



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XF561**

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Atlantic Fleet Training and Testing Study Area.**

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

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

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to the training and testing activities conducted in the Atlantic Fleet Training and Testing (AFTT) Study Area from October 2018 through October 2023.

Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

**DATES:** Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox

address for providing email comments is *ITP.Egger@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

*Instructions:* All comments received are a part of the public record and will generally be posted to *www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Egger, Office of Protected Resources, NMFS; phone: (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Availability**

An electronic copy of the Navy's application may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. The Navy released a draft Environmental Impact Statement (EIS)/Overseas EIS (OEIS) for the on June 30, 2017. A copy of the draft EIS, which would also support NMFS' proposed rulemaking under the MMPA, is available at *www.aftteis.com*.

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial

fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Incidental take authorizations shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

With respect to military readiness activities, the MMPA defines "harassment" as 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 June 16, 2017, NMFS received an application from the Navy requesting authorization to take individuals of 39 marine mammal species by Level A and B (behavioral) harassment incidental to training, testing, and routine military operations (all categorized as military readiness activities) from the use of sonar and other transducers, in-water detonations, air guns,

and impact pile driving/vibratory extraction. In addition, the Navy is requesting nine mortalities of four marine mammal species during ship shock trials, and three takes (not to exceed two from any individual stock) by injury or mortality from vessel strikes over the five-year period. One marine mammal species, the North Atlantic right whale (*Eubalaena glacialis*), has designated critical habitat in the AFTT Study Area. The Navy's training and testing activities would occur over five years beginning October 2018. On August 4, 2017, the Navy sent an amendment to its application and Navy's application was considered final and complete.

This will be NMFS' third rule making for AFTT activities under the MMPA. NMFS published the first rule effective from January 22, 2009 through January 22, 2014 on January 27, 2009 (74 FR 4844) and the second rule effective from November 14, 2013 through November 13, 2018 on December 4, 2013 (78 FR 73009). For this third rule making, the Navy is proposing to conduct similar sonar activities in the proposed rulemaking as they have conducted over the past nine years in the previous two rule makings.

### **Description of the Specified Activity**

The Navy's training and testing activities to be conducted within the AFTT Study Area (includes areas of the western Atlantic Ocean along the east coast of North America, portions of the Caribbean Sea, and the Gulf of Mexico, covering approximately 2.6 million square nautical miles of ocean area, oriented from the mean high tide line along the U.S. coast and extends east to the 45-degree west longitude line, north to the 65-degree north latitude line, and south to approximately the 20-degree north latitude line) over the course of 5 years. Please refer to the application, specifically Figure 1.1-1 for a map of the Study Area and Figures 2.2-1 through Figure 2.2-3 for additional maps of the range complexes and testing ranges. The following types of training and testing, which are classified as military readiness activities pursuant to the

MMPA, as amended by the National Defense Authorization Act, would be covered under the LOAs (if authorized): amphibious warfare (in-water detonations), anti-submarine warfare (sonar and other transducers, in-water detonations), expeditionary warfare (in-water detonations), surface warfare (in-water detonations), mine warfare (sonar and other transducers, in-water detonations), and other (sonar and other transducers, impact pile driving/vibratory extraction, air guns).

The Navy has proposed a suite of mitigation measures for marine mammals that could be implemented during training and testing activities in the AFTT Study Area. Procedural mitigation generally involves: (1) the use of one or more trained Lookouts to diligently observe for specific biological resources within a mitigation zone, (2) requirements for Lookouts to immediately communicate sightings of specific biological resources to the appropriate watch station for information dissemination, and (3) requirements for the watch station to implement mitigation (*e.g.*, halt an activity) until certain recommencement conditions have been met. Mitigation measures are also conducted in specific mitigation zones and can consist of a variety of measures including, but not limited to: conducting a certain number of major training exercise per year, not planning or avoid planning major training exercises, minimizing or not conducting active sonar, conducting a certain amount of hull-mounted mid-frequency active sonar per year, not expending explosive or non-explosive ordnance, and implementing vessel speed reductions.

The Navy also proposes to undertake monitoring and reporting efforts to track compliance with take authorizations and to help investigate the effectiveness of implemented mitigation measures in the AFTT Study Area. This can include Adaptive Management, the Integrated Comprehensive Monitoring Program, the Strategic Planning Process, and Annual Monitoring and Exercise and Testing Reports. As an example, under the Integrated

Comprehensive Monitoring Program, the monitoring relating to the effects of Navy training and testing activities on protected marine species are designed to increase in the understanding of the likely occurrence of marine mammals in the vicinity of the action (*i.e.*, presence, abundance, distribution, and density of species) and to increase the understanding of the nature, scope, or context of the likely exposure of marine mammals to any of the potential stressors associated with the action. Please refer to Chapter 13 of the Navy's application for full details on monitoring and reporting proposed by the Navy.

### **Information Solicited**

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the Navy's request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by the Navy's testing and training activities for the AFTT Study Area.

Dated: August 8, 2017.

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Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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