

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648–XE859

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar**

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

**ACTION:** Notice; receipt of application for letter of authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) for authorization to take, by harassment, marine mammals incidental to conducting operations of Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) sonar for the period beginning August 2017 and ending August 2022. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

**DATES:** Comments and information must be received no later than November 21, 2016.

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is [ITP.Youngkin@noaa.gov](mailto:ITP.Youngkin@noaa.gov). NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications> 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.

**FOR FURTHER INFORMATION CONTACT:** Dale Youngkin, Office of Protected Resources, NMFS; phone: (301) 427–8401.

**SUPPLEMENTARY INFORMATION:****Availability**

An electronic copy of the Navy's application may be obtained online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. The Navy released a draft Supplemental Environmental Impact Statement (DSEIS) for the employment of SURTASS LFA sonar on August 26, 2016. A copy of the DSEIS, which would also support NMFS' proposed rulemaking under the MMPA, is available at <http://www.surtass-lfa-eis.com>.

**Background**

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act of 1972, as amended (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) 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 for incidental takings 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 (where relevant), 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.”

With respect to military readiness activities, the MMPA defines “harassment” as:

(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 Request**

On August 26, 2016, NMFS received an application from the Navy requesting authorization to take individuals of 104 species of marine mammals (75 cetaceans and 29 pinnipeds), by harassment, incidental to training, testing, and routine military operations (all categorized as military readiness activities) using SURTASS LFA sonar over the course of five years between August 15, 2017 and August 15, 2022.

The Navy states that these training, testing, and routine military activities may expose some of the marine mammals present in the operational areas to sound from low-frequency active sonar sources. Because marine mammals may be harassed due to noise disturbance incidental to the use of SURTASS LFA sonar during training, testing, and routine military operations, the Navy utilized the most recent NMFS acoustic Technical Guidance (NMFS 2016) to analyze potential takes of marine mammals. The Navy requests authorization to take individuals of 104 species of marine mammals by Level B Harassment. Further, the Navy states that the probability of taking marine mammals by Level A Harassment is less than 0.001 percent. However, because the probability is not zero, the Navy has included a small number of Level A harassment in its authorization request as a precautionary measure.

This will be NMFS' fourth rule making for SURTASS LFA sonar operations under the MMPA. NMFS published the first rule effective from August 2002 through August 2007 on July 16, 2002 (67 FR 46712); the second rule effective from August 2007 through August 2012 on August 21, 2007 (72 FR 46846); and the third rule effective from August 2012 through August 2012 (77 FR 50290). For this fourth rule making, the Navy is proposing to conduct the same types of sonar activities in the proposed rulemaking as they have conducted over the past fourteen years in the previous three rule makings with the exceptions of updating the LFA sonar duty cycle from 20 percent to 7.5–10 percent based on historical data. In addition, the Navy is proposing a Preferred Alternative (Alternative 2) in their DSEIS that would transmit a maximum number of 255 hours of LFA sonar per vessel per year, as opposed to the previously authorized 432 hours of LFA sonar per vessel per year.

**Description of the Specified Activity**

The Navy proposes to deploy the system on a maximum of four U.S. Naval ships: The USNS ABLE, the USNS EFFECTIVE, the USNS

IMPECCABLE and the USNS VICTORIOUS) in certain areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea. Nominal at-sea missions for each vessel using SURTASS LFA sonar would last up to 294 days, with 240 days of active sonar transmissions and 54 days of transit. The maximum number of actual transmission hours per vessel would not exceed 255 hours annually under the Preferred Alternative. The application describes the activity types, the equipment and platforms involved, and the duration and potential locations of the specified activities.

A suite of proposed mitigation measures for marine mammals that could potentially be affected during SURTASS LFA sonar operations includes restricting the use of SURTASS LFA sonar such that it will not operate in Arctic and Antarctic waters; sound pressure levels (SPL) will not exceed 180 decibels (dB) re 1  $\mu$ Pa (rms) within 12 nautical miles of any emerged features of any coastline, or within designated offshore biologically important areas (OBIA) for marine mammals; and the Navy will minimize exposure of marine mammals to SURTASS LFA sonar signal received levels of 180 dB re 1  $\mu$ Pa (rms) by monitoring for their presence and suspending transmission when animals enter the mitigation zone.

#### Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see ADDRESSES). NMFS will consider all information, suggestions, and comments related to the Navy's request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by the Navy's SURTASS LFA sonar activities.

Dated: October 4, 2016.

**Donna S. Wieting,**

Director, Office of Protected Resources,  
National Marine Fisheries Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XE901

#### International Fisheries; Pacific Tuna Fisheries; Well Volume in the Regional Vessel Register of the Inter-American Tropical Tuna Commission

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

**ACTION:** Notice to the U.S. purse seine fleet fishing for tuna and tuna-like species in the Eastern Pacific Ocean.

**SUMMARY:** The intent of this notice is to inform the U.S. purse seine fleet fishing for tuna or tuna-like species in the Eastern Pacific Ocean (EPO) about Inter-American Tropical Tuna Commission (IATTC) Resolution C-15-02 (*Resolution on the Deadline Applicable to Revisions of Well Volume in Paragraph 6 of Resolution C-02-03*).

**DATES:** IATTC Resolution C-15-02 will become effective January 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Chris Fanning, West Coast Region, NMFS, at [Chris.Fanning@noaa.gov](mailto:Chris.Fanning@noaa.gov), or at (562) 980-4198.

#### SUPPLEMENTARY INFORMATION:

##### Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. In 2003, the IATTC adopted the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), which entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. The full text of the Antigua Convention is available at: [https://www.iatcc.org/PDFFiles2/Antigua\\_Convention\\_Jun\\_2003.pdf](https://www.iatcc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf).

The IATTC consists of 21 member nations and four cooperating non-member nations and facilitates scientific research into, as well as the conservation and management of, highly migratory species of fish in the IATTC Convention Area. The IATTC Convention Area is defined as the waters of the EPO within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC has maintained a scientific research and fishery monitoring

program for many years, which includes a *Regional Vessel Register* (Register) to maintain a record of vessels that are authorized to fish for tuna and tuna-like species in the Convention Area.

#### International Obligations of the United States Under the Convention

As a member of the IATTC, the United States is legally bound to implement decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951-962) provides that the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department of Homeland Security, may promulgate such regulations as may be necessary to carry out the United States' international obligations under the Convention, including recommendations and decisions adopted by the IATTC. The Secretary's authority to promulgate such regulations has been delegated to NMFS.

#### IATTC Resolution C-15-02

Resolution C-02-03 was agreed to at the 69th meeting of the IATTC in Manzanillo, Mexico in 2002. Among other things, the Resolution stated that, "the well volume of each purse-seine vessel, once confirmed. . . , shall be reflected in the Register." This Resolution was implemented domestically through regulations at 50 CFR 300.22(b). At the 89th meeting of the IATTC in Guayaquil, Ecuador in 2015, Resolution C-02-03 was amended to Resolution C-15-02. This Resolution required that a deadline be set for all purse seine well volumes (identified as "Fish Hold Volume (m<sup>3</sup>)" in the Register) to be confirmed. Resolution C-15-02 states that on January 1, 2017, all purse seine well volumes in the Register will be considered confirmed, and the well volume of any new purse seine vessel added to the Register after that date will be considered confirmed at the time they are added to the Register.

#### Impact on the U.S. Purse Seine Fleet

For purse seine vessels currently listed on the Register, the well volume listed in the Register on January 1, 2017, will be considered confirmed, even if documentation (e.g., blueprints, marine survey) verifying well volume has never been submitted. Additionally, if a new purse seine vessel is added to the Register, the well volume submitted at the time it is added will be considered confirmed whether or not it is accompanied by documentation.

If the owner of a vessel currently listed on the Register would like to submit documentation to verify the