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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC560

Takes of Marine Mammals Incidental to Specified Activities; Office of Naval Research Acoustic Technology Experiments in the Western North Pacific Ocean.

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

ACTION: Notice; issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the U.S. Navy's Office of Naval Research (ONR) to take marine mammals, by harassment, incidental to conducting Acoustic Technology Experiments (ATE) in the western North Pacific Ocean.

DATES: This authorization is effective from July 1, 2013, through June 30, 2014.

ADDRESSES: An electronic copy of the application containing a list of the references used in this document may be obtained by visiting the internet at: http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "…an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for a 1-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

The National Defense Authorization Act (NDAA) (Public Law 108–136) removed the ''small numbers'' and "specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On December 20, 2012, NMFS received an application from ONR for the taking of marine mammals incidental to ATE in the western North Pacific Ocean. ONR provided additional information on March 7, 2013 and NMFS determined that the application was adequate and complete on March 7, 2013. On April 2, 2013, NMFS published a Federal Register notice (78 FR 19652) requesting comments from the public concerning ONR's proposed activity along with NMFS' proposed IHA.

ONR will conduct ATE in one of nine provinces comprising the western North Pacific Ocean. The activity will occur for no more than 2 weeks during the spring or summer of 2013. Transmissions from four underwater active acoustic sources may result in the take of marine mammals. Take, by Level B harassment only, of individuals of up to 34 species is authorized for the specified activity. A detailed description of ONR's activity was provided in the proposed IHA (78 FR 19652, April 2, 2013).

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on April 2, 2013 (78 FR 19652). During the 30-day public comment period, we received comments from eighteen individuals and the Marine Mammal Commission (Commission).

Comment 1: Numerous people suggested that the Navy's proposed activity would result in the harm and death of too many marine mammals.

Response: The Navy did not propose, and NMFS is not authorizing, the take of marine mammals by injury or mortality. The Navy's activity may result in the behavioral harassment of marine mammals. It is also important to note that the take estimates provided in the proposed IHA (78 FR 19652, April 2, 2013) are the maximum amount of take expected for any of the nine provinces in the western North Pacific Ocean.

Comment 2: One commenter suggested that marine mammal species were omitted from some of the proposed action areas in the analysis (i.e., short-beaked common dolphin, gray whale, Pacific white-sided dolphin, pantropical spotted dolphin, and sei whale).

Response: Short-beaked common dolphins – Short-beaked common dolphins are a cool-temperate species and they are not expected to occur in the South China Sea. The Smith et al (1997) paper the commenter refers to states that skeletal remains of long-beaked common dolphins were found in Vietnamese whale temples, but no evidence of short-beaked common dolphins have been recorded for the region. Furthermore, several visual surveys in the western Pacific region and the Main Hawaiian Islands have not observed short-beaked common dolphins (Barlow, 2006; Fulling et al., 2011). Given the lack of observations in recent surveys, the density estimate that was derived from data in the eastern North Pacific (Ferguson and Barlow, 2001 and 2003) was modified to reflect the expected distribution of short-beaked common

dolphins in the Sea of Japan and North Philippine Sea provinces and the unlikely presence of short-beaked common dolphins in the South China Sea, West Philippine Sea, Offshore Guam, and Northwest Pacific Ocean (10-25°N).

Gray whale – Western Pacific gray whales are believed to migrate across the East China Sea to and from unknown winter breeding grounds. The reference that the commenter cites (Omura, 1988) has anecdotal observations of gray whales in the Yellow Sea in May (spring). There is no indication if any observations in summer months and western Pacific gray whales are known to occur in more northern areas during the summer (Meier et al., 2007; Weller et al., 2002).

Pacific white-sided dolphins – Pacific white-sided dolphins display a north-south migratory pattern, moving from warm-temperate waters in winter to cool-temperate waters in summer. The commenter cites Hayano et al. (2004), which states, "In the Sea of Japan, the dolphins were observed mostly in coastal waters off Iki Island in January-March, and off the central-northern Japan in June-July, suggesting they migrate northward along the coast of Japan in spring to off the western coast of Hokkaido and/or to the Sea of Okhotsk where they summer." The cited reference of Miyashita (1993) does not include any reference to Pacific white-sided dolphins. Pacific white-sided dolphins are not expected to be in the southern half of the Sea of Japan during summer months.

Pantropical spotted dolphins – Pantropical spotted dolphins inhabit tropical and subtropical waters, from south of approximately 37°N. The map of sightings in June from Miyashita (1993) (as cited by the commenter) show them south of 35°N. As the East of Japan province is at the northern limit of their distributional range, they are not expected in this region during the cold-water months of spring, but may be present during summer months.

Sei whale – The papers that the commenter cited on passive acoustic recordings (Stafford et al., 2001; Stafford, 2003) do not refer to sei whales. As for the two cited papers on recent surveys (DoN, 2007; Fulling et al., 2011), they both refer to the same survey that occurred in the offshore Guam region in January-April 2007. There were eight sightings of sei whales during these winter months, but there is no evidence to suggest that sei whales are found offshore Guam in summer months.

Comment 3: One commenter stated that harassment estimates were omitted for some species in the area (i.e., Kogia spp. in the East China Sea and Risso's dolphin in the South China Sea).

Response: The value of 0.0000 for both species' was inadvertently left out of the table for Level A harassment. This does not change NMFS' analysis or authorized take amounts.

Comment 4: One commenter suggested that the harassment analysis was based on calculations using an out-of-date database (Generalized Digital Environmental Model (GDEM) 2.5) and inappropriate model.

Response: The Navy compared sound velocity profiles between GDEM 2.5 and 3.0 at each of the nine modeling sites. There were no significant differences observed in the profiles at any of the nine sites. The Navy reran the propagation model with GDEM 3.0 data at the experiment site for multiple odontocetes, and the harassment estimates using GDEM 2.5 were more conservative. It is important to note that the Navy's activity is taking place in deep water areas, so the sound speed variability between the two databases for this activity is negligible. Future analyses of this nature will utilize GDEM 3.0 data.

The commenter suggested that the High Frequency Bottom Loss (HFBL) model should have been used; however, this model is not appropriate for analyzing sources below 1.5 kHz.

Moreover, the Navy's activity will be conducted in deep water so that bottom loss and type are negligible considerations.

Comment 5: The Commission recommended that NMFS assess the potential risk to marine mammals from the ATE by requiring ONR to (1) provide the best available mean density estimates plus two standard deviations for the densities based on surveys in areas other than the locations where the experiments could occur; (2) describe any known or suspected sources of bias associated with the use of those data; and (3) reestimate the numbers of takes using those mean densities plus two standard deviations.

Response: NMFS disagrees that the density estimates need to be reevaluated. The estimation of take already overestimates what is likely to occur because the Navy considered a worst-case scenario of nine different locations (only one of which the activity will actually occur in). Furthermore, the analysis does not take into consideration the required mitigation and monitoring measures in the IHA.

Comment 6: The Commission recommended that NMFS require ONR to use a third clearance time category of 60 minutes for deep-diving species after a delay or shut down, if the animal is not observed to have left the mitigation zone.

Response: NMFS disagrees that the clearance time should be lengthened for deep-diving species for the following reasons: (1) Just because an animal can dive for longer than 30 minutes does not mean that they always do, so the 60-minute delay would only potentially add value in instances when animals had remained underwater for more than 30 minutes; (2) The animal would need to have stayed in the immediate vicinity of the sound source for an hour. Considering the maximum area that both the vessel and the animal could cover in an hour, it is improbable that this would randomly occur. Moreover, considering that many animals have

been shown to avoid both acoustic sources and ships without acoustic sources, it is improbable that a deep-diving cetacean (as opposed to a dolphin that might bow ride) would choose to remain in the immediate vicinity of the acoustic source; and (3) Visual observers are not always able to differentiate species to the degree that would be necessary to implement this measure. NMFS does not believe that increasing the clearance time to 60 minutes will add to the protection of marine mammals in the vast majority of cases, and therefore, we have not required it.

Comment 7: The Commission recommended that NMFS require ONR to use passive acoustic monitoring continually during the experiments to supplement daytime visual monitoring.

Response: NMFS disagrees that passive acoustic monitoring should be required during daytime hours. However, ONR will use passive acoustic monitoring at night and during other periods of decreased visual observation capabilities. NMFS does not believe that supplementing visual monitoring with passive acoustic monitoring during daytime hours will add to the protection of marine mammals in the vast majority of cases, as the location of a marine mammal cannot be identified using a single sound recorder.

Marine Mammals in the Area of the Specified Activity

Thirty-four marine mammal species may potentially occur in at least one of the nine provinces comprising the western North Pacific Ocean in which the ATE may occur. Eight of these species are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.) and depleted under the MMPA: blue whale (Balaenoptera musculus), fin whale (Balaenoptera physalus), gray whale (Eschrichtius robustus), humpback whale (Megaptera novaeangliae), North Pacific right whale (Eubalaena japonica), sei whale (Balaenoptera

borealis), sperm whale (Physeter macrocephalus), and Hawaiian monk seal (Monachus schauinslandi). Although 34 species of marine mammals may potentially occur in the waters of the nine western North Pacific provinces, the two species of Kogia are often considered together due to the difficulty in identifying these animals to the species level at sea and the sparse information that is known about the individual species. The 34 species considered include eight mysticetes, 25 odontocetes, and one pinniped (Table 1). Detailed descriptions of these species are provided in the section 4 of ONR's application and summarized in the Federal Register notice for a proposed IHA (78 FR 19652, April 2, 2013) and not repeated here. Further information on all the species can also be found in the NMFS Stock Assessment Reports (SAR) online: http://www.nmfs.noaa.gov/pr/pdfs/sars.

Table 1. Marine mammals potentially occurring in the nine provinces of the western North Pacific where the ATE may be conducted and their status.

Common Name	Scientific Name	ESA and MMPA Status
Mysticetes		
Blue Whale	Balaenoptera musculus	Endangered/Depleted
Bryde's Whale	Balaenoptera edeni	-
Common Minke Whale	Balaenoptera acutoros-trata	-
Fin Whale	Balaenoptera physalus	Endangered/Depleted
Gray Whale	Eschrichtius robustus	Endangered/Depleted[1]
Humpback Whale	Megaptera novaeangliae	Endangered/Depleted
North Pacific Right Whale	Eubalaena japonica	Endangered/Depleted
Sei Whale	Balaenoptera borealis	Endangered/Depleted
Odontocetes		
Baird's Beaked Whale	Berardius bairdii	-

Blainville's Beaked Whale	Mesoplodon densirostris	-
Common Bottlenose Dolphin	Tursiops truncatus	-
Cuvier's Beaked Whale	Ziphius cavirostris	-
Dall's Porpoise	Phocoenoides dalli	-
False killer whale	Pseudorca crassidens[2]	-
Fraser's Dolphin	Lagenodelphis hosei	-
Ginkgo-toothed Beaked Whale	Mesoplodon ginkgodens	-
Hubbs' Beaked Whale	Mesoplodon carhubbsi	-
Killer Whale	Orca orcinus	-
Kogia spp.		-
Longman's Beaked Whale	Indopacetus pacificus	-
Melon-headed Whale	Peponocephala electra	-
Pacific White-sided Dolphin	Lagenorhynchus obliq-uidens	-
Pantropical Spotted Dolphin	Stenella attenuata	-
Pygmy Killer Whale	Feresa attenuata	-
Risso's Dolphin	Grampus griseus	-
Rough-toothed Dolphin	Steno bredanensis	-
Short-beaked Common Dolphin	Delphinus delphis	-
Short-finned Pilot Whale	Globicephala macrorhynchus	-
Sperm Whale	Physeter macrocephalus	Endangered/Depleted
Spinner Dolphin	Stenella longirostris	-
Stejneger's Beaked Whale	Mesoplodon stejnegeri	-
Striped Dolphin	Stenella coeruleoalba	-
Pinnipeds		

Hawaiian Monk Seal	Monachus schauinslandi	Endangered/Depleted

[1] Only the western Pacific population is listed as endangered under the ESA.
[2] As a species, the false killer whale is not listed under the ESA; however, the insular Main Hawaiian Islands distinct population segment (DPS) of false killer whales is listed as endangered under the ESA.

Potential Effects of the Specified Activity on Marine Mammals

This section of the proposed rule included a detailed account of potential effects (78 FR 19652, April 2, 2013), including tolerance, masking, behavioral disturbance, hearing impairment, non-auditory physiological effects, stranding, and mortality. In summary, acoustic stimuli generated by underwater signals from no more than four acoustic sources have the potential to cause Level B harassment of marine mammals in the action area. The impacts to marine mammals from these sources are expected to be limited to some masking effects and behavioral responses in the areas ensonified by the acoustic sources.

Permanent hearing impairment, in the unlikely event that it occurs, would constitute injury, but temporary threshold shift (TTS) is considered a type of Level B harassment (Southall et al., 2007). Although the possibility cannot be entirely excluded, it is unlikely that the ATE will result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is possible, but NMFS expects the disturbance to be localized and short-term.

Anticipated Effects on Marine Mammal Habitat

No ESA-designated critical habitats of any marine mammal species are located in or near the waters of the nine western North Pacific Ocean provinces in which the ONR ATE may be conducted. There are also no international marine mammal protected areas located within the vicinity of the experiment area. During the ONR ATE, only acoustic transducers and receivers

as well as standard oceanographic equipment will be deployed. Experimental systems are planned to be retrieved after data collection has been completed. The acoustic and oceanographic instrumentation that would be deployed operates in accordance with all applicable international rules and regulations related to environmental compliance, especially for discharge of potentially hazardous materials. Therefore, no discharges of pollutants will result from the deployment and operation of the acoustic and oceanographic instruments and systems.

During the ONR ATE, deployment and operation of the sound sources will result in no physical alterations to the marine environment other than addition of elevated underwater sound levels, which may have some effect on marine mammals. Any increase in underwater sound levels will be temporary (lasting no more than 2 weeks) and limited in geographic scope. A small number of marine mammals present near the proposed activity may be temporarily displaced due to sound source transmissions. However, concentrations of marine mammals and/or marine mammal prey species are not expected to be encountered in or near the vicinity of the waters in the western North Pacific provinces in which the ONR ATE may occur. There are no critical feeding, breeding, or migrating areas for any marine mammal species that may occur in the action area. No long-term impacts associated with the increase in ambient noise levels are expected.

Mitigation Measures

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar

significance, and the availability of such species or stock for taking for certain subsistence uses (where relevant).

The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that "least practicable adverse impact" shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the "military readiness activity." The training activities described in ONR's application are considered military readiness activities.

The following mitigation measures will be implemented during the ONR ATE:

Vessel Movement

ONR will maneuver the research vessel, as feasible, to avoid closing within 457 m (1,499 ft) of a marine mammal. Standard operating procedures for the research vessel will be to avoid collision with marine mammals, including maintaining a minimum safe maneuvering distance from detected animals.

Mitigation Zone

ONR will use a 1-km mitigation zone to avoid take by Level A harassment and reduce the potential impacts to marine mammals from ONR ATE. Mitigation zones are measured as the radius from a source and represent a distance that visual observers will monitor during daylight hours to ensure that no marine mammals enter the designated area. The mitigation zone will be monitored for 30 minutes before the active acoustic source transmissions begin and will continue until 30 minutes after the active acoustic source transmissions are terminated, or 30 minutes after sunset, whichever comes first. Visual detections of marine mammals will be communicated immediately for information dissemination and appropriate action, as described directly below.

Delay and Shut-down Procedures

During daytime transmissions, ONR will immediately delay or shut down active acoustic source transmissions if a marine mammal is visually detected within the 1 km exclusion zone. Based on NMFS' recommendation, transmissions will not commence/resume for 15 minutes (for small odontocetes and pinnipeds) or 30 minutes (for mysticetes and large odontocetes) after the animal has moved out of the exclusion zone or there has been no further visual detection of the animal. During nighttime transmissions, ONR will immediately delay or shut down active acoustic source transmissions if a marine mammal is detected using passive acoustic monitoring. Based on NMFS' recommendation, transmissions will commence/resume 15 minutes (for small odontocetes and pinnipeds) or 30 minutes (for mysticetes and large odontocetes) after there has been no further detection of the animal.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of assuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the applicant's proposed measures and those proposed by NMFS, we have determined that the above mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, where applicable, "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring

ONR will conduct marine mammal monitoring during the specified activity for the purpose of implementing required mitigation and to provide information on species presence and abundance in the action area. Protected species observers (both visual and acoustic) will maintain a log that includes duration of time spent searching/listening for marine mammals; numbers and species of marine mammals detected; any unusual marine mammal behavior; and the date, time, and location of the animal and any sonobuoy deployments. ONR's monitoring plan is described below.

Vessel-based Visual Monitoring – ONR will continuously monitor for marine mammals when active acoustic sources are being used during daylight hours. Two visual observers will be on effort during active ATE source transmissions occurring during daylight hours. One observer will be positioned on the deck level above the bridge, about 12 m above the water line, while the second observer will be located on the bridge level, about 9.8 m above the water line. Protected species observers will be trained for visually detecting and identifying marine mammal species. Observers will begin monitoring 30 minutes before the active acoustic source transmissions are scheduled to begin and will continue until 30 minutes after the active acoustic source transmissions are terminated, or 30 minutes after sunset, whichever comes first.

Passive Acoustic Monitoring – ONR will conduct passive acoustic monitoring from the vessel when active acoustic sources are deployed during nighttime (i.e., no more than 35 hours total) and other periods of decreased visual observation capabilities. Passive acoustic monitoring will include listening for vocalizations and visually inspecting spectrograms of radio frequency-transmitted signals from a deployed AN/SSQ-53 DIFAR sonobuoy by personnel trained in detecting and identifying marine mammal sounds. Passive acoustic monitoring will begin 30 minutes before transmissions are scheduled to begin and continue until 30 minutes after transmissions are terminated, or 30 minutes after sunrise, whichever occurs first.

If a passively detected sound is estimated to be from a marine mammal, the acoustic observer will notify the appropriate personnel and shutdown procedures will be implemented. For any marine mammal detection, the Test Director will order the immediate delay/suspension of the active acoustic source transmissions and/or deployment. Based on NMFS' recommendation, transmissions may commence/resume 15 minutes (for small odontocetes) or 30

minutes (for mysticetes and large odontocetes) after there has been no further detection of the animal.

Reporting

Protected species observers (both visual and acoustic) will maintain a log that includes duration of time spent searching/listening for marine mammals; numbers and species of marine mammals detected; any unusual marine mammal behavior; and the date, time, and location of the animal and any sonobuoy deployments. Data would be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). Based on NMFS' recommendation, protected species observers will record the behavioral state of all marine mammals observed and the status of the active acoustic source when observers see an animal.

ONR will submit two reports to NMFS within 90 days after the end of the proposed activity: one unclassified report and one classified report. The reports will describe the operations that were conducted and sightings of marine mammals near the operations. The reports will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day reports will summarize the dates and locations of active acoustic source transmissions, and all marine mammal sightings (dates, times, locations, activities, associated active acoustic transmissions). The reports will also include estimates of the number and nature of exposures that could result in 'takes' of marine mammals.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury, or mortality (e.g., ship-strike, gear interaction, etc.), ONR would immediately cease the specified activities and immediately (as soon as possible, according to security protocol) report

the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS. The report must include the following information:

Time, date, and location (latitude/longitude) of the incident;

Name and type of vessel involved;

Vessel's speed during and leading up to the incident;

Description of the incident

Status of all sound sources used in the 24 hours preceding the incident;

Water depth;

Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

Description of all marine mammal observations in the 24 hours preceding the incident;

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

Fate of the animal(s); and

Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with ONR to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ONR may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that ONR discovers an injured or dead marine mammal, and the lead protected species observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), ONR would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS. The report must include the same

information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with ONR to determine whether modifications in the activities are appropriate.

In the event that ONR discovers an injured or dead marine mammal, and the lead protected species observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ONR would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS within 24 hours of the discovery. ONR would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

With respect to military readiness activities, section 3(18)(B) of the MMPA defines "harassment" as: any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

This section of the proposed rule included a detailed description of the Navy's analysis and how take estimates were calculated (78 FR 19652, April 2, 2013). That information has not changed and is not repeated here. In summary, only take by Level B harassment is anticipated and authorized as a result of the specified activity. Acoustic stimuli (i.e., increased underwater sound) generated during the transmission of active acoustic sources have the potential to cause

temporary, short-term changes in marine mammal behavior. There is no evidence that the planned activities will result in injury, serious injury, or mortality within the specified geographic area. The required mitigation and monitoring measures are expected to minimize any potential risk for injury or mortality. The maximum estimated take amounts are summarized in Table 2 below.

Table 2. Maximum estimated take from exposure to acoustic sources employed during the ONR ATE by marine mammal species potentially occurring in the nine provinces of the western North Pacific Ocean.

Marine Mammal Species	Maximum MMPA Level A Harassment	Maximum MMPA Level B Harassment	Authorized Take by Level B Harassment
Mysticetes			
Blue Whale	0.0000	0.0156	1
Bryde's Whale	0.0000	1.9562	2
Common Minke Whale	0.0000	7.70636	8
Fin Whale	0.0000	1.70956	2
Gray Whale	0.0000	0.0038	1
Humpback Whale	0.0000	1.6395	2
North Pacific Right Whale	0.0000	0.0214	1
Sei Whale	0.0000	1.0446	2
Odontocetes			
Baird's Beaked Whale	0.0000	0.6882	1
Blainville's Beaked Whale	0.0000	0.5985	1
Common Bottlenose Dolphin	0.0000	23.7805	24
Cuvier's Beaked Whale	0.0000	2.2811	3
Dall's Porpoise	0.0000	53.0706	54
Dwarf Sperm Whale	0.0000	4.2209	5
False Killer Whale	0.0000	7.3891	8
Fraser's Dolphin	0.0000	5.7854	6
Ginkgo-toothed Beaked Whale	0.0000	0.5985	1

Hubbs' Beaked Whale	0.0000	0.1928	1
Killer Whale	0.0000	0.1600	1
Kogia spp.	0.0000	2.2840	3
Longman's Beaked Whale	0.0000	0.2993	1
Melon-headed Whale	0.0000	15.4891	16
Mesoplodon spp.	0.0000	0.1928	1
Pacific White-sided Dolphin	0.0000	7.5305	8
Pantropical Spotted Dolphin	0.0000	35.8584	36
Pygmy Killer Whale	0.0000	4.3103	5
Pygmy Sperm Whale	0.0000	1.7203	2
Risso's Dolphin	0.0000	11.3736	12
Rough-toothed Dolphin	0.0000	5.8877	6
Short-beaked Common Dolphin	0.0000	86.3962	87
Short-finned Pilot Whale	0.0000	18.7461	19
Sperm Whale	0.0000	1.6701	2
Spinner Dolphin	0.0000	2.1661	3
Stejneger's Beaked Whale	0.0000	0.2855	1
Striped Dolphin	0.0000	23.9042	24
Pinnipeds			
Hawaiian Monk Seal	0.0000	0.0067	1

Negligible Impact Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "…an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a variety of factors, including, but not limited to:

- The number of anticipated mortalities;
- The number and nature of anticipated injuries;
- The number, nature, intensity, and duration of Level B harassment; and
- The context in which the takes occur.

As mentioned previously, NMFS estimates that 34 species of marine mammals may be affected by Level B harassment during the ONR ATE. No injuries, serious injuries, or mortalities are anticipated to occur as a result of the specified activity, and none are authorized. Additionally, for reasons presented earlier in this document, temporary or permanent hearing impairment is not anticipated to occur during the specified activity. Only short-term behavioral disturbance is anticipated to occur due to the limited duration of active acoustic transmissions and the estimated marine mammal densities in the area. ONR's specified activity will occur for about 2 weeks and active acoustic sources will operate intermittently during this time. Due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival. Furthermore, there are no critical feeding, breeding, or migrating areas for any of the species that may be found there at the time of the activity.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting the ONR ATE, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals. Of the ESA-listed marine mammals that may potentially occur in the action area, North Pacific right whale populations lack sufficient data to determine trends in abundance and sperm whale populations are not well known in the southern hemisphere. While behavioral modifications, including temporarily vacating the area during the transmission of active acoustic transmissions, may be made by these species to avoid

the resultant acoustic disturbance, the availability of alternate areas and the short and sporadic duration of the demonstration, have led NMFS to determine that this action will have a negligible impact on the species in the specified geographic region.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that ONR's specified activity may result in the incidental take of marine mammals, by Level B harassment only, and that the total taking from the ATE will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Of the species of marine mammals that may occur in the proposed demonstration area, eight are listed as endangered under the ESA: blue whale, fin whale, gray whale, humpback whale, North Pacific right whale, sei whale, sperm whale, and Hawaiian monk seal. Under section 7 of the ESA, ONR initiated formal consultation with NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on their specified activity. NMFS' Office of Protected Resources, Permits and Conservation Division, also initiated formal consultation under section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Act Interagency Cooperation Division. NMFS issued a Biological Opinion concluding that the Navy's action is not likely to jeopardize the continued

existence of endangered blue, fin, gray, humpback, North Pacific right, sei, or sperm whales or Hawaiian monk seals, or adversely modify critical habitat designated for those species.

National Environmental Policy Act (NEPA)

ONR prepared a draft Overseas Environmental Assessment (OEA) to address the potential environmental impacts that could occur as a result of the proposed activity. To meet NMFS' National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) requirements for the issuance of an IHA to ONR, NMFS prepared an independent NEPA analysis, which included an EA and Finding of No Significant Impact (FONSI). These documents are available on our website at http://www.nmfs.noaa.gov/pr/permits/incidental.htm. NMFS determined that issuance of the IHA will not significantly impact the quality of the human environment and that preparation of an Environmental Impact Statement is not required.

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