

further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date/time established in this notice.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (*see ADDRESSES*) at least 5 working days prior to the meeting.

Dated: January 20, 2011.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XA040**

#### Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training

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

**ACTION:** Notice of issuance of a Letter of Authorization; request for comments on Integrated Comprehensive Management Program Plan.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to Navy training, maintenance, and research, development, testing, and evaluation (RDT&E) activities to be conducted within the Atlantic Fleet Active Sonar Training (AFAST) Study Area for the period of January 22, 2011, through January 21, 2012. NMFS also provides notice that the Integrated Comprehensive Management Program (ICMP) Plan, which is intended for use as a planning tool to focus Navy monitoring priorities pursuant to the MMPA and Endangered Species Act (ESA), has been updated for 2010. NMFS encourages the public to review this document and provide comments, information, and suggestions on the ICMP Plan.

**DATES:** This authorization is effective from January 22, 2011, through January

21, 2012. Comments and information on the ICMP Plan must be received no later than February 28, 2011.

**ADDRESSES:** The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here. The mailbox address for providing e-mail comments on the ICMP Plan is

*ITP.Hopper@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

**FOR FURTHER INFORMATION CONTACT:** Jolie Harrison or Brian D. Hopper, Office of Protected Resources, NMFS, (301) 713-2289.

**SUPPLEMENTARY INFORMATION:** Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Regulations governing the taking of marine mammals by the Navy incidental to AFAST training, maintenance, and RDT&E became effective on January 22, 2009 (74 FR 4844, January 27, 2009), and remain in effect through January 22, 2014. The AFAST study area extends east from the Atlantic Coast of the U.S. to 45° W. long. and south from the Atlantic and Gulf of Mexico Coasts to approximately 23° N. lat., but not encompassing the Bahamas (*see* Figure 1-1 in the Navy's Application). For detailed information on this action, please refer to the January 2009 final rule. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

#### Summary of Request

On August 31, 2010, NMFS received a request from the Navy for a renewal of an LOA issued on January 22, 2010, for the taking of marine mammals incidental to training and research activities conducted within the AFAST Study Area under regulations issued on January 22, 2009 (74 FR 4844, January 27, 2009). The Navy has complied with the measures required in 50 CFR 216.244 and 216.245, as well as the associated 2010 LOA, and submitted the reports and other documentation required in the final rule and the 2010 LOA.

#### Summary of Activity Under the 2010 LOA

As described in the Navy's exercise reports (both classified and unclassified), in 2010, the training activities conducted by the Navy were within the scope and amounts authorized by the 2010 LOA and the levels of take remain within the scope and amounts contemplated by the final rule. The Navy conducted eight major anti-submarine warfare strike group training exercises in 2010, including one Integrated Anti-Submarine Warfare Course (IAC II), one Joint Task Force Exercise (JTFEX), three Composite Training Unit Exercises (COMPTUEX), and three Southeastern Anti-Submarine Warfare Integrated Training Initiative exercises (SEASWITI).

#### Planned Activities and Estimated Take for 2011

In 2011, the Navy expects to conduct the same type and amount of training identified in the 2010 LOA. Therefore, for 2011, NMFS authorizes the same amount of take that was authorized in 2010.

#### Summary of Monitoring, Reporting, and Other Requirements Under the 2010 LOA

##### *Annual Exercise Reports*

The Navy submitted their classified and unclassified 2010 exercise reports within the required timeframes and the unclassified report is posted on NMFS' Web site: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. NMFS has reviewed both reports and they contain the information required by the 2010 LOA. The reports indicate the amounts of different types of training that occurred from August 2, 2009, through August 1, 2010. As mentioned above, the Navy conducted 8 major anti-submarine warfare training exercises addressed in the rule (the rule analyzed the likely impacts from 39 coordinated unit level training exercises and 7 strike group training exercises).

The reports also list specific information gathered when marine mammals were detected by Navy watchstanders, such as how far an animal was from the vessel, whether sonar was in use, and whether it was powered or shut down. This information indicates that the Navy implemented the safety zone mitigation measures as required. No instances of obvious behavioral disturbance were reported by the Navy watchstanders in their 64 marine mammal sightings totaling 329 animals. Furthermore, safety zones were adhered to, and vessels and aircraft applied mitigation

measures when marine mammals were observed within the requisite zones. To summarize, there were a total of 5 sightings of 20 marine mammals for all AFAST Major Training Exercises for reporting (MTERs) at ranges less than 1,000 yards (914 m) during which mid-frequency active sonar (MFAS) was in use. Of these 5 total MTER MFAS sightings, there were 3 sightings of 11 dolphins, 2 sightings of 9 whales, and 0 sightings of pinnipeds. There were a total of 7 mitigation events triggered by these sightings, which resulted in two sonar power downs (range to animal < 1,000 yards (914 m)) and two shut down (range to animal < 200 yards (183 m)). During one of these mitigation events, sonar was unnecessarily shut down when the observed range of a whale was in excess of 1,000 yards (914 m). During two mitigation events when sonar power was lowered (power down by -10 dB), the ship did not report a range to the marine mammal sighted.

#### 2010 Monitoring

The Navy conducted the monitoring required by the 2010 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of sonar and exercises by dedicated MMOs, as well as passive acoustic monitoring utilizing high frequency acoustic recording packages (HARPs) and pop-up buoys, and marine mammal tagging, tracking, and biopsy sampling. The Navy submitted their 2010 Monitoring Report, which is posted on NMFS' Web site (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>), within the required timeframe. The Navy included a summary of their 2010 monitoring effort and results (beginning on page 9 of the monitoring report) and the specific reports for each individual effort are presented in the appendices. Navy-funded marine mammal monitoring accomplishments within the AFAST study area occurred from August 2, 2009 to August 1, 2010.

#### Visual Surveys

The majority of monitoring effort for the reporting period was conducted in two locations, Onslow Bay and the Jacksonville (JAX) Operating Area (OPAREA). These locations serve as the primary study areas for longitudinal baseline monitoring efforts and are also the primary locations for coordinated Anti-Submarine Warfare (ASW) exercise monitoring events. These monitoring efforts and their findings, if available, will be discussed in greater detail below.

The baseline monitoring program consists of year-round multi-disciplinary monitoring through the use

of shipboard and aerial visual surveys (24 days each annually), photo identification studies, biopsy sampling, and passive acoustic monitoring. Surveys are conducted year-round using established track lines and standard distance sampling techniques. During the reporting period, aerial surveys were planned monthly in both Onslow Bay and JAX; however, in JAX no surveys were flown during April and May due to adverse weather conditions. In Onslow Bay, aerial surveys were conducted on 23 days during this period, and aerial observers reported sightings of seven identifiable species of marine mammals. In JAX, aerial surveys were conducted on 37 days during the reporting period, and aerial observers reported sightings of nine identifiable species of marine mammals. On March 20, 2010, an aerial survey to the west of the JAX OPAREA (and outside of designated critical habitat) observed a female right whale giving birth, which is notable because it was only the second North Atlantic right whale birth observed.

Vessel surveys were conducted in both Onslow Bay and JAX during the reporting periods. Vessel-based observers in Onslow Bay reported sightings of five identifiable species of marine mammals. Over 1,300 digital images were taken for species identification and individual recognition. Analysis of these photographic images resulted in re-sightings of five bottlenose dolphins and one spotted dolphin, which may suggest some degree of residency in the study area. Vessel surveys in JAX reported sightings of four identifiable species of marine mammals. Approximately 3,300 digital images were taken for the purposes of species identification and individual recognition.

#### Tagging, Tracking, and Biopsy Sampling

In conjunction with the vessel surveys in Onslow Bay, researchers from Duke University and Woods Hole Oceanographic Institution deployed five DTAGs between July 4–7, 2010. The DTAG is a small, lightweight tag that is placed on a whale using a carbon-fiber pole and attaches to the animal via four silicon suction cups. The DTAG is equipped with a pressure sensor, three-axis magnetometer and accelerometers that measure depth, heading, pitch, and roll, at a rate of five times per second. The tag contains two hydrophones that record sound and a VHF antenna that allows radio tracking of animals while they are at the surface and facilitates re-location of the tag upon release from the animal. Data are archived on the tag

during deployment and later downloaded for calibration and analysis. The duration of tag deployments vary and tags can either be released by a programmed release mechanism or by the animal's actions that result in shedding the device (*i.e.*, breaching, coming into physical contact with other animals, *etc.*). The longest DTAG deployment during the July 2010 study was over 17 hours. Data from these tagging efforts will be analyzed in Matlab to generate descriptive metrics for the diving and acoustic behavior of each whale. These include time-depth profiles for the duration of the tag deployment.

When sea conditions permitted, focal follows of tagged animals were conducted from a rigged-hulled inflatable boat (RHIB) during daylight hours. Location, group size, spread, synchrony and composition, behavioral state and environmental conditions were recorded at 5-minute intervals. Although these detailed behavioral observations could not be collected at night, the R/V *Stellwagen* followed the tagged whale closely using the VHF radio signal. In addition, the presence of prey was monitored using an onboard fisheries acoustic system and measured physical features of the water column using Acoustic Doppler Current Profiler (ADCP) and conductivity-temperature-depth (CTD) casts.

In addition, the research team was able to collect skin biopsy samples from three of the tagged whales for future molecular determination of the gender of these individuals.

#### Passive Acoustic Monitoring

Three passive acoustic systems have been used during AFAST monitoring in Onslow Bay and JAX—a multi-element towed array used during vessel surveys, bottom-mounted high-frequency acoustic recorder packages (HARPs), and pop-up buoys. During the reporting period, the towed array was deployed on 17 days of surveys in Onslow Bay. A total of 70 acoustic detections were made, 40 of which were identified to species. Three HARPs were deployed in Onslow Bay during the reporting period. In JAX, the towed array was deployed on 19 days of surveys. A total of 48 acoustic detections were made, 31 of which were identified to species. Six HARP deployments were made in JAX during the reporting period. A thorough analysis of all acoustic data is currently underway.

Coordinated ASW exercise monitoring studies are one of the primary components being used to address specific monitoring questions presented in the AFAST monitoring

plan and LOA. Both passive acoustic and visual monitoring methods have been employed to address before/after (aerial surveys) and before/during/after (passive acoustics) monitoring requirements. During this reporting period, two focused ASW exercise passive acoustic monitoring efforts were conducted in the JAX OPAREA, each included the deployment of 9 pop-up buoys arranged in an array configuration. The goal was to establish intensive short-term (20–30 day) passive acoustic monitoring before, during, and after specific ASW exercises. Two sets of buoys were deployed from September 11, 2009, through October 8, 2009, and from December 4, 2009, through January 7, 2010, respectively. Analysis of data from both deployments is currently in progress.

Aerial surveys were coordinated before and after three ASW training events during the reporting period. Two surveys coincided with pop-up buoy deployments and were conducted September 14–18, 2009, and December 8–10, 2009; however, aerial surveys conducted in December were hampered by poor weather conditions. The third survey was conducted June 4–7, 2010 in the JAX OPAREA. During the September 2009 surveys, there were a total of 39 sightings of four delphinid species. There were no cetacean sightings during the December 2009 surveys. The June 2010 surveys reported one sighting of a short-finned pilot whale and three sightings of Atlantic spotted dolphins.

#### **Marine Mammal Observations and Lookout Effectiveness Study**

Navy marine mammal observers (MMOs) participated in two exercises in the JAX OPAREA on March 15–19, 2010 and June 4–9, 2010. MMOs conducted visual observations from the bridge wings of Guided Missile Destroyers (DDGs) during daylight hours. They worked alongside the Navy lookouts, conducting visual searches for marine species. Visual monitoring for both exercises was conducted in coordination with data collection for a Navy Lookout Effectiveness Study. During the March 2009 exercise, the MMOs spent approximately 27.5 hours monitoring for marine species. Independent MMOs reported four marine mammal sightings, which included three Atlantic spotted dolphins and one unidentified dolphin. During the June 2010 exercise, the MMOs spent approximately 42 hours monitoring for marine species. Independent MMOs reported 13 marine mammal sightings, which included two Atlantic spotted dolphins and 11 unidentified dolphins. There were no

reports of marine mammals behaving in any unusual manner during these exercises.

To date, the Navy has successfully completed four Lookout Effectiveness data collection trials. The primary functions of these efforts were to test and refine lookout observation methodology. Of the four studies, one was completed in Hawaii, one was completed in Southern California, and two were completed off the coast of Jacksonville, FL. Each study had four trained biologists acting as MMOs, observing from sunrise to sunset each day while underway, to assess the effectiveness of the Navy lookout team and to obtain data to characterize the possible exposure of marine species to MFAS.

During the March 2010 exercise, the MMOs recorded four independent sightings of marine mammal (*i.e.*, sightings not seen by the Navy lookout team). In addition, the Navy lookout team recorded three independent sightings, and six sightings were seen by both the MMOs and the Navy lookouts. A qualitative review of the data revealed that poor sighting conditions (*e.g.*, high wind speed and sea state) correlated to low sightings. For example, on the days when the number of sightings was the lowest (March 16 and 18), the wind speed and sea states were relatively greater than the remaining days with a greater number of sightings.

During the June 2010 exercise, the MMOs recorded 12 independent sightings of marine mammals. In addition, the Navy lookout team recorded three independent sightings, and four sightings were seen by both the MMOs and the Navy lookouts. The Navy concluded that these studies accomplished their goals. First, data was collected that will populate a spreadsheet in order to being determining the effectiveness of the Navy lookouts. Second, sightings information, including the range and bearing to an animal, can be used to determine to what extent animal(s) may have been exposed to MFAS if the device was in use. Reconstruction of the event and the determination of the possible exposure(s) of marine species to MFAS will be completed separately.

In conclusion, the Navy's implementation of the monitoring plan accomplished several goals, which contribute to a larger body of data intended to better characterize the abundance, distribution, life history, and behaviors of the species in the AFAST study area. In general, the monitoring conducted in 2010 satisfied the objectives of the monitoring plan and specifically contributed to the

following: (1) A greater knowledge and understanding of the density and distribution of species within the AFAST study area; (2) the vocalizations of different species, which advances the development of automated classification software; (3) the movement patterns of individual (both vertically in the water column as well as horizontally for the duration of a DTAG deployment); and (4) observable behavioral patterns of marine mammals, before, during, and after exposure to Navy training activities.

Except as described below in the Adaptive Management section, NMFS concludes that the results of these monitoring efforts when taken together with the findings presented in the 2010 exercise report (*see* Annual Exercise Report section) do not warrant making changes to the current monitoring/mitigation requirements identified in the LOA. While the data collected by the Navy through monitoring and reporting builds upon the existing body of information in a valuable way, none of the new data contradict, or amend, the assumptions that underlie the findings in the 2009 rule in a manner that would suggest changing the current mitigation or monitoring.

#### *Adaptive Management*

In general, adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) if monitoring efforts should be modified if new information suggests that such modifications are appropriate. All of the 5-year rules and LOAs issued to the Navy include an adaptive management component, which includes an annual meeting between NMFS and the Navy. NMFS and the Navy conducted an adaptive management meeting in October, 2010, which representatives from the Marine Mammal Commission participated in, wherein we reviewed the Navy monitoring results through August 1, 2010, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. Based on the implementation of the 2010 monitoring, the Navy proposed some minor modifications to their monitoring plan for 2011, which NMFS agreed were appropriate. Additional details regarding these minor modifications are provided in the following paragraph.

After over 3 years of combined aerial and shipboard visual surveys at the Onslow Bay location, the Navy plans to shift some of that survey effort to a new

location to the north, off Cape Hatteras, NC because the Onslow Bay surveys have established a relatively detailed baseline of low marine species distribution and habitat use. This change is meant to enable the Navy to take advantage of additional monitoring locations and techniques to better address the questions proposed in the AFAST monitoring plan and contribute to addressing the objectives of the Navy's ICMP plan. Vessel and aerial surveys off Cape Hatteras will support a study examining the behavioral ecology, prey fields, and cetacean reactions to sound. The project is an expansion of previous research conducted on pilot whales and other deep-diving odontocetes by researchers from Duke University and Woods Hole Oceanographic Institution. Baseline data will be collected in 2010–2011 from boat-based visual surveys and may also include tagging, biopsy, photo ID, and tracking. The project is anticipated to span approximately 3 years to include future experimental response studies and prey field mapping. For 2011, the Navy proposes to allow for flexibility among multiple sites within the Virginia Capes (VACAPES), Cherry Point (CHPT), and Jacksonville (JAX) Operating Areas (OPAREAS) in order to support different monitoring efforts as described above. The Navy plans to continue some baseline monitoring at the Onslow Bay site.

Beyond those changes, none of the information contained in the monitoring report or discussed at the annual adaptive management meeting led NMFS to recommend any modifications to the existing mitigation or monitoring measures. The final modifications to the monitoring plan and justifications are described in Section 12 of the Navy's 2011 LOA Application, which may be viewed at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

#### **Integrated Comprehensive Monitoring Report**

The 2010 LOA required that the Navy update the ICMP Plan to reflect development in three areas, specifically: (1) Identifying more specific monitoring sub-goals under the major goals that have been identified; (2) characterizing Navy Range Complexes and study areas within the context of the prioritization guidelines described in the ICMP Plan; and (3) continuing to develop data management, organization and access procedures. The Navy has updated the ICMP Plan as required. Because the ICMP is an evolving Program, we have posted the ICMP on NMFS Web site: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm> and are specifically

requesting input, which the Navy and NMFS will consider and apply as appropriate.

Further, the Navy convened a monitoring meeting in October, 2010 to solicit input from NMFS and marine mammal and acoustic scientists regarding the comprehensive development and improvement of the more specific monitoring that should occur across the Navy's training areas. Subsequent to those discussions, the Navy has developed a scientific advisory group (of Navy and outside scientists) that will work on a proposed Navy training area-wide monitoring plan that better considers the biological, logistical, and resource-specific factors that are applicable in each area (and which are summarized in the updated ICMP) to maximize the effectiveness of the information that is most needed. Subsequently, NMFS and MMC representatives will review this proposed Navy-wide monitoring plan, which will likely reflect monitoring differences in some Navy training areas from what is required in the 2011 LOA.

This proposed Navy-wide monitoring plan will then be available for review and discussion at the required 2011 Navy Monitoring Meeting, which will take place in late Spring 2011. The Navy and NMFS will then modify the Navy-wide monitoring plan based on applicable input from the 2011 Monitoring Meeting and propose appropriate changes to the monitoring measures in specific LOAs for the different Range Complexes and training areas. For training areas with substantive monitoring modifications, NMFS will subsequently publish proposed LOAs, with the modifications, in the **Federal Register** and solicit public input. After addressing public comments and making changes as appropriate, NMFS will issue new training area LOAs that reflect the new Navy-wide monitoring plan.

#### **NOAA Workshops**

In a January 19, 2010 letter to the Council on Environmental Quality, NOAA identified the need for two interrelated workshops on marine mammals and sound in the ocean. To address this commitment, NOAA is convening two parallel, focused, relatively small, and product-driven working groups. One will identify and map cetacean "hot spots", defined as areas of known, or reasonably predictable, biological importance (*i.e.*, for reproduction, feeding, migration) and/or high densities. The second working group will be directed toward developing a comprehensive data

collection and analysis plan for describing and predicting underwater sound fields in different areas. The outcomes of these working groups will be integrated and analyzed in a broader symposium to include a larger audience of scientists, industries, Federal agencies, conservation managers, and environmental non-governmental organizations (NGOs). The final products and analyses will provide a more robust, comprehensive, and context-specific biological and acoustic basis by which to inform subsequent management decisions regarding human-generated noise in our oceans. The steering committee has been convened and met for the first time in October, 2010. The working group efforts should take about a year to complete, and we expect the final symposium to be held in early 2012. The results of these working groups will be analyzed by NMFS in an adaptive management context, as related to the AFAST final rule (74 FR 4844, January 27, 2009), and mitigation or monitoring measures may be modified, as appropriate.

#### **Authorization**

The Navy complied with the requirements of the 2010 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2010 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized. Further, the level of taking authorized in 2011 for the Navy's AFAST activities is consistent with our previous findings made for the total taking allowed under the AFAST regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2011 AFAST activities will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a one-year LOA for Navy training exercises conducted in the AFAST Study Area from January 22, 2011, through January 21, 2012.

Dated: January 20, 2011.

**Helen M. Golde,**

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

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