mammal Monitoring Plans, subject to approval by NMFS. If any cetacean is observed outside the shutdown zone identified pursuant to paragraphs (b)(1) and (2) of this section, but within the designated monitoring zone, such operations shall cease.

(c) *Shutdown protocols.* (1) The Navy shall deploy marine mammal observers as indicated in annual Marine Mammal Monitoring Plans, which shall be subject to approval by NMFS, and as described in §218.25.

(2) For all pile driving activities, a minimum of one observer shall be stationed at the active pile driving rig or in reasonable proximity in order to monitor the shutdown zone.

(3) Prior to the start of pile driving on any day, the Navy shall take measures to ensure that southern resident killer whales are not located within the vicinity of the project area, including, but not limited to, contacting and/or reviewing the latest sightings data from the Orca Network and/or Center for Whale Research, including passive acoustic detections, to determine the location of the nearest marine mammal sightings.

(4) Monitoring shall take place from fifteen minutes prior to initiation of pile driving activity through thirty minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for fifteen minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may

commence only if observers have declared the shutdown zone clear of marine mammals during this period. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, the marine mammals shall be allowed to remain in the shutdown zone (*i.e.*, must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. A determination that the shutdown zone is clear cannot be made unless the observer(s) have good visibility of the shutdown zone during the entire fifteen-minute observation period (*i.e.*, the entire shutdown zone must be visible to the naked eye and unobscured by dark, rain, fog, poor lighting conditions, etc.).

(5) If a marine mammal approaches or enters the shutdown zone, the Navy shall halt all pile driving activities at that location. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal.

(6) If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone, the Navy must halt pile driving activities immediately using delay and shutdown procedures. Activities must not resume until the animal has been confirmed to have left the area or the fifteen-minute observation period has elapsed.

(7) Monitoring shall be conducted by trained observers, who shall have no other assigned tasks during monitoring periods. Trained observers shall be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. The Navy shall adhere to the following additional observer qualifications:

(i) Independent observers (*i.e.*, not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience.

(iv) Where a team of three or more observers are required, one observer shall be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer.

(d) *Soft start.* The Navy shall use soft start techniques for impact pile driving. Soft start for impact drivers requires contractors to provide an initial set of three strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy three-strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(e) *Sound attenuation.* The Navy shall employ a bubble curtain (or other sound attenuation device with proven typical performance of at least 8 decibels effective attenuation) during impact pile driving of steel piles greater than 14 inches diameter in water depths greater than 2 feet, except at Naval Base Kitsap Bremerton and Naval Base Kitsap Keyport. The Navy shall assess the potential for the use of bubble curtains at Keyport on a project-by-project basis. In addition, the Navy shall implement the following performance standards:

(1) The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column.

(2) The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact.

(3) The Navy shall require that construction contractors train personnel in the proper balancing of air flow to the bubble rings, and shall require that construction contractors submit an inspection/performance report for ap-

proval by the Navy within 72 hours following the performance test. Corrections to the attenuation device to meet the performance standards shall occur prior to impact driving.

**§ 218.25 Requirements for monitoring and reporting.**

(a) Not later than March 1 of each year, the Navy shall develop and submit for NMFS's approval an installation-specific Marine Mammal Monitoring Plan for each year's anticipated work. Final monitoring plans shall be prepared and submitted to NMFS within 30 days following receipt of comments on the draft plans from NMFS.

(b) During each in-water work period, the Navy shall update NMFS every two months on the progress of ongoing projects.

(c) Trained observers shall receive a general environmental awareness briefing conducted by Navy staff. At a minimum, training shall include identification of the marine mammals that may occur in the project vicinity and relevant mitigation and monitoring requirements. All observers shall have no other construction-related tasks while conducting monitoring.

(d) For shutdown zone monitoring, the Navy shall report on implementation of shutdown or delay procedures, including whether the procedures were not implemented and why (when relevant).

(e) The Navy shall deploy additional observers to monitor disturbance zones according to the minimum requirements defined in annual Marine Mammal Monitoring Plans, subject to approval by NMFS. These observers shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity, and shall communicate with the shutdown zone observer as appropriate with regard to the presence of marine mammals. All observers shall be trained in identification and reporting of marine mammal behaviors.

(f) The Navy must conduct hydroacoustic monitoring for a subset of impact-driven steel piles for projects that include more than three such piles. When this requirement for monitoring of impact-driven steel piles is

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triggered, the Navy must also conduct hydroacoustic monitoring of a subset of impact-driven plastic piles (if applicable).

(g) The Navy must submit annual summary, final, and comprehensive summary reports as described in this paragraph (g):

(1) Navy shall submit an annual summary report to NMFS not later than 90 days following the end of construction for that year. Navy shall provide a final report within 30 days following resolution of comments on the draft report. These reports shall contain, at minimum, the following:

- (i) Date and time that monitored activity begins or ends;
- (ii) Construction activities occurring during each observation period;
- (iii) Weather parameters (e.g., wind speed, percent cloud cover, visibility);
- (iv) Water conditions (e.g., sea state, tide state);
- (v) Species, numbers, and, if possible, sex and age class of marine mammals;
- (vi) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- (vii) Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- (viii) Description of implementation of mitigation measures (e.g., shutdown or delay);
- (ix) Locations of all marine mammal observations; and
- (x) Other human activity in the area.

(2) Navy shall submit a comprehensive summary report to NMFS not later than ninety days following the conclusion of marine mammal monitoring efforts described in this subpart.

(h) The Navy must submit reports of stranded, injured, or dead marine mammals as described in this paragraph (h):

(1) In the event that a live marine mammal is found stranded, whether on shore or in or on any structure or vessel, the following steps shall be taken:

(i) Project personnel who discover the marine mammal shall immediately notify the most appropriate onsite personnel with relevant expertise (e.g., marine mammal observers) as well as the Navy (if non-Navy project personnel initially discover the animal).

(ii) The Navy shall then immediately notify the West Coast Regional Stranding Coordinator, NMFS, and, in consultation with the Stranding Coordinator, shall immediately notify the most appropriate qualified individual (i.e., biologist or veterinarian) to respond to the event.

(iii) In the interim, or in the event that no qualified individual other than onsite marine mammal observers is available to respond to the event, the Navy shall manage the event response and shall take action to prevent any further deterioration of the animal's condition, to the extent possible. Appropriate action may be specific to the event. At minimum, the Navy should provide shade for the animal (if possible), shall not move the animal or cause the animal to move, and shall suspend project activity until the situation is resolved.

(iv) The Navy shall report the incident to the Office of Protected Resources (OPR), NMFS, within 48 hours after discovery.

(2) In the unanticipated event that the activity defined in §218.20 clearly causes the take of at least one marine mammal in a prohibited manner, the Navy shall immediately cease such activity and report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS. Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Navy may not resume their activities until notified by NMFS. The report must include the following information:

- (i) Time, date, and location (latitude/longitude) of the incident;
- (ii) Description of the incident;
- (iii) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, visibility);
- (iv) Description of all marine mammal observations in the 24 hours preceding the incident;
- (v) Species identification or description of the animal(s) involved;
- (vi) Fate of the animal(s); and
- (vii) Photographs or video footage of the animal(s). Photographs may be

taken once the animal(s) have been moved from the waterfront area.

(3) In the event that the Navy discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), the Navy shall immediately report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (h)(2) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

(4) In the event that the Navy discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 218.20 (e.g., previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Navy shall report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. The Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. Photographs may be taken once the animal has been moved from the waterfront area.

#### § 218.26 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the Navy must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of the regulations in this subpart.

(c) If an LOA expires prior to the expiration date of the regulations in this subpart, the Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the Navy must apply for and obtain a modification of the LOA as described in § 218.27.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the regulations in this subpart.

(g) Notice of issuance or denial of an LOA shall be published in the FEDERAL REGISTER within thirty days of a determination.

#### § 218.27 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 218.26 for the activity identified in § 218.20(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under the regulations in this subpart were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations in this subpart or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 218.26 for the activity identified in § 218.20(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the regulations in this subpart.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the Navy’s monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 218.26, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within thirty days of the action.

§§ 218.28–218.29 [Reserved]

**Subpart D—Taking Marine Mammals Incidental to U.S. Navy Construction Activities at Naval Weapons Station Seal Beach, California**

SOURCE: 85 FR 10325, Feb. 24, 2020, unless otherwise noted.

EFFECTIVE DATE NOTE: At 85 FR 10325, Feb. 24, 2020, subpart D was added, effective Mar. 25, 2020, through Mar. 25, 2025.

**§ 218.30 Specified activity and specified geographical region.**

(a) Regulations in this subpart apply only to the U.S. Navy (Navy) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to maintenance construction activities.

(b) The taking of marine mammals by the Navy may be authorized in a Letter of Authorization (LOA) only if it occurs within California coastal waters in the vicinity of Naval Weapons Station Seal Beach.

**§ 218.31 Effective dates.**

Regulations in this subpart are effective from March 25, 2020, through March 25, 2025.

**§ 218.32 Permissible methods of taking.**

Under LOAs issued pursuant to §§ 216.106 of this chapter and 218.36, the Holder of the LOA (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in § 218.30(b) by Level B harassment associated with construction activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

**§ 218.33 Prohibitions.**

Notwithstanding takings contemplated in § 218.32 and authorized by an LOA issued under §§ 216.106 of this chapter and 218.36, no person in connection with the activities described in § 218.30 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 218.36;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such



taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

#### § 218.34 Mitigation requirements.

When conducting the activities identified in § 218.30(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 218.36 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) A copy of any issued LOA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of the issued LOA.

(2) The Navy shall conduct briefings for construction supervisors and crews, the monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

(b) *Shutdown zones.* (1) For all pile driving activity, the Navy shall implement a minimum shutdown zone of a 10 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(2) For all pile driving activity, the Navy shall implement shutdown zones with radial distances as identified in any LOA issued under §§ 216.106 of this chapter and 218.36. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(3) For all pile driving activity, the Navy shall designate monitoring zones with radial distances as identified in any LOA issued under §§ 216.106 of this chapter and 218.36.

(c) *Shutdown protocols.* (1) The Navy shall deploy marine mammal observers as described in § 218.35.

(2) For all pile driving activities, a minimum of one observer shall be stationed at the active pile driving rig or in reasonable proximity in order to monitor the shutdown zone.

(3) Monitoring shall take place from 30 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for 30 minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.*, must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.*, the entire shutdown zone and surrounding waters must be visible to the naked eye).

(4) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

(5) During conditions where the entire shutdown zone is not visible (*e.g.*, dark, fog, heavy rain), impact pile driving must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

(6) Monitoring shall be conducted by trained observers, who shall have no other assigned tasks during monitoring periods. Trained observers shall be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. The Navy shall adhere to the following additional observer qualifications:

(i) Independent observers (*i.e.*, not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

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(iii) Other observers may substitute education (degree in biological science or related field) or training for experience.

(iv) Where a team of three or more observers are required, one observer shall be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer.

(v) The Navy shall submit observer CVs for approval by NMFS.

(d) *Soft start.* The Navy shall use soft start techniques for impact pile driving. Soft start for impact drivers requires contractors to provide an initial set of three strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy three-strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

### §218.35 Requirements for monitoring and reporting.

(a) Trained observers shall receive a general environmental awareness briefing conducted by Navy staff. At minimum, training shall include identification of marine mammals that may occur in the project vicinity and relevant mitigation and monitoring requirements. All observers shall have no other construction-related tasks while conducting monitoring.

(b) For shutdown zone monitoring, the Navy shall report on implementation of shutdown or delay procedures, including whether the procedures were not implemented and why (when relevant).

(c) The Navy shall deploy a minimum of one additional observer to aid in monitoring disturbance zones. This observer shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity, and shall communicate with the shutdown zone observer as appropriate with regard to the presence of marine mammals. All observers shall be trained in identification and reporting of marine mammal behaviors.

(d) The Navy must submit annual and summary reports.

(1) Navy shall submit an annual summary report to NMFS not later than 90 days following the end of each calendar year. Navy shall provide a final report within 30 days following resolution of comments on the draft report. These reports shall contain, at minimum, the following:

(i) Dates and times (begin and end) of all marine mammal monitoring;

(ii) Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.*, impact or vibratory);

(iii) Weather parameters and water conditions during each monitoring period (*e.g.*, wind speed, percent cover, visibility, sea state);

(iv) The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;

(v) Age and sex class, if possible, of all marine mammals observed;

(vi) PSO locations during marine mammal monitoring;

(vii) Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);

(viii) Description of any marine mammal behavior patterns during observation, including direction of travel;

(ix) Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);

(x) Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;

(xi) Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and,

(xii) An extrapolation of the estimated takes by Level B harassment

based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible, when applicable.

(2) Navy shall submit a comprehensive summary report to NMFS not later than ninety days following the conclusion of marine mammal monitoring efforts described in this subpart.

(e) Reporting of injured or dead marine mammals: In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the LOA-holder must report the incident to the Office of Protected Resources (OPR), NMFS and to the West Coast Regional Stranding Network as soon as feasible. The report must include the following information:

(1) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(2) Species identification (if known) or description of the animal(s) involved;

(3) Condition of the animal(s) (including carcass condition if the animal is dead);

(4) Observed behaviors of the animal(s), if alive;

(5) If available, photographs or video footage of the animal(s); and

(6) General circumstances under which the animal was discovered.

#### § 218.36 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the Navy must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, the Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the Navy must apply for and obtain a modification of the LOA as described in § 218.37.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the FEDERAL REGISTER within thirty days of a determination.

#### § 218.37 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 218.36 for the activity identified in § 218.30(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 218.36 for the activity identified in § 218.30(a) may be modified

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by NMFS under the following circumstances:

(1) *Adaptive management*—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the Navy’s monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) *Emergencies*. If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§216.106 of this chapter and 218.36, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within thirty days of the action.

**§§ 218.38–218.39 [Reserved]**

**Subpart E [Reserved]**

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**Subpart F—Taking of Marine Mammals Incidental to the U.S. Air Force 86 Fighter Weapons Squadron Conducting Long Range Strike Weapons System Evaluation Program at the Pacific Missile Range Facility at Kauai, Hawaii**

SOURCE: 82 FR 39698, Aug. 22, 2017, unless otherwise noted.

EFFECTIVE DATE NOTE: At 82 FR 39698, Aug. 22, 2017, subpart F was added, effective Aug. 21, 2017, through Aug. 22, 2022.

**§218.50 Specified activity and specified geographical region.**

(a) Regulations in this subpart apply only to the 86 Fighter Weapons Squadron (86 FWS) and those persons it authorizes to conduct activities on its behalf, for the taking of marine mammals as outlined in paragraph (b) of this section and incidental to Long Range Strike Weapons System Evaluation Program (LRS WSEP) missions.

(b) The taking of marine mammals by 86 FWS pursuant to a Letter of Authorization (LOA) is authorized only if it occurs at the Barking Sands Underwater Range Expansion (BSURE) area of the Pacific Missile Range Facility (PMRF) off Kauai, Hawaii.

**§218.51 Effective dates.**

Regulations in this subpart are effective August 21, 2017, through August 22, 2022.

**§218.52 Permissible methods of taking.**

Under a LOA issued pursuant to §216.106 of this chapter and §218.56, the Holder of the LOA (herein after 86 FWS) may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment associated with LRS WSEP activities within the area described in §218.50, provided the activities are in compliance with all terms, conditions, and requirements of these regulations in this subpart and the associated LOA.

**§218.53 Prohibitions.**

Notwithstanding takings contemplated in §218.50 and authorized by

an LOA issued under §216.106 of this chapter and §218.56, no person in connection with the activities described in §218.50 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or the LOA issued under §216.106 of this chapter and §218.56.

(b) Take a marine mammal species or stock not specified in the LOA; and

(c) Take a marine mammal species or stock specified in the LOA in any manner other than as specified.

#### §218.54 Mitigation requirements.

When conducting activities identified in §218.50, the mitigation measures contained in the LOA issued under §216.106 of this chapter and §218.56 must be implemented. These mitigation measures shall include but are not limited to the following general conditions:

(a) Execute missions during day-light hours only, no more than four hours per day, no more than one day during 2017, no more than four days per year for 2018 through 2022 over a five-day period, on weekdays, and only during summer (June through August) or fall (September through November) months.

(b) Delay live munition detonations if a marine mammal is observed within the designated exclusion zone (2.3 mile (mi) (3,704 m) from the weapon impact site), resuming only after the animal is observed exiting the exclusion zone or the exclusion zone has been clear of any additional sightings for a period of 30 minutes.

(c) Delay live munition detonations if a marine mammal is observed in an impact zone but outside of the 2.3 mi exclusion zone and if the manner of taking is not authorized (*e.g.*, animal is observed in Level A impact zone for that species and no Level A take is authorized), resuming only after the animal is observed exiting the zone.

(d) Shift the target site as far as possible from an observed marine mammal's location (but within the two-mile wide weapon impact area) if a marine mammal is observed during the pre-mission survey or during missions and continuing the mission will not result

in an unauthorized take of a marine mammal.

(e) Suspend live munition detonations if an unauthorized take of a marine mammal occurs, and report the incident to NMFS Office of Protected Resources (OPR), NMFS Pacific Islands Regional Office (PIRO), and the Pacific Islands Region Marine Mammal Stranding Network representative immediately followed by a report to NMFS within 24 hours.

(f) Implement a best management practice, on a daily basis, of conducting inert munition training or small bomb detonations prior to detonating large bombs if the Project Engineer/Commanding Office determines this practice does not interfere with mission training.

(g) Additional mitigation measures as contained in an LOA.

#### §218.55 Requirements for monitoring and reporting.

(a) Holders of LOAs issued pursuant to §218.56 for activities described in §218.50(a) are required to cooperate with NMFS, and any other Federal, state, or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the LOA, the Holder of the LOA must notify the Pacific Islands Region Stranding Coordinator, NMFS, by email, at least 72 hours prior to LRS WSEP missions.

(b) All marine mammal monitoring will be carried out in compliance with the 86 FWS Marine Mammal Mitigation and Monitoring Plan, dated August 2017.

(c) Aerial Surveys: The 86 FWS will conduct pre-, during, and post-training surveys each mission day.

(1) The marine mammal survey monitoring area will extend no less than approximately 8 mi (13 kilometers (km)) from the designated impact site.

(2) Surveys will utilize military aircraft equipped with advanced targeting sensor pods (*e.g.*, SNIPER pods) at altitudes and speeds ideal for detecting marine mammals using such equipment; aircraft will fly transect lines covering the entire eight mi monitoring area. A helicopter-based survey may substitute the military aircraft

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survey platform and use of sensor pods only if a sensor pod is not be available.

(3) A pre-mission marine mammal survey will commence no later than 30 minutes prior to beginning training activities.

(4) Aircraft personnel will also observe for marine mammals during training (*e.g.*, on approach to weapon launch location).

(5) Aircraft personnel will conduct a post-mission survey for marine mammals immediately following the end of training each mission day. A helicopter may be used in lieu of mission aircraft only if sensor pod is not available.

(d) Range Camera Surveys: 86 FWS personnel will use the Makaha Ridge range cameras to monitor for marine mammals within the weapon impact area at least 30 minutes prior to, during, and immediately after training activities.

(e) Helicopter surveys: If military aircraft equipped with a sensor pod cannot be used for marine mammal surveys, the 86 FWS may substitute a helicopter as the survey platform. The helicopter will fly at an approximately 200 feet altitude and will cover the 8 mi monitoring area. If adverse weather conditions preclude the ability for aircraft to safely operate, missions would either be delayed until the weather clears or cancelled for the day.

(f) Acoustic Monitoring:

(1) The 86 FWS will comply with all acoustic monitoring as described in the 86 FWS Mitigation and Monitoring Plan.

(2) Acoustic data from the PRMF hydrophones will be collected and stored by the 86 FWS. Data will be analyzed to better understand the effects of LRS WSEP missions. The results of the analysis will accompany any subsequent LOA request or, if no request is made, no later than 90 after expiration of the LOA.

(g) The 86 FWS will contact the Pacific Islands Region stranding coordinator, NMFS, by email, at least 72 hours prior to mission onset and one business day after completion of missions to declare that missions are complete.

(h) The Holder of the LOA is required to:

(1) Submit a draft report to NMFS OPR on all monitoring conducted under the LOA within 90 days of the completion of marine mammal monitoring or accompanying a subsequent application for regulations. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, and shall also include:

(i) Date and time of each LRS WSEP mission;

(ii) A complete description of the pre-exercise, exercise, and post-exercise activities related to mitigating and monitoring the effects of LRS WSEP missions on marine mammals; and;

(iii) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the LRS WSEP mission and number of marine mammals (by species if possible) that may have been harassed due to presence within the designated harassment zones.

(iv) The draft report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. The draft report will be considered the final report for this activity under the LOA if NMFS has not provided comments and recommendations within 90 days of receipt of the draft report.

(2) Report injured or dead marine mammals:

(i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the LOA, such as an injury for species not authorized (Level A harassment), serious injury, or mortality, the 86 FWS shall immediately cease the specified activities and immediately report the incident to Pacific Islands Regional Stranding Coordinator (888-256-9840), NMFS followed by a report submitted to NMFS Office of Protected Resources and the Pacific Islands Regional Office within 24 hours. The report must include the following information:

(A) Time and date of the incident;

(B) Description of the incident;

(C) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(D) Description of all marine mammal observations in the 24 hours preceding the incident;

(E) Species identification or description of the animal(s) involved;

(F) Fate of the animal(s); and

(G) Photographs or video footage of the animal(s).

(ii) Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with 86 FWS to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The 86 FWS may not resume their activities until notified by NMFS.

(iii) In the event that 86 FWS discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), 86 FWS shall immediately report the incident to the Pacific Islands Regional Stranding Coordinator, followed by a report to NMFS Office of Protected Resources and the Pacific Island Regional Office within 24 hours of the discovery. The report must include the same information identified in paragraph (h)(2)(i) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with 86 FWS to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iv) In the event that 86 FWS discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the LOA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), 86 FWS shall report the incident to the Office of Protected Resources, NMFS, and the Pacific Islands Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. The 86 FWS shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

(3) Additional Conditions:

(i) The Holder of the LOA must inform the Director, Office of Protected Resources, NMFS, (301-427-8400) or designee (301-427-8401) prior to the initiation of any changes to the monitoring plan for a specified mission activity.

(ii) A copy of the LOA must be in the possession of the safety officer on duty each mission day.

(iii) The LOA may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

#### § 218.56 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, 86 FWS must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, 86 FWS must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, 86 FWS must apply for and obtain a modification of the LOA as described in § 218.57.

(e) The LOA will set forth:

(1) Permissible methods of incidental taking;

(2) The number of marine mammals, by species and stock, authorized to be taken;

(3) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species of marine mammals authorized for taking, on its habitat, and on the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting.

(f) Issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA will be published in the FEDERAL

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REGISTER within 30 days of a determination.

### §218.57 Renewals and Modifications of Letters of Authorization.

(a) An LOA issued under §216.106 of this chapter and §218.56 for the activity identified in §218.50(a) will be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal request by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis illustrating the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §216.106 of this chapter and §218.56 for the activity identified in §218.50(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify and augment the existing mitigation, monitoring, or reporting measures (after consulting with the 86 FWS regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, and report-

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ing measures in an LOA include, but is not limited to:

(A) Results of new range-to-effects models based on maximum amount of weapons, by type, utilized during each mission;

(B) Results from 86 FWS's monitoring from the previous year(s);

(C) Results from other marine mammal and/or sound research or studies; or

(D) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations or subsequent LOA.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in the LOA issued pursuant to §216.106 of this chapter and §218.50, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within 30 days of the action.

### §§ 218.58–218.59 [Reserved]

## Subpart G—Taking of Marine Mammals Incidental to Testing and Training Activities Conducted at the Eglin Gulf Test and Training Range in the Gulf of Mexico

SOURCE: 83 FR 5568, Feb. 8, 2018, unless otherwise noted.

EFFECTIVE DATE NOTE: At 83 FR 5568, Feb. 8, 2018, subpart G was added, effective Feb. 13, 2018, through Feb. 12, 2023.

### §218.60 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Eglin Air Force Base (Eglin AFB) and those persons it authorizes to conduct activities on its behalf, for the taking of marine mammals as outlined in paragraph (b) of this section and incidental to testing and training



missions in the Eglin Gulf Test and Training Range (EGTTR).

(b) The taking of marine mammals by Eglin AFB pursuant to a Letter of Authorization (LOA) is authorized only if it occurs at the EGTTR in the Gulf of Mexico.

**§ 218.61 Effective dates.**

Regulations in this subpart are effective February 13, 2018 through February 12, 2023.

**§ 218.62 Permissible methods of taking.**

Under a Letter of Authorization (LOA) issued pursuant to § 216.106 of this chapter and § 218.66, the Holder of the LOA (herein after Eglin AFB) may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment associated with EGTTR activities within the area described in § 218.60 provided the activities are in compliance with all terms, conditions, and requirements of these regulations in this subpart and the appropriate LOA.

**§ 218.63 Prohibitions.**

Notwithstanding takings contemplated in § 218.60 and authorized by an LOA issued under § 216.106 of this chapter and § 218.66, no person in connection with the activities described in § 218.60 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under § 216.106 of this chapter and § 218.66.

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

**§ 218.64 Mitigation requirements.**

When conducting activities identified in § 218.60, the mitigation measures contained in the LOA issued under § 216.106 of this chapter and § 218.66 must be implemented. These mitigation measures shall include but are not

limited to the following general conditions:

(a) If daytime weather and/or sea conditions preclude adequate monitoring for detecting marine mammals and other marine life, EGTTR operations must be delayed until adequate sea conditions exist for monitoring to be undertaken.

(b) Restrictions on time of activities.

(1) Missions involving the use of live bombs, missiles and rockets shall only occur during daylight hours.

(2) Missions during daylight hours shall occur no earlier than two hours after sunrise and no later than two hours prior to sunset.

(c) Required delay of live ordnance mission activities shall occur if a protected species, large schools of fish or large flocks of birds feeding at the surface are observed within the ZOI. Mission activities cannot resume until one of the following conditions is met:

(1) Protected species marine mammal(s) is confirmed to be outside of the ZOI on a heading away from the target area; or

(2) Protected species marine mammal(s) is not seen again for 30 minutes and presumed to be outside the Level A harassment ZOI.

(3) Large groupings of fish or birds leading to required delay are confirmed outside of the ZOI.

(d) Gunnery operations shall require employment of the following mitigation measures.

(1) Use of 105-millimeter (mm) training rounds (TR) during nighttime missions.

(2) Ramp-up procedures requiring the use of the lowest caliber munition and proceeding to the highest, which means the munitions would be fired in the order of 25 mm, 40 mm, and 105 mm.

(3) Any pause in live fire activities greater than 10 minutes shall require reinitiation of protected species surveys.

(4) Missions shall be conducted within the 200-meter (m) isobaths to provide greater protection to several species.

(e) If one or more sperm or baleen whales are detected during pre-mission monitoring activities, mission activities shall be aborted/suspended for the remainder of the day.

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(f) Additional mitigation measures as contained in an LOA.

### § 218.65 Requirements for monitoring and reporting.

(a) Holders of LOAs issued pursuant to § 218.66 for activities described in § 218.60(a) are required to cooperate with NMFS, and any other Federal, state, or local agency with authority to monitor the impacts of the activity on marine mammals. If the authorized activity identified in § 218.60(a) is thought to have resulted in the mortality or injury of any marine mammals or take of marine mammals not identified in § 218.60(b), then the Holder of the LOA must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301) 427-8401, and the Southeast Regional Office (phone within 24 hours of the injury or death).

(b) Monitoring shall be conducted by personnel who have completed Eglin's Marine Species Observer Training Course, which was developed in cooperation with the National Marine Fisheries Service.

(c) The Holder of the LOA shall use mission-reporting forms to track their use of the EGTTR for testing and training missions and to track marine mammal observations.

(d) Depending on the mission category, visual aerial-based, vessel-based, or video-based marine mammal surveys shall be conducted before and after live ordnance mission activities each day.

(e) Vessel-based surveys shall begin approximately one and one-half hour prior to live weapon deployment and shall be completed 30 minutes prior to the start of mission.

(f) Surveys shall continue for approximately one hour or until the entire ZOI has been adequately surveyed, whichever comes first.

(g) Post-mission monitoring surveys shall commence once the mission has ended or as soon as the mission area is declared safe.

(h) Vessel-based post-mission surveys shall be conducted for 30 minutes after completion of live ordnance missions.

(i) Any marine mammals detected in the ZOI during post-mission surveys, for which take are authorized, shall be counted as takes by Level B harass-

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ment. Any marine mammals detected in the ZOI during post-mission surveys, for which take is not authorized, shall be reported immediately to the Office of Protected Resources, NMFS.

(j) A minimum of two dedicated observers shall be stationed on each vessel.

(k) Observers shall utilize optical equipment with sufficient magnification to allow observation of surfaced animals.

(l) The size of the survey area for each mission shall be determined according to the radius of impact for the given threshold of each munition/detonation scenario. These ranges shall be monitored during pre-mission surveys for each activity.

(m) Some missions shall be delayed to allow survey platforms to evacuate the human safety zone after pre-missions surveys are completed.

(n) Any aerial-based pre-mission surveys shall be conducted by observers aboard non-mission aircraft or mission aircraft who have completed the Marine Species Observer Training.

(o) Gunship standard procedures initiated prior to initiation of live-firing events shall require at least two complete orbits around the survey mission site at the appropriate airspeed and monitoring altitude and include the following:

(1) Monitoring for marine mammals shall continue throughout the mission by mission crew;

(2) Where applicable aircraft optical and electronic sensors shall be used for marine mammal observation;

(3) If any marine mammals are detected during pre-mission surveys or during the mission, activities shall be immediately halted until the ZOI area is clear of all marine mammals, or the mission shall be relocated to another target area. If the mission is relocated, the pre-mission survey procedures shall be repeated;

(4) If multiple firing missions are conducted within the same flight, standard clearance procedures shall precede each mission; and

(5) Gunship crews shall conduct a post-mission survey beginning at the operational altitude and proceeding through a spiraling descent to the designated monitoring altitude.

(p) Video-based monitoring from the GRATV shall be conducted where appropriate via live high-definition video feed.

(1) Supplemental video monitoring shall be conducted through the employment of additional aerial assets including aerostats and drones when available.

(2) [Reserved]

(q) Acoustic Monitoring:

(1) Eglin AFB shall conduct a passive acoustic monitoring (PAM) study as an initial step towards understanding acoustic impacts from underwater detonations, if funding is approved;

(2) Eglin AFB shall conduct PAM for marine mammal vocalizations before, during, and after live missions in the EGTTR, once funding is approved; and

(3) The results of the PAM study shall be submitted to NMFS OPR as a draft monitoring report within 90 days of completion of the study.

(r) The Holder of the LOA is required to:

(1) Submit an annual draft report to NMFS OPR on all monitoring conducted under the LOA within 90 days of the completion of marine mammal monitoring, or 60 days prior to the issuance of any subsequent LOA for projects at the EGTTR, whichever comes first. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS. This report must contain, at a minimum, the following information:

(i) Date and time of each EGTTR mission;

(ii) A complete description of the pre-mission and post-mission activities related to mitigating and monitoring the effects of EGTTR missions on marine mammal populations; and

(iii) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the EGTTR mission and number of marine mammals (by species if possible) that may have been harassed due to presence within the zone of influence.

(2) The draft report shall be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. The draft report

shall be considered the final report for this activity under the LOA if NMFS has not provided comments and recommendations within 90 days of receipt of the draft report.

(s) Reporting injured or dead marine mammals:

(1) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the LOA, such as an injury for species not authorized (Level A harassment), serious injury, or mortality, Eglin AFB shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Office, NMFS. The report must include the following information:

(i) Time and date of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Fate of the animal(s); and

(vii) Photographs or video footage of the animal(s).

(2) Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Eglin AFB to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Eglin AFB may not resume their activities in the EGTTR until notified by NMFS.

(3) In the event that Eglin AFB discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), Eglin AFB shall immediately report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Office, NMFS. The report must include the same information identified in paragraph (p)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS

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shall work with Eglin AFB to determine whether additional mitigation measures or modifications to the activities are appropriate.

(4) In the event that Eglin AFB discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the LOA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Eglin AFB shall report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Office, NMFS, within 24 hours of the discovery. Eglin AFB shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

(5) Additional Conditions:

(i) The Holder of the LOA must inform the Director, Office of Protected Resources, NMFS, (301-427-8401) or designee prior to the initiation of any changes to the monitoring plan for a specified mission activity.

(ii) A copy of the LOA must be in the possession of the safety officer on duty each day that EGTTR missions are conducted.

(iii) The LOA may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

### §218.66 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Eglin AFB must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Eglin AFB must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Eglin AFB must apply for and obtain a modification of the LOA as described in §218.67.

(e) The LOA shall set forth:

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(1) Permissible methods of incidental taking;

(2) Number of marine mammals, by species and age class, authorized to be taken;

(3) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species of marine mammals authorized for taking, on its habitat, and on the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting.

(f) Issuance of an LOA shall be based on a determination that the level of taking shall be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the FEDERAL REGISTER within 30 days of a determination.

### §218.67 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §216.106 of this chapter and §218.66 for the activity identified in §218.60(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal request by the applicant that includes changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of authorized takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis illustrating the

change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 218.66 for the activity identified in § 218.60(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Eglin AFB regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations;

(2) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA are:

(i) Results from Eglin AFB's annual monitoring reports;

(ii) Results from other marine mammal and sound research or studies; or

(iii) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(3) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(4) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified under LOAs issued pursuant to § 216.106 of this chapter and § 218.60, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within 30 days of the action.

§§ 218.68–218.69 [Reserved]

### Subpart H—Taking and Importing Marine Mammals; U.S. Navy's Hawaii-Southern California Training and Testing (HSTT)

SOURCE: 85 FR 41893, July 10, 2020, unless otherwise noted.

EFFECTIVE DATE NOTE: At 85 FR 41893, July 10, 2020, subpart H was revised, effective from July 10, 2020, to Dec. 20, 2025.

#### § 218.70 Specified activity and geographical region.

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

(b) The taking of marine mammals by the Navy under this subpart may be authorized in Letters of Authorization (LOAs) only if it occurs within the Hawaii-Southern California Training and Testing (HSTT) Study Area, which includes established operating and warning areas across the north-central Pacific Ocean, from the mean high tide line in Southern California west to Hawaii and the International Date Line. The Study Area includes the at-sea areas of three existing range complexes, the Hawaii Range Complex (HRC), the Southern California Range Complex (SOCAL), and the Silver Strand Training Complex, and overlaps a portion of the Point Mugu Sea Range (PMSR). Also included in the Study Area are Navy pierside locations in Hawaii and Southern California, Pearl Harbor, San Diego Bay, and the transit corridor on the high seas where sonar training and testing may occur.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the Navy conducting training and testing activities, including:

- (1) *Training.* (i) Amphibious warfare;
- (ii) Anti-submarine warfare;
- (iii) Electronic warfare;
- (iv) Expeditionary warfare;
- (v) Mine warfare;
- (vi) Surface warfare; and
- (vii) Pile driving.

(2) *Testing.* (i) Naval Air Systems Command Testing Activities;

(ii) Naval Sea Systems Command Testing Activities;

(iii) Office of Naval Research Testing Activities; and

(iv) Naval Information Warfare Systems Command.

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**§218.71 Effective dates.**

Regulations in this subpart are effective from July 10, 2020, through December 20, 2025.

**§218.72 Permissible methods of taking.**

(a) Under LOAs issued pursuant to §§216.106 of this chapter and 218.76, the Holder of the LOAs (hereinafter ‘‘Navy’’) may incidentally, but not intentionally, take marine mammals within the area described in §218.70(b)

by Level A harassment and Level B harassment associated with the use of active sonar and other acoustic sources and explosives as well as serious injury or mortality associated with vessel strikes and explosives, provided the activity is in compliance with all terms, conditions, and requirements of these regulations in this subpart and the applicable LOAs.

(b) The incidental take of marine mammals by the activities listed in §218.70(c) is limited to the following species:

TABLE 1 TO §218.72

Species	Stock
Blue whale .....	Central North Pacific.
Blue whale .....	Eastern North Pacific.
Bryde’s whale .....	Eastern Tropical Pacific.
Bryde’s whale .....	Hawaii.
Fin whale .....	CA/OR/WA.
Fin whale .....	Hawaiian.
Humpback whale .....	CA/OR/WA.
Humpback whale .....	Central North Pacific.
Minke whale .....	CA/OR/WA.
Minke whale .....	Hawaii.
Sei whale .....	Eastern North Pacific.
Sei whale .....	Hawaii.
Gray whale .....	Eastern North Pacific.
Gray whale .....	Western North Pacific.
Sperm whale .....	CA/OR/WA.
Sperm whale .....	Hawaii.
Dwarf sperm whale .....	Hawaii.
Pygmy sperm whale .....	Hawaii.
Kogia whales .....	CA/OR/WA.
Baird’s beaked whale .....	CA/OR/WA.
Blainville’s beaked whale .....	Hawaii.
Cuvier’s beaked whale .....	CA/OR/WA.
Cuvier’s beaked whale .....	Hawaii.
Longman’s beaked whale .....	Hawaii.
Mesoplodon spp. ....	CA/OR/WA.
Bottlenose dolphin .....	California Coastal.
Bottlenose dolphin .....	CA/OR/WA Offshore.
Bottlenose dolphin .....	Hawaii Pelagic.
Bottlenose dolphin .....	Kauai & Niihau.
Bottlenose dolphin .....	Oahu.
Bottlenose dolphin .....	4-Island.
Bottlenose dolphin .....	Hawaii.
False killer whale .....	Hawaii Pelagic.
False killer whale .....	Main Hawaiian Islands Insular.
False killer whale .....	Northwestern Hawaiian Islands.
Fraser’s dolphin .....	Hawaii.
Killer whale .....	Eastern North Pacific (ENP) Offshore.
Killer whale .....	ENP Transient/West Coast Transient.
Killer whale .....	Hawaii.
Long-beaked common dolphin .....	California.
Melon-headed whale .....	Hawaiian Islands.
Melon-headed whale .....	Kohala Resident.
Northern right whale dolphin .....	CA/OR/WA.
Pacific white-sided dolphin .....	CA/OR/WA.
Pantropical spotted dolphin .....	Hawaii Island.
Pantropical spotted dolphin .....	Hawaii Pelagic.
Pantropical spotted dolphin .....	Oahu.
Pantropical spotted dolphin .....	4-Island.
Pygmy killer whale .....	Hawaii.
Pygmy killer whale .....	Tropical.
Risso’s dolphin .....	CA/OR/WA.
Risso’s dolphin .....	Hawaii.
Rough-toothed dolphin .....	Hawaii.

TABLE 1 TO § 218.72—Continued

Species	Stock
Short-beaked common dolphin .....	CA/OR/WA.
Short-finned pilot whale .....	CA/OR/WA.
Short-finned pilot whale .....	Hawaii.
Spinner dolphin .....	Hawaii Island.
Spinner dolphin .....	Hawaii Pelagic.
Spinner dolphin .....	Kauai & Niihau.
Spinner dolphin .....	Oahu & 4-Island.
Striped dolphin .....	CA/OR/WA.
Striped dolphin .....	Hawaii.
Dall's porpoise .....	CA/OR/WA.
California sea lion .....	U.S.
Guadalupe fur seal .....	Mexico.
Northern fur seal .....	California.
Harbor seal .....	California.
Hawaiian monk seal .....	Hawaii.
Northern elephant seal .....	California.

Note to Table 1: CA/OR/WA = California/Oregon/Washington.

### § 218.73 Prohibitions.

Notwithstanding incidental takings contemplated in § 218.72(a) and authorized by LOAs issued under §§ 216.106 of this chapter and 218.76, no person in connection with the activities listed in § 218.70(c) may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 218.76;

(b) Take any marine mammal not specified in § 218.72(b);

(c) Take any marine mammal specified in § 218.72(b) in any manner other than as specified in the LOAs; or

(d) Take a marine mammal specified in § 218.72(b) if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal.

### § 218.74 Mitigation requirements.

When conducting the activities identified in § 218.70(c), the mitigation measures contained in any LOAs issued under §§ 216.106 of this chapter and 218.76 must be implemented. These mitigation measures include, but are not limited to:

(a) *Procedural mitigation.* Procedural mitigation is mitigation that the Navy must implement whenever and wherever an applicable training or testing activity takes place within the HSTT Study Area for each applicable activity category or stressor category and includes acoustic stressors (*i.e.*, active sonar, air guns, pile driving, weapons

firing noise), explosive stressors (*i.e.*, sonobuoys, torpedoes, medium-caliber and large-caliber projectiles, missiles and rockets, bombs, sinking exercises, mines, anti-swimmer grenades, and mat weave and obstacle loading), and physical disturbance and strike stressors (*i.e.*, vessel movement; towed in-water devices; small-, medium-, and large-caliber non-explosive practice munitions; non-explosive missiles and rockets; and non-explosive bombs and mine shapes).

(1) *Environmental awareness and education.* Appropriate Navy personnel (including civilian personnel) involved in mitigation, monitoring, and training or testing activity reporting under the specified activities will complete one or more modules of the U.S. Navy Afloat Environmental Compliance Training Series, as identified in their career path training plan. Modules include: Introduction to the U.S. Navy Afloat Environmental Compliance Training Series, Marine Species Awareness Training; U.S. Navy Protective Measures Assessment Protocol; and U.S. Navy Sonar Positional Reporting System and Marine Mammal Incident Reporting.

(2) *Active sonar.* Active sonar includes low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar. For vessel-based activities, mitigation applies only to sources that are positively controlled and deployed from manned surface vessels (*e.g.*, sonar sources towed from

manned surface platforms). For aircraft-based activities, mitigation applies only to sources that are positively controlled and deployed from manned aircraft that do not operate at high altitudes (*e.g.*, rotary-wing aircraft). Mitigation does not apply to active sonar sources deployed from unmanned aircraft or aircraft operating at high altitudes (*e.g.*, maritime patrol aircraft).

(i) *Number of Lookouts and observation platform*—(A) *Hull-mounted sources*. One Lookout for platforms with space or manning restrictions while underway (at the forward part of a small boat or ship) and platforms using active sonar while moored or at anchor (including pierside); and two Lookouts for platforms without space or manning restrictions while underway (at the forward part of the ship).

(B) *Sources that are not hull-mounted sources*. One Lookout on the ship or aircraft conducting the activity.

(ii) *Mitigation zone and requirements*. (A) During the activity, at 1,000 yards (yd) Navy personnel must power down 6 decibels (dB), at 500 yd Navy personnel must power down an additional 4 dB (for a total of 10 dB), and at 200 yd Navy personnel must shut down for low-frequency active sonar  $\geq 200$  dB and hull-mounted mid-frequency active sonar; or at 200 yd Navy personnel must shut down for low-frequency active sonar  $< 200$  dB, mid-frequency active sonar sources that are not hull-mounted, and high-frequency active sonar.

(B) Prior to the start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of active sonar transmission until the mitigation zone is clear. Navy personnel must also observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of active sonar transmission.

(C) During the activity for low-frequency active sonar at or above 200 dB and hull-mounted mid-frequency active sonar, Navy personnel must observe the mitigation zone for marine mammals and power down active sonar

transmission by 6 dB if marine mammals are observed within 1,000 yd of the sonar source; power down by an additional 4 dB (for a total of 10 dB total) if marine mammals are observed within 500 yd of the sonar source; and cease transmission if marine mammals are observed within 200 yd of the sonar source.

(D) During the activity for low-frequency active sonar below 200 dB, mid-frequency active sonar sources that are not hull mounted, and high-frequency active sonar, Navy personnel must observe the mitigation zone for marine mammals and cease active sonar transmission if marine mammals are observed within 200 yd of the sonar source.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing or powering up active sonar transmission) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonar source; the mitigation zone has been clear from any additional sightings for 10 minutes (min) for aircraft-deployed sonar sources or 30 min for vessel-deployed sonar sources; for mobile activities, the active sonar source has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting; or for activities using hull-mounted sonar where a dolphin(s) is observed in the mitigation zone, the Lookout concludes that the dolphin(s) is deliberately closing in on the ship to ride the ship's bow wave, and is therefore out of the main transmission axis of the sonar (and there are no other marine mammal sightings within the mitigation zone).

(3) *Air guns*—(i) *Number of Lookouts and observation platform*. One Lookout positioned on a ship or pierside.

(ii) *Mitigation zone and requirements*. 150 yd around the air gun.



(A) Prior to the initial start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel must also observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of air gun use.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease air gun use.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing air gun use) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the air gun; the mitigation zone has been clear from any additional sightings for 30 min; or for mobile activities, the air gun has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(4) *Pile driving.* Pile driving and pile extraction sound during Elevated Causeway System training.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the shore, the elevated causeway, or a small boat.

(ii) *Mitigation zone and requirements.* 100 yd around the pile driver.

(A) Prior to the initial start of the activity (for 30 min), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the

start of pile driving or vibratory pile extraction.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease impact pile driving or vibratory pile extraction.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. The Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing pile driving or pile extraction) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the pile driving location; or the mitigation zone has been clear from any additional sightings for 30 min.

(5) *Weapons firing noise.* Weapons firing noise associated with large-caliber gunnery activities.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the ship conducting the firing. Depending on the activity, the Lookout could be the same as the one provided for under “Explosive medium-caliber and large-caliber projectiles” or under “Small-, medium-, and large-caliber non-explosive practice munitions” in paragraphs (a)(8)(i) and (a)(18)(i) of this section.

(ii) *Mitigation zone and requirements.* Thirty degrees on either side of the firing line out to 70 yd from the muzzle of the weapon being fired.

(A) Prior to the start of the activity, Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of weapons firing until the mitigation zone is clear. Navy personnel must also observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of weapons firing.

(B) During the activity, Navy personnel must observe the mitigation

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zone for marine mammals; if marine mammals are observed, Navy personnel must cease weapons firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing weapons firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the firing ship; the mitigation zone has been clear from any additional sightings for 30 min; or for mobile activities, the firing ship has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(6) *Explosive sonobuoys*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft or on a small boat. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 600 yd around an explosive sonobuoy.

(A) Prior to the initial start of the activity (*e.g.*, during deployment of a sonobuoy field, which typically lasts 20–30 min), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of sonobuoy or source/receiver pair detonations until the mitigation zone is clear. Navy personnel must conduct passive acoustic monitoring for marine mammals and use information from detections to assist visual observations. Navy personnel also must visually observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of sonobuoy or source/receiver pair detonations.

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(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease sonobuoy or source/receiver pair detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonobuoy; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints (*e.g.*, helicopter), or 30 min when the activity involves aircraft that are not typically fuel constrained.

(D) After completion of the activity (*e.g.*, prior to maneuvering off station), when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(7) *Explosive torpedoes*—(i) *Number of Lookouts and observation platform.* One Lookout positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2,100 yd around the intended impact location.

(A) Prior to the initial start of the activity (*e.g.*, during deployment of the

target), Navy personnel must observe the mitigation zone for floating vegetation and jellyfish aggregations; if floating vegetation or jellyfish aggregations are observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel must conduct passive acoustic monitoring for marine mammals and use the information from detections to assist visual observations. Navy personnel also must visually observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(D) After completion of the activity (*e.g.*, prior to maneuvering off station), Navy personnel must when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets

must assist in the visual observation of the area where detonations occurred.

(8) *Explosive medium-caliber and large-caliber projectiles.* Gunnery activities using explosive medium-caliber and large-caliber projectiles. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be on the vessel or aircraft conducting the activity. For activities using explosive large-caliber projectiles, depending on the activity, the Lookout could be the same as the one described in “Weapons firing noise” in paragraph (a)(5)(i) of this section. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 200 yd around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles.

(B) 600 yd around the intended impact location for surface-to-surface activities using explosive medium-caliber projectiles.

(C) 1,000 yd around the intended impact location for surface-to-surface activities using explosive large-caliber projectiles.

(D) Prior to the start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(E) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(F) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or

during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or for activities using mobile targets, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(G) After completion of the activity (*e.g.*, prior to maneuvering off station), Navy personnel must, when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(9) *Explosive missiles and rockets.* Aircraft-deployed explosive missiles and rockets. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 900 yd around the intended impact location for missiles or rockets with 0.6–20 lb net explosive weight.

(B) 2,000 yd around the intended impact location for missiles with 21–500 lb net explosive weight.

(C) Prior to the initial start of the activity (*e.g.*, during a fly-over of the mitigation zone), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must re-

locate or delay the start of firing until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(D) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(F) After completion of the activity (*e.g.*, prior to maneuvering off station), Navy personnel must, when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets will assist in the visual observation of the area where detonations occurred.

(10) *Explosive bombs*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the

mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2,500 yd around the intended target.

(A) Prior to the initial start of the activity (*e.g.*, when arriving on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of bomb deployment until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment.

(B) During the activity (*e.g.*, during target approach), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease bomb deployment.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target; the mitigation zone has been clear from any additional sightings for 10 min; or for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(D) After completion of the activity (*e.g.*, prior to maneuvering off station), Navy personnel must, when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are

supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(11) *Sinking exercises*—(i) *Number of Lookouts and observation platform.* Two Lookouts (one must be positioned in an aircraft and one must be positioned on a vessel). If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2.5 nautical miles (nmi) around the target ship hulk.

(A) Prior to the initial start of the activity (90 min prior to the first firing), Navy personnel must conduct aerial observations of the mitigation zone for floating vegetation and jellyfish aggregations; if floating vegetation or jellyfish aggregations are observed, Navy personnel must delay the start of firing until the mitigation zone is clear. Navy personnel also must conduct aerial observations of the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the start of firing.

(B) During the activity, Navy personnel must conduct passive acoustic monitoring for marine mammals and use the information from detections to assist visual observations. Navy personnel must visually observe the mitigation zone for marine mammals from the vessel; if marine mammals are observed, Navy personnel must cease firing. Immediately after any planned or unplanned breaks in weapons firing of longer than two hours, Navy personnel must observe the mitigation zone for marine mammals from the aircraft and vessel; if marine mammals are observed, Navy personnel must delay recommencement of firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The

animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the target ship hulk; or the mitigation zone has been clear from any additional sightings for 30 min.

(D) After completion of the activity (for two hours after sinking the vessel or until sunset, whichever comes first), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets will assist in the visual observation of the area where detonations occurred.

(12) *Explosive mine countermeasure and neutralization activities*—(i) *Number of Lookouts and observation platform.* (A) One Lookout must be positioned on a vessel or in an aircraft when implementing the smaller mitigation zone.

(B) Two Lookouts (one must be positioned in an aircraft and one must be on a small boat) when implementing the larger mitigation zone.

(C) If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 600 yd around the detonation site for activities using 0.1–5 lb net explosive weight.

(B) 2,100 yd around the detonation site for activities using 6–650 lb net explosive weight (including high explosive target mines).

(C) Prior to the initial start of the activity (*e.g.*, when maneuvering on station; typically, 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of detonations until the mitigation zone is clear.

Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations.

(D) During the activity, Navy personnel must observe the mitigation zone for marine mammals, concentrations of seabirds, and individual foraging seabirds; if marine mammals, concentrations of seabirds, or individual foraging seabirds are observed, Navy personnel must cease detonations.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity or a sighting of seabird concentrations or individual foraging seabirds during the activity. Navy personnel must allow a sighted animal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to detonation site; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(F) After completion of the activity (typically 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(13) *Explosive mine neutralization activities involving Navy divers*—(i) *Number of Lookouts and observation platform.* (A) Two Lookouts (two small boats with one Lookout each, or one Lookout

must be on a small boat and one must be in a rotary-wing aircraft) when implementing the smaller mitigation zone.

(B) Four Lookouts (two small boats with two Lookouts each), and a pilot or member of an aircrew must serve as an additional Lookout if aircraft are used during the activity, when implementing the larger mitigation zone.

(C) All divers placing the charges on mines will support the Lookouts while performing their regular duties and will report applicable sightings to their supporting small boat or Range Safety Officer.

(D) If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.*  
(A) 500 yd around the detonation site during activities under positive control using 0.1–20 lb net explosive weight.

(B) 1,000 yd around the detonation site during all activities using time-delay fuses (0.1–29 lb net explosive weight) and during activities under positive control using 21–60 lb net explosive weight charges.

(C) Prior to the initial start of the activity (*e.g.*, when maneuvering on station for activities under positive control; 30 min for activities using time-delay firing devices), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of detonations or fuse initiation until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations or fuse initiation.

(D) During the activity, Navy personnel must observe the mitigation zone for marine mammals, concentrations of seabirds, and individual foraging seabirds (in the water and not on shore); if marine mammals, concentrations of seabirds, or individual foraging seabirds are observed, Navy personnel must cease detonations or fuse initiation. To the maximum extent prac-

ticable depending on mission requirements, safety, and environmental conditions, Navy personnel must position boats near the mid-point of the mitigation zone radius (but outside of the detonation plume and human safety zone), must position themselves on opposite sides of the detonation location (when two boats are used), and must travel in a circular pattern around the detonation location with one Lookout observing inward toward the detonation site and the other observing outward toward the perimeter of the mitigation zone. If used, Navy aircraft must travel in a circular pattern around the detonation location to the maximum extent practicable. Navy personnel must not set time-delay firing devices (0.1–29 lb. net explosive weight) to exceed 10 min.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity or a sighting of seabird concentrations or individual foraging seabirds during the activity. Navy personnel must allow a sighted animal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the detonation site; or the mitigation zone has been clear from any additional sightings for 10 min during activities under positive control with aircraft that have fuel constraints, or 30 min during activities under positive control with aircraft that are not typically fuel constrained and during activities using time-delay firing devices.

(F) After completion of an activity, the Navy must observe for marine mammals for 30 min. Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy

assets must assist in the visual observation of the area where detonations occurred.

(14) *Maritime security operations—anti-swimmer grenades*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the small boat conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 200 yd around the intended detonation location.

(A) Prior to the initial start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of detonations until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended detonation location; the mitigation zone has been clear from any additional sightings for 30 min; or the intended detonation location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(D) After completion of the activity (*e.g.*, prior to maneuvering off station), Navy personnel must, when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets will assist in the visual observation of the area where detonations occurred.

(15) *Underwater demolition multiple charge—mat weave and obstacle loading exercises*—(i) *Number of Lookouts and observation platform.* Two Lookouts (one must be positioned on a small boat and one must be positioned on shore from an elevated platform). If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 700 yd around the intended detonation location.

(A) Prior to the initial start of the activity, or 30 min prior to the first detonation, the Lookout positioned on a small boat must observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel must delay the start of detonations until the mitigation zone is clear. For 10 min prior to the first detonation, the Lookout positioned on shore must use binoculars to observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the start of detonations.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted



marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the detonation location; or the mitigation zone has been clear from any additional sightings for 10 min (as determined by the Navy shore observer).

(D) After completion of the activity (for 30 min), the Lookout positioned on a small boat must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (e.g., providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(16) *Vessel movement.* The mitigation will not be applied if: The vessel's safety is threatened; the vessel is restricted in its ability to maneuver (e.g., during launching and recovery of aircraft or landing craft, during towing activities, when mooring); the vessel is operated autonomously; or when impracticable based on mission requirements (e.g., during Amphibious Assault—Battalion Landing exercise).

(i) *Number of Lookouts and observation platform.* One Lookout must be on the vessel that is underway.

(ii) *Mitigation zone and requirements.* (A) 500 yd around whales.

(B) 200 yd around all other marine mammals (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels).

(iii) *During the activity.* When underway Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must maneuver to maintain distance.

(iv) *Incident reporting procedures.* If a marine mammal vessel strike occurs, Navy personnel must follow the established incident reporting procedures.

(17) *Towed in-water devices.* Mitigation applies to devices that are towed from a manned surface platform or manned aircraft. The mitigation will not be applied if the safety of the towing platform or in-water device is threatened.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on a manned towing platform.

(ii) *Mitigation zone and requirements.* 250 yd around marine mammals.

(iii) *During the activity.* During the activity (i.e., when towing an in-water device), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must maneuver to maintain distance.

(18) *Small-, medium-, and large-caliber non-explosive practice munitions.* Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the platform conducting the activity. Depending on the activity, the Lookout could be the same as the one described for "Weapons firing noise" in paragraph (a)(5)(i) of this section.

(ii) *Mitigation zone and requirements.* 200 yd around the intended impact location.

(A) Prior to the start of the activity (e.g., when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or

during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or for activities using a mobile target, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(19) *Non-explosive missiles and rockets.* Aircraft-deployed non-explosive missiles and rockets. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft.

(ii) *Mitigation zone and requirements.* 900 yd around the intended impact location.

(A) Prior to the initial start of the activity (*e.g.*, during a fly-over of the mitigation zone), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed,

and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(20) *Non-explosive bombs and mine shapes.* Non-explosive bombs and non-explosive mine shapes during mine laying activities.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft.

(ii) *Mitigation zone and requirements.* 1,000 yd around the intended target.

(A) Prior to the initial start of the activity (*e.g.*, when arriving on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of bomb deployment or mine laying until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment or mine laying.

(B) During the activity (*e.g.*, during approach of the target or intended minefield location), Navy personnel must observe the mitigation zone for marine mammals and, if marine mammals are observed, Navy personnel must cease bomb deployment or mine laying.

(C) Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment or mine laying) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target or minefield location; the mitigation zone has been clear from any additional sightings for 10 min; or for activities

using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(b) *Mitigation areas.* In addition to procedural mitigation, Navy personnel must implement mitigation measures within mitigation areas to avoid or reduce potential impacts on marine mammals.

(1) *Mitigation areas for marine mammals in the Hawaii Range Complex for sonar, explosives, and vessel strikes—(i) Mitigation area requirements—(A) Hawaii Island Mitigation Area (year-round)—(1)* Except as provided in paragraph (b)(1)(i)(A)(2) of this section, Navy personnel must not conduct more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar annually, or use explosives that could potentially result in takes of marine mammals during training and testing.

(2) Should national security require conduct of more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar, or use of explosives that could potentially result in the take of marine mammals during training or testing, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (e.g., sonar hours or explosives usage) in its annual activity reports submitted to NMFS.

(B) *4-Islands Region Mitigation Area (November 15–April 15 for active sonar; year-round for explosives)—(1)* Except as provided in paragraph (b)(1)(i)(B)(2) of this section, Navy personnel must not use MF1 surface ship hull-mounted mid-frequency active sonar or explosives that could potentially result in takes of marine mammals during training and testing.

(2) Should national security require use of MF1 surface ship hull-mounted mid-frequency active sonar or explosives that could potentially result in the take of marine mammals during training or testing, Naval units must obtain permission from the appropriate designated Command authority prior

to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (e.g., sonar hours or explosives usage) in its annual activity reports submitted to NMFS.

(C) *Humpback Whale Special Reporting Areas (December 15–April 15).* Navy personnel must report the total hours of surface ship hull-mounted mid-frequency active sonar used in the special reporting areas in its annual training and testing activity reports submitted to NMFS.

(D) *Humpback Whale Awareness Notification Message Area (November–April).* (1) Navy personnel must issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including humpback whales.

(2) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel must instruct vessels to remain vigilant to the presence of large whale species (including humpback whales).

(3) Platforms must use the information from the awareness notification message to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation.

(ii) [Reserved]

(2) *Mitigation areas for marine mammals in the Southern California portion of the study area for sonar, explosives, and vessel strikes—(i) Mitigation area requirements—(A) San Diego Arc, San Nicolas Island, and Santa Monica/Long Beach Mitigation Areas (June 1–October 31).* (1) Except as provided in paragraph (b)(2)(i)(A)(2) of this section, Navy personnel must not conduct more than a total of 200 hours of MF1 surface ship hull-mounted mid-frequency active sonar in the combined areas, excluding normal maintenance and systems checks, during training and testing.

(2) Should national security require conduct of more than 200 hours of MF1 surface ship hull-mounted mid-frequency active sonar in the combined areas during training and testing (excluding normal maintenance and systems checks), Naval units must obtain

permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.*, sonar hours) in its annual activity reports submitted to NMFS.

(3) Except as provided in paragraph (b)(2)(i)(A)(4) of this section, within the San Diego Arc Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training and testing.

(4) Should national security require use of explosives that could potentially result in the take of marine mammals during large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training or testing within the San Diego Arc Mitigation Area, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.*, explosives usage) in its annual activity reports submitted to NMFS.

(5) Except as provided in paragraph (b)(2)(i)(A)(6) of this section, within the San Nicolas Island Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training.

(6) Should national security require use of explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training in the San Nicolas Island Mitigation Area, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.*, explosives usage) in its annual activity reports submitted to NMFS.

(7) Except as provided in paragraph (b)(2)(i)(A)(8) of this section, within the Santa Monica/Long Beach Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training and testing.

(8) Should national security require use of explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training or testing in the Santa Monica/Long Beach Mitigation Area, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.*, explosives usage) in its annual activity reports submitted to NMFS.

(B) *Santa Barbara Island Mitigation Area (year-round)*. (1) Except as provided in paragraph (b)(2)(i)(B)(2) of this section, Navy personnel must not use MF1 surface ship hull-mounted mid-frequency active sonar during training or testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training.

(2) Should national security require use of MF1 surface ship hull-mounted mid-frequency active sonar during training or testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.*, sonar hours or explosives usage) in its annual activity reports submitted to NMFS.

(C) *Blue Whale (June–October), Gray Whale (November–March), and Fin Whale (November–May) Awareness Notification*

*Message Areas.* (1) Navy personnel must issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including blue whales, gray whales, and fin whales.

(2) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel must instruct vessels to remain vigilant to the presence of large whale species.

(3) Platforms must use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation.

(ii) [Reserved]

**§ 218.75 Requirements for monitoring and reporting.**

(a) *Unauthorized take.* Navy personnel must notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in § 218.70 is thought to have resulted in the mortality or serious injury of any marine mammals, or in any Level A harassment or Level B harassment take of marine mammals not identified in this subpart.

(b) *Monitoring and reporting under the LOAs.* The Navy must conduct all monitoring and reporting required under the LOAs, including abiding by the HSTT Study Area monitoring program. Details on program goals, objectives, project selection process, and current projects are available at [www.navy.mil/speciesmonitoring.us](http://www.navy.mil/speciesmonitoring.us).

(c) *Notification of injured, live stranded, or dead marine mammals.* The Navy must consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or live stranded marine mammals are detected. The Notification and Reporting Plan is available at [www.fisheries.noaa.gov/national/marine-mammal-protection/incidentaltake-authorizations-military-readinessactivities](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidentaltake-authorizations-military-readinessactivities).

(d) *Annual HSTT Study Area marine species monitoring report.* The Navy must submit an annual report of the HSTT Study Area monitoring describ-

ing the implementation and results from the previous calendar year. Data collection methods must be standardized across range complexes and study areas to allow for comparison in different geographic locations. The report must be submitted to the Director, Office of Protected Resources, NMFS, either within three months after the end of the calendar year, or within three months after the conclusion of the monitoring year, to be determined by the Adaptive Management process. This report will describe progress of knowledge made with respect to intermediate scientific objectives within the HSTT Study Area associated with the Integrated Comprehensive Monitoring Program (ICMP). Similar study questions must be treated together so that progress on each topic can be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions. As an alternative, the Navy may submit a multi-Range Complex annual Monitoring Plan report to fulfill this requirement. Such a report will describe progress of knowledge made with respect to monitoring study questions across multiple Navy ranges associated with the ICMP. Similar study questions must be treated together so that progress on each topic can be summarized across multiple Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring study question. This will continue to allow the Navy to provide a cohesive monitoring report covering multiple ranges (as per ICMP goals), rather than entirely separate reports for the HSTT, Gulf of Alaska, Mariana Islands, and Northwest Study Areas.

(e) *Annual HSTT Study Area training exercise report and testing activity report.* Each year, the Navy must submit two preliminary reports (Quick Look Report) detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of each LOA to the Director, Office of Protected Resources, NMFS. Each year, the Navy must submit detailed reports to the Director, Office of Protected Resources, NMFS, within 3

months after the one-year anniversary of the date of issuance of the LOA. The HSTT annual Training Exercise Report and Testing Activity Report can be consolidated with other exercise reports from other range complexes in the Pacific Ocean for a single Pacific Exercise Report, if desired. The annual reports must contain information on major training exercises (MTEs), Sinking Exercise (SINKEX) events, and a summary of all sound sources used, including within specific mitigation reporting areas as described in paragraph (e)(3) of this section. The analysis in the detailed reports must be based on the accumulation of data from the current year's report and data collected from previous reports. The detailed reports must contain information identified in paragraphs (e)(1) through (7) of this section.

(1) *MTEs*. This section of the report must contain the following information for MTEs conducted in the HSTT Study Area.

(i) Exercise Information for each MTE.

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location.

(D) Number and types of active sonar sources used in the exercise.

(E) Number and types of passive acoustic sources used in exercise.

(F) Number and types of vessels, aircraft, and other platforms participating in exercise.

(G) Total hours of all active sonar source operation.

(H) Total hours of each active sonar source bin.

(I) Wave height (high, low, and average) during exercise.

(ii) Individual marine mammal sighting information for each sighting in each exercise where mitigation was implemented.

(A) Date/Time/Location of sighting.

(B) Species (if not possible, indication of whale/dolphin/pinniped).

(C) Number of individuals.

(D) Initial Detection Sensor (*e.g.*, sonar, Lookout).

(E) Indication of specific type of platform observation was made from (including, for example, what type of surface vessel or testing platform).

(F) Length of time observers maintained visual contact with marine mammal.

(G) Sea state.

(H) Visibility.

(I) Sound source in use at the time of sighting.

(J) Indication of whether animal was less than 200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or greater than 2,000 yd from sonar source.

(K) Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay.

(L) If source in use was hull-mounted, true bearing of animal from the vessel, true direction of vessel's travel, and estimation of animal's motion relative to vessel (opening, closing, parallel).

(M) Lookouts must 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.*) and if any calves were present.

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation must identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) *SINKEXs*. This section of the report must include the following information for each SINKEX completed that year.

(i) Exercise information gathered for each SINKEX.

(A) Location.

(B) Date and time exercise began and ended.

(C) Total hours of observation by Lookouts before, during, and after exercise.

(D) Total number and types of explosive source bins detonated.

(E) Number and types of passive acoustic sources used in exercise.

(F) Total hours of passive acoustic search time.

(G) Number and types of vessels, aircraft, and other platforms, participating in exercise.

(H) Wave height in feet (high, low, and average) during exercise.

(I) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(ii) Individual marine mammal observation (by Navy Lookouts) information for each sighting where mitigation was implemented.

(A) Date/Time/Location of sighting.

(B) Species (if not possible, indicate whale, dolphin, or pinniped).

(C) Number of individuals.

(D) Initial detection sensor (*e.g.*, sonar or Lookout).

(E) Length of time observers maintained visual contact with marine mammal.

(F) Sea state.

(G) Visibility.

(H) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.

(I) Distance of marine mammal from actual detonations (or target spot if not yet detonated): Less than 200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or greater than 2,000 yd.

(J) Lookouts must 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 and if any calves were present.

(K) The report must indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(L) If observation occurred while explosives were detonating in the water, indicate munition type in use at time of marine mammal detection.

(3) *Summary of sources used.* This section of the report must include the following information summarized from the authorized sound sources used in all training and testing events:

(i) Total annual hours or quantity (per the LOA) of each bin of sonar or other acoustic sources (*e.g.*, pile driving and air gun activities); and

(ii) Total annual expended/detonated ordinance (missiles, bombs, sonobuoys, *etc.*) for each explosive bin.

(4) *Humpback Whale Special Reporting Area (December 15–April 15).* The Navy must report the total hours of operation of surface ship hull-mounted mid-frequency active sonar used in the special reporting area.

(5) *HSTT Study Area Mitigation Areas.* The Navy must report any use that occurred as specifically described in these areas. Information included in the classified annual reports may be used to inform future adaptive management of activities within the HSTT Study Area.

(6) *Geographic information presentation.* The reports must present an annual (and seasonal, where practical) depiction of training and testing bin usage (as well as pile driving activities) geographically across the HSTT Study Area.

(7) *Sonar exercise notification.* The Navy must submit to NMFS (contact as specified in the LOA) an electronic report within fifteen calendar days after the completion of any MTE indicating:

(i) Location of the exercise;

(ii) Beginning and end dates of the exercise; and

(iii) Type of exercise.

(f) *Seven-year close-out comprehensive training and testing activity report.* This report must be included as part of the 2025 annual training and testing report. This report must provide the annual totals for each sound source bin with a comparison to the annual allowance and the seven-year total for each sound source bin with a comparison to the seven-year allowance. Additionally, if there were any changes to the sound source allowance, this report must include a discussion of why the change was made and include the analysis to support how the change did or did not affect the analysis in the 2018 HSTT FEIS/OEIS and MMPA final rule. The draft report must be submitted within three months after the expiration of this subpart to the Director, Office of Protected Resources, NMFS. NMFS must submit comments on the draft close-out report, if any, within three months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

## §218.76

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### §218.76 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the Navy must apply for and obtain LOAs in accordance with §216.106 of this chapter.

(b) LOAs, unless suspended or revoked, may be effective for a period of time not to exceed December 20, 2025.

(c) If an LOA expires prior to December 20, 2025, the Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of §218.77(c)(1)) required by an LOA issued under this subpart, the Navy must apply for and obtain a modification of the LOA as described in §218.77.

(e) Each LOA must set forth:

(1) Permissible methods of incidental taking;

(2) Geographic areas for incidental taking;

(3) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species or stocks of marine mammals and their habitat; and

(4) Requirements for monitoring and reporting.

(f) Issuance of the LOA(s) must be based on a determination that the level of taking is consistent with the findings made for the total taking allowable under the regulations in this subpart.

(g) Notice of issuance or denial of the LOA(s) must be published in the FEDERAL REGISTER within 30 days of a determination.

### §218.77 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§216.106 of this chapter and 218.76 for the activity identified in §218.70(c) may be renewed or modified upon request by the applicant, provided that:

(1) The planned specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA(s) were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or to the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or stock or years), NMFS may publish a notice of planned LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§216.106 of this chapter and 218.76 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* After consulting with the Navy regarding the practicability of the modifications, NMFS may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include:

(A) Results from the Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of planned LOA in the FEDERAL REGISTER and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals



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specified in LOAs issued pursuant to §§216.106 of this chapter and 218.76, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within 30 days of the action.

§§ 218.78–218.79 [Reserved]

**Subpart I—Taking and Importing Marine Mammals; U.S. Navy’s Atlantic Fleet Training and Testing (AFTT)**

SOURCE: 84 FR 70781, Dec. 23, 2019, unless otherwise noted.

EFFECTIVE DATE NOTE: At 84 FR 70781, Dec. 23, 2019, subpart I was revised, effective Dec. 23, 2019, to Nov. 13, 2025.

**§ 218.80 Specified activity and 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 described in paragraph (b) of this section and that occurs incidental to the activities listed in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy under this subpart may be authorized in Letters of Authorization (LOAs) only if it occurs within the Atlantic Fleet Training and Testing (AFTT) Study Area, which includes areas of the western Atlantic Ocean along the East Coast of North America, portions of the Caribbean Sea, and the Gulf of Mexico. The AFTT Study Area begins at the mean high tide line along the U.S. East Coast and extends east to the 45-degree west longitude line, north to the 65-degree north latitude line, and south to approximately the 20-degree north latitude line. The AFTT Study Area also includes Navy pierside locations, bays, harbors, and inland

waterways, and civilian ports where training and testing occurs.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the Navy conducting training and testing activities, including:

- (1) *Training.* (i) Amphibious warfare;
- (ii) Anti-submarine warfare;
- (iii) Electronic warfare;
- (iv) Expeditionary warfare;
- (v) Mine warfare;
- (vi) Surface warfare, and
- (vii) Pile driving.

- (2) *Testing.* (i) Naval Air Systems Command Testing Activities;
- (ii) Naval Sea System Command Testing Activities; and
- (iii) Office of Naval Research Testing Activities.

**§ 218.81 Effective dates.**

Regulations in this subpart are effective from December 23, 2019 through November 13, 2025.

**§ 218.82 Permissible methods of taking.**

(a) Under LOAs issued pursuant to §§216.106 of this chapter and 218.86, the Holder of the LOAs (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in §218.80(b) by Level A harassment and Level B harassment associated with the use of active sonar and other acoustic sources and explosives as well as serious injury or mortality associated with ship shock trials and vessel strikes, provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the applicable LOAs.

(b) The incidental take of marine mammals by the activities listed in §218.80(c) is limited to the following species:

TABLE 1 TO § 218.82

Species	Stock
<b>Suborder Mysticeti (baleen whales)</b>	
<i>Family Balaenidae (right whales):</i>	
North Atlantic right whale .....	Western.
<i>Family Balaenopteridae (rorquals):</i>	
Blue whale .....	Western North Atlantic (Gulf of St. Lawrence).
Bryde’s whale .....	Northern Gulf of Mexico
Minke whale .....	NSD.
	Canadian East Coast.

TABLE 1 TO § 218.82—Continued

Species	Stock
Fin whale .....	Western North Atlantic.
Humpback whale .....	Gulf of Maine.
Sei whale .....	Nova Scotia.
<b>Suborder Odontoceti (toothed whales)</b>	
<i>Family Physeteridae (sperm whale):</i>	
Sperm whale .....	Gulf of Mexico Oceanic. North Atlantic.
<i>Family Kogiidae (sperm whales):</i>	
Dwarf sperm whale .....	Gulf of Mexico Oceanic. Western North Atlantic.
Pygmy sperm whale .....	Northern Gulf of Mexico. Western North Atlantic.
<i>Family Ziphiidae (beaked whales):</i>	
Blainville's beaked whale .....	Northern Gulf of Mexico. Western North Atlantic.
Cuvier's beaked whale .....	Northern Gulf of Mexico. Western North Atlantic.
Gervais' beaked whale .....	Northern Gulf of Mexico. Western North Atlantic.
Northern bottlenose whale .....	Western North Atlantic.
Sowersby's beaked whale .....	Western North Atlantic.
True's beaked whale .....	Western North Atlantic.
<i>Family Delphinidae (dolphins):</i>	
Atlantic spotted dolphin .....	Northern Gulf of Mexico. Western North Atlantic.
Atlantic white-sided dolphin .....	Western North Atlantic.
Bottlenose dolphin .....	Choctawhatchee Bay. Gulf of Mexico Eastern Coastal. Gulf of Mexico Northern Coastal. Gulf of Mexico Western Coastal. Indian River Lagoon Estuarine System. Jacksonville Estuarine System. Mississippi Sound, Lake Borgne, Bay Boudreau. Northern Gulf of Mexico Continental Shelf. Northern Gulf of Mexico Oceanic. Northern North Carolina Estuarine System. Southern North Carolina Estuarine System. Western North Atlantic Northern Florida Coastal. Western North Atlantic Central Florida Coastal. Western North Atlantic Northern Migratory Coastal. Western North Atlantic Offshore. Western North Atlantic South Carolina/Georgia Coastal. Western North Atlantic Southern Migratory Coastal.
Clymene dolphin .....	Northern Gulf of Mexico. Western North Atlantic.
False killer whale .....	Northern Gulf of Mexico. Western North Atlantic.
Fraser's dolphin .....	Northern Gulf of Mexico. Western North Atlantic.
Killer whale .....	Northern Gulf of Mexico. Western North Atlantic.
Long-finned pilot whale .....	Western North Atlantic.
Melon-headed whale .....	Northern Gulf of Mexico. Western North Atlantic.
Pantropical spotted dolphin .....	Northern Gulf of Mexico. Western North Atlantic.
Pygmy killer whale .....	Northern Gulf of Mexico. Western North Atlantic.
Risso's dolphin .....	Northern Gulf of Mexico. Western North Atlantic.
Rough-toothed dolphin .....	Northern Gulf of Mexico. Western North Atlantic.
Short-beaked common dolphin .....	Western North Atlantic.
Short-finned pilot whale .....	Northern Gulf of Mexico. Western North Atlantic.
Spinner dolphin .....	Northern Gulf of Mexico. Western North Atlantic.
Striped dolphin .....	Northern Gulf of Mexico. Western North Atlantic.
White-beaked dolphin .....	Western North Atlantic.

TABLE 1 TO § 218.82—Continued

Species	Stock
<i>Family Phocoenidae (porpoises):</i>	
Harbor porpoise .....	Gulf of Maine/Bay of Fundy.
<b>Suborder Pinnipedia</b>	
<i>Family Phocidae (true seals):</i>	
Gray seal .....	Western North Atlantic.
Harbor seal .....	Western North Atlantic.
Harp seal .....	Western North Atlantic.
Hooded seal .....	Western North Atlantic.

**§ 218.83 Prohibitions.**

Notwithstanding incidental takings contemplated in § 218.82(a) and authorized by LOAs issued under §§ 216.106 of this chapter and 218.86, no person in connection with the activities listed in § 218.80(c) may:

- (a) Violate, or fail to comply with the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 218.86;
- (b) Take any marine mammal not specified in § 218.82(b);
- (c) Take any marine mammal specified § 218.82(b) in any manner other than as specified in the LOAs; or
- (d) Take a marine mammal specified § 218.82(b) if the National Marine Fisheries Service (NMFS) determines such taking results in more than a negligible impact on the species or stocks of such marine mammal.

**§ 218.84 Mitigation requirements.**

When conducting the activities identified in § 218.80(c), the mitigation measures contained in any LOAs issued under §§ 216.106 of this chapter and 218.86 must be implemented. These mitigation measures include, but are not limited to:

- (a) *Procedural mitigation.* Procedural mitigation is mitigation that the Navy must implement whenever and wherever an applicable training or testing activity takes place within the AFTT Study Area for each applicable activity category or stressor category and includes acoustic stressors (*i.e.*, active sonar, air guns, pile driving, weapons firing noise), explosive stressors (*i.e.*, sonobuoys, torpedoes, medium-caliber and large-caliber projectiles, missiles and rockets, bombs, sinking exercises, mines, anti-swimmer grenades, line

charge testing and ship shock trials), and physical disturbance and strike stressors (*i.e.*, vessel movement; towed in-water devices; small-, medium-, and large-caliber non-explosive practice munitions; non-explosive missiles and rockets; non-explosive bombs and mine shapes).

- (1) *Environmental awareness and education.* Appropriate personnel (including civilian personnel) involved in mitigation and training or testing activity reporting under the specified activities must complete one or more modules of the U.S. Navy Afloat Environmental Compliance Training Series, as identified in their career path training plan. Modules include: Introduction to the U.S. Navy Afloat Environmental Compliance Training Series, Marine Species Awareness Training, U.S. Navy Protective Measures Assessment Protocol, and U.S. Navy Sonar Positional Reporting System and Marine Mammal Incident Reporting.

- (2) *Active sonar.* Active sonar includes low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar. For vessel-based active sonar activities, mitigation applies only to sources that are positively controlled and deployed from manned surface vessels (*e.g.*, sonar sources towed from manned surface platforms). For aircraft-based active sonar activities, mitigation applies only to sources that are positively controlled and deployed from manned aircraft that do not operate at high altitudes (*e.g.*, rotary-wing aircraft). Mitigation does not apply to active sonar sources deployed from unmanned aircraft or aircraft operating at high altitudes (*e.g.*, maritime patrol aircraft).

- (i) *Number of Lookouts and observation platform—(A) Hull-mounted sources.* One

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Lookout for platforms with space or manning restrictions while underway (at the forward part of a small boat or ship) and platforms using active sonar while moored or at anchor (including pierside); two Lookouts for platforms without space or manning restrictions while underway (at the forward part of the ship); and four Lookouts for pierside sonar testing activities at Port Canaveral, Florida and Kings Bay, Georgia.

(B) *Sources that are not hull-mounted sources.* One Lookout on the ship or aircraft conducting the activity.

(ii) *Mitigation zones and requirements.* During the activity, at 1,000 yard (yd) Navy personnel must power down 6 decibels (dB), at 500 yd Navy personnel must power down an additional 4 dB (for a total of 10 dB), and at 200 yd Navy personnel must shut down for low-frequency active sonar  $\geq 200$  dB and hull-mounted mid-frequency active sonar; or at 200 yd Navy personnel must shut down for low-frequency active sonar  $< 200$  dB, mid-frequency active sonar sources that are not hull-mounted, and high-frequency active sonar.

(A) Prior to the initial start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of active sonar transmission.

(B) During low-frequency active sonar at or above 200 dB and hull-mounted mid-frequency active sonar, Navy personnel must observe the mitigation zone for marine mammals and power down active sonar transmission by 6 dB if marine mammals are observed within 1,000 yd of the sonar source; power down by an additional 4 dB (10 dB total) if marine mammals are observed within 500 yd of the sonar source; and cease transmission if marine mammals are observed within 200 yd of the sonar source.

(C) During low-frequency active sonar below 200 dB, mid-frequency ac-

tive sonar sources that are not hull mounted, and high-frequency active sonar, Navy personnel must observe the mitigation zone for marine mammals and cease active sonar transmission if marine mammals are observed within 200 yd of the sonar source.

(D) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing or powering up active sonar transmission) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonar source; the mitigation zone has been clear from any additional sightings for 10 minutes (min) for aircraft-deployed sonar sources or 30 min for vessel-deployed sonar sources; for mobile activities, the active sonar source has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting; or for activities using hull-mounted sonar where a dolphin(s) is observed in the mitigation zone, the Lookout concludes that the dolphin(s) is deliberately closing in on the ship to ride the ship's bow wave, and is therefore out of the main transmission axis of the sonar (and there are no other marine mammal sightings within the mitigation zone).

(3) *Air guns*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on a ship or pierside.

(ii) *Mitigation zone and requirements.* 150 yd around the air gun.

(A) Prior to the initial start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine

mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of air gun use.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease use of air guns.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing air gun use) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the air gun; the mitigation zone has been clear from any additional sightings for 30 min; or for mobile activities, the air gun has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(4) *Pile driving.* Pile driving and pile extraction sound during Elevated Causeway System training.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the shore, the elevated causeway, or a small boat.

(ii) *Mitigation zone and requirements.* 100 yd around the pile driver.

(A) Prior to the initial start of the activity (for 30 min), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the start of pile driving or vibratory pile extraction.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease impact pile driving or vibratory pile extraction.

(C) Commencement/recommencement conditions after a marine mammal

sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing pile driving or pile extraction) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the pile driving location; or the mitigation zone has been clear from any additional sightings for 30 min.

(5) *Weapons firing noise.* Weapons firing noise associated with large-caliber gunnery activities.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the ship conducting the firing. Depending on the activity, the Lookout could be the same as the one provided for under explosive medium-caliber and large-caliber projectiles or under small-, medium-, and large-caliber non-explosive practice munitions in paragraphs (a)(8)(i) and (a)(19)(i) of this section.

(ii) *Mitigation zone and requirements.* Thirty degrees on either side of the firing line out to 70 yd from the muzzle of the weapon being fired.

(A) Prior to the initial start of the activity, Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of weapons firing.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease weapons firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or

during the activity (by not recommencing weapons firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the firing ship; the mitigation zone has been clear from any additional sightings for 30 min; or for mobile activities, the firing ship has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(6) *Explosive sonobuoys*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft or on small boat. If additional platforms are participating in the activity, personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 600 yd around an explosive sonobuoy.

(A) Prior to the initial start of the activity (*e.g.*, during deployment of a sonobuoy field, which typically lasts 20–30 min), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel must conduct passive acoustic monitoring for marine mammals and use information from detections to assist visual observations. Navy personnel also must visually observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of sonobuoy or source/receiver pair detonations.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease sonobuoy or source/receiver pair detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of

the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonobuoy; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints (*e.g.*, helicopter), or 30 min when the activity involves aircraft that are not typically fuel constrained.

(D) After completion of the activity (*e.g.*, prior to maneuvering off station), when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(7) *Explosive torpedoes*—(i) *Number of Lookouts and observation platform.* One Lookout positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2,100 yd around the intended impact location.

(A) Prior to the initial start of the activity (*e.g.*, during deployment of the target), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start until the mitigation zone is clear. Navy personnel also must conduct passive acoustic monitoring for marine mammals and use the information from detections to assist visual observations. Navy personnel must visually observe

the mitigation zone for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(D) After completion of the activity (*e.g.*, prior to maneuvering off station), when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(8) *Explosive medium-caliber and large-caliber projectiles.* Gunnery activities using explosive medium-caliber and large-caliber projectiles. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be on the vessel or aircraft conducting the activity. For activities using explosive

large-caliber projectiles, depending on the activity, the Lookout could be the same as the one described for weapons firing noise in paragraph (a)(5)(i) of this section. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 200 yd around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles.

(B) 600 yd around the intended impact location for surface-to-surface activities using explosive medium-caliber projectiles.

(C) 1,000 yd around the intended impact location for surface-to-surface activities using explosive large-caliber projectiles.

(D) Prior to the initial start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(E) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(F) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based

firing or 30 min for vessel-based firing; or for activities using mobile targets, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(G) After completion of the activity (*e.g.*, prior to maneuvering off station), when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(9) *Explosive missiles and rockets.* Aircraft-deployed explosive missiles and rockets. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 900 yd around the intended impact location for missiles or rockets with 0.6–20 lb net explosive weight.

(B) 2,000 yd around the intended impact location for missiles with 21–500 lb net explosive weight.

(C) Prior to the initial start of the activity (*e.g.*, during a fly-over of the mitigation zone), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(D) During the activity, Navy personnel must observe for marine mam-

mals; if marine mammals are observed, Navy personnel must cease firing.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(F) After completion of the activity (*e.g.*, prior to maneuvering off station), when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(10) *Explosive bombs*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2,500 yd around the intended target.

(A) Prior to the initial start of the activity (*e.g.*, when arriving on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed,



Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment.

(B) During the activity (*e.g.*, during target approach), Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease bomb deployment.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target; the mitigation zone has been clear from any additional sightings for 10 min; or for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(D) After completion of the activity (*e.g.*, prior to maneuvering off station), when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(11) *Sinking exercises*—(i) *Number of Lookouts and observation platform*. Two Lookouts (one must be positioned in an aircraft and one must be positioned on a vessel). If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must sup-

port observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements*. 2.5 nautical miles (nmi) around the target ship hulk.

(A) Prior to the initial start of the activity (90 min prior to the first firing), Navy personnel must conduct aerial observations of the mitigation zone for floating vegetation; if floating vegetation is observed Navy personnel must delay the start until the mitigation zone is clear. Navy personnel also must conduct aerial observations of the mitigation zone for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations are observed, Navy personnel must delay the start of firing.

(B) During the activity, Navy personnel must conduct passive acoustic monitoring for marine mammals and use information from detections to assist visual observations. Navy personnel must visually observe the mitigation zone for marine mammals from the vessel; if marine mammals are observed, Navy personnel must cease firing. Immediately after any planned or unplanned breaks in weapons firing of longer than two hours, Navy personnel must observe the mitigation zone for marine mammals from the aircraft and vessel; if marine mammals are observed, Navy personnel must delay recommencement of firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the target ship hulk; or the mitigation zone has been clear from any additional sightings for 30 min.

(D) After completion of the activity (for two hours after sinking the vessel or until sunset, whichever comes first),

Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(12) *Explosive mine countermeasure and neutralization activities*—(i) *Number of Lookouts and observation platform.* (A) One Lookout must be positioned on a vessel or in an aircraft when implementing the smaller mitigation zone defined at paragraph (a)(12)(ii)(A) of this section (using 0.1–5 lb net explosive weight charges).

(B) Two Lookouts (one must be in an aircraft and one must be on a small boat) when implementing the larger mitigation zone defined at paragraph (a)(12)(ii)(B) of this section (using 6–650 lb net explosive weight charges).

(C) If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 600 yd around the detonation site for activities using 0.1–5 lb net explosive weight.

(B) 2,100 yd around the detonation site for activities using 6–650 lb net explosive weight (including high explosive target mines).

(C) Prior to the initial start of the activity (*e.g.*, when maneuvering on station; typically, 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations.

(D) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, the Navy must cease detonations.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to detonation site; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(F) After completion of the activity (typically 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(13) *Explosive mine neutralization activities involving navy divers*—(i) *Number of Lookouts and observation platform.* (A) Two Lookouts must be positioned (two small boats with one Lookout each, or one Lookout must be on a small boat and one must be in a rotary-wing aircraft) when implementing the smaller mitigation zone defined at paragraph (a)(13)(ii)(A) of this section.

(B) Four Lookouts must be positioned (two small boats with two Lookouts each), and a pilot or member of an aircrew must serve as an additional Lookout if aircraft are used during the activity, when implementing the larger

mitigation zone defined at paragraph (a)(13)(ii)(B) of this section.

(C) All divers placing the charges on mines must support the Lookouts while performing their regular duties and must report applicable sightings to their supporting small boat or Range Safety Officer.

(D) If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.*

(A) 500 yd around the detonation site during activities under positive control using 0.1–20 lb net explosive weight.

(B) 1,000 yd around the detonation site during all activities using time-delay fuses (0.1–20 lb net explosive weight) and during activities under positive control using 21–60 lb net explosive weight charges.

(C) Prior to the initial start of the activity (*e.g.*, when maneuvering on station for activities under positive control; 30 min for activities using time-delay firing devices), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonation or fuse initiation.

(D) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease detonation or fuse initiation. To the maximum extent practicable depending on mission requirements, safety, and environmental conditions, boats must position themselves near the mid-point of the mitigation zone radius (but outside of the detonation plume and human safety zone), must position themselves on opposite sides of the detonation location (when two boats are used), and must travel in a circular pattern around the detonation location with one Lookout observing inward toward the detonation site and the other ob-

serving outward toward the perimeter of the mitigation zone. If used, aircraft must travel in a circular pattern around the detonation location to the maximum extent practicable. Navy personnel must not set time-delay firing devices (0.1–20 lb. net explosive weight) to exceed 10 min.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the detonation site; or the mitigation zone has been clear from any additional sightings for 10 min during activities under positive control with aircraft that have fuel constraints, or 30 min during activities under positive control with aircraft that are not typically fuel constrained and during activities using time-delay firing devices.

(F) After completion of an activity (for 30 min), Navy personnel must observe for marine mammals in the vicinity of where any detonations have occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(14) *Maritime security operations—anti-swimmer grenades—(i) Number of Lookouts and observation platform.* One Lookout must be positioned on the small boat conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 200 yd around the intended detonation location.

(A) Prior to the initial start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonation.

(B) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease detonation.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended detonation location; the mitigation zone has been clear from any additional sightings for 30 min; or the intended detonation location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(D) After completion of the activity (*e.g.*, prior to maneuvering off station), when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(15) *Line charge testing*—(i) *Number of Lookouts and observation platform.* One

Lookout must be positioned on a vessel. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 900 yd around the intended detonation location.

(A) Prior to the initial start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the start of detonations.

(B) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended detonation location; or the mitigation zone has been clear from any additional sightings for 30 min.

(D) After completion of the activity (*e.g.*, prior to maneuvering off station), when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of

where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(16) *Ship shock trials*—(i) *Number of Lookouts and observation platform.* (A) A minimum of ten Lookouts or trained marine species observers (or a combination thereof) must be positioned either in an aircraft or on multiple vessels (*i.e.*, a Marine Animal Response Team boat and the test ship).

(1) If aircraft are used, Lookouts or trained marine species observers must be in an aircraft and on multiple vessels.

(2) If aircraft are not used, a sufficient number of additional Lookouts or trained marine species observers must be used to provide vessel-based visual observation comparable to that achieved by aerial surveys.

(B) If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 3.5 nmi around the ship hull.

(A) The Navy must not conduct ship shock trials in the Jacksonville Operating Area during North Atlantic right whale calving season from November 15 through April 15.

(B) The Navy must develop detailed ship shock trial monitoring and mitigation plans approximately one-year prior to an event and must continue to provide these to NMFS for review and approval.

(C) Pre-activity planning must include selection of one primary and two secondary areas where marine mammal populations are expected to be the lowest during the event, with the primary and secondary locations located more than 2 nmi from the western boundary of the Gulf Stream for events in the Virginia Capes Range Complex or Jacksonville Range Complex.

(D) If it is determined during pre-activity surveys that the primary area is environmentally unsuitable (*e.g.*, observations of marine mammals or presence of concentrations of floating vegetation), the shock trial can be moved to a secondary site in accordance with the detailed mitigation and monitoring plan provided to NMFS.

(E) Prior to the initial start of the activity at the shock trial location (in intervals of 5 hrs, 3 hrs, 40 min, and immediately before the detonation), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay triggering the detonation.

(F) During the activity, Navy personnel must observe for marine mammals, large schools of fish, jellyfish aggregations, and flocks of seabirds; if marine mammals, large schools of fish, jellyfish aggregations, and flocks of seabirds are observed, Navy personnel must cease triggering the detonation. After completion of each detonation, Navy personnel must observe the mitigation zone for marine mammals; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures and halt any remaining detonations until Navy personnel can consult with NMFS and review or adapt the mitigation, if necessary.

(G) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the ship hull; or the mitigation zone has been clear from any additional sightings for 30 min.

(H) After completion of the activity (during the following two days at a minimum, and up to seven days at a maximum), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(17) *Vessel movement.* The mitigation must not be applied if: The vessel's safety is threatened; the vessel is restricted in its ability to maneuver (*e.g.*, during launching and recovery of aircraft or landing craft, during towing activities, when mooring, *etc.*); or the vessel is operated autonomously.

(i) *Number of Lookouts and observation platform.* One Lookout must be on the vessel that is underway.

(ii) *Mitigation zone and requirements.*  
(A) 500 yd around whales.

(B) 200 yd around all other marine mammals (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels).

(C) During the activity, when underway, Navy personnel must observe the mitigation zone for marine mammals; if any marine mammals are observed, Navy personnel must maneuver to maintain distance.

(D) Additionally, Navy personnel must broadcast awareness notification messages with North Atlantic right whale Dynamic Management Area information (*e.g.*, location and dates) to applicable Navy assets operating in the vicinity of the Dynamic Management Area. The information will alert assets to the possible presence of a North Atlantic right whale to maintain safety of navigation and further reduce the potential for a vessel strike. Platforms must use the information to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation, including but not limited to, mitigation for vessel movement. If a marine mammal vessel strike occurs, Navy

personnel must follow the established incident reporting procedures.

(18) *Towed in-water devices.* Mitigation applies to devices that are towed from a manned surface platform or manned aircraft. The mitigation will not be applied if the safety of the towing platform or in-water device is threatened.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on a manned towing platform.

(ii) *Mitigation zone and requirements.* 250 yd around marine mammals. During the activity, when towing an in-water device, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must maneuver to maintain distance.

(19) *Small-, medium-, and large-caliber non-explosive practice munitions.* Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the platform conducting the activity. Depending on the activity, the Lookout could be the same as the one described for weapons firing noise in paragraph (a)(5)(i) of this section.

(ii) *Mitigation zone and requirements.* 200 yd around the intended impact location.

(A) Prior to the initial start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The

animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or for activities using a mobile target, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(20) *Non-explosive missiles and rockets.* Aircraft-deployed non-explosive missiles and rockets. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft.

(ii) *Mitigation zone and requirements.* 900 yd around the intended impact location.

(A) Prior to the initial start of the activity (*e.g.*, during a fly-over of the mitigation zone), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity

involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(21) *Non-explosive bombs and mine shapes.* Non-explosive bombs and non-explosive mine shapes during mine laying activities.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft.

(ii) *Mitigation zone and requirements.* 1,000 yd around the intended target.

(A) Prior to the initial start of the activity (*e.g.*, when arriving on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment or mine laying.

(B) During the activity (*e.g.*, during approach of the target or intended minefield location), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease bomb deployment or mine laying.

(C) Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment or mine laying) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target or minefield location; the mitigation zone has been clear from any additional sightings for 10 min; or for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(b) *Mitigation areas.* In addition to procedural mitigation, the Navy must

implement mitigation measures within mitigation areas to avoid potential impacts on marine mammals.

(1) *Mitigation areas off the Northeastern United States for sonar, explosives, and physical disturbance and strikes*—(i) *Mitigation area requirements*—(A) *Northeast North Atlantic Right Whale Mitigation Area (year-round)*. (1) Navy personnel must report the total hours and counts of active sonar and in-water explosives used in the mitigation area (which includes North Atlantic right whale ESA-designated critical habitat) in its annual training and testing activity reports submitted to NMFS.

(2) Navy personnel must minimize the use of low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar to the maximum extent practicable within the mitigation area.

(3) Navy personnel must not use Improved Extended Echo Ranging sonobuoys in or within 3 nmi of the mitigation area or use explosive and non-explosive bombs, in-water detonations, and explosive torpedoes within the mitigation area.

(4) For activities using non-explosive torpedoes within the mitigation area, Navy personnel must conduct activities during daylight hours in Beaufort sea state 3 or less. The Navy must use three Lookouts (one positioned on a vessel and two positioned in an aircraft during dedicated aerial surveys) to observe the vicinity of the activity. An additional Lookout must be positioned on the submarine, when surfaced. Immediately prior to the start of the activity, Navy personnel must observe for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel must not commence the activity until the vicinity is clear or the activity is relocated to an area where the vicinity is clear. During the activity, Navy personnel must observe for marine mammals; if observed, Navy personnel must cease the activity. To allow a sighted marine mammal to leave the area, Navy personnel must not recommence the activity until one of the following conditions has been met: The animal is observed exiting the vicinity of the activity; the animal

is thought to have exited the vicinity of the activity based on a determination of its course, speed, and movement relative to the activity location; or the area has been clear from any additional sightings for 30 min. During transits and normal firing, ships must maintain a speed of no more than 10 knots (kn). During submarine target firing, ships must maintain speeds of no more than 18 kn. During vessel target firing, vessel speeds may exceed 18 kn for brief periods of time (*e.g.*, 10–15 min).

(5) For all activities, before a vessel transits within the mitigation area, Navy personnel must conduct a web query or email inquiry to the National Oceanographic and Atmospheric Administration Northeast Fisheries Science Center's North Atlantic Right Whale Sighting Advisory System to obtain the latest North Atlantic right whale sightings information. Navy personnel on vessels must use the sightings information to reduce potential interactions with North Atlantic right whales during transits. Navy personnel on vessels must implement speed reductions within the mitigation area after observing a North Atlantic right whale, if transiting within 5 nmi of a sighting reported to the North Atlantic Right Whale Sighting Advisory System within the past week, and if transiting at night or during periods of reduced visibility.

(B) *Gulf of Maine Planning Awareness Mitigation Area (year-round)*. (1) Navy personnel must report the total hours and counts of active sonar and in-water explosives used in the mitigation area in its annual training and testing activity reports submitted to NMFS.

(2) Navy personnel must not conduct greater than 200 hrs of hull-mounted mid-frequency active sonar per year within the mitigation area.

(3) Navy personnel must not conduct major training exercises (Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) within the mitigation area. If the Navy needs to conduct a major training exercise within the mitigation area in support of training requirements driven by national security concerns, Navy personnel must confer with NMFS to verify that potential impacts are adequately addressed.



(C) *Northeast Planning Awareness Mitigation Areas (year-round)*. (1) Navy personnel will avoid planning major training exercises (Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) within the mitigation area to the maximum extent practicable.

(2) Navy personnel must not conduct more than four major training exercises per year (all or a portion of the exercise) within the mitigation area.

(3) If the Navy needs to conduct additional major training exercises in the mitigation area in support of training requirements driven by national security concerns, Navy personnel must provide NMFS with advance notification and include the information in its annual training and testing activity reports submitted to NMFS.

(i) [Reserved]

(2) *Mitigation areas off the Mid-Atlantic and Southeastern United States for sonar, explosives, and physical disturbance and strikes—(i) Mitigation area requirements—(A) Southeast North Atlantic Right Whale Mitigation Area (November 15 through April 15)*. (1) Navy personnel must report the total hours and counts of active sonar and in-water explosives used in the mitigation area in its annual training and testing activity reports submitted to NMFS.

(2) The Navy must not conduct: Low-frequency active sonar (except as noted in paragraph (b)(2)(i)(A)(3) of this section), mid-frequency active sonar (except as noted in paragraph (b)(2)(i)(A)(3) of this section), high-frequency active sonar, missile and rocket activities (explosive and non-explosive), small-, medium-, and large-caliber gunnery activities, Improved Extended Echo Ranging sonobuoy activities, explosive and non-explosive bombing activities, in-water detonations, and explosive torpedo activities within the mitigation area.

(3) To the maximum extent practicable, Navy personnel must minimize the use of: Helicopter dipping sonar, low-frequency active sonar and hull-mounted mid-frequency active sonar used for navigation training, and low-frequency active sonar and hull-mounted mid-frequency active sonar used for object detection exercises within the mitigation area.

(4) Before transiting or conducting training or testing activities within the mitigation area, Navy personnel must initiate communication with the Fleet Area Control and Surveillance Facility, Jacksonville to obtain Early Warning System North Atlantic right whale sightings data. The Fleet Area Control and Surveillance Facility, Jacksonville must advise Navy personnel on vessels of all reported whale sightings in the vicinity to help Navy personnel on vessels and aircraft reduce potential interactions with North Atlantic right whales. Commander Submarine Force U.S. Atlantic Fleet must coordinate any submarine activities that may require approval from the Fleet Area Control and Surveillance Facility, Jacksonville. Navy personnel on vessels must use the sightings information to reduce potential interactions with North Atlantic right whales during transits.

(5) Navy personnel on vessels must implement speed reductions after they observe a North Atlantic right whale, if they are within 5 nmi of a sighting reported within the past 12 hrs, or when operating in the mitigation area at night or during periods of poor visibility.

(6) To the maximum extent practicable, Navy personnel on vessels must minimize north-south transits in the mitigation area.

(B) *Southeast North Atlantic Right Whale Critical Habitat Special Reporting Area (November 15 through April 15)*. (1) Navy personnel must report the total hours and counts of active sonar and in-water explosives used in the Special Reporting Area (which includes southeast North Atlantic right whale ESA-designated critical habitat) in its annual training and testing activity reports submitted to NMFS.

(2) [Reserved]

(C) *Jacksonville Operating Area (November 15 through April 15)*. (1) Navy units conducting training or testing activities in the Jacksonville Operating Area must initiate communication with the Fleet Area Control and Surveillance Facility, Jacksonville to obtain Early Warning System North Atlantic right whale sightings data.

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The Fleet Area Control and Surveillance Facility, Jacksonville must advise Navy personnel on vessels of all reported whale sightings in the vicinity to help Navy personnel on vessels and aircraft reduce potential interactions with North Atlantic right whales. Commander Submarine Force U.S. Atlantic Fleet must coordinate any submarine activities that may require approval from the Fleet Area Control and Surveillance Facility, Jacksonville. Navy personnel must use the reported sightings information as they plan specific details of events (*e.g.*, timing, location, duration) to minimize potential interactions with North Atlantic right whales to the maximum extent practicable. Navy personnel must use the reported sightings information to assist visual observations of applicable mitigation zones and to aid in the implementation of procedural mitigation.

(2) [Reserved]

(D) *Navy Cherry Point Range Complex Nearshore Mitigation Area (March through September)*. (1) Navy personnel must not conduct explosive mine neutralization activities involving Navy divers in the mitigation area.

(2) To the maximum extent practicable, Navy personnel must not use explosive sonobuoys, explosive torpedoes, explosive medium-caliber and large-caliber projectiles, explosive missiles and rockets, explosive bombs, explosive mines during mine countermeasure and neutralization activities, and anti-swimmer grenades in the mitigation area.

(E) *Mid-Atlantic Planning Awareness Mitigation Areas (year-round)*. (1) Navy personnel will avoid planning major training exercises (Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) to the maximum extent practicable.

(2) Navy personnel must not conduct more than four major training exercises per year (all or a portion of the exercise) within the mitigation area.

(3) If the Navy needs to conduct additional major training exercises in the mitigation area in support of training requirements driven by national security concerns, Navy personnel must provide NMFS with advance notification and include the information in its

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annual training and testing activity reports submitted to NMFS.

(ii) [Reserved]

(3) *Mitigation areas in the Gulf of Mexico for sonar and explosives*—(i) *Mitigation area requirements*—(A) *Gulf of Mexico Planning Awareness Mitigation Areas (year-round)*. (1) Navy personnel must not conduct major training exercises within the mitigation area (all or a portion of the exercise).

(2) If the Navy needs to conduct a major training exercise within the mitigation areas in support of training requirements driven by national security concerns, Navy personnel must confer with NMFS to verify that potential impacts are adequately addressed.

(B) *Bryde's Whale Mitigation Area (year-round)*. (1) Navy personnel must report the total hours and counts of active sonar and in-water explosives used in the mitigation area in its annual training and testing activity reports submitted to NMFS.

(2) Navy personnel must not conduct greater than 200 hrs of hull-mounted mid-frequency active sonar per year within the mitigation area.

(3) Navy personnel must not use explosives (except during mine warfare activities) within the mitigation area.

(ii) [Reserved]

### §218.85 Requirements for monitoring and reporting.

(a) *Unauthorized take*. The Navy must notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in §218.80 is thought to have resulted in the mortality or serious injury of any marine mammals, or in any Level A or Level B harassment take of marine mammals not identified in this subpart.

(b) *Monitoring and reporting under the LOAs*. The Navy must conduct all monitoring and required reporting under the LOAs, including abiding by the AFTT Study Area monitoring program. Details on program goals, objectives, project selection process, and current projects are available at [www.navymarinespeciesmonitoring.us](http://www.navymarinespeciesmonitoring.us).

(c) *Notification of injured, live stranded, or dead marine mammals*. The Navy

must consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or live stranded marine mammals are detected. The Notification and Reporting Plan is available at [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities).

(d) *Annual AFTT Study Area marine species monitoring report.* The Navy must submit an annual report of the AFTT Study Area monitoring describing the implementation and results from the previous calendar year. Data collection methods must be standardized across range complexes and study areas to allow for comparison in different geographic locations. The report must be submitted to the Director, Office of Protected Resources of NMFS either within 90 days after the calendar year, or within 90 days after the conclusion of the monitoring year to be determined by the Adaptive Management process. This report will describe progress of knowledge made with respect to monitoring plan study questions across all Navy ranges associated with the Integrated Comprehensive Monitoring Program. Similar study questions must be treated together so that progress on each topic can be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions.

(e) *Annual AFTT Study Area training and testing reports.* Each year, the Navy must submit a preliminary report (Quick Look Report) detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of each LOA to the Director, Office of Protected Resources, NMFS. Each year, the Navy must submit a detailed report within 3 months after the anniversary of the date of issuance of each LOA to the Director, Office of Protected Resources, NMFS. The annual reports must contain information on major training exercises (MTEs), sinking exercise (SINKEX) events, and a summary of all sound sources used, including within specified mitigation reporting areas, as described in paragraph (e)(3) of this section.

The analysis in the detailed report must be based on the accumulation of data from the current year's report and data collected from the previous report. The detailed reports must contain information identified in paragraphs (e)(1) through (5) of this section.

(1) *Major training exercises (MTEs).* This section of the report must contain the following information for MTEs conducted in the AFTT Study Area:

(i) Exercise information (for each MTE):

(A) Exercise designator;  
(B) Date that exercise began and ended;

(C) Location;  
(D) Number and types of active sonar sources used in the exercise;

(E) Number and types of passive acoustic sources used in exercise;

(F) Number and types of vessels, aircraft, and other platforms participating in exercise;

(G) Total hours of all active sonar source operation;

(H) Total hours of each active sonar source bin; and

(I) Wave height (high, low, and average) during exercise.

(ii) Individual marine mammal sighting information for each sighting in each exercise where mitigation was implemented:

(A) Date/time/location of sighting;

(B) Species (if not possible, indication of whale/dolphin/pinniped);

(C) Number of individuals;

(D) Initial detection sensor (*e.g.*, sonar, Lookout);

(E) Indication of specific type of platform observation made from (including, for example, what type of surface vessel or testing platform);

(F) Length of time observers maintained visual contact with marine mammal;

(G) Sea state;

(H) Visibility;

(I) Sound source in use at the time of sighting;

(J) Indication of whether animal was less than 200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or greater than 2,000 yd from sonar source;

(K) Mitigation implementation (*e.g.* whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was);

(L) If source in use was hull-mounted, true bearing of animal from the vessel, true direction of vessel's travel, and estimation of animal's motion relative to vessel (opening, closing, parallel); and

(M) Lookouts must 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.*) and if any calves were present.

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation must identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) *Sinking exercises (SINKEXs)*. This section of the report must include the following information for each SINKEX completed that year:

(i) Exercise information (gathered for each SINKEX):

(A) Location;

(B) Date and time exercise began and ended;

(C) Total hours of observation by Lookouts before, during, and after exercise;

(D) Total number and types of explosive source bins detonated;

(E) Number and types of passive acoustic sources used in exercise;

(F) Total hours of passive acoustic search time;

(G) Number and types of vessels, aircraft, and other platforms participating in exercise;

(H) Wave height in feet (high, low, and average) during exercise; and

(I) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(ii) Individual marine mammal sighting information for each sighting where mitigation was implemented:

(A) Date/time/location of sighting;

(B) Species (if not possible, indicate whale, dolphin, or pinniped);

(C) Number of individuals;

(D) Initial detection sensor (*e.g.*, sonar or Lookout);

(E) Length of time observers maintained visual contact with marine mammal;

(F) Sea state;

(G) Visibility; and

(H) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.

(I) Distance of marine mammal from actual detonations (*e.g.* less than 200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or greater than 2,000 yd, or target spot if not yet detonated).

(J) Lookouts must 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 and if any calves were present.

(K) Resulting mitigation implementation: The report must indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(L) If observation occurred while explosives were detonating in the water, indicate munition type in use at time of marine mammal detection.

(3) *Summary of sources used*. This section must include the following information summarized from the authorized sound sources used in all training and testing events:

(i) Total annual hours or quantity (per the LOA) of each bin of sonar or other acoustic sources (pile driving and air gun activities); and

(ii) Total annual expended/detonated ordnance (missiles, bombs, sonobuoys, *etc.*) for each explosive bin.

(4) *Geographic information presentation*. The reports must present an annual (and seasonal, where practical) depiction of training and testing bin usage (as well as pile driving activities) geographically across the AFTT Study Area.

(5) *Sonar exercise notification*. The Navy must submit to NMFS (contact as specified in the LOA) an electronic report within fifteen calendar days after the completion of any MTE indicating:

(i) Location of the exercise;

(ii) Beginning and end dates of the exercise; and

(iii) Type of exercise.

(f) *Seven-year close-out comprehensive training and testing report.* This report must be included as part of the 2025 annual training and testing report. This report must provide the annual totals for each sound source bin with a comparison to the annual allowance and the seven-year total for each sound source bin with a comparison to the seven-year allowance. Additionally, if there were any changes to the sound source allowance, this report must include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the EIS and final rule determinations. The draft report must be submitted within three months after the expiration of this subpart to the Director, Office of Protected Resources, NMFS. NMFS must submit comments on the draft close-out report, if any, within three months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

#### § 218.86 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the Navy must apply for and obtain Letters of Authorization (LOAs) in accordance with § 216.106 of this chapter.

(b) LOAs, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of the regulations in this subpart.

(c) If an LOA expires prior to the expiration date of the regulations in this subpart, the Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of § 218.87(c)(1) as required by an LOA issued under this subpart, the Navy must apply for and obtain a modification of the LOA as described in § 218.87.

(e) Each LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Specified geographic areas for incidental taking;

(3) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species or stocks of marine mammals and their habitat; and

(4) Requirements for monitoring and reporting.

(f) Issuance of the LOA(s) will be based on a determination that the level of taking must be consistent with the findings made for the total taking allowable under the regulations in this subpart.

(g) Notice of issuance or denial of the LOA(s) will be published in the FEDERAL REGISTER within 30 days of a determination.

#### § 218.87 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this subchapter and 218.86 may be renewed or modified upon request by the applicant, provided that:

(1) The planned specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA(s) under the regulations in this subpart were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or to the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations in this subpart or result in no more than a minor change in the total estimated number of takes (or distribution by species or stock or years), NMFS may publish a notice of planned LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this subchapter and 218.86 may be

modified by NMFS under the following circumstances:

(1) *Adaptive management.* After consulting with the Navy regarding the practicability of the modifications, NMFS may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include:

(A) Results from the Navy’s monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of planned LOA in the FEDERAL REGISTER and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 218.86, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within thirty days of the action.

§§ 218.88–218.89 [Reserved]

**Subpart J—Taking and Importing Marine Mammals; U.S. Navy’s Mariana Islands Training and Testing (MITT)**

SOURCE: 85 FR 46410, July 31, 2020, unless otherwise noted.

EFFECTIVE DATE NOTE: At 85 FR 46410, July 31, 2020, subpart J was revised, effective from July 31, 2020, to July 30, 2027.

**§ 218.90 Specified activity and 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 described in paragraph (b) of this section and that occurs incidental to the activities listed in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy under this subpart may be authorized in a Letter of Authorization (LOA) only if it occurs within the Mariana Islands Training and Testing (MITT) Study Area. The MITT Study Area is comprised of three components: The Mariana Islands Range Complex (MIRC), additional areas on the high seas, and a transit corridor between the MIRC and the Hawaii Range Complex (HRC). The MIRC includes the waters south of Guam to north of Pagan (Commonwealth of the Northern Mariana Islands (CNMI)), and from the Pacific Ocean east of the Mariana Islands to the Philippine Sea to the west, encompassing 501,873 square nautical miles (nmi<sup>2</sup>) of open ocean. The additional areas of the high seas include the area to the north of the MIRC that is within the U.S. Exclusive Economic Zone (EEZ) of the CNMI and the areas to the west of the MIRC. The transit corridor is outside the geographic boundaries of the MIRC and represents a great circle route (*i.e.*, the shortest distance) across the high seas for Navy ships transiting between the MIRC and the HRC. Additionally, the MITT Study Area includes pierside locations in the Apra Harbor Naval Complex.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the Navy conducting training and testing activities, including:

- (1) *Training.* (i) Amphibious warfare;
- (ii) Anti-submarine warfare;
- (iii) Mine warfare;
- (iv)–(v) [Reserved];
- (vi) Surface warfare; and
- (vii) Other training activities.

- (2) *Testing.* (i) Naval Air Systems Command Testing Activities;
- (ii) Naval Sea Systems Command Testing Activities; and
- (iii) Office of Naval Research Testing Activities.

§ 218.91 Effective dates.

Regulations in this subpart are effective from July 31, 2020, to July 30, 2027.

§ 218.92 Permissible methods of taking.

(a) Under an LOA issued pursuant to §§ 216.106 of this section and 218.96, the Holder of the LOA (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in § 218.90(b) by Level A harassment and Level B harassment associated with the use of active sonar and other acoustic sources and explosives, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

(b) The incidental take of marine mammals by the activities listed in § 218.90(c) is limited to the species listed in Table 1 of this section.

TABLE 1 TO § 218.92(b)

Species	Scientific name
Blue whale .....	<i>Balaenoptera musculus.</i>
Bryde’s whale .....	<i>Balaenoptera edeni.</i>
Fin whale .....	<i>Balaenoptera physalus.</i>
Humpback whale .....	<i>Megaptera novaeangliae.</i>
Minke whale .....	<i>Balaenoptera acutorostrata.</i>
Omura’s whale .....	<i>Balaenoptera omurai.</i>
Sei whale .....	<i>Balaenoptera borealis.</i>
Blainville’s beaked whale ..	<i>Mesoplodon densirostris.</i>
Common bottlenose dolphin ..	<i>Tursiops truncatus.</i>
Cuvier’s beaked whale .....	<i>Ziphius cavirostris.</i>
Dwarf sperm whale .....	<i>Kogia sima.</i>
False killer whale .....	<i>Pseudorca crassidens.</i>
Fraser’s dolphin .....	<i>Lagenodelphis hosei.</i>
Ginkgo-toothed beaked whale	<i>Mesoplodon ginkgodens.</i>
Killer whale .....	<i>Orcinus orca.</i>
Longman’s beaked whale .....	<i>Indopacetus pacificus.</i>
Melon-headed whale .....	<i>Peponocephala electra.</i>
Pantropical spotted dolphin ...	<i>Stenella attenuata.</i>
Pygmy killer whale .....	<i>Feresa attenuata.</i>
Pygmy sperm whale .....	<i>Kogia breviceps.</i>
Risso’s dolphin .....	<i>Grampus griseus.</i>
Rough-toothed dolphin .....	<i>Steno bredanensis.</i>
Short-finned pilot whale .....	<i>Globicephala macrorhynchus.</i>
Sperm whale .....	<i>Physeter macrocephalus.</i>
Spinner dolphin .....	<i>Stenella longirostris.</i>
Striped dolphin .....	<i>Stenella coeruleoalba.</i>

§ 218.93 Prohibitions.

Notwithstanding incidental takings contemplated in § 218.92(a) and authorized by an LOA issued under §§ 216.106 of this section and 218.96, no person in connection with the activities listed in § 218.90(c) may:

(a) Violate, or fail to comply with, the terms, conditions, and require-

ments of this subpart or an LOA issued under §§ 216.106 of this section and 218.96;

(b) Take any marine mammal not specified in § 218.92(b);

(c) Take any marine mammal specified in § 218.92(b) in any manner other than as specified in the LOA issued under §§ 216.106 of this chapter and 218.96; or

(d) Take a marine mammal specified in § 218.92(b) if NMFS determines such taking results in more than a negligible impact on the species of such marine mammal.

§ 218.94 Mitigation requirements.

When conducting the activities identified in § 218.90(c), the mitigation measures contained in any LOA issued under §§ 216.106 of this section and 218.96 must be implemented. These mitigation measures include, but are not limited to:

(a) *Procedural mitigation.* Procedural mitigation is mitigation that the Navy must implement whenever and wherever an applicable training or testing activity takes place within the MITT Study Area for each applicable activity category or stressor category and includes acoustic stressors (*i.e.*, active sonar and other transducers, weapons firing noise), explosive stressors (*i.e.*, sonobuoys, torpedoes, medium-caliber and large-caliber projectiles, missiles and rockets, bombs, sinking exercises, mines, anti-swimmer grenades), and physical disturbance and strike stressors (*i.e.*, vessel movement; towed in-water devices; small-, medium-, and large-caliber non-explosive practice munitions; non-explosive missiles and rockets; and non-explosive bombs and mine shapes).

(1) *Environmental awareness and education.* Appropriate Navy personnel (including civilian personnel) involved in mitigation and training or testing reporting under the specified activities will complete one or more modules of the U.S. Navy Afloat Environmental Compliance Training Series, as identified in their career path training plan. Modules include: Introduction to the U.S. Navy Afloat Environmental Compliance Training Series, Marine Species Awareness Training; U.S. Navy

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Protective Measures Assessment Protocol; and U.S. Navy Sonar Positional Reporting System and Marine Mammal Incident Reporting.

(2) *Active sonar.* Active sonar includes low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar. For vessel-based activities, mitigation applies only to sources that are positively controlled and deployed from manned surface vessels (e.g., sonar sources towed from manned surface platforms). For aircraft-based activities, mitigation applies only to sources that are positively controlled and deployed from manned aircraft that do not operate at high altitudes (e.g., rotary-wing aircraft). Mitigation does not apply to active sonar sources deployed from unmanned aircraft or aircraft operating at high altitudes (e.g., maritime patrol aircraft).

(i) *Number of Lookouts and observation platform—(A) Hull-mounted sources.* One Lookout must be positioned for platforms with space or manning restrictions while underway (at the forward part of a small boat or ship) and platforms using active sonar while moored or at anchor (including pierside); and two Lookouts must be positioned for platforms without space or manning restrictions while underway (at the forward part of the ship).

(B) *Sources that are not hull-mounted sources.* One Lookout must be positioned on the ship or aircraft conducting the activity.

(ii) *Mitigation zone and requirements.* The mitigation zones must be the zones as described in paragraphs (a)(2)(ii)(B) and (C) of this section.

(A) Prior to the initial start of the activity (e.g., when maneuvering on station), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of active sonar transmission.

(B) During the activity for low-frequency active sonar at or above 200 dB and hull-mounted mid-frequency active sonar, Navy personnel must observe the mitigation zone for marine mammals and power down active sonar transmission by 6 dB if marine mammals are observed within 1,000 yd of the sonar source; power down by an addi-

tional 4 dB (for a total of 10 dB) if marine mammals are observed within 500 yd of the sonar source; and cease transmission if marine mammals are observed within 200 yd of the sonar source.

(C) During the activity for low-frequency active sonar below 200 dB, mid-frequency active sonar sources that are not hull mounted, and high-frequency active sonar, Navy personnel must observe the mitigation zone for marine mammals and cease active sonar transmission if marine mammals are observed within 200 yd of the sonar source.

(D) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing or powering up active sonar transmission) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonar source; the mitigation zone has been clear from any additional sightings for 10 minutes (min) for aircraft-deployed sonar sources or 30 min for vessel-deployed sonar sources; for mobile activities, the active sonar source has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting; or for activities using hull-mounted sonar where a dolphin(s) is observed in the mitigation zone, the Lookout concludes that the dolphin(s) is deliberately closing in on the ship to ride the ship's bow wave, and is therefore out of the main transmission axis of the sonar (and there are no other marine mammal sightings within the mitigation zone).

(3) *Weapons firing noise.* Weapons firing noise associated with large-caliber gunnery activities.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the ship conducting the firing. Depending on the activity, the Lookout could be the same as the one



provided for under “Explosive medium-caliber and large-caliber projectiles” or under “Small-, medium-, and large-caliber non-explosive practice munitions” in paragraphs (a)(6)(i) and (a)(15)(i) of this section.

(ii) *Mitigation zone and requirements.* The mitigation zone must be thirty degrees on either side of the firing line out to 70 yd from the muzzle of the weapon being fired.

(A) Prior to the initial start of the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of weapons firing.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease weapons firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing weapons firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the firing ship; the mitigation zone has been clear from any additional sightings for 30 min; or for mobile activities, the firing ship has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(4) *Explosive sonobuoys*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft or on a small boat. If additional platforms are participating in the activity, Navy personnel positioned on those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) The mitigation zone must be 600 yd around an explosive sonobuoy.

(B) Prior to the initial start of the activity (*e.g.*, during deployment of a sonobuoy pattern, which typically lasts 20–30 min), Navy personnel must conduct passive acoustic monitoring for marine mammals and use information from detections to assist visual observations. Navy personnel also must visually observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of sonobuoy or source/receiver pair detonations.

(C) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease sonobuoy or source/receiver pair detonations.

(D) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonobuoy; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints (*e.g.*, helicopter), or 30 min when the activity involves aircraft that are not typically fuel constrained.

(E) After completion of the activity (*e.g.*, prior to maneuvering off station), when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), Navy personnel on these assets must assist in the visual observation of the area where detonations occurred.

(5) *Explosive torpedoes*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned on those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) The mitigation zone must be 2,100 yd around the intended impact location.

(B) Prior to the initial start of the activity (*e.g.*, during deployment of the target), Navy personnel must conduct passive acoustic monitoring for marine mammals and use the information from detections to assist visual observations. Navy personnel also must visually observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(C) During the activity, Navy personnel must observe the mitigation zone for marine mammals. If marine mammals are observed, Navy personnel must cease firing.

(D) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(E) After completion of the activity (*e.g.*, prior to maneuvering off station), Navy personnel must when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments),

observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), Navy personnel on these assets must assist in the visual observation of the area where detonations occurred.

(6) *Explosive medium-caliber and large-caliber projectiles.* Gunnery activities using explosive medium-caliber and large-caliber projectiles. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be on the vessel or aircraft conducting the activity. For activities using explosive large-caliber projectiles, depending on the activity, the Lookout could be the same as the one described in “Weapons firing noise” in paragraph (a)(3)(i) of this section. If additional platforms are participating in the activity, Navy personnel positioned on those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) The mitigation zone must be 200 yd around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles.

(B) The mitigation zone must be 600 yd around the intended impact location for surface-to-surface activities using explosive medium-caliber projectiles.

(C) The mitigation zone must be 1,000 yd around the intended impact location for surface-to-surface activities using explosive large-caliber projectiles.

(D) Prior to the initial start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(E) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(F) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or for activities using mobile targets, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(G) After completion of the activity (*e.g.*, prior to maneuvering off station), Navy personnel must, when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), Navy personnel on these assets must assist in the visual observation of the area where detonations occurred.

(7) *Explosive missiles and rockets.* Aircraft-deployed explosive missiles and rockets. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned on those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) The mitigation zone must be 900 yd around the intended impact location

for missiles or rockets with 0.6–20 lb net explosive weight.

(B) 2,000 yd around the intended impact location for missiles with 21–500 lb net explosive weight.

(C) Prior to the initial start of the activity (*e.g.*, during a fly-over of the mitigation zone), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(D) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(F) After completion of the activity (*e.g.*, prior to maneuvering off station), Navy personnel must, when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), Navy personnel on these assets will assist in the visual observation of the area where detonations occurred.

(8) *Explosive bombs*—(i) *Number of Lookouts and observation platform.* One

Lookout must be positioned in an aircraft conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned on those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.*

(A) The mitigation zone must be 2,500 yd around the intended target.

(B) Prior to the initial start of the activity (*e.g.*, when arriving on station), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment.

(C) During the activity (*e.g.*, during target approach), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease bomb deployment.

(D) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target; the mitigation zone has been clear from any additional sightings for 10 min; or for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(E) After completion of the activity (*e.g.*, prior to maneuvering off station), Navy personnel must, when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must fol-

low established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), Navy personnel on these assets must assist in the visual observation of the area where detonations occurred.

(9) *Sinking exercises*—(i) *Number of Lookouts and observation platform.* Two Lookouts (one must be positioned in an aircraft and one must be positioned on a vessel). If additional platforms are participating in the activity, Navy personnel positioned on those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.*

(A) The mitigation zone must be 2.5 nmi around the target ship hulk.

(B) Prior to the initial start of the activity (90 min prior to the first firing), Navy personnel must conduct aerial observations of the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the start of firing.

(C) During the activity, Navy personnel must conduct passive acoustic monitoring for marine mammals and use the information from detections to assist visual observations. Navy personnel must visually observe the mitigation zone for marine mammals from the vessel; if marine mammals are observed, Navy personnel must cease firing. Immediately after any planned or unplanned breaks in weapons firing of longer than two hours, Navy personnel must observe the mitigation zone for marine mammals from the aircraft and vessel; if marine mammals are observed, Navy personnel must delay recommencement of firing.

(D) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based

on a determination of its course, speed, and movement relative to the target ship hulk; or the mitigation zone has been clear from any additional sightings for 30 min.

(E) After completion of the activity (for two hours after sinking the vessel or until sunset, whichever comes first), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), Navy personnel on these assets will assist in the visual observation of the area where detonations occurred.

(10) *Explosive mine countermeasure and neutralization activities*—(i) *Number of Lookouts and observation platform.* (A) One Lookout must be positioned on a vessel or in an aircraft.

(B) If additional platforms are participating in the activity, Navy personnel positioned on those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.*

(A) The mitigation zone must be 600 yd around the detonation site.

(B) Prior to the initial start of the activity (*e.g.*, when maneuvering on station; typically 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations.

(C) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations.

(D) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or

during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to detonation site; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(E) [Reserved]

(F) After completion of the activity (typically 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), Navy personnel on these assets must assist in the visual observation of the area where detonations occurred.

(11) *Explosive mine neutralization activities involving Navy divers*—(i) *Number of Lookouts and observation platform.* (A) Two Lookouts (two small boats with one Lookout each, or one Lookout must be on a small boat and one must be in a rotary-wing aircraft) when implementing the smaller mitigation zone.

(B) Four Lookouts (two small boats with two Lookouts each), and a pilot or member of an aircrew which must serve as an additional Lookout if aircraft are used during the activity, must be used when implementing the larger mitigation zone.

(C) All divers placing the charges on mines will support the Lookouts while performing their regular duties and will report applicable sightings to their supporting small boat or Range Safety Officer.

(D) If additional platforms are participating in the activity, Navy personnel positioned on those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for

marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.*

(A) For Lookouts on small boats or aircraft, the mitigation zone must be 500 yd around the detonation site under positive control.

(B) For Lookouts on small boats or aircraft, the mitigation zone must be 1,000 yd around the detonation site during all activities using time-delay fuses.

(C) For divers, the mitigation zone must be the underwater detonation location, which is defined as the sea space within the divers' range of visibility but no further than the mitigation zone specified for Lookouts on small boats or aircraft (500 yd or 1,000 yd depending on the charge type).

(D) Prior to the initial start of the activity (when maneuvering on station for activities under positive control; 30 min for activities using time-delay firing devices), Navy Lookouts on small boats or aircraft, must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations or fuse initiation.

(E) During the activity, Navy Lookouts on small boats or aircraft, must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations or fuse initiation. While performing their normal duties during the activity, divers must observe the underwater detonation location for marine mammals. Divers must notify their supporting small boat or Range Safety Officer of marine mammal sightings at the underwater detonation location; if observed, the Navy must cease detonations or fuse initiation. To the maximum extent practicable depending on mission requirements, safety, and environmental conditions, Navy personnel must position boats near the mid-point of the mitigation zone radius (but outside of the detonation plume and human safety zone), must position themselves on opposite sides of the detonation location (when two boats are used), and must travel in a circular pattern around the detonation location with one Lookout observing inward toward the detonation site

and the other observing outward toward the perimeter of the mitigation zone. If used, Navy aircraft must travel in a circular pattern around the detonation location to the maximum extent practicable. Navy personnel must not set time-delay firing devices to exceed 10 min.

(F) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the underwater detonation location or mitigation zone (as applicable) prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations or fuse initiation) until one of the following conditions has been met: The animal is observed exiting the 500 yd or 1,000 yd mitigation zone; the animal is thought to have exited the 500 yd or 1,000 yd mitigation zone based on a determination of its course, speed, and movement relative to the detonation site; or the 500 yd or 1,000 yd mitigation zones (for Lookouts on small boats or aircraft) and the underwater detonation location (for divers) has been clear from any additional sightings for 10 min during activities under positive control with aircraft that have fuel constraints, or 30 min during activities under positive control with aircraft that are not typically fuel constrained and during activities using time-delay firing devices.

(G) After completion of an activity, the Navy must observe for marine mammals for 30 min. Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), Navy personnel on these assets must assist in the visual observation of the area where detonations occurred.

(12) *Maritime security operations—anti-swimmer grenades*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the small boat conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned

on those assets (*e.g.*, safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.*

(A) The mitigation zone must be 200 yd around the intended detonation location.

(B) Prior to the initial start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations.

(C) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations.

(D) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended detonation location; the mitigation zone has been clear from any additional sightings for 30 min; or the intended detonation location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(E) After completion of the activity (*e.g.*, prior to maneuvering off station), Navy personnel must, when practical (*e.g.*, when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.*, providing range clearance), Navy personnel on these assets will assist in the visual ob-

serva-tion of the area where detonations occurred.

(13) *Vessel movement.* The mitigation will not be applied if: The vessel's safety is threatened; the vessel is restricted in its ability to maneuver (*e.g.*, during launching and recovery of aircraft or landing craft, during towing activities, when mooring); the vessel is submerged or operated autonomously; or if impracticable based on mission requirements (*e.g.*, during Amphibious Assault and Amphibious Raid exercises).

(i) *Number of Lookouts and observation platform.* One Lookout must be on the vessel that is underway.

(ii) *Mitigation zone and requirements.*

(A) The mitigation zone must be 500 yd around whales.

(B) The mitigation zone must be 200 yd around all other marine mammals (except bow-riding dolphins).

(C) During the activity. When underway Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must maneuver to maintain distance.

(iii) *Reporting.* If a marine mammal vessel strike occurs, Navy personnel must follow the established incident reporting procedures.

(14) *Towed in-water devices.* Mitigation applies to devices that are towed from a manned surface platform or manned aircraft. The mitigation will not be applied if the safety of the towing platform or in-water device is threatened.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on a manned towing platform.

(ii) *Mitigation zone and requirements.*

(A) The mitigation zone must be 250 yd around marine mammals.

(B) During the activity (*i.e.*, when towing an in-water device), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must maneuver to maintain distance.

(15) *Small-, medium-, and large-caliber non-explosive practice munitions.* Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the platform conducting the

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activity. Depending on the activity, the Lookout could be the same as the one described for “Weapons firing noise” in paragraph (a)(3)(i) of this section.

(ii) *Mitigation zone and requirements.*

(A) The mitigation zone must be 200 yd around the intended impact location.

(B) Prior to the initial start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(C) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(D) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or for activities using a mobile target, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(16) *Non-explosive missiles and rockets.* Aircraft-deployed non-explosive missiles and rockets. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft.

(ii) *Mitigation zone and requirements.*

(A) The mitigation zone must be 900 yd around the intended impact location.

(B) Prior to the initial start of the activity (*e.g.*, during a fly-over of the mitigation zone), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are ob-

served, Navy personnel must relocate or delay the start of firing.

(C) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(D) Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(17) *Non-explosive bombs and mine shapes.* Non-explosive bombs and non-explosive mine shapes during mine laying activities.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft.

(ii) *Mitigation zone and requirements.*

(A) The mitigation zone must be 1,000 yd around the intended target.

(B) Prior to the initial start of the activity (*e.g.*, when arriving on station), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment or mine laying.

(C) During the activity (*e.g.*, during approach of the target or intended minefield location), Navy personnel must observe the mitigation zone for marine mammals and, if marine mammals are observed, Navy personnel must cease bomb deployment or mine laying.

(D) Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity. Navy personnel must allow a



sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment or mine laying) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target or mine-field location; the mitigation zone has been clear from any additional sightings for 10 min; or for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(b) *Mitigation areas.* In addition to procedural mitigation, Navy personnel must implement mitigation measures within mitigation areas to avoid or reduce potential impacts on marine mammals.

(1) *Mitigation areas for marine mammals off Saipan in MITT Study Area for sonar, explosives, and vessel strikes—(i) Mitigation area requirements—(A) Marpi Reef and Chalan Kanoa Reef Geographic Mitigation Areas.* (1) Navy personnel will conduct a maximum combined total of 20 hours annually from December 1 through April 30 of surface ship hull-mounted MF1 mid-frequency active sonar during training and testing within the Marpi Reef and Chalan Kanoa Reef Geographic Mitigation Areas.

(2) Navy personnel will not use in-water explosives.

(3) Navy personnel must report the total hours of all active sonar use (all bins, by bin) from December 1 through April 30 in these geographic mitigation areas in the annual training and testing exercise report submitted to NMFS.

(4) Should national security present a requirement to conduct training or testing prohibited by the mitigation requirements in this paragraph (b)(1)(i)(A), Navy personnel must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include

relevant information (*e.g.*, sonar hours, explosives use) in its annual activity reports submitted to NMFS.

(B) *Marpi Reef and Chalan Kanoa Reef Awareness Notification Message Area.* (1) Navy personnel must issue a seasonal awareness notification message to alert Navy ships and aircraft operating in the Marpi Reef and Chalan Kanoa Reef Geographic Mitigation Areas to the possible presence of increased concentrations of humpback whales from December 1 through April 30.

(2) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel must instruct vessels to remain vigilant to the presence of humpback whales that when concentrated seasonally, may become vulnerable to vessel strikes.

(3) Navy personnel must use the information from the awareness notification message to assist their visual observation of applicable geographic mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation.

(ii) [Reserved]

(2) *Mitigation areas for marine mammals off Guam of the MITT Study Area for sonar and explosives—(i) Mitigation area requirements—(A) Agat Bay Near-shore Geographic Mitigation Area.* (1) Navy personnel will not conduct MF1 surface ship hull-mounted mid-frequency active sonar year-round.

(2) Navy personnel will not use in-water explosives year-round.

(3) Should national security require the use of MF1 surface ship hull-mounted mid-frequency active sonar or explosives within the Agat Bay Near-shore Geographic Mitigation Area, Navy personnel must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.*, sonar hours, explosives usage) in its annual activity reports submitted to NMFS.

(B) [Reserved]

#### § 218.95 Requirements for monitoring and reporting.

(a) *Unauthorized take.* Navy personnel must notify NMFS immediately (or as

soon as operational security considerations allow) if the specified activity identified in §218.90 is thought to have resulted in the serious injury or mortality of any marine mammals, or in any Level A harassment or Level B harassment of marine mammals not identified in this subpart.

(b) *Monitoring and reporting under the LOA.* The Navy must conduct all monitoring and reporting required under the LOA, including abiding by the U.S. Navy's Marine Species Monitoring Program for the MITT Study Area. Details on program goals, objectives, project selection process, and current projects are available at [www.navy.mil/speciesmonitoring.us](http://www.navy.mil/speciesmonitoring.us).

(c) *Notification of injured, live stranded, or dead marine mammals.* Navy personnel must consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or live stranded marine mammals are detected. The Notification and Reporting Plan is available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-mariana-islands-training-and-testing-mitt>.

(d) *Annual MITT Study Area marine species monitoring report.* The Navy must submit an annual report to NMFS of the MITT Study Area monitoring which will be included in a Pacific-wide monitoring report including results specific to the MITT Study Area describing the implementation and results from the previous calendar year. Data collection methods will be standardized across Pacific Range Complexes including the MITT, HSTT, NWT, and Gulf of Alaska (GOA) Study Areas to the best extent practicable, to allow for comparison in different geographic locations. The report must be submitted to the Director, Office of Protected Resources, NMFS, either within three months after the end of the calendar year, or within three months after the conclusion of the monitoring year, to be determined by the Adaptive Management process. NMFS will submit comments or questions on the draft monitoring report, if any, within three months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or three months after the

submission of the draft if NMFS does not provide comments on the draft report. Such a report will describe progress of knowledge made with respect to monitoring study questions across multiple Navy ranges associated with the ICMP. Similar study questions must be treated together so that progress on each topic can be summarized across multiple Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring study question. This will continue to allow the Navy to provide a cohesive monitoring report covering multiple ranges (as per ICMP goals), rather than entirely separate reports for the MITT, Hawaii-Southern California, Gulf of Alaska, and Northwest Training and Testing Study Areas.

(e) *Annual MITT Study Area Training and Testing Exercise Report.* Each year, the Navy must submit a preliminary report (Quick Look Report) detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of the LOA to the Director, Office of Protected Resources, NMFS. The Navy must also submit a detailed report (MITT Annual Training and Testing Exercise Report) to the Director, Office of Protected Resources, NMFS, within three months after the one-year anniversary of the date of issuance of the LOA. The MITT Annual Training and Testing Exercise Report can be consolidated with other exercise reports from other range complexes in the Pacific Ocean for a single Pacific Exercise Report, if desired. NMFS will submit comments or questions on the report, if any, within one month of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or one month after submission of the draft if NMFS does not provide comments on the draft report. The annual will contain information on major training exercises (MTEs), Sinking Exercise (SINKEX) events, and a summary of all sound sources used (total hours or quantity of each bin of sonar or other non-impulsive source; total annual number of each type of explosive exercises; and total annual expended/detonated rounds (missiles, bombs, sonobuoys, etc.) for each explosive bin).

The annual report will also contain information on sound sources used including within specific mitigation reporting areas as described in paragraph (e)(4) of this section. The annual report will also contain both the current year's data as well as cumulative sonar and explosive use quantity from previous years' reports. Additionally, if there were any changes to the sound source allowance in a given year, or cumulatively, the report will include a discussion of why the change was made and include analysis to support how the change did or did not affect the analysis in the 2020 MITT FSEIS/OEIS and MMPA final rule. The annual report will also include the details regarding specific requirements associated with specific mitigation areas. The final annual/close-out report at the conclusion of the authorization period (year seven) will serve as the comprehensive close-out report and include both the final year annual use compared to annual authorization as well as a cumulative seven-year annual use compared to seven-year authorization. The detailed reports must contain the information identified in paragraphs (e)(1) through (6) of this section.

(1) *MTEs*. This section of the report must contain the following information for MTEs conducted in the MITT Study Area.

(i) Exercise information for each MTE.

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location.

(D) Number and types of active sonar sources used in exercise.

(E) Number and types of passive acoustic sources used in exercise.

(F) Number and types of vessels, aircraft, and other platforms participating in exercise.

(G) Total hours of all active sonar source operation.

(H) Total hours of each active sonar source bin.

(I) Wave height (high, low, and average) during exercise.

(ii) Individual marine mammal sighting information for each sighting in each exercise where mitigation was implemented.

(A) Date/Time/Location of sighting.

(B) Species (if not possible, indication of whale or dolphin).

(C) Number of individuals.

(D) Initial Detection Sensor (*e.g.*, sonar, Lookout).

(E) Indication of specific type of platform observation was made from (including, for example, what type of surface vessel or testing platform).

(F) Length of time observers maintained visual contact with marine mammal.

(G) Sea state.

(H) Visibility.

(I) Sound source in use at the time of sighting.

(J) Indication of whether the animal was less than 200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or greater than 2,000 yd from sonar source.

(K) Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay.

(L) If source in use was hull-mounted, true bearing of animal from the vessel, true direction of vessel's travel, and estimation of animal's motion relative to vessel (opening, closing, parallel).

(M) Lookouts must 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.) and if any calves were present.

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation must identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) *SINKEXs*. This section of the report must include the following information for each SINKEX completed that year.

(i) Exercise information gathered for each SINKEX.

(A) Location.

(B) Date and time exercise began and ended.

(C) Total hours of observation by Lookouts before, during, and after exercise.

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(D) Total number and types of explosive source bins detonated.

(E) Number and types of passive acoustic sources used in exercise.

(F) Total hours of passive acoustic search time.

(G) Number and types of vessels, aircraft, and other platforms, participating in exercise.

(H) Wave height in feet (high, low, and average) during exercise.

(I) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(ii) Individual marine mammal observation (by Navy Lookouts) information for each sighting where mitigation was implemented.

(A) Date/Time/Location of sighting.

(B) Species (if not possible, indicate whale or dolphin).

(C) Number of individuals.

(D) Initial detection sensor (*e.g.*, sonar or Lookout).

(E) Length of time observers maintained visual contact with marine mammal.

(F) Sea state.

(G) Visibility.

(H) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.

(I) Distance of marine mammal from actual detonations (or target spot if not yet detonated): Less than 200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or greater than 2,000 yd.

(J) Lookouts must 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 and if any calves were present.

(K) The report must indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(L) If observation occurred while explosives were detonating in the water, indicate munition type in use at time of marine mammal detection.

(3) *Summary of sources used.* This section of the report must include the following information summarized from

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the authorized sound sources used in all training and testing events:

(i) Total annual hours or quantity (per the LOA) of each bin of sonar or other transducers; and

(ii) Total annual expended/detonated ordnance (missiles, bombs, sonobuoys, etc.) for each explosive bin.

(4) *Marpi Reef and Chalan Kanoa Reef Geographic Mitigation Areas.* The Navy must report any active sonar use (all bins, by bin) between December 1 and April 30 that occurred as specifically described in these areas. Information included in the classified annual reports may be used to inform future adaptive management within the MITT Study Area.

(5) *Geographic information presentation.* The reports must present an annual (and seasonal, where practical) depiction of training and testing bin usage geographically across the MITT Study Area.

(6) *Sonar exercise notification.* The Navy must submit to NMFS (contact as specified in the LOA) an electronic report within fifteen calendar days after the completion of any MTE indicating:

(i) Location of the exercise;

(ii) Beginning and end dates of the exercise; and

(iii) Type of exercise.

(f) *Final Close-Out Report.* The final (year seven) draft annual/close-out report must be submitted within three months after the expiration of this subpart to the Director, Office of Protected Resources, NMFS. NMFS must submit comments on the draft close-out report, if any, within three months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or three months after the submittal of the draft if NMFS does not provide comments.

### §218.96 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the Navy must apply for and obtain an LOA in accordance with §216.106 of this section.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed July 30, 2027.

(c) If an LOA expires prior to July 30, 2027, the Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of §218.97(c)(1)) required by an LOA issued under this subpart, the Navy must apply for and obtain a modification of the LOA as described in §218.97.

(e) Each LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Geographic areas for incidental taking;

(3) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species of marine mammals and their habitat; and

(4) Requirements for monitoring and reporting.

(f) Issuance of the LOA(s) must be based on a determination that the level of taking is consistent with the findings made for the total taking allowable under the regulations in this subpart.

(g) Notice of issuance or denial of the LOA(s) will be published in the FEDERAL REGISTER within 30 days of a determination.

**§ 218.97 Renewals and modifications of Letters of Authorization.**

(a) An LOA issued under §§216.106 of this section and 218.96 for the activity identified in §218.90(c) may be renewed or modified upon request by the applicant, provided that:

(1) The planned specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA(s) were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or to the mitigation, monitoring, or reporting measures (excluding changes made pursuant

to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of planned LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§216.106 of this section and 218.96 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* After consulting with the Navy regarding the practicability of the modifications, NMFS may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include:

(A) Results from the Navy's annual monitoring report and annual exercise report from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies;

(C) Results from specific stranding investigations; or

(D) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of planned LOA in the FEDERAL REGISTER and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species of marine mammals specified in LOAs issued pursuant to §§216.106 of this section and 218.96, an LOA may be modified without prior notice or opportunity for public comment. Notice will be published in the FEDERAL REGISTER within thirty days of the action.

**Subparts K–N [Reserved]**

**Subpart O—Taking and Importing Marine Mammals; U.S. Navy’s Northwest Training and Testing (NWT) Study Area**

SOURCE: 80 FR 73622, Nov. 24, 2015, unless otherwise noted.

**§ 218.140 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 NWT Study Area, which is composed of established maritime operating and warning areas in the eastern North Pacific Ocean region, including areas of the Strait of Juan de Fuca, Puget Sound, and Western Behm Canal in southeastern Alaska. The Study Area includes air and water space within and outside Washington state waters, and outside state waters of Oregon and Northern California. The Study Area includes four existing range complexes and facilities: The Northwest Training Range Complex (NWT), the Keyport Range Complex, Carr Inlet Operations Area, and SEAFAC. In addition to these range complexes, the Study Area also includes Navy pier-side locations where sonar maintenance and testing occurs as part of overhaul, modernization, maintenance and repair activities at NAVBASE Kitsap, Bremerton; NAVBASE Kitsap, Bangor; and Naval Station Everett.

(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) Sonar and other Active Sources Used During Training:

(i) Mid-frequency (MF) Source Classes:

(A) MF1—an average of 166 hours per year.

(B) MF3—an average of 70 hours per year.

(C) MF4—an average of 4 hours per year.

(D) MF5—an average of 896 items per year.

(E) MF11—an average of 16 hours per year.

(ii) High-frequency (HF) Source Classes:

(A) HF1—an average of 48 hours per year.

(B) HF4—an average of 384 hours per year.

(C) HF6—an average of 192 hours per year.

(iii) Anti-Submarine Warfare (ASW) Source Classes:

(A) ASW2—an average of 720 items per year per year.

(B) ASW3—an average of 78 hours per year.

(2) Sonar and other Active Sources Used During Testing:

(i) Low-frequency (LF) Source Classes:

(A) LF4—an average of 110 hours per year.

(B) LF5—an average of 71 hours per year.

(ii) Mid-frequency (MF):

(A) MF1—an average of 32 hours per year.

(B) MF3—an average of 145 hours per year.

(C) MF4—an average of 10 hours per year.

(D) MF5—an average of 273 items per year.

(E) MF6—an average of 12 items per year.

(F) MF8—an average of 40 hours per year.

(G) MF9—an average of 1,183 hours per year.

(H) MF10—an average of 1,156 hours per year.

(I) MF11—an average of 34 hours per year.

(J) MF12—an average of 24 hours per year.

(iii) High-frequency (HF) and Very High-frequency (VHF):

(A) HF1—an average of 161 hours per year.

(B) HF3—an average of 145 hours per year.

(C) HF5—an average of 360 hours per year.

(D) HF6—an average of 2,099 hours per year.

(iv) VHF:

(A) VHF2—an average of 35 hours per year.

(B) [Reserved]

(v) ASW:

(A) ASW1—an average of 16 hours per year.

(B) ASW2—an average of 64 hours per year.

(C) ASW2—an average of 170 items per year.

(D) ASW3—an average of 444 hours per year.

(E) ASW4—an average of 1,182 items per year.

(vi) Acoustic Modems (M):

(A) M3—an average of 1,519 hours per year.

(B) [Reserved]

(vii) Torpedoes (TORP):

(A) TORP1—an average of 315 items per year.

(B) TORP2—an average of 299 items per year.

(viii) Swimmer Detection Sonar (SD):

(A) SD1—an average of 757 hours per year.

(B) [Reserved]

(ix) Synthetic Aperture Sonar (SAS):

(A) SAS2—an average of 798 hours per year.

(B) [Reserved]

(3) Impulsive Source Detonations During Training:

(i) Explosive Classes:

(A) E1 (0.1 to 0.25 pound [lb] NEW)—an average of 48 detonations per year.

(B) E3 (>0.5 to 2.5 lb NEW)—an average of 6 detonations per year.

(C) E5 (>5 to 10 lb NEW)—an average of 80 detonations per year.

(D) E10 (>250 to 500 lb NEW)—an average of 4 detonations per year.

(E) E12 (>650 to 1,000 lb NEW)—an average of 10 detonations per year.

(ii) [Reserved]

(4) Impulsive Source Detonations During Testing:

(i) Explosive Classes:

(A) E3 (>0.5 to 2.5 lb NEW)—an average of 72 detonations per year.

(B) E4 (>2.5 to 5 lb NEW)—an average of 140 detonations (70 sonobuoys) per year.

(C) E8 (>60 to 100 lb NEW)—an average of 3 detonations per year.

(D) E11 (>500 to 650 lb NEW)—an average of 3 detonations per year.

(ii) [Reserved]

#### § 218.141 Applicability dates.

Regulations in this subpart are applicable November 9, 2015, through November 8, 2020.

#### § 218.142 Permissible methods of taking.

(a) Under Letters of Authorization (LOAs) issued pursuant to § 218.147, the Holder of, and those operating under, the LOA may incidentally, but not intentionally, take marine mammals within the area described in § 218.140, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate LOA.

(b) The activities identified in § 218.140(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 § 218.140(c) is limited to the following species, by the identified method of take and the indicated number of times:

(1) Level B Harassment for all Training Activities:

(i) Mysticetes:

(A) Blue whale (*Balaenoptera musculus*), Eastern North Pacific—25 (an average of 5 per year).

(B) Fin whale (*Balaenoptera physalus*), California, Oregon, and Washington (CA/OR/WA)—125 (an average of 25 per year).

(C) Gray whale (*Eschrichtius robustus*), Eastern North Pacific—30 (an average of 6 per year).

(D) Humpback whale (*Megaptera novaeangliae*), CA/OR/WA—60 (an average of 12 per year).

(E) Minke whale (*Balaenoptera acutorostrata*), CA/OR/WA—90 (an average of 18 per year).

(ii) Odontocetes:

(A) Baird's beaked whale (*Berardius bairdii*), CA/OR/WA—2,955 (an average of 591 per year).

(B) Mesoplodont beaked whale (*Mesoplodon* spp.), CA/OR/WA—7,085 (an average of 1,417 per year).

(C) Cuvier's beaked whale (*Ziphius cavirostris*), CA/OR/WA—1,765 (an average of 353 per year).

(D) Dall's porpoise (*Phocoenoida dalli*), CA/OR/WA—18,178 (an average of 3,730 per year).

(E) Harbor porpoise (*Phocoena phocoena*), Northern OR/WA Coast—175,030 (an average of 35,006 per year).

(F) Harbor porpoise (*Phocoena phocoena*), Northern CA/Southern OR—262,545 (an average of 52,509 per year).

(G) Harbor porpoise (*Phocoena phocoena*), WA Inland Waters—4,409 (an average of 1,417 per year).

(H) Killer whale (*Orcinus orca*), West Coast Transient—39 (an average of 9 per year).

(I) Killer whale (*Orcinus orca*), Eastern North Pacific Offshore—65 (an average of 13 per year).

(J) Killer whale (*Orcinus orca*), Eastern North Pacific Southern Resident—6 (an average of 2 per year).

(K) *Kogia* spp., CA/OR/WA—365 (an average of 73 per year).

(L) Northern right whale dolphin (*Lissodelphis borealis*), CA/OR/WA—6,660 (an average of 1,332 per year).

(M) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), CA/OR/WA—17,408 (an average of 3,482 per year).

(N) Risso's dolphin (*Grampus griseus*), CA/OR/WA—3,285 (an average of 657 per year).

(O) Short-beaked common dolphin (*Delphinus delphis*), CA/OR/WA—3,670 (an average of 734 per year).

(P) Sperm whale (*Physeter macrocephalus*), CA/OR/WA—405 (an average of 81 per year).

(Q) Striped dolphin (*Stenella coerulealba*), CA/OR/WA—110 (an average of 22 per year).

(iii) Pinnipeds:

(A) California sea lion (*Zalophus californianus*), U.S.—4,038 (an average of 814 per year).

(B) Steller sea lion (*Eumetopias jubatus*), Eastern U.S.—1,986 (an average of 404 per year).

(C) Guadalupe fur seal (*Arctocephalus townsendi*), Mexico—35 (an average of 7 per year).

(D) Harbor seal (*Phoca vitulina*), WA Northern Inland Waters—1,855 (an average of 427 per year).

(E) Harbor seal (*Phoca vitulina*), Southern Puget Sound—252 (an average of 58 per year).

(F) Harbor seal (*Phoca vitulina*), Hood Canal—2,054 (an average of 452 per year).

(G) Northern elephant seal (*Mirounga angustirostris*), CA Breeding—6,353 (an average of 1,271 per year).

(H) Northern fur seal (*Callorhinus ursinus*), Eastern Pacific—12,475 (an average of 2,495 per year).

(I) Northern fur seal (*Callorhinus ursinus*), California—185 (an average of 37 per year).

(2) Level A Harassment for all Training Activities:

(i) Mysticetes:

(A)–(B) [Reserved]

(ii) Odontocetes:

(A) Dall's porpoise (*Phocoenoida dalli*), CA/OR/WA—20 (an average of 4 per year).

(B) Harbor porpoise (*Phocoena phocoena*), WA Inland Waters—5 (an average of 1 per year).

(iii) Pinnipeds:

(A) Harbor seal (*Phoca vitulina*), WA Northern Inland Waters—20 (an average of 4 per year).

(B) Harbor seal (*Phoca vitulina*), Hood Canal—10 (an average of 2 per year).

(C) [Reserved]

(3) Level B Harassment for all Testing Activities:

(i) Mysticetes:

(A) Blue whale (*Balaenoptera musculus*), Eastern North Pacific—30 (an average of 6 per year).

(B) Fin whale (*Balaenoptera physalus*), CA/OR/WA—170 (an average of 34 per year).

(C) Fin whale (*Balaenoptera physalus*), Northeast Pacific—10 (an average of 2 per year).

(D) Gray whale (*Eschrichtius robustus*), Eastern North Pacific—60 (an average of 12 per year).

(E) Humpback whale (*Megaptera novaeangliae*), Central North Pacific—5 (an average of 1 per year).

(F) Humpback whale (*Megaptera novaeangliae*), CA/OR/WA—220 (an average of 44 per year).

(G) Minke whale (*Balaenoptera acutorostrata*), CA/OR/WA—90 (an average of 18 per year).

(H) Sei whale (*Balaenoptera borealis*), Eastern North Pacific—10 (an average of 2 per year).

(ii) Odontocetes:



- (A) Baird's beaked whale (*Berardius bairdii*), Alaska—125 (an average of 25 per year).
- (B) Baird's beaked whale (*Berardius bairdii*), CA/OR/WA—745 (an average of 149 per year).
- (C) Mesoplodont beaked whale (*Mesoplodon* spp.), CA/OR/WA—1,845 (an average of 369 per year).
- (D) Cuvier's beaked whale (*Ziphius cavirostris*), Alaska—75 (an average of 15 per year).
- (E) Cuvier's beaked whale (*Ziphius cavirostris*), CA/OR/WA—455 (an average of 91 per year).
- (F) Dall's porpoise (*Phocoenoidea dalli*), Alaska—6,000 (an average of 1,200 per year).
- (G) Dall's porpoise (*Phocoenoidea dalli*), CA/OR/WA—50,785 (an average of 10,157 per year).
- (H) Harbor porpoise (*Phocoena phocoena*), Southeast Alaska—4,630 (an average of 926 per year).
- (I) Harbor porpoise (*Phocoena phocoena*), Northern OR/WA Coast—86,060 (an average of 17,212 per year).
- (J) Harbor porpoise (*Phocoena phocoena*), Northern CA/Southern OR—129,095 (an average of 25,819 per year).
- (K) Harbor porpoise (*Phocoena phocoena*), WA Inland Waters—27,045 (an average of 5,409 per year).
- (L) Killer whale (*Orcinus orca*), Alaska Resident—10 (an average of 2 per year).
- (M) Killer whale (*Orcinus orca*), West Coast Transient—1,035 (an average of 207 per year).
- (N) Killer whale (*Orcinus orca*), Eastern North Pacific Offshore—110 (an average of 22 per year).
- (O) *Kogia* spp., CA/OR/WA—530 (an average of 106 per year).
- (P) Northern right whale dolphin (*Lissodelphis borealis*), CA/OR/WA—10,190 (an average of 2,038 per year).
- (Q) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), North Pacific—15 (an average of 3 per year).
- (R) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), CA/OR/WA—24,345 (an average of 4,869 per year).
- (S) Risso's dolphin (*Grampus griseus*), CA/OR/WA—5,770 (an average of 1,154 per year).
- (T) Short-beaked common dolphin (*Delphinus delphis*), CA/OR/WA—8,140 (an average of 1,628 per year).
- (U) Sperm whale (*Physeter macrocephalus*), CA/OR/WA—390 (an average of 78 per year).
- (V) Striped dolphin (*Stenella coerulealba*), CA/OR/WA—70 (an average of 14 per year).
- (iii) Pinnipeds:
- (A) California sea lion (*Zalophus californianus*), U.S.—10,730 (an average of 2,146 per year).
- (B) Steller sea lion (*Eumetopias jubatus*), Eastern U.S.—2,605 (an average of 521 per year).
- (C) Guadalupe fur seal (*Arctocephalus townsendi*), Mexico—15 (an average of 3 per year).
- (D) Harbor seal (*Phoca vitulina*), Southeast Alaska (Clarence Sound)—110 (an average of 22 per year).
- (E) Harbor seal (*Phoca vitulina*), OR/WA Coast—8,275 (an average of 1,655 per year).
- (F) Harbor seal (*Phoca vitulina*), WA Northern Inland Waters—9,115 (an average of 1,823 per year).
- (G) Harbor seal (*Phoca vitulina*), Southern Puget Sound—980 (an average of 196 per year).
- (H) Harbor seal (*Phoca vitulina*), Hood Canal—296,085 (an average of 59,217 per year).
- (I) Northern elephant seal (*Mirounga angustirostris*), CA Breeding—6,625 (an average of 1,325 per year).
- (J) Northern fur seal (*Callorhinus ursinus*), Eastern Pacific—9,150 (an average of 1,830 per year).
- (K) Northern fur seal (*Callorhinus ursinus*), California—135 (an average of 27 per year).
- (4) Level A Harassment for all Testing Activities:
- (i) Mysticetes:
- (A) Gray whale (*Eschrichtius robustus*), Eastern North Pacific—5 (an average of 1 per year).
- (B) [Reserved]
- (ii) Odontocetes:
- (A) *Kogia* spp., CA/OR/WA—5 (an average of 1 per year).
- (B) Dall' porpoise (*Phocoenoidea dalli*), CA/OR/WA—215 (an average of 43 per year).
- (C) Harbor porpoise (*Phocoena phocoena*), Northern OR/WA Coast—75 (an average of 15 per year).

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(D) Harbor porpoise (*Phocoena phocoena*), Northern CA/Southern OR—115 (an average of 23 per year).

(E) Harbor porpoise (*Phocoena phocoena*), WA Inland Waters—30 (an average of 6 per year).

(iii) Pinnipeds:

(A) Harbor seal (*Phoca vitulina*), OR/WA Coast—20 (an average of 4 per year).

(B) Harbor seal (*Phoca vitulina*), WA Northern Inland Waters—110 (an average of 22 per year).

(C) Harbor seal (*Phoca vitulina*), Southern Puget Sound—5 (an average of 1 per year).

(D) Harbor seal (*Phoca vitulina*), Hood Canal—335 (an average of 67 per year).

(E) Northern elephant seal (*Mirounga angustirostris*), CA Breeding—10 (an average of 2 per year).

(F) [Reserved]

### §218.143 Prohibitions.

Notwithstanding takings contemplated in §218.142 and authorized by an LOA issued under §§216.106 and 218.147 of this chapter, no person in connection with the activities described in §218.140 may:

(a) Take any marine mammal not specified in §218.142(c);

(b) Take any marine mammal specified in §218.142(c) other than by incidental take as specified in §218.142(c);

(c) Take a marine mammal specified in §218.142(c) 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 an LOA issued under §§216.106 and 218.147.

### §218.144 Mitigation.

(a) When conducting training and testing activities, as identified in §218.140, the mitigation measures contained in the LOA issued under §§216.106 and 218.147 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) *Lookouts*—The following are protective measures concerning the use of Lookouts.

(i) Lookouts positioned on surface ships will be dedicated solely to dili-

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gent observation of the air and surface of the water. Their observation objectives will include, but are not limited to, detecting the presence of biological resources and recreational or fishing boats, observing mitigation zones, and monitoring for vessel and personnel safety concerns.

(ii) Lookouts positioned ashore, in aircraft or on boats will, to the maximum extent practicable and consistent with aircraft and boat safety and training and testing requirements, comply with the observation objectives described in paragraph (a)(1)(i) of this section.

(iii) Lookout Measures for Non-Impulsive Sound:

(A) With the exception of vessels less than 65 ft (20 m) in length or minimally manned vessels, ships using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea will have two Lookouts at the forward position of the vessel. For the purposes of this rule, low-frequency active sonar does not include surface towed array surveillance system low-frequency active sonar.

(B) While using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea, vessels less than 65 ft (20 m) in length or minimally manned vessels will have one Lookout at the forward position of the vessel due to space and manning restrictions.

(C) Ships conducting active sonar activities while moored or at anchor (including pierside or shore-based testing or maintenance) will maintain one Lookout.

(D) Minimally manned vessels conducting hull-mounted mid-frequency testing will employ one Lookout.

(E) Ships, small boats, range craft, or aircraft conducting non-hull-mounted mid-frequency active sonar, such as helicopter dipping sonar systems, will maintain one Lookout.

(F) Surface ships or aircraft conducting high-frequency or non-hull-mounted mid-frequency active sonar activities associated with anti-submarine warfare and mine warfare activities at sea will have one Lookout.

(iv) Lookout measures for impulsive sound (*e.g.*, explosives):

(A) Aircraft conducting improved extended echo ranging sonobuoy activities will have one Lookout.

(B) Aircraft conducting explosive sonobuoy activities using >0.5 to 2.5-lb net explosive weight (NEW) will have one Lookout.

(C) General mine countermeasure and neutralization activities involving positive control diver placed charges using >0.5 to 2.5 lb NEW will have a total of two Lookouts (one Lookout positioned in each of the two support vessels). All divers placing the charges on mines will support the Lookouts while performing their regular duties. The divers and Lookouts will report all marine mammal sightings to their dive support vessel.

(D) Surface vessels or aircraft conducting small-, medium-, and large-caliber gunnery exercises will have one Lookout. Towing vessels, if applicable, will also maintain one Lookout.

(E) Aircraft conducting missile exercises against a surface target will have one Lookout.

(F) Aircraft conducting explosive bombing exercises will have one Lookout and any surface vessels involved will have trained Lookouts.

(G) During explosive torpedo testing from aircraft one Lookout will be used and positioned in an aircraft. During explosive torpedo testing from a surface ship the Lookout procedures implemented for hull-mounted mid-frequency active sonar activities will be used.

(H) To mitigate effects from weapon firing noise, ships conducting explosive and non-explosive large-caliber gunnery exercises will have one Lookout. This may be the same Lookout used for small, medium, and large-caliber gunnery exercises using a surface target when that activity is conducted from a ship against a surface target.

(v) Lookout measures for physical strike and disturbance:

(A) While underway, surface ships and range craft will have at least one Lookout.

(B) During activities using towed in-water devices towed from a manned platform, one Lookout will be used. During activities in which in-water de-

vices are towed by unmanned platforms, a manned escort vessel will be included and one Lookout will be employed.

(C) Activities involving non-explosive practice munitions (*e.g.*, small-, medium-, and large-caliber gunnery exercises) using a surface target will have one Lookout.

(D) During non-explosive bombing exercises one Lookout will be positioned in an aircraft and trained Lookouts will be positioned in any surface vessels involved.

(2) *Mitigation zones*—The following are protective measures concerning the implementation of mitigation zones.

(i) Mitigation zones will be measured as the radius from a source and represent a distance to be monitored.

(ii) Visual detections of marine mammals (or sea turtles) within a mitigation zone will be communicated immediately to a watch station for information dissemination and appropriate action.

(iii) Mitigation Zones for Non-Impulsive Sound:

(A) The Navy shall ensure that hull-mounted mid-frequency active sonar transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals (or sea turtles) are within 1,000 yd. (914 m) of the sonar dome (the bow).

(B) The Navy shall ensure that hull-mounted mid-frequency active sonar transmissions are limited to at least 10 dB below the equipment's normal operating level if any detected marine mammals (or sea turtles) are within 500 yd. (457 m) of the sonar dome.

(C) The Navy shall ensure that hull-mounted mid-frequency active sonar transmissions are ceased if any detected cetaceans (or sea turtles) are within 200 yd. (183 m) and pinnipeds are within 100 yd. (91 m) of the sonar dome. Transmissions will not resume until the marine mammal has been observed exiting the mitigation zone, is thought to have exited the mitigation zone based on its course and speed, has not been detected for 30 minutes, the vessel has transited more than 2,000 yd. beyond the location of the last detection, or the Lookout concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave (and there

are no other marine mammal sightings within the mitigation zone). Active transmission may resume when dolphins are bow riding because they are out of the main transmission axis of the active sonar while in the shallow-wave area of the ship bow. The pinniped mitigation zone does not apply to pierside sonar in the vicinity of pinnipeds hauled out on or in the water near man-made structures and vessels.

(D) The Navy shall ensure that low-frequency active sonar transmission levels are ceased if any detected cetaceans (or sea turtles) are within 200 yd. (183 m) and pinnipeds are within 100 yd. (91 m) of the source. Transmissions will not resume until the marine mammal has been observed exiting the mitigation zone, is thought to have exited the mitigation zone based on its course and speed, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yd. beyond the location of the last detection. The pinniped mitigation zone does not apply for pierside sonar in the vicinity of pinnipeds hauled out on or in the water near man-made structures and vessels.

(E) For training, the Navy shall ensure that high-frequency and non-hull-mounted mid-frequency active sonar transmission levels are ceased if any detected marine mammals are within 200 yd. (183 m) of the source. For testing, the Navy shall ensure that high-frequency and non-hull-mounted mid-frequency active sonar transmission levels are ceased if any detected cetaceans are within 200 yd. (183 m) and pinnipeds are within 100 yd. (91 m) of the source. Transmissions will not resume until the marine mammal has been observed exiting the mitigation zone, is thought to have exited the mitigation zone based on its course and speed, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for an aircraft-deployed source, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a vessel-deployed source, the vessel or aircraft has repositioned itself more than 400 yd. (370 m) away from the location of the last sighting, or the vessel concludes that dolphins are deliberately closing in to ride the vessel's

bow wave (and there are no other marine mammal sightings within the mitigation zone). The pinniped mitigation zone does not apply for pierside or shore-based testing in the vicinity of pinnipeds hauled out on or in the water near man-made structures and vessels.

(iv) Mitigation Zones and Procedures for Explosive and Impulsive Sound:

(A) For activities using IEER sonobuoys, mitigation will include pre-exercise aerial observation and passive acoustic monitoring, which will begin 30 minutes before the first source/receiver pair detonation and continue throughout the duration of the exercise. IEER sonobuoys will not be deployed if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone around the intended deployment location. Explosive detonations will cease if a marine mammal, sea turtle, or concentrations of floating vegetation are sighted within a 600-yd. (549 m) mitigation zone. Detonations will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(B) A mitigation zone with a radius of 350 yd. (320 m) shall be established for explosive signal underwater sonobuoys using >0.5 to 2.5 lb net explosive weight. Mitigation will include pre-exercise aerial monitoring of the mitigation zone during deployment. Explosive SUS buoys will not be deployed if concentrations of floating vegetation (kelp paddies) are observed within the mitigation zone around the intended deployment location. A SUS detonation will cease if a marine mammal or sea turtle is sighted within the mitigation zone. Detonations will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

(C) A mitigation zone with a radius of 400 yd. (366 m) shall be established for mine countermeasures and neutralization activities using positive control

firing devices. For Demolition and Mine Countermeasures Operations, pre-exercise surveys shall be conducted within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, or from the air, and personnel shall be alert to the presence of any marine mammal or sea turtle. Should a marine mammal or sea turtle be present within the survey area, the explosive event shall not be started until the animal voluntarily leaves the area. The Navy will ensure the area is clear of marine mammals for a full 30 minutes prior to initiating the explosive event. Explosive detonations will cease if a marine mammal is sighted in the water portion of the mitigation zone (*i.e.*, not on shore). Detonations will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(D) A mitigation zone with a radius of 200 yd. (183 m) shall be established for small- and medium-caliber gunnery exercises with a surface target. Vessels will observe the mitigation zone from the firing position. When aircraft are firing, the aircrew will maintain visual watch of the mitigation zone during the activity. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed within the mitigation zone. Firing will cease if a marine mammal or sea turtle is sighted within the mitigation zone. Firing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing ship, or the intended target location has been repositioned more than 400 yd. (370 m) away from the location of the last sighting.

(E) A mitigation zone with a radius of 600 yd. (549 m) shall be established for large-caliber gunnery exercises

with a surface target. Ships will observe the mitigation zone from the firing position. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing will cease if a marine mammal or sea turtle is sighted within the mitigation zone. Firing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(F) A mitigation zone with a radius of 2,000 yd. (1.8 km) shall be established for missile exercises up to 500 lb NEW using a surface target. When aircraft are involved in the missile firing, mitigation will include visual observation by the aircrew prior to commencement of the activity within a mitigation zone of 2,000 yd. (1.8 km) around the intended impact location. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing will not commence or will cease if a marine mammal or sea turtle is sighted within the mitigation zone. Firing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

(G) A mitigation zone with a radius of 2,500 yd. (2.3 km) for explosive bombs and a mitigation zone of 1,000 yd (914 m) for non-explosive bombs around the intended impact location shall be established for bombing exercises. Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Bombing will not commence or will cease if a marine mammal or sea turtle is sighted within the mitigation zone. Bombing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based

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on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

(H) A mitigation zone with a radius of 2,100 yd. (1.9 km) shall be established for torpedo (explosive) testing. Mitigation will include visual observation by aircraft immediately before, during, and after the event of the mitigation zone. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are sighted within the mitigation zone. Firing will not commence or will cease if a marine mammal, sea turtle, or aggregation of jellyfish is sighted within the mitigation zone. Firing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type). In addition to visual observation, passive acoustic monitoring shall be conducted by Navy assets, such as passive ship sonar systems or sonobuoys already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency band monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections shall be reported to the Lookout posted in the aircraft in order to increase vigilance of the visual surveillance, and to the person in control of the activity for their consideration in determining when the mitigation zone is determined free of visible marine mammals.

(I) A mitigation zone with a radius of 70 yd. (46 m) within 30 degrees on either side of the gun target line on the firing side shall be established for weapons firing noise during large-caliber gunnery exercises. Mitigation shall include visual observation immediately before and during the exercise. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing will cease if a marine mammal or sea turtle is sighted within the mitigation zone. Firing will recommence if the

animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, the mitigation zone has been clear from any additional sightings for a period of 30 minutes, or the vessel has repositioned itself more than 140 yd. (128 m) away from the location of the last sighting.

(v) Mitigation Zones for Vessels and In-Water Devices:

(A) For all training activities and for testing activities involving surface ships, vessels shall avoid approaching marine mammals head on and shall maneuver to keep at least 500 yd. (457 m) away from observed whales and 200 yd (183 m) away from all other marine mammals (except bow riding dolphins, and pinnipeds hauled out on man-made navigational and port structures and vessels) during vessel movements. These requirements shall not apply if a vessel's safety is threatened and to the extent that vessels are restricted in their ability to maneuver. Restricted maneuverability includes, but is not limited to, situations when vessels are engaged in dredging, submerged activities, launching and recovering aircraft or landing craft, minesweeping activities, replenishment while underway and towing activities that severely restrict a vessel's ability to deviate course.

(B) For testing activities not involving surface ships (*e.g.* range craft) vessels shall maneuver to keep at least 100 yd. (91 m) away from marine mammals (except bow-riding dolphins, pinnipeds hauled out on man-made navigational and port structures and vessels, and pinnipeds during test body retrieval) during vessel movements. This requirement shall not apply if a vessel's safety is threatened and to the extent that vessels are restricted in their ability to maneuver. Restricted maneuverability includes, but is not limited to, situations when vessels are engaged in dredging, submerged activities, launching and recovering aircraft or landing craft, minesweeping activities, replenishment while underway and towing activities that severely restrict a vessel's ability to deviate course.

(C) The Navy shall ensure that towed in-water devices being towed from manned platforms avoid coming within

a mitigation zone of 250 yd. (230 m) for all training events and testing activities involving surface ships, and a mitigation zone of 100 yd (91 m) for testing activities not involving surface ships (e.g. range craft) around any observed marine mammal, providing it is safe to do so.

(vi) Mitigation zones for non-explosive practice munitions:

(A) A mitigation zone of 200 yd. (183 m) shall be established for small-, medium, and large-caliber gunnery exercises using a surface target. Mitigation will include visual observation from a vessel or aircraft immediately before and during the exercise within the mitigation zone of the intended impact location. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing will cease if a marine mammal is sighted within the mitigation zone. Firing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing ship, or the intended target location has been repositioned more than 400 yd. (370 m) away from the location of the last sighting.

(B) A mitigation zone of 1,000 yd. (914 m) shall be established for non-explosive bombing exercises. Mitigation shall include visual observation from the aircraft immediately before the exercise and during target approach within the mitigation zone around the intended impact location. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed within the mitigation zone. Bombing will not commence or will cease if a marine mammal is sighted within the mitigation zone. Bombing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

(3) *NWTT-Specific Mitigation*—The following are additional measures the Navy shall comply with when conducting training or testing activities in the NWTT Study Area:

(i) *Maritime Homeland Defense/Security Mine Countermeasure Integrated Exercises*—The Navy shall conduct pre-event planning and training to ensure environmental awareness of all exercise participants. When this event is proposed to be conducted in Puget Sound, Navy event planners shall consult with Navy biologists who shall contact NMFS during the planning process in order to determine likelihood of gray whale or southern resident killer whale presence in the proposed exercise area as planners consider specifics of the event.

(ii) *Small Boat Attack Gunnery Exercises*—The Navy shall conduct pre-event planning and training to ensure environmental awareness of all exercise participants. When this event is proposed to be conducted in and around Naval Station Everett, Naval Base Kitsap Bangor, or Naval Base Kitsap Bremerton in Puget Sound, Navy event planners shall consult with Navy biologists who shall contact NMFS early in the planning process in order to determine the extent marine mammals may be present in the immediate vicinity of the proposed exercise area as planners consider the specifics of the event.

(iii) *Missile Exercise*—The Navy shall conduct Missile Exercises using high explosives at least 50 nm from shore in the NWTT Offshore Area.

(iv) *BOMBEX*—The Navy shall conduct BOMBEX (high explosive munitions) greater than 50 nm from shore.

(v) *BOMBEX (non-explosive practice munitions)*—The Navy shall conduct BOMBEX (non-explosive practice munitions) events at least 20 nm from shore and shall not conduct BOMBEX events within the Olympic Coast National Marine Sanctuary.

(vi) *Mine Countermeasure and Neutralization Underwater Detonations*—The Navy shall require approval from U.S. Third Fleet prior to conducting mine countermeasure and neutralization underwater detonations at Hood Canal or Crescent Harbor.

(vii) *Hull Mounted Mid-Frequency Active Sonar Training*—The Navy shall

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require approval from U.S. Pacific Fleet's designated authority prior to conducting hull-mounted mid-frequency active sonar on vessels while training underway in Puget Sound and the Strait of Juan de Fuca.

(viii) Pierside Maintenance or Testing of Sonar Systems—The Navy shall require approval from U.S. Pacific Fleet's designated authority or Systems Command designated authority (as applicable to ship and submarine active sonar use) prior to conducting pierside maintenance or testing in Puget Sound or the Strait of Juan de Fuca.

(b) [Reserved]

### §218.145 Requirements for monitoring and reporting.

(a) The Navy is required to cooperate with the NMFS, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(b) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS is notified immediately (or as soon as clearance procedures allow) if an injured, stranded, or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will 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). In the event that an injured, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or during or shortly after, MFAS, HFAS, or underwater explosive detonations, the Navy will report the same information as listed above as soon as operationally feasible and clearance procedures allow.

(c) General Notification of Ship Strike—In the event of a ship strike by any Navy vessel, at any time or place, the Navy shall do the following:

(1) Immediately report to NMFS the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead

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(or unknown), and the time of the strike.

(2) Report to NMFS as soon as operationally feasible the size and length of animal, an estimate of the injury status (ex., dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status.

(3) Report to NMFS the vessel length, speed, and heading as soon as feasible.

(4) Provide NMFS a photo or video, if equipment is available.

(5) Within 2 weeks of the strike, provide NMFS with a detailed description of the specific actions of the vessel in the 30-minute timeframe immediately preceding the strike, during the event, and immediately after the strike (e.g., the speed and changes in speed, the direction and changes in direction, other maneuvers, sonar use, etc., if not classified); a narrative description of marine mammal sightings during the event and immediately after, and any information as to sightings prior to the strike, if available; and use established Navy shipboard procedures to make a camera available to attempt to capture photographs following a ship strike.

(d) Event Communication Plan—The Navy shall develop a communication plan that will include all of the communication protocols (phone trees, etc.) and associated contact information required for NMFS and the Navy to carry out the necessary expeditious communication required in the event of a stranding or ship strike, including as described in the proposed notification measures above.

(e) The Navy must conduct all monitoring and/or research required under the Letter of Authorization including abiding by the NWTM monitoring plan. (<http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm>).

(f) Annual NWTM Monitoring Report—The Navy shall submit an annual report of the NWTM monitoring describing the implementation and results of the NWTM monitoring efforts from the previous calendar year. Data collection methods will be standardized across range complexes and study areas to allow for comparison in different geographic locations. Although additional information will be gathered, the protected species observers collecting marine mammal data pursuant



to the NWTT monitoring plan shall, at a minimum, provide the same marine mammal observation data required in this section. The report shall be submitted either 90 days after the calendar year, or 90 days after the conclusion of the monitoring year to be determined by the Adaptive Management process. The NWTT Monitoring Report may be provided to NMFS within a larger report that includes the required Monitoring Plan reports from multiple range complexes and study areas (the multi-Range Complex Annual Monitoring Report). Such a report would describe progress of knowledge made with respect to monitoring plan study questions across all Navy ranges associated with the Integrated Comprehensive Monitoring Program. Similar study questions shall be treated together so that progress on each topic shall be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions.

(g) Annual NWTT Exercise and Testing Reports—The Navy shall submit preliminary reports detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of the LOA. The Navy shall submit detailed reports 3 months after the annual anniversary of the date of issuance of the LOA. The detailed annual reports shall describe the level of training and testing conducted during the reporting period, and a summary of sound sources used (total annual hours or quantity [per the LOA] of each bin of sonar or other non-impulsive source; total annual number of each type of explosive exercises; total annual expended/detonated rounds [missiles, bombs, etc.] for each explosive bin; and improved Extended Echo-Ranging System (IEER)/sonobuoy summary, including total number of IEER events conducted in the Study Area, total expended/detonated rounds (buoys), and total number of self-scuttled IEER rounds. The analysis in the detailed reports will be based on the accumulation of data from the current year's report and data collected from previous reports. The annual classified exercise reports will also include the

amount of hull-mounted mid-frequency and high frequency active sonar use during training and testing activities in the Olympic Coast National Marine Sanctuary and in the months specified for the following three feeding areas (to the extent that active sonar training or testing does occur in these areas): The Humpback Whale Northern Washington feeding area (May through November); the Stonewall and Heceta Bank feeding area (May through November) and the Gray Whale Northern Puget Sound Feeding Area (March through May).

(h) 5-year Close-out Exercise and Testing Report—This report will be included as part of the 2020 annual exercise or testing report. This report will provide the annual totals for each sound source bin with a comparison to the annual allowance and the 5-year total for each sound source bin with a comparison to the 5-year allowance. Additionally, if there were any changes to the sound source allowance, this report will include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the EIS and final rule determinations. The report will be submitted 3 months after the expiration of the rule. NMFS will submit comments on the draft close-out report, if any, within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

#### **§218.146 Applications for Letters of Authorization.**

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by §216.106) conducting the activity identified in §218.140(c) (the U.S. Navy) must apply for and obtain either an initial LOA in accordance with §218.147 or a renewal under §218.148.

#### **§218.147 Letters of Authorization.**

(a) An LOA, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart.

(b) Each LOA will set forth:

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(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, modification, or renewals of LOAs 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).

### §218.148 Renewals and Modifications of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under §§216.106 and 218.147 of this chapter for the activity identified in §218.140(c) will be renewed or modified upon request of the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision of this chapter), and;

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were adequately implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis illustrating the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§216.106 and 218.147 of this chapter for the activity identified in §218.144 of this chapter

may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including add to, change, or remove) the existing mitigation, monitoring, or reporting measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, and reporting measures in an LOA include (but are not limited to):

(A) Results from Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS would publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §218.142(c), an LOA may be modified without prior notification and an opportunity for public comment. Notification would be published in the FEDERAL REGISTER within 30 days of the action.

### Subpart P—Taking and Importing Marine Mammals; U.S. Navy's Gulf of Alaska Temporary Maritime Activities Area (GOA TMAA) Study Area

SOURCE: 82 FR 19601, Apr. 27, 2017, unless otherwise noted.

EFFECTIVE DATE NOTE: At 82 FR 19601, Apr. 27, 2017, subpart P was added, effective Apr. 26, 2017, through Apr. 26, 2022.

**§ 218.150 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 GOA TMAA Study Area, which is bounded by a hexagon with the following six corners: 57°30' N. lat., 141°30' W. long.; 59°36' N. lat., 148°10' W. long.; 58°57' N. lat., 150°04' W. long.; 58°20' N. lat., 151°00' W. long.; 57°16' N. lat., 151°00' W. long.; and 55°30' N. lat., 142°00' W. long.

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

(1) *Sonar and other active sources used during training*—(i) *Mid-frequency (MF) source classes*. (A) MF1—an average of 271 hours per year.

(B) MF3—an average of 24 hours per year.

(C) MF4—an average of 26 hours per year.

(D) MF5—an average of 126 items per year.

(E) MF6—an average of 11 items per year.

(F) MF11—an average of 39 hours per year.

(ii) *High-frequency (HF) source classes*. (A) HF1—an average of 12 hours per year.

(B) HF6—an average of 40 items per year.

(iii) *Anti-Submarine Warfare (ASW) source classes*. (A) ASW2—an average of 40 hours per year.

(B) ASW3—an average of 273 hours per year.

(C) ASW4—an average 6 items per year.

(iv) *Torpedoes (TORP)*. (A) TORP2—an average of 0 items per year.

(B) [Reserved]

(2) *Impulsive source detonations during training*—(i) *Explosive classes*. (A) E5 (>5 to 10 pound (lb) net explosive weight (NEW))—an average of 56 detonations per year.

(B) E9 (>100 to 250 lb NEW)—an average of 64 detonations per year.

(C) E10 (>250 to 500 lb NEW)—an average of 6 detonations per year.

(D) E12 (>650 to 1,000 lb NEW)—an average of 2 detonations per year.

(ii) [Reserved]

**§ 218.151 Effective dates and definitions.**

(a) Regulations in this subpart are effective April 26, 2017 through April 26, 2022.

(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 (MTE) and involves any one of the following:

(i) Two or more individuals of any cetacean species (*i.e.*, could be two different species, but not including mother/calf pairs, unless of species of concern listed in next bullet) found dead or live on shore within a three- to four-day period and within 10 miles of one another.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: beaked whale of any species, North Pacific right whale, humpback whale, sperm whale, blue whale, fin whale, sei whale, Cook Inlet beluga whale, Northern fur seal, and Steller sea lion.

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

(2) [Reserved]

**§ 218.152 Permissible methods of taking.**

(a) Under letter of authorization (LOA) issued pursuant to § 216.106 of this chapter and § 218.157, the holder of the LOA may incidentally, but not intentionally, take marine mammals within the area described in § 218.150, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the LOA.

(b) The activities identified in § 218.150(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammal species or stocks and their habitat.

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(c) The incidental take of marine mammals under the activities identified in §218.150(c) is limited to the following species, by the identified method of take and the indicated number of times:

(1) *Level B harassment for all training activities*—(i) *Mysticetes*. (A) Blue whale (*Balaenoptera musculus*), Eastern North Pacific—235 (an average of 47 per year).

(B) Fin whale (*Balaenoptera physalus*), Northeast Pacific—6,455 (an average of 1,291 per year).

(C) Humpback whale (*Megaptera novaeangliae*), Central North Pacific—305 (an average of 61 per year).

(D) Humpback whale (*Megaptera novaeangliae*), Western North Pacific—5 (an average of 1 per year).

(E) Humpback whale (*Megaptera novaeangliae*), CA/OR/WA—35 (an average of 7 per year).

(F) Minke whale (*Balaenoptera acutorostrata*), Alaska—215 (an average of 43 per year).

(G) North Pacific right whale (*Eubalaena japonica*), Eastern North Pacific—15 (an average of 3 per year).

(H) Sei whale (*Balaenoptera borealis*), Eastern North Pacific—30 (an average of 6 per year).

(ii) *Odontocetes*. (A) Baird's beaked whale (*Berardius bairdii*), Alaska—1,000 (an average of 200 per year).

(B) Cuvier's beaked whale (*Ziphius cavirostris*), Alaska—6,355 (an average of 1,271 per year).

(C) Dall's porpoise (*Phocoenoidea dalli*), Alaska—41,350 (an average of 8,270 per year).

(D) Harbor porpoise (*Phocoena phocoena*), GOA—13,710 (an average of 2,742 per year).

(E) Harbor porpoise (*Phocoena phocoena*), Southeast Alaska—4,815 (an average of 963 per year).

(F) Killer whale (*Orcinus orca*), Alaska Resident—1,405 (an average of 281 per year).

(G) Killer whale (*Orcinus orca*), Eastern North Pacific Offshore—130 (an average of 26 per year).

(H) Killer whale (*Orcinus orca*), GOA, Aleutian Island, and Bearing Sea Transient—360 (an average of 72 per year).

(I) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), North

Pacific—4,905 (an average of 981 per year).

(J) Stejneger's beaked whale (*Mesoplodon stejnegeri*), Alaska—2,880 (an average of 576 per year).

(K) Sperm whale (*Physeter macrocephalus*), North Pacific—490 (an average of 98 per year).

(iii) *Pinnipeds*. (A) California sea lion (*Zalophus californianus*), U.S.—10 (an average of 2 per year).

(B) Steller sea lion (*Eumetopias jubatus*), Eastern U.S.—1,675 (an average of 335 per year).

(C) Steller sea lion (*Eumetopias jubatus*), Western U.S.—1,430 (an average of 286 per year).

(D) Harbor seal (*Phoca vitulina*), South Kodiak—5 (an average of 1 per year).

(E) Harbor seal (*Phoca vitulina*), Prince William Sound—5 (an average of 1 per year).

(F) Northern elephant seal (*Mirounga angustirostris*), California Breeding—610 (an average of 122 per year).

(G) Northern fur seal (*Callorhinus ursinus*), Eastern Pacific—3,565 (an average of 713 per year).

(2) *Level A harassment for all training activities*—(i) *Odontocetes*. (A) Dall's porpoise (*Phocoenoidea dalli*), Alaska—12 (an average of 4 per year).

(B) [Reserved]

(ii) [Reserved]

§218.153 Prohibitions.

Notwithstanding takings contemplated in §218.152 and authorized by an LOA issued under §216.106 of this chapter and §218.157, no person in connection with the activities described in §218.150 may:

(a) Take any marine mammal not specified in §218.152(c);

(b) Take any marine mammal specified in §218.152(c) other than by incidental take as specified in §218.152(c);

(c) Take a marine mammal specified in §218.152(c) 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 an LOA issued under §216.106 of this chapter and §218.157.

**§ 218.154 Mitigation.**

(a) After review of best available science, the following mitigation was determined to result in the least practicable adverse effect on marine mammal species or stocks. When conducting training activities, as identified in § 218.150, the mitigation measures contained in the LOA issued under § 216.106 of this chapter and § 218.157 must be implemented. These mitigation measures include, but are not limited to:

(1) *Lookouts.* The Navy shall have two types of lookouts for the purposes of conducting visual observations: Those positioned on ships; and those positioned ashore, in aircraft, or on boats. The following are protective measures concerning the use of lookouts.

(i) Lookouts positioned on surface ships shall be dedicated solely to diligent observation of the air and surface of the water. Their observation objectives shall include, but are not limited to, detecting the presence of biological resources and recreational or fishing boats, observing mitigation zones, and monitoring for vessel and personnel safety concerns.

(ii) Due to manning and space restrictions on aircraft, small boats, and some Navy ships, lookouts for these platforms may be supplemented by the aircraft crew or pilot, boat crew, range site personnel, or shore-side personnel. Lookouts positioned in minimally manned platforms may be responsible for tasks in addition to observing the air or surface of the water (e.g., navigation of a helicopter or small boat). However, all lookouts shall, considering personnel safety, practicality of implementation, and impact on the effectiveness of the activity, comply with the observation objectives described in paragraph (a)(1)(i) of this section for lookouts positioned on ships.

(iii) All personnel standing watch on the bridge, Commanding Officers, Executive Officers, maritime patrol aircraft aircrews, anti-submarine warfare helicopter crews, civilian equivalents, and lookouts shall successfully complete the United States Navy Marine Species Awareness Training prior to standing watch or serving as a lookout.

(iv) *Lookout measures for non-impulsive sound.* (A) With the exception of vessels

less than 65 ft (20 m) in length, ships using hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare activities at sea shall have two Lookouts at the forward position of the vessel.

(B) While using hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare activities at sea, vessels less than 65 ft (20 m) in length shall have one lookout at the forward position of the vessel due to space and manning restrictions.

(C) During non-hull mounted mid-frequency active sonar training activities, Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Helicopters shall observe/survey the vicinity of an anti-submarine warfare training event for 10 minutes before the first deployment of active (dipping) sonar in the water.

(D) Ships or aircraft conducting non-hull-mounted mid-frequency active sonar, such as helicopter dipping sonar systems, shall maintain one lookout.

(E) Ships conducting high-frequency active sonar shall maintain one lookout.

(v) *Lookout measures for explosives and impulsive sound.* (A) Aircraft conducting explosive signal underwater sound buoy activities using >0.5–2.5 lb. NEW shall have one lookout.

(B) Surface vessels or aircraft conducting small-, medium-, or large-caliber gunnery exercises against a surface target shall have one Lookout. From the intended firing position, trained Lookouts shall survey the mitigation zone for marine mammals prior to commencement and during the exercise as long as practicable. Towing vessels, if applicable, shall also maintain one Lookout. If a marine mammal is sighted in the vicinity of the exercise, the tow vessel shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(C) Aircraft conducting explosive bombing exercises shall have one lookout and any surface vessels involved shall have trained Lookouts. If surface

vessels are involved, Lookouts shall survey for floating kelp and marine mammals. 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 (460 m) 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. Survey aircraft should employ most effective search tactics and capabilities.

(D) When aircraft are conducting missile exercises against a surface target, the Navy shall have one Lookout positioned in an aircraft. Aircraft shall visually survey the target area for marine mammals. Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) or lower, if safe to do so, and at the slowest safe speed. Firing or range clearance aircraft must be able to actually see ordnance impact areas.

(E) Ships conducting explosive and non-explosive gunnery exercises shall have one Lookout on the ship. This may be the same lookout described in paragraph (a)(1)(v)(B) of this section for surface vessels conducting small-, medium-, or large-caliber gunnery exercises when that activity is conducted from a ship against a surface target.

(vi) *Lookout measures for physical strike and disturbance.* (A) While underway, surface ships shall have at least one Lookout with binoculars, and surfaced submarines shall have at least one Lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, Lookouts will watch for and report to the Officer of the Deck the presence of marine mammals.

(B) [Reserved]

(vii) *Lookout measures for non-explosive practice munitions.* (A) Gunnery exercises using non-explosive practice munitions (e.g., small-, medium-, and large-caliber) using a surface target shall have one Lookout.

(B) During non-explosive bombing exercises one Lookout shall be positioned in an aircraft and trained lookouts shall be positioned in any surface vessels involved.

(C) When aircraft are conducting non-explosive missile exercises (including exercises using rockets) against a surface target, the Navy shall have one Lookout positioned in an aircraft.

(2) *Mitigation zones.* The following are protective measures concerning the implementation of mitigation zones.

(i) Mitigation zones shall be measured as the radius from a source and represent a distance to be monitored.

(ii) Visual detections of marine mammals or sea turtles within a mitigation zone shall be communicated immediately to a watch station for information dissemination and appropriate action.

(iii) *Mitigation zones for non-impulsive sound.* (A) The Navy shall ensure that hull-mounted mid-frequency active sonar transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals or sea turtles are within 1,000 yd (914 m) of the sonar dome (the bow).

(B) The Navy shall ensure that hull-mounted mid-frequency active sonar transmissions are limited to at least 10 dB below the equipment's normal operating level if any detected marine mammals or sea turtles are within 500 yd (457 m) of the sonar dome.

(C) The Navy shall ensure that hull-mounted mid-frequency active sonar transmissions are ceased if any detected cetaceans or sea turtles are within 200 yd (183 m) and pinnipeds are within 100 yd (90 m) of the sonar dome. Transmissions shall not resume until the marine mammal has been observed exiting the mitigation zone, is thought to have exited the mitigation zone based on its course and speed, has not been detected for 30 minutes, the vessel has transited more than 2,000 yd (1830 m) beyond the location of the last detection, or the ship concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave (and there are no other marine mammal sightings within the mitigation zone). Active transmission may resume when dolphins are bow riding because they are out of the main transmission axis of the active sonar while in the shallow-wave area of the ship bow.

(D) The Navy shall ensure that high-frequency and non-hull-mounted mid-frequency active sonar transmission

levels are ceased if any detected cetaceans are within 200 yd (183 m) and pinnipeds are within 100 yd (90 m) of the source. Transmissions shall not resume until the marine mammal has been observed exiting the mitigation zone, is thought to have exited the mitigation zone based on its course and speed, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for an aircraft-deployed source, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a vessel-deployed source, the vessel or aircraft has repositioned itself more than 400 yd (370 m) away from the location of the last sighting, or the vessel concludes that dolphins are deliberately closing in to ride the vessel's bow wave (and there are no other marine mammal sightings within the mitigation zone).

(iv) *Mitigation zones for explosive and impulsive sound.* (A) A mitigation zone with a radius of 350 yd (320 m) shall be established for explosive signal underwater sonobuoys using >0.5 to 2.5 lb NEW. Explosive signal underwater sonobuoys shall not be deployed if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone (around the intended deployment location). Explosive signal underwater sonobuoy deployment shall cease if a marine mammal is sighted within the mitigation zone. Detonations shall recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes. Passive acoustic monitoring shall also be conducted with Navy assets, such as sonobuoys, already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to Lookouts posted in aircraft in order to increase vigilance of their visual surveillance.

(B) A mitigation zone with a radius of 200 yd (183 m) shall be established for small- and medium-caliber gunnery exercises with a surface target. The exercise shall not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing shall cease if a marine mammal is sighted within the mitigation zone. Firing shall recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing ship, or the intended target location has been repositioned more than 400 yd (370 m) away from the location of the last sighting.

(C) A mitigation zone with a radius of 600 yd (549 m) shall be established for large-caliber gunnery exercises with a surface target. The exercise shall not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing shall cease if a marine mammal is sighted within the mitigation zone. Firing shall recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(D) A mitigation zone with a radius of 2,500 yd (2.3 km) around the intended impact location for explosive bombs and 1000 yd (920 m) for non-explosive bombs shall be established for bombing exercises. The exercise shall not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Bombing shall cease if a marine mammal is sighted within the mitigation zone. Bombing shall recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has

been clear from any additional sightings for a period of 10 minutes.

(E) A mitigation zone of 70 yd (64 m) shall be established for all explosive large-caliber gunnery exercises conducted from a ship. The exercise shall not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing shall cease if a marine mammal is sighted within the mitigation zone. Firing shall recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, the mitigation zone has been clear from any additional sightings for a period of 30 minutes, or the vessel has repositioned itself more than 140 yd (128 m) away from the location of the last sighting.

(v) *Mitigation zones for vessels and in-water devices.* (A) Vessels shall avoid approaching marine mammals head on and shall maneuver to keep at least 500 yd (457 m) away from observed whales and 200 yd (183 m) away from all other marine mammals (except bow riding dolphins), providing it is safe to do so. These requirements shall not apply if a vessel's safety is threatened and to the extent that vessels are restricted in their ability to maneuver. Restricted maneuverability includes, but is not limited to, situations when vessels are engaged in dredging, submerged activities, launching and recovering aircraft or landing craft, minesweeping activities, replenishment while underway and towing activities that severely restrict a vessel's ability to deviate course.

(B) A mitigation zone of 250 yd (229 m) shall be established for all towed in-water devices, providing it is safe to do so.

(vi) *Mitigation zones for non-explosive practice munitions.* (A) A mitigation zone of 200 yd (183 m) shall be established for small-, medium-, and large-caliber gunnery exercises using a surface target. The exercise shall not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing shall cease if a marine mammal is sighted within the mitigation zone. Firing shall recommence if any one of the fol-

lowing conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing ship, or the intended target location has been repositioned more than 400 yd (370 m) away from the location of the last sighting.

(B) A mitigation zone of 1,000 yd (920 m) shall be established for bombing exercises. Bombing shall cease if a marine mammal is sighted within the mitigation zone. The exercise shall not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Bombing shall recommence if any one of the following conditions is met: the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

(3) *Cautionary Areas.* The following are additional measures the Navy shall comply with when conducting training activities in the GOA TMAA Study Area:

(i) The Navy shall avoid training activities using hull-mounted surface ship active sonar and explosive detonations within the North Pacific Right Whale Cautionary Area, defined as the portion of the NMFS-identified biologically important feeding area for North Pacific right whale overlapping the GOA TMAA, except when required by national security needs.

(ii) In the event of national security needs, the Navy shall seek approval in advance from the Commander, U.S. Third Fleet, prior to conducting training activities using hull-mounted active sonar or explosive detonations within the Cautionary Area.

(4) *Stranding response plan.* (i) The Navy shall abide by the letter of the "Stranding Response Plan for the Gulf of Alaska Temporary Maritime Activities Area," to include the following measures:



(A) *Shutdown procedures.* When an Uncommon Stranding Event (USE—defined in § 218.151) occurs during an MTE in the Study Area, the Navy shall implement the procedures described in paragraphs (a)(4)(i)(A)(1) through (4) of this section:

(1) The Navy shall implement a shutdown when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the GOA TMAA Study Area Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and the Navy shall maintain a dialogue, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(2) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(3) If the Navy finds an injured or dead animal floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational security considerations allow. 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(s) is/are dead, location, time of first discovery, observed behavior (if alive), and photo or video (if available). Based on the information provided, NMFS shall determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(4) In the event, following a USE, that qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy shall coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of mid-frequency active sonar training activities or explosive detonations, though farther than 14 nautical miles from the distressed animal(s), is likely contrib-

uting to the animals' refusal to return to the open water. If so, NMFS and the Navy shall further coordinate to determine what measures are necessary to improve the probability that the animals will return to open water and implement those measures as appropriate.

(B) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the GOA TMAA Study Area Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using mid-frequency active sonar, and marine mammal sightings information associated with training activities occurring within 80 nautical miles (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80-nautical miles (148-km), 72-hour period prior to the event shall be provided as soon as it becomes available. The Navy shall provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(ii) [Reserved]

(b) [Reserved]

#### **§ 218.155 Requirements for monitoring and reporting.**

(a) The Holder of the Authorization must notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in § 218.150 is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 218.152(c).

(b) The Holder of the LOA must conduct all monitoring and required reporting under the LOA, including abiding by the GOA TMAA monitoring plan.

(c) *General notification of injured or dead marine mammals.* Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security considerations allow) if an injured or dead marine mammal is found by Navy personnel during or shortly after, and in the vicinity of, a Navy training activity utilizing mid- or high-frequency active sonar, or 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). In the event that an injured, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or during or shortly after, MFAS, HFAS, or underwater explosive detonations, the Navy shall report the same information as listed in this paragraph (c) as soon as operationally feasible and clearance procedures allow.

(d) *General notification of ship strike.* In the event of a ship strike by any Navy vessel, at any time or place, the Navy shall do the following:

(1) Immediately report to NMFS the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead (or unknown), and the time of the strike.

(2) Report to NMFS as soon as operationally feasible the size and length of animal, an estimate of the injury status (ex., dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status.

(3) Report to NMFS the vessel length, speed, and heading as soon as feasible.

(4) Provide NMFS a photo or video, if equipment is available.

(5) Within 2 weeks of the strike, provide NMFS with a detailed description of the specific actions of the vessel in the 30-minute timeframe immediately preceding the strike, during the event, and immediately after the strike (e.g., the speed and changes in speed, the direction and changes in direction, other maneuvers, sonar use, etc., if not classified); a narrative description of marine mammal sightings during the event and immediately after, and any information as to sightings prior to the strike, if available; and use established Navy shipboard procedures to make a camera available to attempt to capture photographs following a ship strike.

(e) *Communication plan.* The Navy and NMFS shall develop a communication plan that will include all of the communication protocols (phone trees, etc.) and associated contact informa-

tion required for NMFS and the Navy to carry out the necessary expeditious communication required in the event of a stranding or ship strike, including information described in the notification measures in paragraphs (c) and (d) of this section.

(f) *Annual GOA TMAA monitoring report.* The Navy shall submit an annual report of the GOA TMAA monitoring describing the implementation and results from the previous calendar year. Data collection methods shall be standardized across range complexes and study areas to allow for comparison in different geographic locations. The report shall be submitted either 90 days after the calendar year, or 90 days after the conclusion of the monitoring year to be determined by the adaptive management process. The GOA TMAA Monitoring Report may be provided to NMFS within a larger report that includes the required Monitoring Plan reports from multiple range complexes and study areas (the multi-Range Complex Annual Monitoring Report). Such a report would describe progress of knowledge made with respect to monitoring plan study questions across all Navy ranges associated with the Integrated Comprehensive Monitoring Program. Similar study questions shall be treated together so that progress on each topic shall be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions.

(g) *Annual GOA TMAA exercise reports.* Each year, the Navy shall submit a preliminary report detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of the LOA. Each year, the Navy shall submit a detailed report within 3 months after the anniversary of the date of issuance of the LOA. The annual report shall contain information on Major Training Exercises (MTEs) and a summary of all sound sources used, as described in paragraph (g)(3) of this section. The analysis in the detailed report shall be based on the accumulation of data from the current year's report and data collected from previous the report. The detailed

reports shall contain information identified in paragraphs (g)(1) through (4) of this section.

(1) *MFAS/HFAS Major Training Exercises*. This section shall contain the following information for Major Training Exercises conducted in the GOA TMAA:

(i) Exercise Information (for each MTE):

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location.

(D) Number and types of active sources used in the exercise.

(E) Number and types of passive acoustic sources used in exercise.

(F) Number and types of vessels, aircraft, etc., participating in exercise.

(G) Total hours of observation by lookouts.

(H) Total hours of all active sonar source operation.

(I) Total hours of each active sonar source bin.

(J) Wave height (high, low, and average during exercise).

(ii) Individual marine mammal sighting information for each sighting in each exercise when mitigation occurred:

(A) Date/Time/Location of sighting.

(B) Species (if not possible, indication of whale/dolphin/pinniped).

(C) Number of individuals.

(D) Initial Detection Sensor.

(E) Indication of specific type of platform observation made from (including, for example, what type of surface vessel or testing platform).

(F) Length of time observers maintained visual contact with marine mammal.

(G) Sea state.

(H) Visibility.

(I) Sound source in use at the time of sighting.

(J) Indication of whether animal is <200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or >2,000 yd from sonar source.

(K) *Mitigation implementation*. Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was.

(L) If source in use is hull-mounted, true bearing of animal from ship, true direction of ship's travel, and esti-

mation of animal's motion relative to ship (opening, closing, parallel).

(M) *Observed behavior*. Lookouts shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.) and if any calves present.

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) *Summary of sources used*. (i) This section shall include the following information summarized from the authorized sound sources used in all training events:

(A) Total annual hours or quantity (per the LOA) of each bin of sonar or other non-impulsive source; and

(B) Total annual number of each type of explosive exercises and total annual expended/detonated rounds (missiles, bombs, sonobuoys, etc.) for each explosive bin.

(ii) [Reserved]

(3) *Geographic information presentation*. The reports shall present an annual (and seasonal, where practical) depiction of training exercises and testing bin usage geographically across the Study Area.

(h) *MTE prior notification*. The Navy shall submit to NMFS (contact as specified in the LOA and Stranding Plan) an electronic notice of pending MTEs 72 hours prior to the start of the MTE indicating:

(1) Location of the exercise.

(2) Beginning and end dates of the exercise.

(3) Type of exercise.

(i) *Five-year close-out exercise report*. This report shall be included as part of the 2021 annual exercise report. This report shall provide the annual totals for each sound source bin with a comparison to the annual allowance and the 5-year total for each sound source bin with a comparison to the 5-year allowance. Additionally, if there were

any changes to the sound source allowance, this report shall include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the SEIS and final rule determinations. The report shall be submitted 3 months after the expiration of this subpart. NMFS shall submit comments on the draft close-out report, if any, within 3 months of receipt. The report shall be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

**§218.156 Applications for letters of authorization (LOA).**

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by §216.106 of this chapter) conducting the activity identified in §218.150(c) (the U.S. Navy) must apply for and obtain either an initial LOA in accordance with §218.157 or a renewal under §218.158.

**§218.157 Letters of authorization (LOA).**

(a) An LOA, unless suspended or revoked, shall be valid for a period of time not to exceed the period of validity of this subpart.

(b) Each LOA shall 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 LOA shall be based on a determination that the total number of marine mammals taken by the activity as a whole shall have no more than a negligible impact on the affected species or stock of marine mammal(s).

**§218.158 Renewals and modifications of letters of authorization (LOA) and adaptive management.**

(a) A letter of authorization issued under §216.106 of this chapter and §218.157 for the activity identified in §218.150(c) shall be renewed or modified

upon request of the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision of this chapter); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis illustrating the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §216.106 of this chapter and §218.157 for the activity identified in §218.154 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify and augment the existing mitigation, monitoring, or reporting measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, and reporting measures in an LOA:

(A) Results from Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOA.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS would publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §218.152(c), an LOA may be modified without prior notification and an opportunity for public comment. Notification would be published in the FEDERAL REGISTER within 30 days of the action.

**Subparts Q–W [Reserved]**

**Subpart X—Taking and Importing of Marine Mammals; U.S. Navy Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Training and Testing in the Central and Western North Pacific and Eastern Indian Oceans**

EFFECTIVE DATE NOTE: At 84 FR 40208, Aug. 13, 2019, subpart X was added, effective from Aug. 12, 2019, through Aug. 13, 2026.

**§ 218.230 Specified activity, level of taking, and species/stocks.**

Regulations in this subpart apply to the U.S. Navy (Navy) for the taking of marine mammals that occurs incidental to the Navy’s SURTASS LFA sonar training and testing activities under authority of the Secretary of the Navy within the central and western North Pacific and eastern Indian Oceans (SURTASS LFA Sonar Study Area) (Table 1 to §218.230).

TABLE 1 TO § 218.230—SPECIES/STOCKS PROPOSED FOR AUTHORIZATION BY LEVEL B HARASSMENT FOR THE 7-YEAR PERIOD OF THE PROPOSED RULE BY SURTASS LFA SONAR TRAINING AND TESTING ACTIVITIES

Species	Stock <sup>1</sup>
Antarctic minke whale .....	ANT.
Blue whale .....	CNP. NIND. WNP. SIND.
Bryde’s whale .....	ECS. Hawaii. WNP. NIND. SIND.
Common minke whale .....	Hawaii. IND. WNP JW. WNP OE. YS.
Fin whale .....	ECS. Hawaii. IND. SIND. WNP.
Humpback whale .....	CNP stock and Hawaii DPS. WAU stock and DPS. WNP stock and DPS.
North Pacific right whale .....	WNP.
Omura’s whale .....	NIND. SIND. WNP.
Sei whale .....	Hawaii. SIND. NP. NIND.
Western North Pacific gray whale .....	WNP stock and Western DPS.
Baird’s beaked whale .....	WNP.
Blainville’s beaked whale .....	Hawaii.

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TABLE 1 TO § 218.230—SPECIES/STOCKS PROPOSED FOR AUTHORIZATION BY LEVEL B HARASSMENT FOR THE 7-YEAR PERIOD OF THE PROPOSED RULE BY SURTASS LFA SONAR TRAINING AND TESTING ACTIVITIES—Continued

Species	Stock <sup>1</sup>
Common bottlenose dolphin .....	WNP. IND. 4-Islands.
Common dolphin .....	Hawaii Island. Hawaii Pelagic. IA. IND. Japanese Coastal. Kauai/Niihau. Oahu. WNP Northern Offshore. WNP Southern Offshore. WAU.
Cuvier's beaked whale .....	IND. WNP. Hawaii.
Dall's porpoise .....	IND. SH. WNP. SOJ <i>dalli</i> type. WNP <i>dalli</i> ecotype. WNP <i>truei</i> ecotype.
Deraniyagala's beaked whale .....	IND. NP.
Dwarf sperm whale .....	Hawaii. IND. WNP.
False killer whale .....	Hawaii Pelagic. IA. IND. Main Hawaiian Islands Insular stock and DPS. Northwestern Hawaiian Islands. WNP.
Fraser's dolphin .....	CNP. Hawaii. IND. WNP.
Ginkgo-toothed beaked whale .....	IND. NP. WNP.
Harbor porpoise .....	IND. NP.
Hubbs' beaked whale .....	IND. Hawaii.
Indo-Pacific bottlenose dolphin .....	IND. WNP. WNP.
Killer whale .....	Hawaii. IND. WNP.
<i>Kogia</i> spp. ....	WNP. WNP.
Longman's beaked whale .....	Hawaii. IND. WNP. Hawaiian Islands. IND. Kohala Resident. WNP.
Melon-headed whale .....	WNP. NP. NP.
<i>Mesoplodon</i> spp. ....	4-Islands. Hawaii Island. Hawaiian Pelagic. IND. Oahu. WNP.
Northern right whale dolphin .....	Hawaii. IND. WNP.
Pacific white-sided dolphin .....	Hawaii. IND. WNP.
Pantropical spotted dolphin .....	Hawaii. IND. WNP. IA.
Pygmy killer whale .....	Hawaii. IND. WNP.
Pygmy sperm whale .....	Hawaii. IND. WNP.
Risso's dolphin .....	Hawaii. IA.

TABLE 1 TO § 218.230—SPECIES/STOCKS PROPOSED FOR AUTHORIZATION BY LEVEL B HARASSMENT FOR THE 7-YEAR PERIOD OF THE PROPOSED RULE BY SURTASS LFA SONAR TRAINING AND TESTING ACTIVITIES—Continued

Species	Stock <sup>1</sup>
Rough-toothed dolphin .....	WNP. IND. Hawaii.
Short-finned pilot whale .....	IND. WNP. Hawaii.
Southern bottlenose whale .....	IND. WNP Northern Ecotype. WNP Southern Ecotype.
Spade-toothed beaked whale .....	IND.
Sperm whale .....	IND. Hawaii.
Spinner dolphin .....	NIND. NP. SIND. Hawaii Island. Hawaii Pelagic. IND. Kauai/Niihau. Kure/Midway Atoll. Oahu/4-Islands. Pearl and Hermes Reef.
Stejneger's beaked whale .....	WNP.
Striped dolphin .....	WNP. Hawaii. IND. Japanese Coastal. WNP Northern Offshore. WNP Southern Offshore.
Hawaiian monk seal .....	Hawaii.
Northern fur seal .....	Western Pacific.
Ribbon seal .....	NP.
Spotted seal .....	Alaska stock/Bering Sea DPS. Southern stock and DPS.
Steller sea lion .....	Western/Asian stock and Western DPS.

<sup>1</sup> ANT = Antarctic; CNP = Central North Pacific; NP = North Pacific; NIND = Northern Indian; SIND = Southern Indian; IND = Indian; WNP = Western North Pacific; ECS = East China Sea; WP = Western Pacific; SOJ = Sea of Japan; IA = Inshore Archipelago; WAU = Western Australia; YS = Yellow Sea; OE = Offshore Japan; OW = Nearshore Japan; JW = Sea of Japan/Minke; JE = Pacific coast of Japan; SH = Southern Hemisphere; DPS = distinct population segment.

**§ 218.231 Effective dates.**

Regulations in this subpart are effective from August 13, 2019, through August 12, 2026.

**§ 218.232 Permissible methods of taking.**

Under a Letter or Letters of Authorization (LOA) issued pursuant to §§ 216.106 of this chapter and 218.237, the Holder of the LOA (hereinafter "Navy") may incidentally, but not intentionally, take marine mammals within the area described in § 218.230 by Level B harassment associated with SURTASS LFA sonar training and testing provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

**§ 218.233 Prohibitions.**

Notwithstanding takings contemplated in § 218.230 and authorized by a LOA issued under §§ 216.106 of this chapter and 218.237, no person in connection with the activities described in § 218.230 may:

- (a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 218.237;
- (b) Take any marine mammal not specified in such LOAs;
- (c) Take any marine mammal specified in such LOAs in any manner other than Level B harassment;

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(d) Take any marine mammal specified in the LOA if NMFS makes a determination that such taking is having, or may have, more than a negligible impact on the species or stocks concerned; or

(e) Take a marine mammal specified in the LOA if NMFS determines such taking is having, or may have, an unmitigable adverse impact on availability of the species or stock for taking for subsistence uses.

### §218.234 Mitigation.

When conducting activities identified in §218.230, the mitigation measures described in this section and in any LOA issued under §§216.106 of this chapter and 218.237 must be implemented.

(a) *Personnel training—lookouts.* The Navy will utilize one or more trained marine biologists qualified in conducting at-sea marine mammal visual monitoring to conduct at-sea marine mammal visual monitoring training and qualify designated ship personnel to conduct at-sea visual monitoring. Training will ensure quick and effective communication within the command structure in order to facilitate implementation of protective measures if they detect marine mammals and may be accomplished either in-person, or via video training.

(b) *General operating procedures.* (1) Prior to SURTASS LFA sonar activities, the Navy will promulgate executive guidance for the administration, execution, and compliance with the environmental regulations under these regulations and LOA.

(2) The Navy must not transmit the SURTASS LFA sonar signal at a frequency greater than 500 Hz.

(c) *2,000-yard LFA sonar mitigation zone; suspension and delay.* If a marine mammal is detected, through monitoring required under §218.235, within or about to enter within 2,000 yards of the SURTASS LFA source (*i.e.*, the LFA mitigation zone), the Navy must immediately delay or suspend SURTASS LFA sonar transmissions.

(d) *Resumption of SURTASS LFA sonar transmissions.* (1) The Holder of a LOA may not resume SURTASS LFA sonar transmissions earlier than 15 minutes after:

(i) All marine mammals have left the area of the 2,000-yard LFA sonar mitigation zone; and

(ii) There is no further detection of any marine mammal within the 2,000-yard LFA sonar mitigation zone as determined by the visual, passive acoustic, and active acoustic high frequency monitoring described in §218.235.

(2) [Reserved]

(e) *Ramp-up procedures for the high-frequency marine mammal monitoring (HF/M3) sonar required under §218.235.*

(1) The Navy must ramp up the HF/M3 sonar power level beginning at a maximum source sound pressure level of 180 dB: re 1  $\mu$ Pa at 1 meter in 10-dB increments to operating levels over a period of no less than five minutes:

(i) At least 30 minutes prior to any SURTASS LFA sonar transmissions; and

(ii) Anytime after the HF/M3 source has been powered down for more than two minutes.

(2) The Navy must not increase the HF/M3 sound pressure level once a marine mammal is detected; ramp-up may resume once marine mammals are no longer detected.

(f) *Geographic restrictions on the SURTASS LFA sonar sound field.* (1) LFA sonar training and testing activities must be conducted such that:

(i) The received level of SURTASS LFA sonar transmissions will not exceed 180 dB re: 1  $\mu$ Pa rms within 22 km (12 nmi) from any emergent land, including offshore islands;

(ii) The received level of SURTASS LFA sonar transmissions will not exceed 180 dB re: 1  $\mu$ Pa rms at a distance of 1 km (0.5 nmi) seaward of the outer perimeter of any Offshore Biologically Important Area (OBIA) designated in the Study Area for SURTASS LFA sonar in paragraph (f)(2) of this section, or subsequently identified through the Adaptive Management process specified in §218.241, during the period specified. The boundaries and periods of such OBIA's will be kept on file in NMFS' Office of Protected Resources and on its website at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>.

(iii) No more than 25 percent of the authorized amount (transmission



hours) of SURTASS LFA sonar for training and testing will be conducted within 10 nmi (18.5 km) of any single OBIA during any year (no more than 124 hours in years 1–4 and 148 hours in years 5–7) unless the following conditions are met: Should national security present a requirement to conduct more than 25 percent of authorized hours of SURTASS LFA sonar within 10 nmi (18.5 km) of any single OBIA during any year, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with notification as soon as is practicable and include the information (*e.g.*, sonar hours) in its annual activity reports submitted to NMFS.

(iv) No activities with the SURTASS LFA system will occur within territorial seas of foreign nations, which are areas from 0 up to 12 nmi from shore, depending on the distance that individual nations claim; and

(v) No activities with the SURTASS LFA sonar system will occur in the waters of Penguin Bank, Hawaii (defined as water depth of 600 ft (183 m)), and ensonification of Hawaii state waters (out to 3 nmi) will not exceed 145 dB re: 1  $\mu$ Pa rms.

(2) Offshore Biologically Important Areas (OBIA) for marine mammals (with specified periods) for SURTASS LFA sonar training and testing activities include the following (Table 1 to paragraph (f)(2)):

TABLE 1 TO PARAGRAPH (f)(2)—OFFSHORE BIOLOGICALLY IMPORTANT AREAS (OBIA)

OBIA name	Ocean area	Effective seasonal period
Main Hawaiian Islands .....	Central North Pacific .....	November to April.
Northwestern Hawaiian Islands .....	Central North Pacific .....	December to April.
Mariana Islands .....	Western North Pacific .....	February to April.
Ryukyu-Philippines .....	Western North Pacific .....	January to April.
Ogasawara Islands (Sperm Whale) .....	Western North Pacific .....	June to September.
Ogasawara-Kazin Islands (Humpback Whale).	Western North Pacific .....	December to May.
Honshu .....	Western North Pacific .....	January to May.
Southeast Kamchatka .....	Western North Pacific .....	June to September.
Gulf of Thailand .....	Eastern Indian Ocean .....	April to November.
Western Australia (Blue Whale) .....	Eastern Indian Ocean .....	May to November.
Western Australia (Humpback Whale) .....	Eastern Indian Ocean .....	May to December.
Southern Bali .....	Eastern Indian Ocean .....	October to November.
Swatch-of-No-Ground (SoNG) .....	Northern Bay of Bengal .....	Year-round.
Sri Lanka .....	Eastern Indian Ocean .....	October to April.

(g) *Minimization of additional harm to live-stranded (or milling) mammals.* The Navy must consult the Notification and Reporting Plan, which sets out the requirements for when live stranded marine mammals are reported in the Study Area. The Stranding and Notification Plan is available at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-operations-surveillance-towed-array-sensor-system-0>.

**§ 218.235 Requirements for monitoring.**

(a) The Navy must:

(1) Conduct visual monitoring from the ship’s bridge during all daylight hours (30 minutes before sunrise until 30 minutes after sunset). During training and testing activities that employ SURTASS LFA sonar in the active

mode, the SURTASS vessels must have Lookouts to maintain a topside watch with standard binoculars (7x) and with the naked eye. If the lookout sights a possible marine mammal, the lookout will use big-eye binoculars (25x) to confirm the sighting and potentially identify the marine mammal species.

(2) Use the passive SURTASS sonar component to detect vocalizing marine mammals; and

(3) Use the HF/M3 sonar to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the LFA mitigation zone, subject to the ramp-up requirements in § 216.234(e) of this chapter.

(b) Monitoring under paragraph (a) of this section must:

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(1) Commence at least 30 minutes before the first SURTASS LFA sonar training and testing transmission;

(2) Continue between transmission pings; and

(3) Continue either for at least 15 minutes after completion of the SURTASS LFA sonar training and testing transmission, or, if marine mammals are exhibiting unusual changes in behavioral patterns, until behavior patterns return to normal or conditions prevent continued observations.

(c) The Navy must designate qualified on-site individuals to conduct the mitigation, monitoring, and reporting activities specified in these regulations and LOA issued under §§216.106 of this chapter and 218.237.

(d) The Navy must continue to assess data from the Marine Mammal Monitoring Program and work toward making some portion of that data, after appropriate security reviews, available to scientists with appropriate clearances. Any portions of the analyses conducted by these scientists based on these data that are determined to be unclassified after appropriate security reviews will be made publically available.

(e) The Navy must collect ambient noise data and will explore the feasibility of declassifying and archiving the ambient noise data for incorporation into appropriate ocean noise budget efforts.

(f) The Navy must conduct all monitoring required under LOAs.

### §218.236 Requirements for reporting.

(a) The Navy must submit classified and unclassified annual training and testing activity reports to the Director, Office of Protected Resources, NMFS, no later than 90 days after the end of each year covered by the LOA beginning on the date of effectiveness of a LOA. Each annual training and testing activity report will include a summary of all active-mode training and testing activities completed during that year. At a minimum, each classified training and testing activity report must contain the following information:

(1) Dates, times, and location of each vessel during each training and testing activity;

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(2) Information on sonar transmissions during each training and testing activity;

(3) Results of the marine mammal monitoring program specified in the LOA; and

(4) Estimates of the percentages of marine mammal species and stocks affected (both for the year and cumulatively for each successive year) covered by the LOA.

(b) The seventh annual report must be prepared as a final comprehensive report, which will include information for the final year as well as the prior six years of activities under the rule. This final comprehensive report must also contain an unclassified analysis of new passive sonar technologies and an assessment of whether such a system is feasible as an alternative to SURTASS LFA sonar, and be submitted to the Director, Office of Protected Resources, NMFS as described in this paragraph (b).

(c) The Navy will continue to assess the data collected by its undersea arrays and work toward making some portion of that data, after appropriate security reviews, available to scientists with appropriate clearances. Any portions of the analyses conducted by these scientists based on these data that are determined to be unclassified after appropriate security reviews will be made publically available.

(d) The Navy must consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements for when dead, injured, or live stranded marine mammals are reported in the Study Area. The Stranding and Notification Plan is available at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-operations-surveillance-towed-array-sensor-system-0>.

### §218.237 Letter of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Navy must apply for and obtain a Letter of Authorization (LOA).

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations,

Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA (excluding changes made pursuant to the adaptive management provision of § 218.239), the Navy must apply for and obtain a modification of the LOA as described in § 218.238.

(e) The LOA shall 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 monitoring and reporting.

(f) Issuance of the LOA will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA will be published in the FEDERAL REGISTER within thirty days of a determination.

**§ 218.238 Renewals and modifications of a Letter of Authorization.**

(a) An LOA issued under §§ 216.106 of this chapter and 218.237 for the activity identified in § 218.230 may be renewed or modified upon request by the applicant, provided that:

(1) The planned specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA(s) were implemented.

(b) For LOA modification or renewal requests by the Navy that include changes to the activity or to the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or that do not result in

more than a minor change in the total estimated number of takes (or distribution by species or stock or years), NMFS may publish notification of a planned LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 218.237 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* After consulting with the Navy regarding the practicability of the modifications, NMFS may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include:

(A) Results from the Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of planned LOA in the FEDERAL REGISTER and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 218.237, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within thirty days of the action.