

(8) Characteristics of test contents, *e.g.* viscosity and relative density for liquids and particle size for solids;

(9) Test descriptions and results; and

(10) Signed with the name and title of signatory.

[FR Doc. 2011-13183 Filed 5-25-11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 218

[Docket No. 110516281-1283-01]

RIN 0648-BB03

#### Taking and Importing Marine Mammals: U.S. Navy Training in the Virginia Capes Range Complex and Jacksonville Range Complex

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** In June 2009, pursuant to the Marine Mammal Protection Act (MMPA), NMFS issued two 5-year final regulations to govern the unintentional taking of marine mammals incidental to Navy training activities conducted in the Virginia Capes (VACAPES) and Jacksonville (JAX) range complexes off the East Coast of the U.S. These regulations, which allow for the issuance of “Letters of Authorization” (LOAs) for the incidental take of marine mammals during the specified activities and described timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

These rules quantify the specific amounts of training activities involving underwater detonations that will occur over the course of the 5-year rules, and indicate that marine mammal take may only be authorized in an LOA incidental to the types and amounts of training activities and explosives described. No language was included expressly allowing for deviation from those precise levels of training activities and amounts of explosives even if the total number of takes remain within the analyzed and authorized limits. Since the issuance of these rules, the Navy realized that their evolving training programs, which are linked to real

world events, necessitate greater flexibility in the types and amounts of training events and explosives that they conduct and use. In response to this need, NMFS has, through this interim final rule, amended the VACAPES and JAX regulations to explicitly allow for greater flexibility in the types and amount of training activities that they conduct and explosives that they use.

**DATES:** Effective on May 24, 2011.

Comments and information must be received no later than June 27, 2011.

**ADDRESSES:** You may submit comments, identified by 0648-BB03, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

- Hand delivery or mailing of paper, disk, or CD-ROM comments should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

A copy of the Navy’s applications, NMFS’ Records of Decision (RODs), NMFS’ proposed and final rules and subsequent LOAs, and other documents cited herein may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225 or by telephone via the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 713-2289, ext. 137.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct

the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The definition of “harassment” as it applies to a “military readiness activity” is as follows (section 3(18)(B) of the MMPA as amended by the National Defense Authorization Act (NDAA) (Pub. L. 108-136)):

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or

(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

#### Summary of the Modification

In June, 2009, NMFS issued 5-year regulations governing the taking of marine mammals incidental to training activities conducted in the VACAPES Range Complex (74 FR 28328; June 15, 2009) and the JAX Range Complex (74 FR 28349; June 15, 2009) (collectively the “2009 Final Rules”). The VACAPES and JAX Range Complex regulations allow for the issuance of LOAs that authorize the incidental take of marine mammals during the specified activities and described timeframes, and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and

reporting of such taking. These regulations were drafted in such a way that the Navy's specified activities were strictly quantified by the amount of each type of training event to be carried out and the amount of explosives and sound sources to be used (e.g., number of events or explosive detonations) over the course of the 5-year regulations.

After the issuance of these rules, the Navy realized that their evolving training programs, which are linked to real world events, necessitate greater flexibility in both the types and amount of training activities that they conduct and the types and amount of underwater detonations and sound sources that they use.

Regarding the types of training events and explosives for which incidental take is authorized, in some cases, the Navy's VACAPES and JAX Range Complex rules identified the most representative or highest power source to represent a group of known similar activities or explosive types. However, the Navy regularly modifies or improves training techniques, often in the way that results in the use of explosive munitions are similar to, but not exactly the same as, existing ones. In its LOA renewal requests submitted to NMFS on January 19, 2011, the Navy requested modification in the amount and types of training activities and the explosives involved for the VACAPES and JAX range complexes. To address this issue, NMFS modifies the 2009 Final Rules to increase the flexibility of the Navy's takings prescriptions by inserting language that will explicitly allow for authorization of take incidental to the previously identified specified explosives or "similar events or explosives" (with similar characteristics that do not change any of the underlying analyses), and in the case of the JAX Range Complex, by allowing FIREX exercises to be conducted in areas similar to those initially specifically identified in the rule (areas BB and CC), provided that the implementation of these changes in annual LOAs does not result in exceeding the incidental take analyzed and identified in the 2009 Final Rules.

Regarding amounts of explosive and number of training activities, the 2009 Final Rules only allow for the authorization of take incidental to a 5-yr maximum amount of use for each specific training activity type and explosive type, even though no change in the environmental impacts would be expected by modifying the amounts of explosives being used in a training event in certain ways. For example, a large number of smaller explosives being used would yield similar impacts

to the marine environment as a few larger explosives. To address this issue, NMFS modifies the VACAPES and JAX 2009 Final Rules to increase flexibility by including language that allows for inter-annual variability in the amount of training activities and the number and types of explosives that can be authorized in each annual LOA (e.g., one year the Navy could use a lot of one explosive, and little of another, and the next year those amounts could be reversed), provided it does not result in exceeding the total level of incidental take analyzed and identified in the 2009 Final Rules, and the taking does not result in more than a negligible impact on affected species or stocks.

As indicated above, these regulatory amendments do not change the analyses of marine mammal impacts conducted in the 2009 Final Rules. This fact is assured and illustrated through: (1) The Navy's annual submission of LOA applications for each area, which include take estimates specific to the upcoming year's activities (*i.e.*, explosive use); (2) their subsequent annual submission of exercise reports, which accurately report the specific amount of use for each explosive and the number of training events conducted over the course of the previous year; and (3) their annual submission of monitoring reports, which describe observed responses of marine mammals to Navy's training activities and the use of explosives collected via visual or passive acoustic methods. Together, these submissions allow NMFS to accurately predict and track the Navy's activities to ensure that both NMFS' annual LOAs, and the impacts of the Navy's activities on marine mammals, remain within what is analyzed and allowed by the VACAPES and JAX 5-year regulations.

#### Classification

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this final rule is not significant.

Pursuant to 5 U.S.C. 553, there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The 2009 VACAPES and JAX Final Rules established a framework whereby a total number of marine mammals, by species, could be taken incidental to certain military readiness activities during the 5-year period. These rules also enumerated levels of activity for each type of training activity and explosive, but did not include

language expressly authorizing deviation from those precise levels if the total number of takes remained within authorized limits. Although the Navy used the best available information and professional judgment to estimate the level of individual activities planned for the ranges, evolving unforeseen real world requirements, and the evolving training and readiness tactics and procedures needed to meet those requirements, necessitate annual flexibility to offset increases in some activities with decreases in others. The Navy requires the flexibility to modify its training activities and the use of certain explosive detonations in the VACAPES and JAX Range Complexes, and these regulations modify the VACAPES and JAX final rules to insert language codifying that flexibility.

The Navy has a compelling need to continue its currently on-going military readiness and testing activities with the specific sound sources at issue without interruption. In 10 U.S.C. 5062, Congress mandated that the Chief of Naval Operations (CNO) man, organize, train, and equip all Naval forces for combat. To accomplish this, naval commands adhere to the Fleet Response Training Plan (FRTP). The FRTP is an arduous sequential training cycle in which unit level training (ULT) and certification is followed by a series of major exercises that bring together various components so they have the opportunity to train and practice as an integrated whole resulting in Major Combat Operation certification. This certification includes critically important anti-submarine warfare that requires training on the use and deployment of the described systems. Interruption or reduction of the Navy's ability to utilize specific sound sources during this period would significantly disrupt vital sequential training, certification, and testing activities essential to our national security and the safety of our armed forces. Therefore, allowing a public comment period for these rules is impracticable and contrary to the public's interest.

Because the requested modifications would not increase the total level of takes authorized in the 2009 Final Rules, the modifications would result in no increased impact to protected species.

For the same reasons above, there is good cause under 5 U.S.C. 553 to waive the 30-day delay in effectiveness. Interruption or reduction of the Navy's ability to utilize specific sound sources would significantly disrupt vital sequential training, certification, and testing activities essential to our national security and the safety of our

armed forces. Therefore, there is good cause to waive the 30-day delay in effectiveness and to make this rule effective immediately.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

**List of Subjects in 50 CFR Part 218**

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: May 20, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR part 218 is amended as follows:

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

■ 1. The authority citation for part 218 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

■ 2. In § 218.1, paragraphs (c) introductory text, (c)(1) introductory text, (c)(1)(i)(D), (c)(1)(ii) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

**§ 218.1 Specified activity, and specified geographical area and effective dates.**

\* \* \* \* \*

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training

events, indicated in paragraph (c)(1)(ii) of this section:

\* \* \* \* \*

(i) \* \* \*

(D) Airborne Mine Neutralization system (AMNS).

\* \* \* \* \*

(ii) Training events (with approximated number of events)

\* \* \* \* \*

(d) Regulations are effective June 5, 2011, through June 4, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives or activities, listed in § 218.1(c) should the amounts (e.g., number of exercises) vary from those estimated in § 218.1(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.2(c).

■ 3. In § 218.10, paragraphs (c) introductory text, (c)(1) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

**§ 218.10 Specified activity and specified geographical area and effective dates**

\* \* \* \* \*

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

\* \* \* \* \*

(d) Regulations are effective June 5, 2011, through June 4, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives and activities, listed in § 218.10(c) should the amounts (e.g., number of exercises) vary from those estimated in § 218.10(c), provided that

the variation does not result in exceeding the amount of take indicated in § 218.11(c).

■ 4. In § 218.13, paragraph (a)(4)(i)(A) is revised to read as follows:

**§ 218.13 Mitigation.**

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(i) \* \* \*

(A) This activity shall only occur in Areas BB and CC, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in § 216.11(c).

\* \* \* \* \*

[FR Doc. 2011-12984 Filed 5-24-11; 4:15 pm]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 0907151138-1235-03]

**RIN 0648-AY03**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands; Queen Conch Management Measures**

*Correction*

In rule document 2011-10446 appearing on pages 23907-23909 in the issue of Friday, April 29, 2011, make the following correction:

**§ 622.32 [Corrected]**

On page 23908, in the third column, in § 622.32(b)(1)(iv), in the fourth line “64E34’ W.” should read “64°34’ W.”.

[FR Doc. C1-2011-10446 Filed 5-25-11; 8:45 am]

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