

service like cellular or broadband PCS, we may revisit this decision.

18. The Commission considered and rejected proposals to adopt a specific technology for providing ALI, because we believe that various technologies are currently under development which can provide more advanced public safety technology than those that are currently available. The Commission also considered and rejected proposals to adopt rules to require a minimum latency period to locate 911 callers at this time, because the record is insufficient to determine the technical feasibility and the costs of implementing such requirements, especially the financial impact on small business entities. The Commission instead decided to seek comment on these proposals, including the benefits and feasibility of such requirements.

*VI. Federal Rules That Overlap, Duplicate, or Conflict with These Proposed Rules*

19. There are no Federal rules which overlap, duplicate, or conflict with the rules we are proposing.

**List of Subjects in 47 CFR Part 20**

Communications common carriers, Federal Communications Commission.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96-19661 Filed 8-1-96; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 216**

[Docket No. 960318084-6199-02; I.D. 071596C]

RIN 0648-AG55

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities**

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

**ACTION:** Proposed rule; notice of public meetings and request for comments.

**SUMMARY:** NMFS has received an application from the U.S. Navy for an incidental small take exemption under the Marine Mammal Protection Act (MMPA) to take a small number of marine mammals incidental to shock testing the USS SEAWOLF submarine in

the offshore waters of the U.S. Atlantic coast in 1997. By this notice, NMFS is proposing regulations to govern that take. NMFS also announces the times, dates, and locations of public meetings in order to receive comments from the general public on the Navy application and the proposed regulations. In order to grant the exemption and issue the regulations, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and the proposed regulations.

**DATES:** Comments must be received no later than September 17, 1996. Public meetings are scheduled as follows:

1. August 19, 1996, 10 a.m.-4 p.m. Silver Spring, MD.
2. August 20, 1996, 7-10 p.m. Norfolk, VA.
3. August 21, 1996, 7-10 p.m. Atlantic Beach, FL.

**ADDRESSES:** Comments should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. A copy of the application may be obtained by writing to the above address, telephoning the person below (see **FOR FURTHER INFORMATION CONTACT**) or by leaving a voice mail request at (301) 713-4070. A copy of the draft environmental impact statement (draft EIS) may be obtained from Will Sloger, U.S. Navy, at (803) 820-5797.

The public meetings will be held at the following locations:

1. Norfolk—Lafayette Winona Middle School auditorium, 1701 Alsace Avenue, Norfolk, VA.
2. Atlantic Beach—Mayport Middle School cafeteria, 2600 Mayport Road, Atlantic Beach, FL.
3. Silver Spring—Silver Spring Metro Center Building 4, 1st floor, 1305 East-West Highway, Silver Spring, MD.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, NMFS, (301) 713-2055.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS 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) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s) of marine mammals, will not have an unmitigable adverse impact on the availability of these species for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

**Summary of Request**

On June 7, 1996, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from the U.S. Navy to take marine mammals incidental to shock testing the USS SEAWOLF submarine off the U.S. Atlantic coast. The USS SEAWOLF is the first of a new class of submarines being acquired by the Navy. In accordance with 10 U.S.C. 2366, each new class of ships constructed for the Navy cannot proceed beyond initial production until realistic survivability testing of the ship and its components are completed. Realistic survivability testing means testing for vulnerability in combat by firing munitions likely to be encountered in combat. This testing and assessment is commonly referred to as "Live Fire Test & Evaluation (LFT&E)." Because realistic testing by detonating torpedoes or mines against a ship's hull could result in the loss of a multi-billion dollar Navy asset, the Navy has established an LFT&E program consisting of computer modeling, component and surrogate testing, and shock testing the entire ship. Together, these components complete the survivability testing as required by 10 U.S.C. 2366.

The shock test component of LFT&E is a series of underwater detonations that propagate a shock wave through a ship's hull under deliberate and controlled conditions. Shock tests simulate near misses from underwater explosions similar to those encountered in combat. Shock testing verifies the accuracy of design specifications for shock testing ships and systems, uncovers weaknesses in shock sensitive components that may compromise the performance of vital systems, and provides a basis for correcting deficiencies and upgrading ship and component design specifications. While computer modeling and laboratory testing provide useful information, they

cannot substitute for shock testing under realistic, offshore conditions. To minimize cost and risk to personnel, the first ship in each new class is shock tested and improvements are applied to later ships of the class.

The Navy proposes to shock test the USS SEAWOLF by detonating a single 4,536-kg (10,000-lb) explosive charge near the submarine once per week over a 5-week period between April 1 and September 30, 1997. If the Mayport, FL site is selected, the shock tests would be conducted between May 1 and September 30, 1997 in order to minimize risk to sea turtles. Detonations would occur 30 m (100 ft) below the ocean surface in a water depth of 152 m (500 ft). The USS SEAWOLF would be underway at a depth of 20 m (65 ft) at the time of the test. For each test, the submarine would move closer to the explosive so the submarine would experience a more severe shock.

As part of a separate review under the National Environmental Policy Act (NEPA), two sites are being considered by the Navy for the USS SEAWOLF shock test effort. The Mayport site is located on the continental shelf of Georgia and northeast Florida and the Norfolk site is located on the continental shelf offshore of Virginia and North Carolina. The Mayport site is the preferred location because of a lower abundance of marine mammals at that site. Because of the potential impact to marine mammals, the Navy has requested NMFS to grant an exemption under section 101(a)(5)(A) of the MMPA that would authorize the incidental taking and issue regulations governing the take.

#### Comments

On June 14, 1996 (61 FR 30212), NMFS published a notice of receipt of the Navy's application for a small take exemption and requested comments, information and suggestions concerning the request and the structure and content of regulations to govern the take. The comment period closed on July 15, 1996, but no comments were received.

#### Description of Habitat and Marine Mammals Affected by Shock Testing the USS SEAWOLF

A description of the U.S. Atlantic coast environment, its marine life and marine mammal abundance, distribution and habitat can be found in the draft EIS on this subject and is not repeated here. Additional information on Atlantic coast marine mammals can

be found in Blaylock *et al.* (1995).<sup>1</sup> These documents are available upon request.

#### Summary of Potential Impacts

Potential impacts to the several marine mammal species known to occur in these areas from shock testing include both lethal and non-lethal injury, as well as harassment. Death or injury may occur as a result of the explosive blast, and harassment may occur as a result of non-injurious physiological responses to the explosion-generated shockwave and its acoustic signature. The Navy believes it is very unlikely that injury will occur from exposure to the chemical by-products released into the surface waters, and no permanent alteration of marine mammal habitat would occur. While the Navy does not anticipate any lethal takes would result from these detonations, theoretical calculations indicate that the Mayport site has the potential to result in 1 lethal take, 5 injurious takes, and 570 harassment takes, while the Norfolk site has the potential to result in 8 lethal takes, 38 injurious takes, and 4,819 harassment takes. Detailed descriptions on the definitions of take categories; calculation of ranges for potential mortality, injury, and harassment; incidental take calculations; and impacts on marine mammal habitat can be found in the Navy application, which is available upon request (see ADDRESSES).

#### Summary of Proposed Mitigation and Monitoring Measures

The Navy's proposed action includes mitigation that would minimize risk to marine mammals and sea turtles. The Navy would: (1) Through pre-detonation aerial surveys, select a test area with potentially, the lowest number of marine mammals and turtles; (2) monitor the area visually (aerial and shipboard monitoring) and acoustically before each test and postpone detonation if either (a) any marine mammal or sea turtle is detected within a safety zone of 3.8 km (2.05 nmi) or a buffer zone of an additional 1.8 km (0.05 nmi), or (b) the sea state exceeds Beaufort 4 (i.e., wind velocity >16 kt), or the visibility is not 1.85 km (1 nmi) or greater and the ceiling is not 305 m (1,000 ft) or greater; and (3) monitor the area after each test to find and treat any injured animals. If post-detonation monitoring shows that marine mammals

or sea turtles were killed or injured as a result of the test, testing would be halted until procedures for subsequent detonations could be reviewed and changed as necessary.

A detailed description on the proposed measures for mitigation and monitoring the shock test can be found in the Navy application and draft EIS, which are available upon request (see ADDRESSES).

#### Reporting

Within 120 days of the completion of shock testing, the Navy would be required to submit a final report to NMFS. This report must include the following information: (1) Date and time of each of the detonations; (2) a detailed description of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammals and their populations; (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonations and numbers that may have been harassed due to undetected presence within the safety zone; and (4) results of coordination with coastal marine mammal/sea turtle stranding networks.

#### Preliminary Conclusions

While NMFS believes that detonation of five 4,536-kg (10,000-lb) charges may affect some marine mammals, the latest abundance and seasonal distribution estimates indicate that such taking will have a negligible impact on the populations of marine mammals inhabiting the waters of the U.S. Atlantic Coast. NMFS concurs with the U.S. Navy that impacts can be mitigated by mandating a conservative safety range for marine mammal exclusion, incorporating aerial and acoustic survey monitoring efforts in the program both prior to, and after detonation of explosives, and provided detonations are not conducted whenever marine mammals are detected within the safety zone, or if weather and sea conditions preclude adequate aerial surveillance.

#### NEPA

On June 14, 1996 (61 FR 30232), the Environmental Protection Agency noted the availability for public review and comment a draft EIS prepared by the U.S. Navy under NEPA on this action. NMFS is a cooperating agency as defined by the Council on Environmental Quality regulations (40 CFR 1501.6).

<sup>1</sup> Blaylock, Robert A., James W. Hain, Larry J. Hansen, Debra L. Palka, and Gordon T. Waring. 1995. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments. NOAA Technical Memorandum NMFS-SEFEC-363. 211 pp.

## Endangered Species Act (ESA)

NMFS will be consulting with the U.S. Navy under section 7 of the ESA for this action. In that regard, the Navy submitted to NMFS a Biological Assessment under the ESA. This consultation will be concluded prior to a determination on issuance of a final rule and exemption.

## Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the U.S. Navy and would have no effect, directly or indirectly, on small businesses.

This proposed rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act (PRA). This collection has been approved previously by OMB under section 3504(b) of the PRA issued under OMB Control No. 0648-0151. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The reporting burden for this collection is estimated to be approximately 80 hours, including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information. It does not include time for monitoring the activity by observers. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

## List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: July 30, 1996.

Charles Karnella,  
Acting Director, Office of Operations  
Management Information.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

## PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart O is added to read as follows:

### Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS SEAWOLF by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

Sec.

216.161 Specified activity, geographical region and incidental take levels.

216.162 Effective dates.

216.163 Permissible methods of taking; mitigation.

216.164 Prohibitions.

216.165 Requirements for monitoring and reporting.

216.166 Modifications to the Letter of Authorization.

216.167–216.169 [Reserved]

### Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS SEAWOLF by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

#### § 216.161 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of conventional military explosives within the waters of the U.S. Atlantic Coast offshore Mayport, FL or Norfolk, VA for the purpose of shock testing the USS SEAWOLF.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Blue whale (*Balaenoptera musculus*); fin whale (*B. physalus*); sei whale (*B. borealis*); Bryde's whale (*B. edeni*); minke whale (*B. acutorostrata*); humpback whale (*Megaptera novaeangliae*); northern right whale (*Eubalaena glacialis*); sperm whale (*Physeter macrocephalus*); dwarf sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); pilot whales (*Globicephala melas*, *G. macrorhynchus*); Atlantic spotted dolphin (*Stenella frontalis*); Pantropical spotted dolphin (*S. attenuata*); striped dolphin (*Stenella coeruleoalba*); spinner dolphin (*S. longirostris*); Clymene dolphin (*S. clymene*); bottlenose dolphin (*Tursiops truncatus*); Risso's dolphin (*Grampus griseus*); rough-toothed dolphin (*Steno bredanensis*); killer whale (*Orcinus orca*); false killer whale (*Pseudorca crassidens*); pygmy

killer whale (*Feresa attenuata*); Fraser's dolphin (*Lagenodelphis hosei*); harbor porpoise (*Phocoena phocoena*); melon-headed whale (*Peponocephala electra*); northern bottlenose whale (*Hyperoodon ampullatus*); Cuvier's beaked whale (*Ziphius cavirostris*); Blainville's beaked whale (*Mesoplodon densirostris*); Gervais' beaked whale (*M. europaeus*); Sowerby's beaked whale (*M. bidens*); True's beaked whale (*M. mirus*); common dolphin (*Delphinus delphis*); Atlantic white-sided dolphin (*Lagenorhynchus acutus*); and harbor seals (*Phoca vitulina*).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total of 8 mortalities, 38 injuries and 4,819 harassment takes for detonations in the Norfolk, VA area, or 1 mortality, 5 injuries and 570 harassment takes for detonations in the Jacksonville, FL area, except that the taking by serious injury or mortality for species listed in paragraph (b) of this section that are also listed as threatened or endangered under § 17.11 of this title, is prohibited.

#### § 216.162 Effective dates.

Regulations in this subpart are effective from April 1, 1997, through September 30, 1997.

#### § 216.163 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals by harassment, injury or mortality in the course detonating five 4,536 kg (10,000 lb) conventional explosive charges within the area described in § 216.161(a) provided all terms, conditions, and requirements of the regulations in this subpart and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be utilized:

(1) If marine mammals are observed within the designated safety zone prescribed in the Letter of Authorization, or within the buffer zone prescribed in the Letter of Authorization and on a course that will put them within the safety zone prior to detonation, detonation must be delayed until the marine mammals are no longer within the safety zone or on a course

within the buffer zone that is taking them away from the safety zone.

(2) If weather and/or sea conditions as described in the Letter of Authorization preclude adequate aerial surveillance, detonation must be delayed until conditions improve sufficiently for aerial surveillance to be undertaken.

(3) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next detonation.

#### **§ 216.164 Prohibitions.**

Notwithstanding takings authorized by § 216.161(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified in this subpart.

#### **§ 216.165 Requirements for monitoring and reporting.**

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the appropriate Regional Director at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to record the effects of explosives detonation on marine mammals that inhabit the Atlantic Ocean test area.

(c) The Atlantic Ocean test area must be surveyed by marine mammal biologists and other trained individuals, and the marine mammal populations monitored, approximately 3 weeks prior to detonation, 48–72 hours prior to a scheduled detonation, on the day of detonation, and for a period of time specified in the Letter of Authorization after each detonation. Monitoring shall include, but not necessarily be limited to, aerial and acoustic surveillance sufficient to ensure that no marine mammals are within the designated safety zone nor are likely to enter the designated safety zone prior to or at the time of detonation.

(d) Under the direction of a certified marine mammal veterinarian,

examination and recovery of any dead or injured marine mammals will be conducted. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea. The occurrence of live marine mammals will also be documented.

(e) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under § 216.106, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to subpart D of this part.

(f) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on any ship or aircraft involved in marine mammal reconnaissance, or monitoring either prior to, during, or after explosives detonation in order to monitor the impact on marine mammals.

(g) A final report must be submitted to the Director, Office of Protected Resources, no later than 120 days after completion of shock testing the USS SEAWOLF. This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the designated safety zone.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

#### **§ 216.166 Modifications to the Letter of Authorization.**

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.161(b), or that significantly and detrimentally alters the scheduling of explosives detonation within the area specified in § 216.161(a), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the Federal Register subsequent to the action.

#### **§§ 216.167–216.169 [Reserved]**

[FR Doc. 96–19659 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–22–W

### **50 CFR Part 679**

[Docket No. 960717195–6195–01; I.D. 070196E]

RIN 0648–AI95

#### **Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Fisheries Research Plan; Interim Groundfish Observer Program**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule that would implement Amendment 47 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, Amendment 47 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Groundfish FMPs), and Amendment 6 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area (Crab FMP). This action also would repeal regulations implementing the North Pacific Fisheries Research Plan (Research Plan). This action is necessary to respond to the North Pacific Fishery Management Council's (Council) recommendation to repeal the Research Plan and implement Amendments 47 and 47 to the Groundfish FMPs to establish mandatory groundfish observer coverage requirements through 1997. Amendment 6 to the Crab FMP would remove reference to the Research Plan. This action is intended to establish an Interim Groundfish Observer Program until a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs,