

(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.

§ 217.217 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.216 for the activity identified in § 217.210(a) shall 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 these regulations; 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 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 217.216 for the activity identified in § 217.210(a) may be modified by NMFS under the following circumstances:

(1) HRCF may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with NMFS 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 HRCF's monitoring from previous years;

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

(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) 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 217.216, 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.

§§ 217.218–217.219 [Reserved]

Subpart X [Reserved]

Subparts Z–[Reserved]

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

Subpart A—Taking and Importing Marine Mammals Incidental to U.S. Navy Construction at Naval Station Norfolk in Norfolk, Virginia

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- 218.90 Specified activity and geographical region.
- 218.91 Effective dates.
- 218.92 Permissible methods of taking.
- 218.93 Prohibitions.
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- 218.140 Specified activity and geographical region.
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- 218.230 Specified activity, level of taking, and species/stocks.
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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.

Subpart A—Taking and Importing Marine Mammals Incidental to U.S. Navy Construction at Naval Station Norfolk in Norfolk, Virginia

SOURCE: 86 FR 24356, May 6, 2021, unless otherwise noted.

EFFECTIVE DATE NOTE: At 86 FR 24356, May 6, 2021, subpart A was added, effective June 7, 2021, to June 7, 2026.

§ 218.1 Specified activity and 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 construction activities including marine structure maintenance, pile replacement, and select waterfront improvements at Naval Station (NAVSTA) Norfolk.

(b) The taking of marine mammals by the Navy may be authorized in a Letter of Authorization (LOA) only if it occurs at NAVSTA Norfolk and adjacent Navy facilities.

§ 218.2 Effective dates.

Regulations in this subpart are effective from June 7, 2021 to June 7, 2026.

§ 218.3 Permissible methods of taking.

Under an LOA issued pursuant to §§ 216.106 of this chapter and 218.7, the Holder of the LOA (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in § 218.1(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 applicable LOA.

§ 218.4 Prohibitions.

(a) Except for the takings contemplated in § 218.3 and authorized by a LOA issued under §§ 216.106 of this chapter and 218.7, it is unlawful for any person to do any of the following in connection with the activities described in § 218.1 may:

(1) 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 § 218.7;

(2) Take any marine mammal not specified in such LOA;

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(3) Take any marine mammal specified in such LOA in any manner other than as specified;

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

(5) Take a marine mammal specified in such LOA 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.

(b) [Reserved]

§ 218.5 Mitigation requirements.

(a) When conducting the activities identified in § 218.20(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 218.7 must be implemented. These mitigation measures shall include but are not limited to:

(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;

(3) For in-water heavy machinery work other than pile driving, if a marine mammal comes within 10 m, the Navy shall cease operations and reduce vessel speed to the minimum level required to maintain steerage and safe working conditions;

(4) 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;

(5) For all pile driving activity, the Navy shall implement shutdown zones with radial distances as identified in a LOA issued under §§ 216.106 of this chapter and 218.7. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease;

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(6) The Navy shall deploy protected species observers (observers) as indicated in its Marine Mammal Monitoring Plan approved by NMFS;

(7) A minimum of three PSOs shall be stationed at the best vantage points practicable to monitor for marine mammals and implement shutdown/delay procedures during vibratory pile driving at Pier 3, Pier 12, and Craney Island, and at least four PSOs must be stationed at the best vantage points practicable during vibratory pile driving at Lambert's Point. For all other pile driving activities, a minimum of two observers shall be stationed at the best vantage points practicable to monitor for marine mammals and implement shutdown/delay procedures;

(8) 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. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. Monitoring shall occur throughout the time required to drive a pile. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones must commence. 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);

(9) 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 fifteen minutes have passed without re-detection of the animal;

(10) Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone;

(11) Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.*, fog, heavy rain, night), the Navy shall delay pile driving and removal until observers are confident marine mammals within the shutdown zone could be detected;

(12) 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 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;

(v) Personnel who are engaged in construction activities may not serve as observers.

(13) The Navy shall use soft start techniques for impact pile driving. Soft start for impact drivers requires the Navy and those persons it authorizes or funds to provide an initial set of three strikes at reduced energy, followed by a 30-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.

(b) [Reserved]

§218.6 Requirements for monitoring and reporting.

(a) The Navy shall submit a Marine Mammal Monitoring Plan to NMFS for approval in advance of construction.

(b) The Navy shall deploy at least three PSOs during vibratory pile driving at Pier 3, Pier 12, and Craney Island, and at least four PSOs during vibratory pile driving at Lambert's Point. For all other pile driving activities, the Navy shall deploy a minimum of two PSOs.

(c) Observers shall be trained in marine mammal identification and behaviors. Observers shall have no other construction-related tasks while conducting monitoring.

(d) For all pile driving activities, a minimum of two observers shall be stationed at the active pile driving site or in reasonable proximity in order to monitor the shutdown zone.

(e) The Navy shall monitor the Level B harassment zones (areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory pile driving) to the extent practicable and the shutdown zones. The Navy shall monitor at least a portion of the Level B harassment zone on all pile driving days.

(f) The Navy shall submit a draft monitoring report to NMFS within 45 work days of the completion of required monitoring for each marine structure maintenance, pile replacement, and upgrades project. The report must detail the monitoring protocol and summarize the data recorded during monitoring. If no comments are received from NMFS within 30 days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments. Specifically, the report must include:

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

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(2) 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);

(3) Environmental conditions during monitoring periods (at beginning and end of observer shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance (if less than the harassment zone distance);

(4) 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;

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

(6) Observer locations during marine mammal monitoring;

(7) 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);

(8) Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;

(9) Number of marine mammals detected within the harassment zones, by species;

(10) 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;

(11) 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

(12) Estimated percentage of the Level B harassment zone that was not visible.

(g) In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy shall report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and

to the Greater Atlantic Region New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the authorization. The Navy must not resume their activities until notified by NMFS.

(1) The report must include the following information:

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

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

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

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

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

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

(2) [Reserved]

§218.7 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 § 218.8.

(e) The LOA shall set forth the following information:

(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 30 days of a determination.

§ 218.8 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 218.7 for the activity identified in § 218.1(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, 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 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 § 218.7 for the activity identified in § 218.1(a) may be modified by NMFS under the following circumstances:

(1) 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; and

(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) 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 § 218.7, a 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.

§ 218.9 [Reserved]

Subpart B—Taking and Importing Marine Mammals; U.S. Navy's Point Mugu Sea Range (PMSR) Training and Testing Study Area

SOURCE: 87 FR 40960, July 8, 2022, unless otherwise noted.

EFFECTIVE DATE NOTE: 87 FR 40960, July 8, 2022, subpart B was added, effective July 7, 2022, through July 7, 2029.

§ 218.10 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 occur in the area described in paragraph (b) of this section and that occur 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

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PMSR Training and Testing Study Area. The PMSR Study Area is located adjacent to Los Angeles, Ventura, Santa Barbara, and San Luis Obispo Counties along the Pacific Coast of Southern California and includes a 36,000-square-mile sea range. The two primary components of the PMSR Complex are Special Use Airspace and the ocean Operating Areas.

(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) Air warfare;
 - (ii) Electronic warfare; and
 - (iii) Surface warfare.
- (2) *Testing*.
 - (i) Air warfare;
 - (ii) Electronic warfare; and
 - (iii) Surface warfare.

§218.11 Effective dates.

Regulations in this subpart are effective from July 7, 2022, through July 7, 2029.

§218.12 Permissible methods of taking.

(a) Under an LOA issued pursuant to §§216.106 of this subchapter and 218.16, the Holder of the LOA (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in §218.10(b) by Level A harassment and Level B harassment associated with the use of explosives and missile launch activities, 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 §218.10(c) is limited to the species and stocks listed in Table 1 of this section.

TABLE 1 TO §218.12(b)

Common name	Scientific name	Stock
Blue whale	<i>Balaenoptera musculus</i>	Eastern North Pacific.
Fin whale	<i>Balaenoptera physalus</i>	California, Oregon, and Washington.
Gray whale	<i>Eschrichtius robustus</i>	Eastern North Pacific.
Humpback whale	<i>Megaptera novaeangliae</i>	California, Oregon, Washington.
Minke whale	<i>Balaenoptera acutorostrata</i>	California, Oregon, and Washington.
Common Bottlenose dolphin	<i>Tursiops truncatus</i>	California, Oregon, and Washington Off-shore.
Dall's porpoise	<i>Phocoenoides dalli</i>	California, Oregon, and Washington.
Dwarf sperm whale	<i>Kogia sima</i>	California, Oregon, and Washington.
Long-beaked common dolphin	<i>Delphinus capensis</i>	California.
Mesoplodont beaked whales	<i>Mesoplodon spp</i>	California, Oregon, and Washington.
Northern right whale dolphin	<i>Lissodelphis borealis</i>	California, Oregon, and Washington.
Pacific white-sided dolphin	<i>Lagenorhynchus obliquidens</i>	California, Oregon, and Washington.
Pygmy killer whale	<i>Feresa attenuata</i>	
Pygmy sperm whale	<i>Kogia breviceps</i>	California, Oregon, and Washington.
Risso's dolphins	<i>Grampus griseus</i>	California, Oregon, and Washington.
Short-beaked common dolphin	<i>Delphinus delphis</i>	California, Oregon, and Washington.
Sperm whale	<i>Physeter macrocephalus</i>	California, Oregon, and Washington.
Striped dolphin	<i>Stenella coeruleoalba</i>	California, Oregon, and Washington.
Harbor seal	<i>Phoca vitulina</i>	California.
Northern elephant seal	<i>Mirounga angustirostris</i>	California.
California sea lion	<i>Zalophus californianus</i>	U.S. Stock.
Guadalupe fur seal	<i>Arctocephalus townsendi</i>	Mexico to California.

§218.13 Prohibitions.

Except for incidental takings contemplated in §218.12(a) and authorized by an LOA issued under §§216.106 of this chapter and 218.16, it shall be unlawful for any person to do any of the following in connection with the activities listed in §218.10(c):

(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 chapter and 218.16;

(b) Take any marine mammal not specified in §218.12(b);

(c) Take any marine mammal specified in §218.12(b) in any manner other than as specified in the LOA issued under §§216.106 of this chapter and 218.16; or

(d) Take a marine mammal specified in § 218.12(b) if NMFS determines such taking is having, or may have, more than a negligible impact on the species or stock concerned.

§ 218.14 Mitigation requirements.

When conducting the activities identified in § 218.10(c), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 218.16 will be implemented. These mitigation measures include, but are not limited to:

(a) *Procedural mitigation.* Procedural mitigation is mitigation that the Navy will implement whenever and wherever an applicable training or testing activity takes place within the PMSR Study Area for each applicable activity category or stressor category and includes acoustic stressors (*i.e.*, weapons firing noise), explosive stressors (*i.e.*, medium-caliber and large-caliber projectiles, missiles and rockets, bombs), and physical disturbance and strike stressors (*i.e.*, vessel movement; towed in-water devices (*e.g.*, surface targets); small-, medium-, and large-caliber non-explosive practice munitions; non-explosive missiles and rockets; and non-explosive bombs).

(1) *Environmental awareness and education.* 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, and U.S. Navy Protective Measures Assessment Protocol.

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

(i) *Number of Lookouts and observation platform.* One Lookout will be positioned on the ship conducting the firing. Depending on the activity, the Lookout could be the same as the one provided for under paragraph (a)(7)(i) of this section.

(ii) *Mitigation zone and requirements.* The mitigation zone will be 30 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 will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will relocate or delay the start of weapons firing.

(B) *During the activity.* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Determined to have exited.* The animal is determined to have exited the mitigation zone based on its course, speed, and movement away from weapons firing noise;

(3) *Clear from additional sightings.* The mitigation zone has been clear from any additional sightings for 30 minutes (min); or

(4) *Firing ship transit.* 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.

(3) *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 will 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 paragraph (a)(2)(i) of this section. If additional platforms are participating in the activity, Navy personnel positioned on those assets (*e.g.*, safety observers, evaluators) will support observing the

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

(ii) *Mitigation zone and requirements.* The relevant mitigation zones are as follows: 200 yd (182.88 m) around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles; 600 yd (548.64 m) around the intended impact location for surface-to-surface activities using explosive medium-caliber projectiles; and 1,000 yd (914.4 m) around the intended impact location for surface-to-surface activities using explosive large-caliber projectiles.

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

(B) *During the activity.* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Determined to have exited.* The animal is determined to have exited the mitigation zone based on a its course, speed, and movement away from the intended impact location;

(3) *Clear from additional sightings.* 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

(4) *Impact location transit.* 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.

(D) *After completion of the activity (e.g., prior to maneuvering off station).* Navy personnel will, 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 will 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.

(4) *Explosive missiles and rockets.* Aircraft-deployed explosive missiles and rockets. Mitigation applies to activities using a maritime surface target at ranges up to 75 nmi (139 km).

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

(ii) *Mitigation zone and requirements.* The relevant mitigation zones are as follows: 900 yd (822.96 m) around the intended impact location for missiles or rockets with 0.6–20 lb net explosive weight; and 2,000 yd (1,828.8 m) around the intended impact location for missiles with 21–500 lb net explosive weight.

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

(B) *During the activity.* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will cease firing.

(C) *Commencement/recommencement conditions after a marine mammal sighting before or during the activity.* Navy

personnel will 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Determined to have exited.* The animal is determined to have exited the mitigation zone based on its course, speed, and movement away from the intended impact location; or

(3) *Clear from additional sightings.* 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 will, 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 will 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.

(5) *Explosive bombs.* Mitigation applies to activities using a maritime surface target at ranges up to 75 nmi (139 km).

(i) *Number of Lookouts and observation platform.* One Lookout will 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) will support observing the relevant mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* The relevant mitigation zones is 2,500 yd (2,286 m) around the intended target.

(A) *Prior to the initial start of the activity* (e.g., when arriving on station). Navy personnel will observe the mitigation

zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will relocate or delay the start of bomb deployment.

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

(C) *Commencement/recommencement conditions after a marine mammal sighting before or during the activity.* Navy personnel will 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Determined to have exited.* The animal is determined to have exited the mitigation zone based on its course, speed, and movement away from the intended target;

(3) *Clear from additional sightings.* The mitigation zone has been clear from any additional sightings for 10 min; or

(4) *Intended target transit.* 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 will, 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 will 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.

(6) *Vessel movement.* The mitigation will not be required 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 will be on the vessel that is underway.

(ii) *Mitigation zone and requirements.* The relevant mitigation zones are as follows: 500 yd (457.2 m) around whales; and 200 yd (182.88 m) around all other marine mammals (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels).

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

(B) [Reserved]

(iii) *Reporting.* If a marine mammal vessel strike occurs, Navy personnel will follow the established incident reporting procedures.

(7) *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 will be positioned on the platform conducting the activity. Depending on the activity, the Lookout could be the same as the one described in paragraph (a)(2)(i) of this section.

(ii) *Mitigation zone and requirements.* The relevant mitigation zone is 200 yd (182.88 m) around the intended impact location.

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

(B) *During the activity.* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will cease firing.

(C) *Commencement/recommencement conditions after a marine mammal sighting before or during the activity.* Navy personnel will 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Determined to have exited.* The animal is determined to have exited the mitigation zone based on its course, speed, and movement away from the intended impact location;

(3) *Clear of additional sightings.* The mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing;

(4) *Impact location transit.* 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.

(8) *Non-explosive missiles and rockets.* Aircraft-deployed non-explosive missiles and rockets. Mitigation applies to activities using a maritime surface target at ranges of up to 75 nmi (139 km).

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

(ii) *Mitigation zone and requirements.* The relevant mitigation zone is 900 yd (822.96 m) 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 will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will relocate or delay the start of firing.

(B) *During the activity.* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will cease firing.

(C) *Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity.* Navy personnel will 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Determined to have exited.* The animal is determined to have exited the mitigation zone based on its course, speed, and movement away from the intended impact location; or

(3) *Clear of additional sightings.* 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.

(9) *Non-explosive bombs.* Mitigation applies to activities using a maritime surface target at ranges up to 75 nmi (139 km).

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

(ii) *Mitigation zone and requirements.* The relevant mitigation zone is 900 yd (822.96 m) around the intended target.

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

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

(C) *Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity.* Navy personnel will 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Determined to have exited.* The animal is determined to have exited the

mitigation zone based its course, speed, and movement away from the intended target or minefield location;

(3) *Clear of additional sightings.* The mitigation zone has been clear from any additional sightings for 10 min; or

(4) *Intended target transit.* 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.

(10) *Target and missile launches from San Nicolas Islands (SNI).* Target and missile launch activities from SNI.

(i) *Mitigation zone and requirements.* 305 m (1,000 ft) over pinniped haulouts. Missiles will not cross over pinniped haulouts at elevations less than 305 m (1,000 ft) above the haulout. All manned aircraft and helicopter flight paths will maintain a minimum distance of 305 m (1,000 ft) from recognized seal haulouts and rookeries, except in emergencies or for real-time security incidents. For unmanned aircraft systems (UAS), the following minimum altitudes will be maintained over pinniped haulout areas and rookeries: Class 0-2 UAS will maintain a minimum altitude of 300 ft; Class 3 UAS will maintain a minimum altitude of 500 ft; Class 4 or 5 UAS will not be flown below 1,000 ft.

(A) *Pinniped haulouts.* Navy personnel will not enter pinniped haulouts or rookeries. Personnel may be adjacent to pinniped haulouts and rookeries prior to and following a launch for monitoring purposes.

(B) *Number of launch events.* Navy will not conduct more than 40 launch events annually. Up to 10 launch events of the 40 annual launch events may occur at night.

(C) *Launches during the peak pinniped pupping season.* Launches will be scheduled to avoid peak pinniped pupping periods between January and July, to the maximum extent practicable.

(D) *Unauthorized species.* If a species for which authorization has not been granted is taken, or a species for which authorization has been granted but the authorized takes are met, the Navy will consult with NMFS to determine how to proceed.

(E) *Review of launch procedures.* The Navy will review the launch procedure

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and monitoring methods, in cooperation with NMFS, if any incidents of injury or mortality of a pinniped are discovered during post-launch surveys, or if surveys indicate possible effects to the distribution, size, or productivity of the affected pinniped populations as a result of the specified activities. If necessary, appropriate changes will be made through modification to the LOA prior to conducting the next launch of the same vehicle.

(ii) [Reserved]

(b) *Seasonal awareness messages.* In addition to procedural mitigation, Navy personnel will implement seasonal awareness notification messages throughout the PMSR Study Area to avoid interaction with large whales during transit.

(1) *Blue whale awareness notification message.* (i) Navy personnel will issue a seasonal awareness notification message to alert Navy ships and aircraft operating throughout the PMSR Study Area to the possible presence of increased concentrations of blue whales June 1 through October 31.

(ii) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel will instruct vessels to remain vigilant to the presence of blue whales that, when concentrated seasonally, may become vulnerable to vessel strikes.

(iii) Navy personnel will 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.

(2) *Gray whale awareness notification message.* (i) Navy personnel will issue a seasonal awareness notification message to alert Navy ships and aircraft operating through the PMSR Study Area to the possible presence of increased concentrations of gray whales November 1 through March 31.

(ii) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel will instruct vessels to remain vigilant to the presence of gray whales that, when concentrated seasonally, may become vulnerable to vessel strikes.

(iii) Navy personnel will 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.

(3) *Fin whale awareness notification message.* (i) Navy personnel will issue a seasonal awareness notification message to alert Navy ships and aircraft operating throughout the PMSR Study Area to the possible presence of increased concentrations of fin whales November 1 through May 31.

(ii) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel will instruct vessels to remain vigilant to the presence of fin whales that, when concentrated seasonally, may become vulnerable to vessel strikes.

(iii) Navy personnel will 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.

§218.15 Requirements for monitoring and reporting.

(a) *Unauthorized take.* Navy personnel will notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in §218.10 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 will conduct all monitoring and reporting required under the LOA. The Navy will coordinate and discuss with NMFS how monitoring in the PMSR Study Area could contribute to the Navy's Marine Species Monitoring Program.

(c) *Notification of injured, live stranded, or dead marine mammals.* Navy personnel will 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-testing-and-training-activities-point-mugu-sea-range.

(d) *Pinniped monitoring plan on SNI.* In consultation with NMFS, the Navy will implement a monitoring plan for beaches exposed to missile launch noise with the goal of assessing baseline pinniped distribution/abundance and potential changes in pinniped use of these beaches after launch events. Marine mammal monitoring shall include multiple surveys (e.g., time-lapse photography) during the year that record the species, number of animals, general behavior, presence of pups, age class, gender and reactions to launch noise or other natural or human caused disturbances, in addition to environmental conditions that may include tide, wind speed, air temperature, and swell. In addition, video and acoustic monitoring of up to three pinniped haulout areas and rookeries will be conducted during launch events that include missiles or targets that have not been previously monitored using video and acoustic recorders for at least three launch events. Video monitoring cameras would be either high-definition video cameras, or Forward-Looking Infrared Radiometer (FLIR) thermal imaging cameras for night launch events.

(e) *Annual pinniped monitoring report on SNI.* The Navy will submit an annual report to NMFS of the SNI rocket and missile launch activities. The draft annual monitoring report will be submitted to the Director, Office of Protected Resources, NMFS, within 3 months after the end of the reporting year. NMFS will submit comments or questions on the draft monitoring 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 submission of the draft if NMFS does not provide comments on the draft report. The report will summarize the launch events conducted during the year; assess any direct impacts to pinnipeds from launch events; assess any cumulative impacts on pinnipeds from launch events; and, summarize pinniped monitoring and research activities conducted on SNI and any findings related to effects of launch noise on pinniped populations.

(f) *Annual PMSR Study Area Training and Testing Activity Report.* Each year, the Navy will submit a detailed report PMSR (Annual Training and Testing Activity Report) to the Director, Office of Protected Resources, NMFS, within 3 months after the one-year anniversary of the date of issuance of the LOA. NMFS will submit comments or questions on the report, if any, within 1 month of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 1 month after submission of the draft if NMFS does not provide comments on the draft report. The annual report will contain information on all sound sources used (total hours or quantity of each bin; total annual number of each type of explosive events; and total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive bin). The annual report will also contain both the current year's data as well as explosive use quantity from previous years' reports. Additionally, if there were any changes to the explosive 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 2022 PMSR Final Environment Impact Statement/Overseas Environmental Impact Statement ("FEIS/OEIS"; available at <https://pmsr-eis.com/>) and the analysis in the Marine Mammal Protection Act (MMPA) final rule (87 FR [INSERT FR PAGE NUMBER], July 8, 2022). The annual report will also include the details regarding specific requirements associated with monitoring on SNI. The final annual/close-out report at the conclusion of the authorization period (year 7) 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 7-year annual use compared to 7-year authorization. The detailed reports will contain the information identified in paragraphs (f)(1) and (2) of this section.

(1) *Explosives.* This section of the report will include the following information for explosive activities completed that year.

(i) Activity information gathered for each explosive event.

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(A) Location by Special Use Airspace (*e.g.*, Warning Area).

(B) Date and time exercise began and ended.

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

(D) Total annual expended/detonated ordnance (*i.e.*, missile, bombs *etc.*) number and types of explosive source bins detonated.

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

(F) 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 (183 m), 200 to 500 yd (183 m to 457 m), 500 to 1,000 yd (457 m to 914 m), 1,000 to 2,000 yd (914 m to 1,829 m), or greater than 2,000 yd (1,829 m).

(J) Lookouts will 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 will 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.

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

(i) Total annual quantity (per the LOA) of each explosive bin; and

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

(g) *Final close-out report.* The final (year 7) draft annual/close-out report will be submitted within 3 months after the expiration of this subpart to the Director, Office of Protected Resources, NMFS. 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.

§218.16 Letters of Authorization.

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

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed between October 31, 2021, and October 30, 2028.

(c) If an LOA expires prior to October 30, 2028, 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 §218.17(c)(1)) required by an LOA issued under this subpart, the Navy will apply for and obtain a modification of the LOA as described in §218.17.

(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 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 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.

§ 218.17 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 218.16 for the activity identified in § 218.10(c) may 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 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 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 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 218.16 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 reason-

able 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 a new 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 chapter and 218.16, an LOA may be modified without prior notice or opportunity for public comment. Notice will be published in the FEDERAL REGISTER within 30 days of the action.

§§ 218.18–218.19 [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)

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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

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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.

(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

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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 bubblers, and shall require that construction contractors submit an inspection/performance report for approval 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

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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 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 Re-

sources (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.,

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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

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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,

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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.

(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);

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(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:

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(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 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]

Subparts E–F [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.

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(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.

(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 harassment. 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

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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 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, scav-

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enger 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:

(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 practicality 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.

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(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.

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(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.

§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.

TABLE 1 TO § 218.72—Continued

Species	Stock
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.
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 ≥ 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 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.

(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 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.

(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 ac-

tivity (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 per-

sonnel 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 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 (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 Look-outs and observation platform.* One Look-out 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 deto-

nations 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 mis-

siles 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 per-

sonnel 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.

(i) [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.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/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 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, 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 cur-

rent 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.

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(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 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 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

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(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
Suborder Mysticeti (baleen whales)	
<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
	NSD.
Minke whale	Canadian East Coast.
Fin whale	Western North Atlantic.
Humpback whale	Gulf of Maine.
Sei whale	Nova Scotia.
Suborder Odontoceti (toothed whales)	
<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.

TABLE 1 TO § 218.82—Continued

Species	Stock
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.
Family <i>Phocoenidae</i> (porpoises):	
Harbor porpoise	Gulf of Maine/Bay of Fundy.
Suborder Pinnipedia	
Family <i>Phocidae</i> (true seals):	
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 con-

trolled 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); 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 ≥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 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) *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 vege-

tation; 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 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), 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 support 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 observing 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 mitiga-

tion 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.

(ii) [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. 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 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.

(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.

(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.

§ 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.

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- (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 (nmi²) 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 pier-side 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:

§ 218.94

(a) Violate, or fail to comply with, the terms, conditions, and requirements 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 Spe-

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cies 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 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 additional 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 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.

(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 sup-

port 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 observation 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 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 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 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 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 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

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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.

(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 submittal 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 submittal 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.

(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 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

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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

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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)

SOURCE: 85 FR 72459, Nov. 12, 2020, unless otherwise noted.

EFFECTIVE DATE NOTE: At 85 FR 72459, Nov. 12, 2020, subpart O was revised, effective Nov. 9, 2020, to Nov. 8, 2027

§218.140 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 NWT Study Area. The NWT Study Area 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 eastern boundary of the Offshore Area portion of the Study Area is 12 nautical miles (nmi) off the coastline for most of the Study Area starting south of W-237, including southern Washington, Oregon, and Northern California. The Offshore Area includes the ocean all the way to the coastline only along that part of the Washington coast that lies beneath the airspace of W-237 and the Olympic Military Operations Area. The Quinault Range Site is a defined area of sea space where training and testing is conducted. The Quinault Range Site coincides with the boundaries of W-237A and also includes a surf zone component. The surf zone component extends north to south 5 nmi

along the eastern boundary of W-237A, extends approximately 3 nmi to shore along the mean lower low water line, and encompasses 1 mile (1.6 kilometers) of shoreline at Pacific Beach, Washington. The Study Area includes four existing range complexes and facilities: the Northwest Training Range Complex (NWTRC), the Keyport Range Complex, the Carr Inlet Operations Area, and the Southeast Alaska Acoustic Measurement Facility (SEAFAC). In addition to these range complexes, the Study Area also includes Navy pierside locations where sonar maintenance and testing occurs as part of overhaul, modernization, maintenance, and repair activities at Naval Base Kitsap, Bremerton; Naval Base Kitsap, Bangor; and Naval Station Everett.

(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) Anti-submarine warfare;
- (2) Mine warfare;
- (3) Surface warfare;
- (4) Unmanned systems;
- (5) Vessel evaluation; and

(6) Other training and testing activities.

§ 218.141 Effective dates.

Regulations in this subpart are effective from November 9, 2020, through November 8, 2027.

§ 218.142 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 of this chapter and 218.146, the Holder of the LOAs (hereinafter "Navy") may incidentally, but not intentionally, take marine mammals within the area described in § 218.140(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, 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 § 218.140(c) is limited to the following species:

TABLE 1 TO PARAGRAPH (b)

Species	Stock
Blue whale	Eastern North Pacific.
Fin whale	Northeast Pacific.
Fin whale	California/Oregon/Washington.
Sei whale	Eastern North Pacific.
Minke whale	Alaska.
Minke whale	California/Oregon/Washington.
Humpback whale	Central North Pacific.
Humpback whale	California/Oregon/Washington.
Gray whale	Eastern North Pacific.
Bottlenose dolphin	California/Oregon/Washington Offshore.
Killer whale	Alaska Resident.
Killer whale	Eastern North Pacific Offshore.
Killer whale	West Coast Transient.
Killer whale	Southern Resident.
Northern right whale dolphin	California/Oregon/Washington.
Pacific white-sided dolphin	North Pacific.
Pacific white-sided dolphin	California/Oregon/Washington.
Risso's dolphin	California/Oregon/Washington.
Short-beaked common dolphin	California/Oregon/Washington.
Short-finned pilot whale	California/Oregon/Washington.
Striped dolphin	California/Oregon/Washington.
Pygmy sperm whale	California/Oregon/Washington.
Dwarf sperm whale	California/Oregon/Washington.
Dall's porpoise	Alaska.
Dall's porpoise	California/Oregon/Washington.
Harbor porpoise	Southeast Alaska.
Harbor porpoise	Northern Oregon & Washington Coast.
Harbor porpoise	Northern California/Southern Oregon.
Harbor porpoise	Washington Inland Waters.
Sperm whale	California/Oregon/Washington.
Baird's beaked whale	California/Oregon/Washington.
Cuvier's beaked whale	California/Oregon/Washington.
<i>Mesoplodon</i> species	California/Oregon/Washington.

TABLE 1 TO PARAGRAPH (b)—Continued

Species	Stock
California sea lion	U.S. Stock.
Steller sea lion	Eastern U.S.
Guadalupe fur seal	Mexico.
Northern fur seal	Eastern Pacific.
Northern fur seal	California.
Harbor seal	Southeast Alaska—Clarence Strait.
Harbor seal	Oregon & Washington Coastal.
Harbor seal	Washington Northern Inland Waters.
Harbor seal	Hood Canal.
Harbor seal	Southern Puget Sound.
Northern elephant seal	California.

§ 218.143 Prohibitions.

(a) Notwithstanding incidental takings contemplated in § 218.142(a) and authorized by LOAs issued under §§ 216.106 of this chapter and 218.146, no person in connection with the activities listed in § 218.140(c) may:

(1) 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 218.146;

(2) Take any marine mammal not specified in § 218.142(b);

(3) Take any marine mammal specified in § 218.142(b) in any manner other than as specified in the LOAs; or

(4) Take a marine mammal specified in § 218.142(b) if NMFS determines such taking results in more than a negligible impact on the species or stock of such marine mammal.

(b) [Reserved]

§ 218.144 Mitigation requirements.

(a) When conducting the activities identified in § 218.140(c), the mitigation measures contained in any LOAs issued under §§ 216.106 of this chapter and 218.146 must be implemented. These mitigation measures include, but are not limited to:

(1) *Procedural mitigation.* Procedural mitigation is mitigation that the Navy must implement whenever and wherever an applicable training or testing activity takes place within the NWT Study Area for each applicable activity category or stressor category and includes acoustic stressors (*i.e.*, active sonar, weapons firing noise), explosive stressors (*i.e.*, sonobuoys, torpedoes, medium-caliber and large-caliber projectiles, missiles, bombs, Mine Coun-

termeasure and Neutralization activities, mine neutralization involving Navy divers), 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, non-explosive bombs and mine shapes).

(i) *Environmental awareness and education.* Appropriate Navy personnel (including civilian personnel) involved in mitigation and training or testing activities will complete the environmental compliance training modules identified in their career path training plan, as specified in the LOAs.

(ii) *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).

(A) *Number of Lookouts and observation platform for hull-mounted sources.* For hull-mounted sources, the Navy must have 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) *Number of Lookouts and observation platform for sources not hull-mounted.* For sources that are not hull-mounted, the Navy must have one Lookout on the ship or aircraft conducting the activity.

(C) *Prior to activity.* Prior to the initial start of the activity (e.g., when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or a marine mammal is observed, Navy personnel must relocate or delay the start of active sonar transmission until the mitigation zone is clear of floating vegetation or until the conditions in paragraph (a)(1)(ii)(F) are met for marine mammals.

(D) *During activity for low-frequency active sonar at 200 decibels (dB) and hull-mounted mid-frequency active sonar.* During the activity, for low-frequency active sonar at 200 dB and hull-mounted mid-frequency active sonar, Navy personnel must observe the following mitigation zones for marine mammals.

(1) *Powerdowns for marine mammals.* Navy personnel must power down active sonar transmission by 6 dB if marine mammals are observed within 1,000 yard (yd) of the sonar source; Navy personnel must power down an additional 4 dB (10 dB total) if marine mammals are observed within 500 yd of the sonar source.

(2) *Shutdowns for marine mammals.* Navy personnel must cease transmission if cetaceans are observed within 200 yd of the sonar source in any location in the Study Area; Navy personnel must cease transmission if pinnipeds in the NWTT Offshore Area or Western Behm Canal are observed within 200 yd of the sonar source and cease transmission if pinnipeds in NWTT Inland Waters are observed within 100 yd of the sonar source (except if hauled out on, or in the water near, man-made structures and vessels).

(E) *During activity for low-frequency active sonar below 200 dB, mid-frequency active sonar not hull-mounted, and high-frequency sonar.* During the activity,

for low-frequency active sonar below 200 dB, mid-frequency active sonar sources that are not hull-mounted, and high-frequency sonar, Navy personnel must observe the following mitigation zones for marine mammals. Navy personnel must cease transmission if cetaceans are observed within 200 yd of the sonar source in any location in the Study Area. Navy personnel must cease transmission if pinnipeds in the NWTT Offshore Area or Western Behm Canal are observed within 200 yd of the sonar source. Navy personnel must cease transmission if pinnipeds in NWTT Inland Waters are observed within 100 yd of the sonar source (except if hauled out on, or in the water near, man-made structures and vessels).

(F) *Commencement/recommencement conditions after marine mammal sighting before or during 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Thought to have exited.* 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;

(3) *Clear from additional sightings.* 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;

(4) *Sonar source transit.* 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

(5) *Bow-riding dolphins.* For activities using hull-mounted sonar, the Lookout concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave, and are therefore out of the main transmission axis of the sonar (and there are no other marine mammal sightings within the mitigation zone).

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

(A) *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 described for “Explosive medium-caliber and large-caliber projectiles” or for “Small-, medium-, and large-caliber non-explosive practice munitions” in paragraphs (a)(1)(vi)(A) and (a)(1)(xiii)(A) of this section.

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

(C) *Prior to activity.* Prior to the initial start of the activity, Navy personnel must observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or a marine mammal is observed, Navy personnel must relocate or delay the start of weapons firing until the mitigation zone is clear of floating vegetation or until the conditions in paragraph (a)(1)(iii)(E) of this section are met for marine mammals.

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

(E) *Commencement/recommencement conditions after marine mammal sighting before or during 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Thought to have exited.* 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;

(3) *Clear from additional sightings.* The mitigation zone has been clear from any additional sightings for 30 min; or

(4) *Firing ship transit.* 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.

(iv) *Explosive sonobuoys.*

(A) *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, including marine mammals, while performing their regular duties.

(B) *Mitigation zone.* 600 yd around an explosive sonobuoy.

(C) *Prior to activity.* 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 conduct passive acoustic monitoring for marine mammals; personnel must use information from detections to assist visual observations. Navy personnel also must visually observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or a marine mammal is observed, Navy personnel must relocate or delay the start of sonobuoy or source/receiver pair detonations until the mitigation zone is clear of floating vegetation or until the conditions in paragraph (a)(1)(iv)(E) of this section are met for marine mammals.

(D) *During activity.* 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.

(E) *Commencement/recommencement conditions after marine mammal sighting before or during 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Thought to have exited.* 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

(3) *Clear from additional sightings.* 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 activity.* 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.

(v) *Explosive torpedoes.*

(A) *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, including marine mammals, while performing their regular duties.

(B) *Mitigation zone.* 2,100 yd around the intended impact location.

(C) *Prior to activity.* 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; personnel must use the information from detections to assist visual observations. Navy personnel also must visually observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or a marine mammal is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear of floating vegetation or until the conditions in paragraph (a)(1)(v)(E) of this section are met for marine mammals.

(D) *During activity.* 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 marine mammal sighting before or during 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Thought to have exited.* 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

(3) *Clear from additional sightings.* 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 activity.* 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.

(vi) *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.

(A) *Number of Lookouts and observation platform.* One Lookout must be on the vessel 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)(1)(iii)(A) 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, including marine mammals, while performing their regular duties.

(B) *Mitigation zones.* 600 yd around the intended impact location for explosive medium-caliber projectiles. 1,000 yd around the intended impact location for explosive large-caliber projectiles.

(C) *Prior to activity.* Prior to the initial start of the activity (e.g., when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or a marine mammal is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear of floating vegetation or until the conditions in paragraph (a)(1)(vi)(E) of this section are met for marine mammals.

(D) *During activity.* 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 marine mammal sighting before or during 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Thought to have exited.* 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;

(3) *Clear of additional sightings.* The mitigation zone has been clear from any additional sightings for 30 min for vessel-based firing; or

(4) *Impact location transit.* 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.

(F) *After activity.* 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.

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

(A) *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, including marine mammals, while performing their regular duties.

(B) *Mitigation zone.* 2,000 yd around the intended impact location.

(C) *Prior to activity.* 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 and marine mammals; if floating vegetation or a marine mammal is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear of floating vegetation or until the conditions in paragraph (a)(1)(vii)(E) of this section are met for marine mammals.

(D) *During activity.* 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 marine mammal sighting before or during 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Thought to have exited.* 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

(3) *Clear of additional sightings.* 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 activity.* 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.

(viii) *Explosive bombs.*

(A) *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, including marine mammals, while performing their regular duties.

(B) *Mitigation zone.* 2,500 yd around the intended target.

(C) *Prior to activity.* Prior to the initial start of the activity (e.g., when arriving on station), Navy personnel must observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or a marine mammal is observed, Navy personnel must relocate or delay the start of bomb deployment until the mitigation zone is clear of floating vegetation or until the conditions in paragraph (a)(1)(viii)(E) of this section are met for marine mammals.

(D) *During activity.* 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.

(E) *Commencement/recommencement conditions after marine mammal sighting before or during 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Thought to have exited.* 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;

(3) *Clear from additional sightings.* The mitigation zone has been clear from any additional sightings for 10 min; or

(4) *Intended target transit.* 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.

(F) *After activity.* 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.

(ix) *Explosive Mine Countermeasure and Neutralization activities.*

(A) *Number of Lookouts and observation platform.* One Lookout must be positioned on a vessel or in an aircraft when implementing the smaller mitigation zone. Two Lookouts must be positioned (one in an aircraft and one on a small boat) when implementing the larger mitigation zone. 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, including marine mammals, while performing their regular duties.

(B) *Mitigation zones.* 600 yd around the detonation site for activities using ≤5 lb net explosive weight. 2,100 yd around the detonation site for activities using >5–60 lb net explosive weight.

(C) *Prior to activity.* 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 and marine mammals; if floating vegetation or a marine mammal is observed, Navy personnel must relocate or delay the start of detonations until the mitigation zone is clear of floating vegetation or until the conditions in paragraph (a)(1)(ix)(E) are met for marine mammals.

(D) *During activity.* During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations. Navy personnel must use the smallest practicable charge size for each activity. Navy personnel must conduct activities in daylight hours only and in Beaufort Sea state number 3 conditions or less.

(E) *Commencement/recommencement conditions after marine mammal sighting before or during 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Thought to have exited.* 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

(3) *Clear from additional sightings.* 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 activity.* 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.

(x) *Explosive mine neutralization activities involving Navy divers.*

(A) *Number of Lookouts and observation platform.*

(1) *Lookouts on small boats.* Two Lookouts on two small boats with one Lookout each, one of which must be a Navy biologist.

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

(3) *Additional platforms.* 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, including marine mammals, while performing their regular duties.

(B) *Mitigation zone.* 500 yd around the detonation site during activities using > 0.5–2.5 lb net explosive weight.

(C) *Prior to activity.* Prior to the initial start of the activity (starting 30 min before the first planned detonation), Navy personnel must observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or a marine mammal is observed, Navy personnel must relocate or delay the start of detonations until the mitigation zone is clear of floating vegetation or until the conditions in

paragraph (a)(1)(x)(E) are met for marine mammals. A Navy biologist must serve as the lead Lookout and must make the final determination that the mitigation zone is clear of any floating vegetation or marine mammals, prior to the commencement of a detonation. The Navy biologist must maintain radio communication with the unit conducting the event and the other Lookout.

(D) *During activity.* During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations. To the maximum extent practicable depending on mission requirements, safety, and environmental conditions, Navy personnel must position boats near the midpoint 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, 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. Navy personnel must only use positively controlled charges (*i.e.*, no time-delay fuses). Navy personnel must use the smallest practicable charge size for each activity. All activities must be conducted in Beaufort sea state number 2 conditions or better and must not be conducted in low visibility conditions.

(E) *Commencement/recommencement conditions after marine mammal sighting before or during 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 to ensure the mitigation zone is clear for 30 min) or during the activity (by not recommencing detonations) until one of the following conditions has been met:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Thought to have exited.* 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

(3) *Clear from additional sightings.* The mitigation zone has been clear from any additional sightings for 30 min.

(F) *After activity.* After each detonation and completion of an activity, the Navy must observe for marine mammals for 30 min in the vicinity of where detonations occurred and immediately downstream of the detonation location; 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.

(xi) *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, and during Transit Protection Program exercises or other events involving escort vessels); the vessel is submerged or operated autonomously; or when impractical based on mission requirements (*e.g.*, during test body retrieval by range craft).

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

(B) *Mitigation zones.*

(1) *Whales.* 500 yd around whales.

(2) *Marine mammals other than whales: Surface vessels.* 200 yd around marine mammals other than whales (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels) for surface vessels (which do not include small boats).

(3) *Marine mammals other than whales: Small boats.* 100 yd around marine mammals other than whales (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels) for small boats, such as range craft.

(C) *During 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.

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

(xii) *Towed in-water devices.* Mitigation applies to devices that are towed from a manned surface platform or manned aircraft, or when a manned support craft is already participating in an activity involving in-water devices being towed by unmanned platforms. The mitigation will not be applied if the safety of the towing platform or in-water device is threatened.

(A) *Number of Lookouts and observation platform.* One Lookout must be positioned on a manned towing platform or support craft.

(B) *Mitigation zones.*

(1) *Mitigation zone: In-water devices towed by aircraft or surface ships.* 250 yd around marine mammals (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels) for in-water devices towed by aircraft or surface ships.

(2) *Mitigation zone: In-water devices towed by small boats.* 100 yd around marine mammals (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels) for in-water devices towed by small boats, such as range craft.

(C) *During 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.

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

(A) *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)(1)(iii)(A) of this section.

(B) *Mitigation zone.* 200 yd around the intended impact location.

(C) *Prior to activity.* Prior to the initial start of the activity (*e.g.*, when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or a marine mammal is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear of floating vegetation or until the conditions in paragraph (a)(1)(xiii)(E) are met for marine mammals.

(D) *During activity.* 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 marine mammal sighting before or during 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Thought to have exited.* 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;

(3) *Clear of additional sightings.* 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

(4) *Impact location transit.* 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.

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

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

(B) *Mitigation zone.* 900 yd around the intended impact location.

(C) *Prior to activity.* 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 and marine

mammals; if floating vegetation or a marine mammal is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear of floating vegetation or until the conditions in paragraph (a)(1)(xiv)(E) of this section are met for marine mammals.

(D) *During activity.* 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 marine mammal sighting prior to or during 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Thought to have exited.* 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

(3) *Clear from additional sightings.* 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.

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

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

(B) *Mitigation zone.* 1,000 yd around the intended target.

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

paragraph (a)(1)(xv)(E) of this section are met for marine mammals.

(D) *During activity.* 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.

(E) *Commencement/recommencement conditions after marine mammal sighting prior to or during 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:

(1) *Observed exiting.* The animal is observed exiting the mitigation zone;

(2) *Thought to have exited.* 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;

(3) *Clear from additional sightings.* The mitigation zone has been clear from any additional sightings for 10 min; or

(4) *Intended target transit.* 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.

(2) *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.

(i) *Marine Species Coastal Mitigation Area (year round unless specified as seasonal).*

(A) Within 50 nmi from shore in the Marine Species Coastal Mitigation Area.

(1) *Prohibited activities.* The Navy must not conduct: Explosive training activities; explosive testing activities (with the exception of explosive Mine Countermeasure and Neutralization Testing activities); and non-explosive missile training activities.

(2) *Seasonal awareness notification messages.* The Navy must issue annual seasonal awareness notification messages to alert Navy ships and aircraft to the possible presence of increased concentrations of Southern Resident killer whales from December 1 to June 30, humpback whales from May 1 to December 31, and gray whales from May 1 to November 30. For safe navigation and to avoid interactions with large whales, the Navy must instruct vessels to remain vigilant to the presence of Southern Resident killer whales, humpback whales, and gray whales that may be vulnerable to vessel strikes or potential impacts from training and testing activities. 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.

(B) Within 20 nmi from shore in the Marine Species Coastal Mitigation Area.

(1) *Surface ship hull-mounted MF1 mid-frequency active sonar.* The Navy must not conduct more than a total of 33 hours of surface ship hull-mounted MF1 mid-frequency active sonar during testing annually within 20 nmi from shore in the Marine Species Coastal Mitigation Area, in the Juan de Fuca Eddy Marine Species Mitigation Area, and in the Olympic Coast National Marine Sanctuary Mitigation Area combined.

(2) *Mine Countermeasure and Neutralization Testing from July 1 to September 30.* To the maximum extent practical, the Navy must conduct explosive Mine Countermeasure and Neutralization Testing from July 1 to September 30 when operating within 20 nmi from shore.

(3) *Mine Countermeasure and Neutralization Testing from October 1 to June 30.* From October 1 to June 30, the Navy must not conduct more than one explosive Mine Countermeasure and Neutralization Testing event, not to exceed the use of 20 explosives from bin E4 and 3 explosives from bin E7 annually, and not to exceed the use of 60 explosives from bin E4 and 9 explosives from bin

E7 over the seven-year period of the rule.

(4) *Large-caliber gunnery training activities and non-explosive bombing training.* The Navy must not conduct non-explosive large-caliber gunnery training activities and non-explosive bombing training activities.

(C) Within 12 nmi from shore in the Marine Species Coastal Mitigation Area.

(1) *Anti-submarine warfare tracking exercise—helicopter,—maritime patrol aircraft,—ship, or—submarine training and anti-submarine warfare torpedo exercise—submarine training.* The Navy must not conduct Anti-Submarine Warfare Tracking Exercise—Helicopter,—Maritime Patrol Aircraft,—Ship, or—Submarine training activities (which involve the use of mid-frequency or high-frequency active sonar) or non-explosive Anti-Submarine Warfare Torpedo Exercise—Submarine training activities (which involve the use of mid-frequency or high-frequency active sonar).

(2) *Unmanned Underwater Vehicle Training.* The Navy must not conduct more than one Unmanned Underwater Vehicle Training event within 12 nmi from shore at the Quinault Range Site. In addition, Unmanned Underwater Vehicle Training events within 12 nmi from shore at the Quinault Range Site must be cancelled or moved to another training location if Southern Resident killer whales are detected at the planned training location during the event planning process, or immediately prior to the event, as applicable.

(3) *Explosive use during Mine Countermeasure and Neutralization testing.* During explosive Mine Countermeasure and Neutralization Testing, the Navy must not use explosives in bin E7 closer than 6 nmi from shore in the Quinault Range Site.

(4) *Non-explosive small- and medium-caliber gunnery training.* The Navy must not conduct non-explosive small- and medium-caliber gunnery training activities.

(D) *National security exception.* Should national security require that the Navy cannot comply with the restrictions in paragraphs (a)(2)(i)(A)(I);

(a)(2)(i)(B); or (a)(2)(i)(C) of this section, 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 information about the event in its annual activity reports to NMFS.

(ii) *Olympic Coast National Marine Sanctuary Mitigation Area (year-round).*

(A) *Surface ship hull-mounted MF1 mid-frequency active sonar during training.* The Navy must not conduct more than 32 hours of surface ship hull-mounted MF1 mid-frequency active sonar during training annually.

(B) *Non-explosive bombing training.* The Navy must not conduct non-explosive bombing training activities.

(C) *Surface ship hull-mounted MF1 mid-frequency active sonar during testing.* The Navy must not conduct more than a total of 33 hours of surface ship hull-mounted MF1 mid-frequency active sonar during testing annually within 20 nmi from shore in the Marine Species Coastal Mitigation Area, in the Juan de Fuca Eddy Marine Species Mitigation Area, and in the Olympic Coast National Marine Sanctuary Mitigation Area combined.

(D) *Explosive Mine Countermeasure and Neutralization testing.* The Navy must not conduct explosive Mine Countermeasure and Neutralization Testing activities.

(E) *National security exception.* Should national security require that the Navy cannot comply with the restrictions in paragraphs (a)(2)(ii)(A), (B), (C), or (D) of this section, 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 information about the event in its annual activity reports to NMFS.

(iii) *Juan de Fuca Eddy Marine Species Mitigation Area (year-round).*

(A) *Surface ship hull-mounted MF1 mid-frequency active sonar during testing.* The Navy must not conduct more than a total of 33 hours of surface ship hull-mounted MF1 mid-frequency active sonar during testing annually within 20 nmi from shore in the Marine Species

Coastal Mitigation Area, in the Juan de Fuca Eddy Marine Species Mitigation Area, and in the Olympic Coast National Marine Sanctuary Mitigation Area combined.

(B) *Explosive Mine Countermeasure and Neutralization testing.* The Navy must not conduct explosive Mine Countermeasure and Neutralization Testing activities.

(C) *National security exception.* Should national security require that the Navy cannot comply with the restrictions in paragraphs (a)(2)(iii)(A) or (B) of this section, 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 information about the event in its annual activity reports to NMFS.

(iv) *Stonewall and Heceta Bank Humpback Whale Mitigation Area (May 1–November 30).*

(A) *Surface ship hull-mounted MF1 mid-frequency active sonar.* The Navy must not use surface ship hull-mounted MF1 mid-frequency active sonar during training and testing from May 1 to November 30.

(B) *Explosive Mine Countermeasure and Neutralization testing.* The Navy must not conduct explosive Mine Countermeasure and Neutralization testing from May 1 to November 30.

(C) *National security exception.* Should national security require that the Navy cannot comply with the restrictions in paragraphs (a)(2)(iv)(A) or (B) of this section, 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 information about the event in its annual activity reports to NMFS.

(v) *Point St. George Humpback Whale Mitigation Area (July 1–November 30).*

(A) *Surface ship hull-mounted MF1 mid-frequency active sonar.* The Navy must not use surface ship hull-mounted MF1 mid-frequency active sonar during training or testing from July 1 to November 30.

(B) *Explosive Mine Countermeasure and Neutralization testing.* The Navy must

not conduct explosive Mine Countermeasure and Neutralization Testing from July 1 to November 30.

(C) *National security exception.* Should national security require that the Navy cannot comply with the restrictions in paragraphs (a)(2)(v)(A) or (B) of this section, 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 information about the event in its annual activity reports to NMFS.

(vi) *Northern Puget Sound Gray Whale Mitigation Area (March 1–May 31).*

(A) *Civilian port defense—homeland security anti-terrorism/force protection exercises.* The Navy must not conduct Civilian Port Defense–Homeland Security Anti-Terrorism/Force Protection Exercises from March 1 to May 31.

(B) *National security exception.* Should national security require that the Navy cannot comply with the restrictions in paragraph (a)(2)(vi)(A) of this section, 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 information about the event in its annual activity reports to NMFS.

(vii) *Puget Sound and Strait of Juan de Fuca Mitigation Area (year-round unless specified as seasonal).*

(A) *Active sonar use.* The Navy must not use low-frequency, mid-frequency, or high-frequency active sonar during training or testing within the Puget Sound and Strait of Juan de Fuca Mitigation Area, unless a required element (*i.e.*, a criterion necessary for the success of the event) necessitates that the activity be conducted in NWTT Inland Waters during:

(1) *Unmanned underwater vehicle training.*

(2) *Civilian port defense—homeland security anti-terrorism/force protection exercises.*

(3) *Activities conducted by Naval Sea Systems Command at designated locations.*

(4) *Pierside sonar maintenance or testing at designated locations.*

(B) *Active sonar source levels.* The Navy must use the lowest active sonar source levels practical to successfully accomplish each event. Naval units must obtain permission from the appropriate designated Command authority prior to commencing pierside maintenance or testing with hull-mounted mid-frequency active sonar.

(C) *Unmanned underwater vehicle training.* The Navy must not conduct more than one Unmanned Underwater Vehicle Training activity annually at the Navy 3 OPAREA, Navy 7 OPAREA, and Manchester Fuel Depot (*i.e.*, a maximum of one event at each location).

(D) *Use of explosives—(1) Explosives during testing.* The Navy must not use explosives during testing.

(2) *Explosives during training.* The Navy must not use explosives during training except at the Hood Canal EOD Range and Crescent Harbor EOD Range during explosive mine neutralization activities involving the use of Navy divers.

(3) *Explosives in bin E4 or above.* The Navy must not use explosives in bin E4 (>2.5–5 lb. net explosive weight) or above, and must instead use explosives in bin E0 (< 0.1 lb. net explosive weight) or bin E3 (>0.5–2.5 lb. net explosive weight).

(4) *Explosives in bin E3 during February, March, and April at the Hood Canal EOD Range.* During February, March, and April at the Hood Canal EOD Range, the Navy must not use explosives in bin E3 (>0.5–2.5 lb. net explosive weight), and must instead use explosives in bin E0 (< 0.1 lb. net explosive weight).

(5) *Explosives in bin E3 during August, September, and October at the Hood Canal EOD Range.* During August, September, and October at the Hood Canal EOD Range, the Navy must not use explosives in bin E3 (>0.5–2.5 lb. net explosive weight) and must instead use explosives in bin E0 (< 0.1 lb. net explosive weight) to the maximum extent practical unless necessitated by mission requirements.

(6) *Explosives at the Crescent Harbor EOD Range.* At the Crescent Harbor EOD Range, the Navy must conduct explosive activities at least 1,000 m from the closest point of land.

(E) *Non-explosive live fire events.* The Navy must not conduct non-explosive live fire events in the mitigation area (except firing blank weapons), including gunnery exercises, missile exercises, torpedo exercises, bombing exercises, and Kinetic Energy Weapon Testing.

(F) *Coordination with Navy biologists.* Navy event planners must coordinate with Navy biologists during the event planning process prior to conducting the activities listed in paragraphs (a)(2)(vii)(F)(1), (2), (3), and (4) of this section. Navy biologists must work with NMFS and must initiate communication with the appropriate marine mammal detection networks to determine the likelihood of applicable marine mammal species presence in the planned training location. Navy biologists must notify event planners of the likelihood of species presence. To the maximum extent practical, Navy planners must use this information when planning specific details of the event (*e.g.*, timing, location, duration) to avoid planning activities in locations or seasons where species presence is expected. The Navy must ensure environmental awareness of event participants. Environmental awareness will help alert participating crews to the possible presence of applicable species in the training location. Lookouts must use the information to assist visual observation of applicable mitigation zones and to aid in the implementation of procedural mitigation. Unmanned Underwater Vehicle Training events at the Navy 3 OPAREA, Manchester Fuel Depot, Crescent Harbor Explosive Ordnance Disposal Range, and Navy 7 OPAREA must be cancelled or moved to another training location if the presence of Southern Resident killer whales is reported through available monitoring networks during the event planning process, or immediately prior to the event, as applicable.

(1) *Unmanned underwater vehicle training.* Unmanned Underwater Vehicle Training at the Navy 3 OPAREA, Manchester Fuel Depot, Crescent Harbor Explosive Ordnance Disposal Range, and Navy 7 OPAREA (for Southern Resident killer whales);

(2) *Civilian port defense—homeland security anti-terrorism/force protection exer-*

cises. Civilian Port Defense—Homeland Security Anti-Terrorism/Force Protection Exercises (for Southern Resident killer whales and gray whales);

(3) *Explosive mine neutralization activities involving the use of Navy divers.* Explosive mine neutralization activities involving the use of Navy divers (for Southern Resident killer whales); and

(4) *Small boat attack exercises.* Small Boat Attack Exercises, which involve firing blank small-caliber weapons (for Southern Resident killer whales and gray whales).

(G) *Seasonal awareness notification messages.* The Navy must issue annual seasonal awareness notification messages to alert Navy ships and aircraft operating within the Puget Sound and Strait of Juan de Fuca Mitigation Area to the possible presence of concentrations of Southern Resident killer whales from July 1 to November 30 in Puget Sound and the Strait of Juan de Fuca, and concentrations of gray whales from March 1 to May 31 in the Strait of Juan de Fuca and northern Puget Sound. For safe navigation and to avoid interactions with large whales, the Navy must instruct vessels to remain vigilant to the presence of Southern Resident killer whales and gray whales that may be vulnerable to vessel strikes or potential impacts from training and testing activities. 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.

(H) *National security exception.* Should national security require that the Navy cannot comply with the restrictions in paragraphs (a)(2)(vii)(A), (B), (C), (D), or (E) of this section, 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 information about the event in its annual activity reports to NMFS.

(3) *Availability for Subsistence Use.* The Navy must notify the following Alaskan Native communities of the issuance of Notices to Mariners of

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Navy operations that involve restricting access in the Western Behm Canal at least 72 hours in advance: Central Council of the Tlingit and Haida Indian Tribes, Ketchikan Indian Corporation, Organized Village of Saxman, and Metlakatla Indian Community, Annette Island Reserve.

(b) [Reserved]

§ 218.145 Requirements for monitoring and reporting.

(a) *Notification of take.* Navy personnel must notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in § 218.140 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 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 U.S. Navy's Marine Species Monitoring Program. Details on program goals, objectives, project selection process, and current projects are available at 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 <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>.

(d) *Annual NWTTC Study Area marine species monitoring report.* The Navy must submit an annual report of the NWTTC Study Area monitoring, which will be included in a Pacific-wide monitoring report including results specific to the NWTTC Study Area, describing the implementation and results from the previous calendar year. Data collection methods must be standardized across Pacific Range Complexes including the Mariana Islands Training and Testing (MITT), Hawaii-Southern California Training and Testing (HSTT), NWTTC, and Gulf of Alaska (GOA) 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. NMFS will submit comments or questions on the 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 submittal of the draft if NMFS does not provide comments on the draft report. This report will describe progress of knowledge made with respect to intermediate scientific objectives within the NWTTC 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. 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 NWTTC, HSTT, GOA, and MITT Study Areas.

(e) *NWTTC Annual Training Exercise Report and Annual Testing Activity Report.* Each year, the Navy must submit two preliminary reports (Quick Look Reports) detailing the status of applicable sound sources within 21 days after the anniversary of the date of issuance of each LOA to the Director, Office of Protected Resources, NMFS. The Navy must also submit detailed reports (NWTTC Annual Training Exercise Report and Annual Testing Activity Report) to the Director, Office of Protected Resources, NMFS, within three months after the one-year anniversary of the date of issuance of the LOAs. NMFS will submit comments or questions on the reports, if any, within one month of receipt. The reports will be considered final after the Navy has addressed NMFS' comments, or one month after submittal of the draft if NMFS does not provide comments on the draft reports. The NWTTC Annual

Training Exercise Report and Annual Testing Activity Report can be consolidated with other exercise and activity reports from other range complexes in the Pacific Ocean for a single Pacific Training Exercise and Testing Activity Report, if desired. The annual reports must contain 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; and total annual expended/detonated rounds (missiles, bombs, sonobuoys, etc.) for each explosive bin). The annual reports will also contain both the current year's sonar and explosive use 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 must 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 NWTTF FSEIS/OEIS and MMPA final rule. The annual report must also include details regarding specific requirements associated with the mitigation areas listed in §218.144(a)(2). 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 incidental take compared to annual authorized incidental take as well as cumulative seven-year incidental take compared to seven-year authorized incidental take. The Annual Training Exercise Report and Annual Testing Activity Report must include the following information.

(1) *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) *Sonar and other transducers.* Total annual hours or quantity (per the LOA) of each bin of sonar or other transducers, and

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

(2) [Reserved]

(f) *Annual classified reports.* Within the annual classified training exercise and testing activity reports, separate

from the unclassified reports described in paragraphs (a) through (e) of this section, the Navy must specifically include the information described in paragraphs (f)(1) and (2) of this section.

(1) *Olympic Coast National Marine Sanctuary Mitigation Area.* Total hours of authorized low-frequency, mid-frequency, and high-frequency active sonar (all bins, by bin) used during training and testing annually within the Olympic Coast National Marine Sanctuary Mitigation Area; and

(2) *Surface ship hull-mounted MF1 mid-frequency active sonar.* Total hours of surface ship hull-mounted MF1 mid-frequency active sonar used in the following mitigation areas:

(i) *Testing annually in three combined areas.* Testing annually within 20 nmi from shore in the Marine Species Coastal Mitigation Area, the Juan de Fuca Eddy Marine Species Mitigation Area, and the Olympic Coast National Marine Sanctuary Mitigation Area combined;

(ii) *Stonewall and Heceta Bank Humpback Whale Mitigation Area.* Training and testing from May 1 to November 30 within the Stonewall and Heceta Bank Humpback Whale Mitigation Area; and

(iii) *Point St. George Humpback Whale Mitigation Area.* Training and testing from July 1 to November 30 within the Point St. George Humpback Whale Mitigation Area.

(g) *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 will 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 submittal of the draft if NMFS does not provide comments.

§218.146 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) An LOA, unless suspended or revoked, may be effective for a period of

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time not to exceed the expiration date of this subpart.

(c) If an LOA expires prior to the expiration date of 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 §218.147(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 §218.147.

(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 and 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) will be published in the FEDERAL REGISTER within 30 days of a determination.

§218.147 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§216.106 of this chapter and 218.146 for the activity identified in §218.140(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 LOAs 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 218.146 may be modified by NMFS under the following circumstances:

(1) 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, as part of an adaptive management process.

(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 report and annual exercise reports 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 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) 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 218.146, an LOA may be modified without prior notice or opportunity for public comment. Notice

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would be published in the FEDERAL REGISTER within 30 days of the action.

§ 218.230 Specified activity, level of taking, and species/stocks.

§ 218.148 [Reserved]

Subparts P–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

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).

EFFECTIVE DATE NOTE: At 84 FR 40208, Aug. 13, 2019, subpart X was added, effective from Aug. 12, 2019, through Aug. 13, 2026.

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 ¹
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.
	WNP.
	IND.
Common bottlenose dolphin	4-Islands.
	Hawaii Island.
	Hawaii Pelagic.
	IA.
	IND.
	Japanese Coastal.

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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 ¹
Common dolphin	Kauai/Niihau. Oahu. WNP Northern Offshore. WNP Southern Offshore. WAU. IND. WNP.
Cuvier's beaked whale	Hawaii. IND. SH. WNP.
Dall's porpoise	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. CNP.
Fraser's dolphin	Hawaii. IND. WNP. IND. NP.
Ginkgo-toothed beaked whale	WNP. IND. NP.
Harbor porpoise	WNP.
Hubbs' beaked whale	NP.
Indo-Pacific bottlenose dolphin	IND.
Killer whale	Hawaii. IND. WNP. WNP.
<i>Kogia</i> spp.	Hawaii. IND. WNP.
Longman's beaked whale	Hawaii. IND. WNP.
Melon-headed whale	Hawaiian Islands. IND. Kohala Resident. WNP. WNP.
<i>Mesoplodon</i> spp.	NP.
Northern right whale dolphin	NP.
Pacific white-sided dolphin	4-Islands. Hawaii Island. Hawaiian Pelagic. IND. Oahu. WNP.
Pantropical spotted dolphin	Hawaii. IND. WNP. Hawaii. IND. WNP.
Pygmy killer whale	Hawaii. IA. WNP. IND.
Pygmy sperm whale	Hawaii. IND. WNP.
Risso's dolphin	Hawaii. IND. WNP.
Rough-toothed dolphin	Hawaii. IND. WNP.
Short-finned pilot whale	Hawaii. IND. WNP Northern Ecotype.

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 ¹
Southern bottlenose whale	WNP Southern Ecotype.
Spade-toothed beaked whale	IND.
Sperm whale	IND.
	Hawaii.
	NIND.
	NP.
	SIND.
Spinner dolphin	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.

¹ 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 con-

nection 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;

(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.

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§ 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 μ 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 μ 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 μ 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 μ Pa rms.

(2) Offshore Biologically Important Areas (OBIs) 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 (OBIs)

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 Ball	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 con-

firm 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:

(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.

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(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;

(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

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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.

PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Subpart A—Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research

Sec.

219.1 Specified activity and specified geographical region.

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