

DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL MARINE FISHERIES SERVICE

Letter of Authorization

The Commander, U.S. Fleet Forces Command, 1562 Mitscher Ave., Suite 250, Norfolk, VA 23551-2487 and persons operating under his authority (i.e., Navy), are authorized to take marine mammals incidental to the U.S. Navy (Navy) training activities conducted in the Virginia Capes (VACAPES) Range Complex in the Atlantic Ocean in accordance with 50 CFR Part 218, Subpart A-- Taking Marine Mammals Incidental to U.S. Navy Training in the Virginia Capes Range Complex subject to the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*; MMPA) and the following conditions:

1. This Authorization is valid for the period June 5, 2009, through June 4, 2010.
2. This Authorization is valid only for the unintentional taking of the species of marine mammals and methods of take identified in 50 CFR 218.2(c) and Condition 5 of this Authorization incidental to the activities specified in 50 CFR 218.1(c) and Condition 4 of this Authorization and occurring within the VACAPES Range Complex Operation Area (OPAREA), (as depicted in Figure 1.1-1 in the Navy's VACAPES Range Complex Final Environmental Impact Statement, which is located in the coastal and offshore waters of the western North Atlantic Ocean adjacent to Delaware, Maryland, Virginia, and North Carolina. The northernmost boundary of the VACAPES Range Complex OPAREA is located 37 nautical miles (nm) off the entrance to Delaware Bay at latitude 38°45' N, the farthest point of the eastern boundary is 184 nm east of Chesapeake Bay at longitude 72°41' W, and the southernmost point is 105 nm southeast of Cape Hatteras, North Carolina, at latitude of 34°19' N. The western boundary of the OPAREA lies 3 nm from the shoreline at the boundary separating state and Federal waters.
3. This Authorization is valid only if the Holder of the Authorization or any person(s) operating under his authority implements the mitigation, monitoring, and reporting required pursuant to 50 CFR 218.4 & 218.5 and implements the Terms and Conditions of this Authorization.
4. (a) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the use of explosive detonations associated with missile exercise (MISSILEX), bombing exercise (BOMBEX), mine exercise (MINEX), and firing exercises (FIREX) in the amounts indicated below:

(i) Underwater Explosives:

- (A) AGM-114 (Hellfire missile)
- (B) AGM-65 E/F (Maverick missile)

- (C) MK-83/GBU-32 (1,000 lb High Explosive bomb)
- (D) Airborne Mine Neutralization system (AMNS)
- (E) 20 lb NEW charges
- (F) AGM-88 (HARM)
- (G) 5" Naval Gunfire

(ii) Training Events:

- (A) MINEX (Mine Neutralization [AMNS]) – 30
- (B) MINEX (Mine Neutralization [20 lb NEW charges]) - 24
- (C) BOMBEX (Air-to-Surface) - 20
- (D) MISSILEX (Air-to-Surface; Hellfire missile) - 60
- (E) MISSILEX (Air-to-Surface; Maverick, HE) – 20
- (F) FIREX with IMPASS – 22

(b) If the number of training events or explosive munitions or detonations indicated in Condition 4(a) are exceeded by the upper limit, subsequent LOAs issued under the VACAPES Range Complex final rule shall ensure that the total over five years does not exceed the amount indicated in 50 CFR 218.1(c) and Condition 4(a) of the Letter of Authorization.

5. This authorization is valid only for the incidental take of the following marine mammal species, and only by the indicated method and amount of take:

(a) Level B Harassment:

(i) Mysticetes:

- (A) Humpback whale (Megaptera novaeangliae) – 2
- (B) Fin whale (Balaenoptera physalus) – 2

(ii) Odontocetes:

- (A) Sperm whale (Physeter macrocephalus) – 2
- (B) Pygmy or dwarf sperm whales (Kogia sp.) – 3
- (C) Rough-toothed dolphin (Steno bredanensis) – 1
- (D) Bottlenose dolphin (Tursiops truncatus) – 29
- (E) Pantropical spotted dolphin (Stenella attenuata) – 70
- (F) Striped dolphin (S. coeruleoalba) - 68
- (F) Clymene dolphin (S. clymene) – 33
- (G) Atlantic spotted dolphin (S. frontalis) – 43
- (H) Common dolphin (Delphinus delphis) – 2,193
- (I) Risso's dolphin (Grampus griseus) – 16
- (J) Pilot whales (Globicephala sp.) – 10

(b) Level A Harassment (injury):

- (i) Atlantic spotted dolphin – 1
- (ii) Common dolphin – 20
- (iii) Pantropical spotted dolphin – 1
- (iv) Striped dolphin – 3

6. Mitigation - The Holder of this Authorization, and any person(s) operating under his authority, must implement the following mitigation measures when conducting activities identified in 50 CFR § 218.1(c) and Condition 4(a) of the Letter of Authorization:

(a) General Maritime Measures:

(i) Personnel Training – Lookouts

(A) All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews shall complete Marine Species Awareness Training (MSAT).

(B) Navy lookouts shall undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

(E) Surface lookouts shall scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout shall always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses would be lowered to allow the eyes to rest for a few seconds, and then the lookout shall search back across the sector with the naked eye.

(F) At night, lookouts shall scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they shall look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts shall also have night vision devices available for use.

(ii) Operating Procedures & Collision Avoidance

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) Commanding Officers shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts shall watch for and report to the OOD the presence of marine mammals.

(D) Personnel on lookout shall employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(E) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(F) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a "safe speed" so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(G) When whales have been sighted in the area, Navy vessels shall increase vigilance and implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Such measures shall include changing speed and/or direction and would be dictated by environmental and other conditions (e.g., safety or weather).

(H) Naval vessels shall maneuver to keep at least 500 yds (460 m) away from any observed whale and avoid approaching whales head-on. This requirement does not apply if a vessel's safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Vessels shall take reasonable steps to alert other vessels in the vicinity of the whale.

(I) Where feasible and consistent with mission and safety, vessels shall avoid closing to within 200-yd (183 m) of marine mammals other than whales (whales addressed above).

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records shall be kept for a period of 30 days following completion of a major training exercise.

(b) Coordination and Reporting Requirements

(i) The Navy shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during or within 24 hours after completion of training activities.

(ii) The Navy shall follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

(c) Mitigation Measures Applicable to Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration: The mitigation measures apply to all Navy vessel transits, including those vessels that would transit to and from East Coast ports and the VACAPES Range Complex.

(i) Mid-Atlantic, Offshore of the Eastern United States:

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission and safety (at a speed that does

not compromise safety of navigation) during the months indicated below and within a 37 km (20 nm) arc (except as noted) of the specified associated reference points:

(1) South and East of Block Island (37 km (20 NM) seaward of line between 41-4.49° N. lat. 071-51.15° W. long. and 41-18.58° N. lat. 070-50.23° W. long.): Sept-Oct and Mar-Apr.

(2) New York / New Jersey (40-30.64° N. lat. 073-57.76° W. long.): Sep-Oct and Feb-Apr.

(3) Delaware Bay (Philadelphia) (38-52.13° N. lat. 075-1.93° W. long.): Oct-Dec and Feb-Mar.

(4) Chesapeake Bay (Hampton Roads and Baltimore) (37-1.11° N. lat. 075-57.56° W. long.): Nov-Dec and Feb-Apr.

(5) North Carolina (34-41.54° N. lat. 076-40.20° W. long.): Dec-Apr.

(6) South Carolina (33-11.84° N. lat. 079-8.99° W. long. and 32-43.39° N. lat. 079-48.72° W. long.): Oct-Apr.

(B) During the months indicated in Condition 6(c)(i)(A) of the Letter of Authorization, Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified in Condition 6(c)(i)(A) of the Letter of Authorization.

(C) All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

(D) Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (1,500 ft) away from any observed whale, consistent with vessel safety.

(ii) Southeast Atlantic, Offshore of the Eastern United States – for the purposes of the measures below (Conditions 6(c)(ii)(A) & (B) of the Letter of Authorization), the “southeast” encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31-15° N. lat. to 30-15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28-00° N. lat. to 30-15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply

from November 15 – April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.

(A) Prior to transiting or training in the critical habitat or associated area of concern, ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised) and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the North Atlantic right whale critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(1) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

(2) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(3) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(4) During the North Atlantic right whale calving season, north-south transits through the critical habitat are prohibited.

(5) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).

(iii) Northeast Atlantic, Offshore of the Eastern United States:

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41-00° N. lat., 69-05° W. long.; 41-45° N. lat., 69-45° W. long.; 42-10° N. lat., 68-31° W. long.; 41-38° N. lat., 68-13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42-04.8° N. lat., 70-10° W. long.; 42-12° N. lat., 70-15° W. long.; 42-12° N. lat., 70-30° W. long.; 41-46.8° N. lat., 70-30° W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the northeastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos were taken. Navy personnel are encouraged to take photos whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(1) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when change of course would create an imminent and serious threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(2) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed (the minimum speed at which mission goals or safety will



not be compromised) so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(3) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(4) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions per Rule 6 of International Navigational Rules.

(d) Mitigation Measures for Specific At-sea Training Events – If a marine mammal is killed as a result of the proposed Navy training activities (e.g., instances in which it is clear that munitions explosions caused the death), the Navy shall suspend its activities immediately and report the incident to NMFS.

(i) Firing Exercise (FIREX) Using the Integrated Maritime Portable Acoustic Scoring System (IMPASS) (5-in. Explosive Rounds):

(A) FIREX using IMPASS would only be conducted in the four designated areas specified in the Navy's LOA application in the VACAPES Range Complex.

(B) Pre-exercise monitoring of the target area shall be conducted with "Big Eyes" prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships shall be required to maintain a lookout dedicated to visually searching for marine mammals 180° along the ship track line and 360° at each buoy drop-off location.

(C) "Big Eyes" on the ship shall be used to monitor a 600 yd (548 m) buffer zone around the target area for marine mammals during naval-gunfire events.

(D) Ships shall not fire on the target if any marine mammals are detected within or approaching the 600 yd (548 m) buffer zone until the area is cleared. If marine mammals are present, operations shall be suspended. Visual observation shall occur for approximately 45 minutes, or until the animal has been observed to have cleared the area and is heading away from the buffer zone.

(E) Post-exercise monitoring of the entire target area shall take place with “Big Eyes” and the naked eye during the retrieval of the IMPASS sonobuoy array following each firing exercise.

(F) FIREX with IMPASS shall take place during daylight hours only.

(G) FIREX with IMPASS shall only be used in Beaufort Sea State three (3) or less.

(H) The visibility must be such that the fall of shot is visible from the firing ship during the exercise.

(I) No firing shall occur if marine mammals are detected within 70 yd (64 m) of the vessel.

(ii) Air-to-Surface At-Sea Bombing Exercises (250-lbs to 2,000-lbs explosive bombs):

(A) Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at the slowest safe speed.

(B) A buffer zone of 5,100-yd (4,663 m) radius shall be established around the intended target zone. The exercises shall be conducted only when marine mammals are observed to be outside the buffer zone.

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

(iii) Air-to-Surface Missile Exercises (Explosive):

(A) Aircraft shall initially survey the intended ordnance impact area for marine mammals.

(B) During the actual firing of the weapon, the aircraft involved must be able to observe the intended ordnance impact area to ensure the area is free of marine mammal transiting the range.

(C) Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at slowest safe speed.

(D) Explosive ordnance shall not be targeted to impact within 1,800 yd (1,646 m) of sighted marine mammals.

(iv) Mine Neutralization Training Involving Underwater Detonations (up to 20-lb charges):

(A) This activity shall only occur in W-50 of the VACAPES Range Complex.

(B) Observers shall survey the Zone of Influence (ZOI), a 700 yd (640 m) radius from detonation location for marine mammals from all participating vessels during the entire operation. A survey of the ZOI (minimum of 3 parallel tracklines 219 yd [200 m] apart) using support craft shall be conducted at the detonation location 30 minutes prior through 30 minutes post detonation. Aerial survey support shall be utilized whenever assets are available.

(C) Detonation operations shall be conducted during daylight hours only.

(D) If a marine mammal is sighted within the ZOI, the animal shall be allowed to leave of its own volition. The Navy shall suspend detonation exercises and ensure the area is clear of marine mammals for a full 30 minutes prior to detonation.

(E) Divers placing the charges on mines and dive support vessel personnel shall survey the area for marine mammals and shall report any sightings to the surface observers. These animals shall be allowed to leave of their own volition and the ZOI shall be clear of marine mammals for 30 minutes prior to detonation.

(F) No detonations shall take place within 3.2 nm (6 km) of an estuarine inlet (Chesapeake Bay Inlets).

(G) No detonations shall take place within 1.6 nm (3 km) of shoreline.

(H) Personnel shall record any protected species observations during the exercise as well as measures taken if species are detected within the ZOI.

7. Monitoring and Reporting – When conducting operations identified in 50 CFR § 218.1(c) and Condition 4(a) of the Letter of Authorization, the Holder of the Authorization and any person(s) operating under his authority must implement the following monitoring and reporting measures. All reports should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring MD 20910 and copies provided to the Assistant Regional Administrator for Protected Resources, Southeast Regional Office, National Marine Fisheries Service, 263 13<sup>th</sup> Avenue South, Saint Petersburg, Florida, 33701 and to the Assistant Regional Administrator for Protected Resources, Northeast Regional Office, 55 great Republic Drive, Gloucester, Massachusetts, 09130-2298.

(a) The Navy must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 218.1(c) and Condition 4(a) of the Letter of Authorization is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in § 218.2(c) and Condition 5 of the Letter of Authorization.

(b) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the VACAPES Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below.

(i) Vessel or aerial surveys.

(A) The Holder of this Authorization shall visually survey a minimum of 2 explosive events per year, one of which shall be a multiple detonation event. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs).

(B) Where operationally feasible, for specified training events, aerial or vessel surveys shall be used 1-2 days prior to, during (if reasonably safe), and 1-5 days post detonation.

(C) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (i.e., the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(D) When conducting a particular survey, the survey team shall collect:

- (1) Location of sighting;
- (2) Species (if not possible, indicate whale, dolphin or pinniped);
- (3) Number of individuals;
- (4) Whether calves were observed;
- (5) Initial detection sensor;
- (6) Length of time observers maintained visual contact with marine mammal;
- (7) Wave height;

(8) Visibility;

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

(10) Distance of marine mammal from actual detonations (or target spot if not yet detonated);

(11) Observed behavior - Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction;

(12) Resulting mitigation implementation - Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and

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

(ii) Passive acoustic monitoring – the Navy shall conduct passive acoustic monitoring when operationally feasible.

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

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

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

(iii) Marine mammal observers on Navy platforms

(A) As required in § 218.5(c)(1) and Condition 7(b)(i) of the Letter of Authorization, MMOs selected for aerial or vessel survey shall be placed on a Navy platform during one of the explosive exercises being monitored

per year, the other designated exercise shall be monitored by the Navy lookouts/watchstanders.

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

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

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

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

(F) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs be the same as those collected by Navy lookout/watchstanders described in § 218.5(c)(1)(iv) and Condition 7(b)(i)(D) of the Letter of Authorization.

(c) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This planning and adaptive management tool shall include:

(i) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

(ii) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(iii) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(iv) An adaptive management plan.

(v) A method for standardizing data collection for VACAPES Range Complex and across range complexes.

(d) General Notification of Injured or Dead Marine Mammals - Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

(e) Annual VACAPES Range Complex Monitoring Plan Report - The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the VACAPES Range Complex Monitoring Plan. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the VACAPES Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in §218.5(g) and Condition 7(f) of the Letter of Authorization. The VACAPES Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from VACAPES Range Complex and multiple range complexes.

(f) Annual VACAPES Range Complex Exercise Report - The Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(i) Total annual number of each type of explosive exercise (of those identified as part of the "specified activity" in this final rule) conducted in the VACAPES Range Complex.

(ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

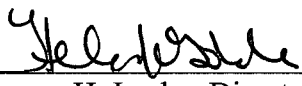
(g) The Navy shall respond to NMFS' comments and requests for additional information or clarification on the VACAPES Range Complex Comprehensive Report, the Annual VACAPES Range Complex Exercise Report, or the Annual VACAPES Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

8. Prohibitions - Notwithstanding takings identified in 50 CFR § 218.2 and authorized in Condition 5 of this Letter of Authorization, no person in connection with the activities described in 50 CFR § 218.1 and Condition 4(a) may violate, or fail to comply with, the terms, conditions, and requirements of 50 CFR Subpart A or this Letter of Authorization.

9. This Authorization may be modified, suspended or withdrawn (pursuant to 50 CFR § 216.106(e)(1 or 2)) if the Holder or any person operating under his authority fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

10. A copy of this Authorization and the attached Subpart A of the regulations, or a document containing the equivalent requirements specified in this Authorization or 50 CFR Subpart A, must be in the possession of the on-site Commanding Officer in order to take marine mammals under the authority of this Letter of Authorization while conducting the specified activity(ies).

11. The Holder of this Authorization and any person operating under his authority is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion as they pertain to listed marine mammals.

  
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for James H. Lecky, Director  
Office of Protected Resources  
National Marine Fisheries Service

6/5/09  
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Date