

Regulatory Compliance Communications

APPENDIX J:
REGULATORY COMPLIANCE COMMUNICATIONS

National Historic Preservation Act Section 106J-1
Marine Mammal Protection ActJ-5
Endangered Species Act Section 7J-98
Coastal Zone Management Act.....J-123
Essential Fish Habitat.....J-141



DEPARTMENT OF THE NAVY
COMMANDER
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
5090
Ser N01CEL/1210
29 Oct 09

Allyson Brooks, PhD
State Historic Preservation Officer
Washington Department of Archaeology and Historic Preservation
PO Box 48343
Olympia, WA 98504-8343

SUBJECT: NATIONAL HISTORIC PRESERVATION ACT SECTION 106
CONSULTATION AND REQUEST FOR CONCURRENCE FOR THE
ONGOING AND PROPOSED USE OF THE NORTHWEST TRAINING
RANGE COMPLEX

Dear Dr. Brooks:

In accordance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f), and its implementing regulation, 36 CFR 800, the U.S. Navy would like to consult with your office regarding the current and proposed activities in the Northwest Training Range Complex (NWTRC). A copy of the Draft Environmental Impact Statement/Overseas Environmental Impact Statement (DEIS/OEIS) was sent to your office for review in late December 2008. We are providing your office with information about this project specific to cultural resources, the eligible and potentially eligible historic properties within the area of potential effect, and our determination of "No Adverse Effect" to comply with Section 106 regulations.

The NWTRC is the principle backyard training area for surface, submarine and aviation units located at Naval Air Station (NAS) Whidbey Island, Naval Station Everett, and Naval Base Kitsap, WA, in addition to supporting other local and non-resident users. The on-going training conducted in the NWTRC is necessary to achieve and maintain Fleet readiness, as articulated in the DEIS/OEIS.

The Navy utilizes the sea, air and land areas of the NWTRC for a variety of training activities, and has proposed to add and increase certain training activities within the complex to address future force structure changes. From the DEIS/OEIS, the Purpose and Need of Proposed Action is provided (Enclosure 1).

SUBJECT: NATIONAL HISTORIC PRESERVATION ACT SECTION 106
CONSULTATION AND REQUEST FOR CONCURRENCE FOR THE
ONGOING AND PROPOSED USE OF THE NORTHWEST TRAINING
RANGE COMPLEX

The Area of Potential Effect (APE) for the proposed action has been identified as the NWTRC in its entirety, and consists of numerous training areas in the Pacific Northwest, including airspace, sea space, subsurface space, and land areas. The Range Complex includes ranges that extend westward in the Pacific Ocean to 250 nautical miles beyond the coast of Washington, Oregon, and Northern California and east to Idaho. The Proposed Action does not include any land-based or at-sea construction, modifications to existing Navy infrastructure, nor does it involve a geographic expansion of the existing NWTRC area. The NWTRC is further discussed and mapped in the DEIS/OEIS Description of Proposed Action and Alternatives (Enclosure 2).

Cultural resources are found throughout the project APE. Specific discussion of resources and potential effects to resources can be found in the Cultural Resources section of the DEIS/OEIS (Enclosure 3). Resources and sites in the APE located on land and shore areas throughout the NWTRC are discussed, as well as near shore submerged resources. Over 1300 shipwrecks and submerged aircraft are present along the Washington Coast and in Puget Sound. Additionally, potentially eligible and eligible properties are located within the installations of NAS Whidbey Island, Naval Magazine Indian Island, and Naval Base Kitsap. Distant offshore activities will have no adverse effect to submerged cultural resources; therefore deeply submerged resources in the NWTRC are not discussed. Cultural resources located under special use airspace are also not addressed, as there is no potential to affect potentially eligible historic properties in these areas.

The proposed action consists mainly of increasing the frequency of some currently conducted training activities within the NWTRC, some activities in fact decrease. Therefore the effects on eligible historic properties are anticipated to remain the same as they are presently. The potential effects consist of changes in the special distribution of artifacts from water movement, minor disturbances, compaction and erosion from helicopter landings and foot traffic, and fragments from expended training materials possibly settling on submerged historic properties. All of these would have a negligible effect on cultural resources, and would not alter the characteristics of any property to be eligible for inclusion on the National Register of Historic Places.

SUBJECT: NATIONAL HISTORIC PRESERVATION ACT SECTION 106
CONSULTATION AND REQUEST FOR CONCURRENCE FOR THE
ONGOING AND PROPOSED USE OF THE NORTHWEST TRAINING
RANGE COMPLEX

Twenty one potentially effected Native American tribes in Washington State were notified of the proposed action and provided copies of the DEIS/OEIS for comment in December 2008, as documented in the enclosed Distribution List (Enclosure 4).

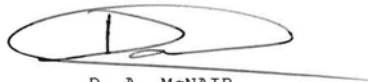
Following notification, six tribes have provided comments on the proposed action or contacted the Navy to arrange further meetings after receipt of the DEIS/OIES: Quinault Indian Nation; Hoh Tribe; Quileute Tribe, Makah Tribe, Suquamish Tribe, and Upper Skagit Tribe.

The comments received from the tribes focused on the following areas: Biological effects, effects on fishing, safety concerns, concerns about expended materials/hazardous wastes, and concerns about future Navy weapons systems and platforms. All comments received from the tribes were individually addressed in Appendix G of the DEIS/OEIS.

Since the potential effects to historic properties from the current and proposed activities within the NWTRC will not alter any characteristics which make the properties eligible for inclusion on the National Register, there is no adverse affect as defined in 36 CFR 800.5. The Navy would like to invite you to concur on our determination of "No Adverse Effect" by November 30, 2009.

If you have questions on this determination, please feel free to contact Mr. John Mosher at 360-257-3234, e-mail: john.g.mosher@navy.mil, or Ms. Kimberly Kler at 360-396-0927, e-mail: Kimberly.kler@navy.mil.

Sincerely,



D. A. McNAIR
Captain, U.S. Navy
Deputy Fleet Engineer
By direction

- Enclosures: 1. NWTRC DEIS/OEIS Purpose and Need
2. NWTRC DEIS/OEIS Description of Proposed Action
3. NWTRC DEIS/OEIS Cultural Resources
4. NWTRC DEIS/OEIS Distribution List



STATE OF WASHINGTON

DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

1063 S. Capitol Way, Suite 106 • Olympia, Washington 98501
Mailing address: PO Box 48343 • Olympia, Washington 98504-8343
(360) 586-3065 • Fax Number (360) 586-3067 • Website: www.dahp.wa.gov

November 5, 2009

Captain D.A. McNair
US Pacific Fleet
250 Makalapa Drive
Pearl Harbor, Hawaii 96860-3131

Re: NWTRC Program
Log No: 092308-10-USN

Dear Captain McNair:

Thank you for contacting our department. We reviewed the materials you provided for the proposed Northwest Training Range Complex (NWTRC) Program in Washington.

We concur with your determination of No Adverse Effect.

We would appreciate receiving any correspondence or comments from concerned tribes or other parties that you receive as you consult under the requirements of 36CFR800.4(a)(4).

These comments are based on the information available at the time of this review and on the behalf of the State Historic Preservation Officer in conformance with Section 106 of the National Historic Preservation Act and its implementing regulations 36CFR800. Should additional information become available, our assessment may be revised.

In the event that archaeological or historic materials are discovered during project activities, work in the immediate vicinity must stop, the area secured, and the concerned tribes and this department notified. Thank you for the opportunity to comment and a copy of these comments should be included in subsequent environmental documents.

Sincerely,



Robert G. Whitlam, Ph.D.
State Archaeologist
(360) 586-3080
email: rob.whitlam@dahp.wa.gov

cc: D. Grant



Notification letters based on the sample letter that follows were delivered to the following Native American Tribes:

First Name	Last Name	Title	Organization	City	State
W. Ron	Allen	Chair	Jamestown S'Klallam Tribe	Sequim	WA
Diana	Barg	Cultural Resources Program Manager	Samish Indian Nation	Anacortes	WA
Janine	Bowechop	THPO Cultural Resources	Makah Tribe	Neah Bay	WA
Pat	Brown	Cultural Resources Manager & Historian	Stillaguamish Tribe	Arlington	WA
Henry	Cagey	Chair	Lummi Nation	Bellingham	WA
Larry	Campbell	Cultural Resources	Swinomish Tribe	LaConner	WA
Frances G.	Charles	Chair	Lower Elwha Klallam Tribe	Port Angeles	WA
Brian	Cladoosby	Chair	Swinomish Tribe	LaConner	WA
Earl	Davis	Cultural Resources Specialist	Shoalwater Bay Tribe	Tokeland	WA
Kathy	Duncan	Cultural Specialist	Jamestown S'Klallam Tribe	Sequim	WA
Kelly	Easter	THPO Cultural Resources	Lummi Nation	Bellingham	WA
Daki	Fisher	Chair	Hoh Indian Tribe	Forks	WA
Leonard	Forsman	Chairman	Suquamish Tribal Center	Suquamish	WA
Billy	Frank	Chair	Northwest Indian Fisheries Commission	Olympia	WA
Henry	Gobin	Cultural Resources Manager	Tulalip Tribes of Washington	Tulalip	WA
Mike	Grayum	Executive Director	Northwest Indian Fisheries Commission	Olympia	WA
Randy	Harder	Executive Director	Point No Point Treaty Council	Kingston	WA
Carol	Hatch	Chair	Quileute Tribe	LaPush	WA
Marie	Hebert	Cultural Resources Director	Port Gamble S'Klallam Tribe	Kingston	WA
Deanna	Hobson	Cultural Resources	Quileute Tribe	La Push	WA
Justine	James	Cultural Resource Protectionist	Quinault Indian Nation	Taholah	WA
Norma	Joseph	Director of Cultural Resources	Sauk-Suiattle Tribe	Darrington	WA
Sandy	Klineburger	Chair	Stillaguamish Tribe	Arlington	WA
Michael	Lawrence	Chair	Makah Tribe	Neah Bay	WA
Dennis	Lewarch	THPO Cultural Resources	Suquamish Tribal Center	Suquamish	WA
Jan	Mabee	Chair	Sauk-Suiattle Tribe	Darrington	WA
Charles "Guy"	Miller	Chair	Skokomish Tribal Nation	Skokomish	WA
Kris	Miller	THPO Cultural Resources	Skokomish Tribal Nation	Skokomish	WA
Joe	Mullen	Chair	Snoqualmie Indian Tribe	Snoqualmie	WA
Steve	Mullen	Cultural Resource Director/Tribal Historic Preservation Officer	Snoqualmie Indian Tribe	Snoqualmie	WA
Charlene	Nelson	Chair	Shoalwater Bay Tribe	Tokeland	WA
Scott	Schuyler	Cultural Resources Manager	Upper Skagit Tribe	Sedro Woolley	WA
Fawn	Sharp	Chair	Quinault Indian Nation	Taholah	WA
Melvin R.	Sheldon, Jr.	Chair	Tulalip Tribes of Washington	Tulalip	WA
Jeromy	Sullivan	Chair	Port Gamble S'Klallam Tribe	Kingston	WA
Lena	Tso	THPO Cultural Resources	Lummi Nation	Bellingham	WA
Jennifer	Washington	Chair	Upper Skagit Tribe	Sedro Woolley	WA
Larry	Wasserman	Director of Environmental Services	Skagit River Cooperative	La Conner	WA
William S.	White	Cultural Resources	Lower Elwha Klallam Tribe	Port Angeles	WA
Thomas	Wooten	Chair	Samish Indian Nation	Anacortes	WA



DEPARTMENT OF THE NAVY

COMMANDER
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
5090
Ser N01CE1/1233
4 Nov 09



SUBJECT: THE NATIONAL HISTORIC PRESERVATION ACT SECTION 106
DETERMINATION FOR THE PROPOSED ACTIVITIES IN THE
NORTHWEST TRAINING RANGE COMPLEX

Dear [REDACTED]:

In accordance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f), and its implementing regulation, 36 CFR 800, the U.S. Navy would like to inform you of our determination of "No Adverse Effect" to historic properties from the proposed actions in the Northwest Training Range Complex (NWTRC). A copy of the Draft Environmental Impact Statement/Overseas Environmental Impact Statement (DEIS/OEIS) was sent to your office for review in late December 2008. We are providing your office with information about this project specific to cultural resources, the eligible and potentially eligible historic properties within the area of potential effect, and the documentation supporting our finding of "No Adverse Effect" to comply with Section 106 regulations.

The NWTRC is the principle backyard training area for surface, submarine and aviation units located at Naval Air Station (NAS) Whidbey Island, Naval Station Everett, and Naval Base Kitsap, WA, in addition to supporting other local and non-resident users. The on-going training conducted in the NWTRC is necessary to achieve and maintain Fleet readiness, as articulated in the DEIS/OEIS.

The Navy utilizes the sea, air and land areas of the NWTRC for a variety of training activities, and has proposed to add and increase certain training activities within the complex to address future force structure changes. From the DEIS/OEIS, the Purpose and Need of Proposed Action is provided (Enclosure 1).

SUBJECT: THE NATIONAL HISTORIC PRESERVATION ACT SECTION 106
DETERMINATION FOR THE PROPOSED ACTIVITIES IN THE
NORTHWEST TRAINING RANGE COMPLEX

The Area of Potential Effect (APE) for the proposed action has been identified as the NWTRC in its entirety, and consists of numerous training areas in the Pacific Northwest, including airspace, sea space, subsurface space, and land areas. The Range Complex includes ranges and special use airspace that extend westward in the Pacific Ocean to 250 nautical miles beyond the coast of Washington, Oregon, and Northern California and east to Idaho. The Proposed Action does not include any land-based or at-sea construction, modifications to existing Navy infrastructure, nor does it involve a geographic expansion of the existing NWTRC area. The NWTRC is further discussed and mapped in the DEIS/OEIS Description of Proposed Action and Alternatives (Enclosure 2).

Cultural resources are found throughout the project APE. Specific discussion of resources and potential effects to resources can be found in the Cultural Resources section of the DEIS/OEIS (Enclosure 3). Resources and sites in the APE located on land and shore areas throughout the NWTRC are discussed, as well as near shore submerged resources. Over 1300 shipwrecks and submerged aircraft are present along the Washington Coast and in Puget Sound. Additionally, potentially eligible and eligible properties are located within the installations of NAS Whidbey Island, Naval Magazine Indian Island, and Naval Base Kitsap. Distant offshore activities will have no adverse effect to submerged cultural resources, therefore deeply submerged resources in the NWTRC are not discussed. Cultural resources located under special use airspace are also not addressed, as there is no potential to affect potentially eligible historic properties in these areas.

The proposed action consists mainly of increasing the frequency of some currently conducted training activities within the NWTRC, some activities in fact decrease. Therefore the effects on eligible historic properties are anticipated to remain the same as they are presently. The potential effects consist of minor disturbances, changes in the spatial distribution of artifacts from water movement, compaction and erosion from foot traffic, and fragments from expended training materials possibly settling on submerged historic properties. These negligible effects will not alter the characteristics of the property that make them eligible for inclusion into the National Register of Historic Places, or the integrity of any such property, and are therefore not considered adverse as defined in 36 CFR 800.5.

SUBJECT: THE NATIONAL HISTORIC PRESERVATION ACT SECTION 106
DETERMINATION FOR THE PROPOSED ACTIVITIES IN THE
NORTHWEST TRAINING RANGE COMPLEX

I would like to inform you of the Navy's determination of "No Adverse Effect" to historic properties from the proposed activities within the NWTRC. If you have any questions or concerns regarding this determination for the proposed action, we ask that you communicate them to the Navy by November 23, 2009 to conclude the Section 106 process of the National Historic Preservation Act.

Points of contact for this information are Mr. John Mosher at 360-257-3234, e-mail: john.g.mosher@navy.mil, or Ms. Kimberly Kler at 360-396-0927, e-mail: kimberly.kler@navy.mil.

Sincerely,



D. A. McNAIR
Captain, U.S. Navy
Deputy Fleet Engineer
By direction

Enclosures: 1. NWTRC DEIS/OEIS Purpose and Need
2. NWTRC DEIS/OEIS Description of Proposed Action
3. NWTRC DEIS/OEIS Cultural Resources



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350-2000

IN REPLY REFER TO

5090
Ser N456P/8U158319
16 October 2008

Mr. P. Michael Payne, Division Chief
Permits, Conservation and Education Division
Office of Protected Resources
National Oceanic and Atmospheric Administration
National Marine Fisheries Service (NMFS)
B-SSMC3 Room 13822
1315 East-West Highway
Silver Spring, MD 20910-3282

Dear Mr. Payne,

In accordance with the Marine Mammal Protection Act, as amended and 50 CFR Part 216.106, the U.S. Navy requests a five-year Letter of Authorization (LOA) for the incidental take of marine mammals associated with the proposed training operations under Commander, U.S. Pacific Fleet, that occur within the established Northwest Training Range Complex (NWTRC).

The proposed action may expose certain marine mammals that may be present within the NWTRC to sound from hull-mounted mid- or high- frequency active sonar or to pressure from explosive sources during training activities. Enclosure (1) focuses on the specific information required by the National Marine Fisheries Service for consideration of an incidental take request.

We appreciate your continued support in helping the Navy to meet its environmental responsibilities. My staff point of contact for this action is Ms. Linda S. Petitpas at (703) 604-1233, or e-mail Linda.petitpas@navy.mil. Commander, U.S. Pacific Fleets' point of contact in this matter is Ms. Carolyn Winter, (360) 315-5092 or email carolyn.winter@navy.mil.

Sincerely,

RONALD E. TICKLE
Head, Operational Environmental
Readiness and Planning Branch
Environmental Readiness Division
(OPNAV N45)

Enclosure:

- (1) Request for Letter of Authorization for the Incidental Harassment of Marine Mammals Resulting from the Navy Training Activities Conducted Within the Northwest Training Range Complex (September 2008) delivered via FedEx under separate cover on 3 Sep 08.

Copy to (w/o enclosure):

DASN (E)
CPF N01CE
OPNAV N43
ASN (I&E)

Wauer, Brian D

From: Petitpas, Linda S. CIV (OPNAV CNO) [linda.petitpas@navy.mil]
Sent: Wednesday, November 05, 2008 7:20 AM
To: Jolie.Harrison@noaa.gov
Cc: Petitpas, Linda S. CIV (OPNAV CNO); Peters, Agnes CIV; Kler, Kimberly H CIV NAVFAC NW, EV1; Winters, Carolyn L CIV COMPACFLT, N01CE1CW
Subject: FW: NWTRC - Replacement Pages for LOA
Attachments: NWTRC LOA V4 10-8-08 track changes.pdf

Importance: High

Jolie,
CPF identified some corrections that are required in the NWTRC LOA application. The track changes version here provides changes in harassment numbers as presented in Chapter 6. Navy would prefer that the corrected pages be inserted in the document posted on NMFS website when the NOR is issues. If this is acceptable to you, CPF has also provided the ftp site information where a completed Word version is available for you to download.

I have reviewed the changes and support the updated version.

This fell through the cracks in my inbox with everything else going on - my fault. Please let me know if this version can be used for the NOR. Thanks in advance.

Linda
Linda S. Petitpas
Chief of Naval Operations (CNO)
Environmental Readiness (N45)
2511 Jefferson Davis Highway
Suite 2000
Arlington, VA 22202
Phone: 703-604-1233
Fax: 703-602-2676
e-mail: linda.petitpas@navy.mil
SIPRNET: n45msg.fct@navy.smil.mil

-----Original Message-----
From: Wauer, Brian [mailto:Brian.Wauer@wg.srs.com]
Sent: Friday, October 24, 2008 14:18
To: Petitpas, Linda S. CIV (OPNAV CNO); Winters, Carolyn L CIV COMPACFLT, N01CE1CW
Cc: Peters, Agnes CIV; Phelps, Elizabeth I CIV OPNAV; Rios, Jorge P (Pat) CAPT COMPACFLT; Foster, Larry M CIV (CPF N01CE1); Diarsing, Jere CIV NAVFAC SW, 09C; Eldredge, Daniel E CDR COMPACFLT N01CE1DE; Vavra, Randy LCDR COMPACFLT N01CE1RV; Kler, Kimberly H CIV NAVFAC NW, EV1; Johnson, Chip CIV COMPACFLT N01CE1CJ; Sheehan, Neil A CTR COMPACFLT N01CE1NS; ffc.record FLTFORCOM ADMINISTRATIVE RECORD REPOSITORY; ffc.record FLTFORCOM ADMINISTRATIVE RECORD REPOSITORY
Subject: RE: NWTRC - Replacement Pages for LOA

Linda,

Same file I sent to Winters. See if this works when it's by itself.

- Brian

Brian Wauer
SRS - Parsons Joint Venture
440 Stevens Avenue Suite 200
Solana Beach, CA 92075
brian.wauer@mantech.com
Phone: (858) 345-1947
Cell: (619) 952-0301
Fax: (858) 345-1959

-----Original Message-----
From: Petitpas, Linda S. CIV (OPNAV CNO) [mailto:linda.petitpas@navy.mil]
Sent: Friday, October 24, 2008 11:06 AM
To: Wauer, Brian; Winters, Carolyn L CIV COMPACFLT, N01CE1CW
Cc: Peters, Agnes CIV; Phelps, Elizabeth I CIV OPNAV; Rios, Jorge P (Pat) CAPT COMPACFLT; Foster, Larry M CIV (CPF N01CE1); Diarsing, Jere CIV NAVFAC SW, 09C; Eldredge, Daniel E CDR COMPACFLT N01CE1DE; Vavra, Randy LCDR COMPACFLT N01CE1RV; Kler, Kimberly H CIV NAVFAC NW, EV1; Johnson, Chip CIV COMPACFLT N01CE1CJ; Sheehan, Neil A CTR COMPACFLT N01CE1NS; ffc.record FLTFORCOM ADMINISTRATIVE RECORD REPOSITORY; ffc.record FLTFORCOM ADMINISTRATIVE RECORD REPOSITORY
Subject: RE: NWTRC - Replacement Pages for LOA

Brian,
It didn't work for me. Please resend.
Linda

-----Original Message-----
From: Wauer, Brian [mailto:Brian.Wauer@wg.srs.com]
Sent: Friday, October 24, 2008 13:04
To: Petitpas, Linda S. CIV (OPNAV CNO); Winters, Carolyn L CIV COMPACFLT, N01CE1CW
Cc: Peters, Agnes CIV; Phelps, Elizabeth I CIV OPNAV; Rios, Jorge P (Pat) CAPT COMPACFLT; Foster, Larry M CIV (CPF N01CE1); Diarsing, Jere CIV NAVFAC SW, 09C; Eldredge, Daniel E CDR COMPACFLT N01CE1DE; Vavra, Randy LCDR COMPACFLT N01CE1RV; Kler, Kimberly H CIV NAVFAC NW, EV1; Johnson, Chip CIV COMPACFLT N01CE1CJ; Sheehan, Neil A CTR COMPACFLT N01CE1NS; ffc.record FLTFORCOM ADMINISTRATIVE RECORD REPOSITORY; ffc.record FLTFORCOM ADMINISTRATIVE RECORD REPOSITORY
Subject: RE: NWTRC - Replacement Pages for LOA

Linda,

We've had this problem. Try closing the files and opening the one that says track changes again. Seemed to work for everyone else the second time they opened it.

- Brian

Brian Wauer
SRS - Parsons Joint Venture
440 Stevens Avenue Suite 200
Solana Beach, CA 92075
brian.wauer@mantech.com
Phone: (858) 345-1947
Cell: (619) 952-0301
Fax: (858) 345-1959

-----Original Message-----
From: Petitpas, Linda S. CIV (OPNAV CNO) [mailto:linda.petitpas@navy.mil]
Sent: Friday, October 24, 2008 10:01 AM

To: Winters, Carolyn L CIV COMPACFLT, N01CE1CW
Cc: Peters, Agnes CIV; Phelps, Elizabeth I CIV OPNAV; Rios, Jorge P (Pat) CAPT COMPACFLT;
Foster, Larry M CIV (CPF N01CE1); Diarsing, Jere CIV NAVFAC SW, 09C; Eldredge, Daniel E CDR
COMPACFLT N01CE1DE; Vavra, Randy LCDR COMPACFLT N01CE1RV; Kler, Kimberly H CIV NAVFAC NW,
EV1; Johnson, Chip CIV COMPACFLT N01CE1CJ; Wauer, Brian; Sheehan, Neil A CTR COMPACFLT
N01CE1NS; ffc.record FLTFORCOM ADMINISTRATIVE RECORD REPOSITORY; ffc.record FLTFORCOM
ADMINISTRATIVE RECORD REPOSITORY
Subject: RE: NWTRC - Replacement Pages for LOA

Carolyn,
The track changes did not make it into the pdf version. Please provide a track changes
version that I can view quickly to see the changes. Thanks in advance.

Linda

-----Original Message-----

From: Winters, Carolyn L CIV COMPACFLT, N01CE1CW
Sent: Wednesday, October 22, 2008 20:01
To: Petitpas, Linda S. CIV (OPNAV CNO)
Cc: Peters, Agnes CIV; Phelps, Elizabeth I CIV OPNAV; Rios, Jorge P (Pat) CAPT COMPACFLT;
Foster, Larry M CIV (CPF N01CE1); Diarsing, Jere CIV NAVFAC SW, 09C; Eldredge, Daniel E CDR
COMPACFLT N01CE1DE; Vavra, Randy LCDR COMPACFLT N01CE1RV; Kler, Kimberly H CIV NAVFAC NW,
EV1; Johnson, Chip CIV COMPACFLT N01CE1CJ; 'Brian.Wauer@wg.srs.com'; Sheehan, Neil A CTR
COMPACFLT N01CE1NS; ffc.record FLTFORCOM ADMINISTRATIVE RECORD REPOSITORY; ffc.record
FLTFORCOM ADMINISTRATIVE RECORD REPOSITORY
Subject: RE: NWTRC - Replacement Pages for LOA

Linda:

Request your support to determine whether NMFS (Jolie) will accept the attached replacement
pages for the NWTRC LOA, before the NOR is issued (also attached is a track changes version
so you can see what the edits are). If Jolie will accept these, we can forward a complete
.pdf file of the updated LOA immediately to you/her.

The changes are necessary due to the additional MFAS hours from the portable undersea
tracking range (PUTR), one of the NWTRC range enhancements. These page changes (14 pages,
double sided) amend the tables and discussion of take numbers due to a 10% increase in MFAS
sonar hours over what was initially reported in the LOA. Our intention is that NMFS can print
out and do a page-for-page replacement.

Please let me know if you have any questions or if we need to send the entire .pdf file of
the updated LOA.

As usual, appreciate all your support.

Vr

Carolyn

NW TRAINING RANGE COMPLEX ADMINISTRATIVE RECORD ##CODE.NW TRAINING RANGE COMPLEX.AR##

-----Original Message-----

From: Winters, Carolyn L CIV COMPACFLT, N01CE1CW
Sent: Tuesday, October 07, 2008 11:04
To: Petitpas, Linda S. CIV (OPNAV CNO)

3

Cc: Peters, Agnes CIV; Phelps, Elizabeth I CIV OPNAV; Rios, Jorge P (Pat) CAPT COMPACFLT;
Foster, Larry M CIV (CPF N01CE1); Diarsing, Jere CIV NAVFAC SW, 09C; Eldredge, Daniel E CDR
COMPACFLT N01CE1DE; Vavra, Randy LCDR COMPACFLT N01CE1RV; Kler, Kimberly H CIV NAVFAC NW,
EV1; Johnson, Chip CIV COMPACFLT N01CE1CJ; Brian.Wauer@wg.srs.com; ffc.record FLTFORCOM
ADMINISTRATIVE RECORD REPOSITORY; ffc.record FLTFORCOM ADMINISTRATIVE RECORD REPOSITORY
Subject: RE: NWTRC - Replacement Pages for LOA

Linda:

Good morning!

I need to get your advice on how you want us to proceed on updating our LOA.

We have changes to the acoustics effects modeling results due to the inclusion of the
portable undersea tracking range (PUTR) as a range enhancement in our Preferred Alternative.

The PUTR use causes an annual 10% increase in ship MF sonar hours and subsequently an annual
10% increase in Level B exposures from sonar. There is no change to mortalities (remains at
zero) and Level A (remains at one).

Would you be able to speak to Jolie about the status of publishing the NOR and give us
direction on proceeding? If we can submit replacement pages (vice an addendum post NOR),
then we can get that to you via email this week.

Appreciate it!

Vr

Carolyn

NW TRAINING RANGE COMPLEX PROJECT FILE
##CODE.NW TRAINING RANGE COMPLEX.PF##

-----Original Message-----

From: Petitpas, Linda S. CIV (OPNAV CNO)
Sent: Wednesday, October 01, 2008 6:16
To: Winters, Carolyn L CIV COMPACFLT, N01CE1CW
Cc: Peters, Agnes CIV; Phelps, Elizabeth I CIV OPNAV; Rios, Jorge P (Pat) CAPT COMPACFLT;
Foster, Larry M CIV (CPF N01CE1); Diarsing, Jere CIV NAVFAC SW, 09C; Eldredge, Daniel E CDR
COMPACFLT N01CE1DE; Vavra, Randy LCDR COMPACFLT N01CE1RV; Kler, Kimberly H CIV NAVFAC NW,
EV1; Johnson, Chip CIV COMPACFLT N01CE1CJ; Petitpas, Linda S. CIV (OPNAV CNO)
Subject: RE: NWTRC - Any Feedback to Date on NWTRC LOA Application?

Carolyn,

The publication date of 17 Oct 08 was based on delivery of the document to NMFS on 26 Aug 08.
The document was not delivered to NMFS until 2 Sep 08, therefore, I would not anticipate NMFS
to provide the Notice of Receipt until 24 Oct 08. However, I have not heard anything on the
subject from NMFS.

Linda

-----Original Message-----

From: Winters, Carolyn L CIV COMPACFLT, N01CE1CW
Sent: Tuesday, September 30, 2008 19:29
To: Petitpas, Linda S. CIV (OPNAV CNO)

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Cc: Peters, Agnes CIV; Phelps, Elizabeth I CIV OPNAV; Rios, Jorge P (Pat) CAPT COMPACFLT; Foster, Larry M CIV (CPF N01CE1); Diersing, Jere CIV NAVFAC SW, 09C; Eldredge, Daniel E CDR COMPACFLT N01CE1DE; Vavra, Randy LCDR COMPACFLT N01CE1RV; Kler, Kimberly H CIV NAVFAC NW, EV1; Johnson, Chip CIV COMPACFLT N01CE1CJ
 Subject: NWTRC - Any Feedback to Date on NWTRC LOA Application?

Linda:

With the NWTRC target LOA Federal Register publication date just a few weeks away (17 Oct 08), I am just curious if you have heard from or gotten any feedback from Jolie at all?

Thanks!

Carolyn

NW TRAINING RANGE COMPLEX ADMINISTRATIVE RECORD ##CODE.NW TRAINING RANGE COMPLEX.AR##

Table ES-1. Summary of the physiological effects thresholds for TTS and PTS for cetaceans and pinnipeds (SONAR Exposure).

Physiological Effects			
Animal	Criteria	Threshold (re 1μPa ² -s)	MMPA Effect
Cetaceans	TTS	195	Level B Harassment
	PTS	215	Level A Harassment
Pinnipeds			
Northern Elephant Seal	TTS	204	Level B Harassment
	PTS	224	Level A Harassment
Pacific Harbor Seal	TTS	183	Level B Harassment
	PTS	203	Level A Harassment
California Sea Lion	TTS	206	Level B Harassment
	PTS	226	Level A Harassment
Steller Sea Lion	TTS	206	Level B Harassment
	PTS	226	Level A Harassment
Northern Fur Seal	TTS	206	Level B Harassment
	PTS	226	Level A Harassment

The analysis used to estimate the number of marine mammals that could be exposed annually by Navy training to the portion of the MMPA Level B harassment from the risk function will overestimate the number of potential exposures. This is due to the conservative assumptions used in the modeling. Post modeling analysis is undertaken to increase the accuracy of the estimate and includes reducing acoustic footprints where they encounter land masses (land mass elimination), accounting for acoustic footprints for sonar sources that overlap to accurately sum the total area when multiple ships are operating together (correction for multiple ships), and to better account for the maximum number of individuals of a species that could potentially be exposed to sonar within the course of one day or a discreet continuous sonar event (exercise reset times and density dilution). In addition, the Navy routinely employs a number of mitigation measures, outlined in Chapter 11, which will substantially decrease the number of animals potentially exposed and affected by high levels of sonar sound, however, a reduction in the potential number of marine mammals exposed as a result of these mitigation measures is not factored into the quantification of exposures as presented below.

The acoustic modeling estimates that ~~129,111~~ marine mammals will be exposed annually to levels of mid-frequency active (MFA) or high-frequency active (HFA) sonar that will result in MMPA Level B harassment. The risk function and Navy post-modeling analysis (exercise reset times, density dilution, land mass elimination, and correction for multiple ships) estimate that of these exposures, ~~128,583~~ animals will exhibit behavioral responses that NMFS will classify as MMPA Level B harassment from non-TTS. Additionally, ~~528~~ of these annual exposures will exceed the threshold for TTS. The modeling estimates one exposure to the harbor seal, which may be exposed annually to sound levels that may exceed the threshold for permanent threshold shift (MMPA Level A harassment).

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The potential explosive exposures outlined in Chapter 6 represent the maximum expected number of cetaceans and pinnipeds that could be affected from underwater explosives for mine countermeasures (MCMs), bombing exercises (BOMBEX), gunnery exercises (GUNEX), and ship sinking exercises (SINKEX). For underwater detonations, the dual criteria threshold for

potential Level B harassment is at 182 dB re 1 μPa^2 -s or at 23 pounds per square inch (psi). For dual criteria, the criteria resulting in the greatest number of exposures is used. Level A thresholds are 50 percent tympanic membrane rupture, onset of slight lung injury at 205 dB or 13 psi-ms. In addition to Level A and B harassment is the onset of extensive lung injury and mortality at a threshold of 31 psi-ms. For multiple successive explosions potentially occurring during BOMBEX, SINKEK, and GUNEX (when using other than inert weapons), the acoustic criterion for a sub-TTS behavioral disturbance is used to account for behavioral effects significant enough to be judged as harassment, but occurring at lower sound energy levels that may cause TTS. The sub-TTS threshold is 177 dB re 1 μPa^2 -s for multiple successive explosions.

Modeling estimates that 459 marine mammals may be exposed to pressure from explosive sources that could cause Level B harassment; 262 sub-TTS exposures and 197 exceeding 182 dB re 1 μPa^2 -s or 23 psi). An additional 12 are predicted to be exposed to pressures that would cause injury (Level A harassment), and no marine mammals are predicted to be exposed to pressures that could cause severe injury or mortality. However, given range clearance procedures and standard mitigation measures, the Navy believes that in actuality, there will be no injuries resulting from these activities.

As with the acoustic impacts from sonar activities, the conservative analysis used to estimate the maximum number of marine mammals that could be affected by Navy activities will overestimate the potential number of exposures and their severity. In addition, the Navy routinely employs a number of mitigation measures, outlined in Chapter 11, which the Navy believes will substantially decrease the number of animals potentially affected.

Level B harassment in the context of military readiness activities is defined by the National Defense Authorization Act (NDAA) for Fiscal Year 2004 (Public Law 108-136) as 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. This estimate of total predicted marine mammal sound exposures potentially constituting MMPA Level B harassment is presented without consideration of standard protective operating procedures. In addition, the assessment of whether temporary physiological effects or behavioral responses may cause behavioral patterns to be abandoned or significantly altered must be considered in the context of an analytical framework for active sonar. This framework acknowledges that only a subset of exposures are likely to result in MMPA Level B harassment, and that multiple exposures of the same individual will have a higher likelihood of disturbance than single exposures. All predicted acoustic exposures are presented in this analytical framework to support NMFS assessment of those exposures that may result in MMPA Level B harassment.

Based on the long history of conducting these ongoing activities using the same basic equipment in the same general areas for decades without any indications of effects to marine mammals (e.g. Hawaii and Southern California Range Complexes), the incidental harassment of marine mammals associated with the proposed Navy action will have no more than negligible impacts on marine mammal species or stocks. For species listed and protected under the Endangered Species Act (ESA), modeling estimates that seven species may be exposed to sound levels that may cause a behavioral response or reach the threshold for TTS and that may affect these species (384 exposures to sonar, and 52 exposures to explosions). The ongoing ESA Section 7 consultation will examine the anticipated responses and any associated fitness consequences for

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6.6 Estimated ASW Effects on Marine Mammals

6.6.1 Model Results Explanation

Acoustic exposures are evaluated based on their potential direct effects on marine mammals, and these effects are then assessed in the context of the species biology and ecology to determine if there is a mode of action that may result in the acoustic exposure warranting consideration as a harassment level effect.

It is estimated that 129,111 marine mammals will exhibit responses NMFS will classify as behavioral harassment (MMPA Level B) as a result of MFA/HFA sonar use (128,583 using the Risk Function and 528 from TTS). One marine mammal (harbor seal) will be exposed to sonar in excess of permanent threshold shift (PTS) threshold indicative of MMPA Level A harassment. The modeled sonar exposure numbers by species are presented in Table 6-7.

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The modeling indicates 262 annual exposures (Table 6-8) to pressure or acoustics from explosive sources that could result in a sub-TTS behavioral response (threshold of 177 dB re 1 μPa^2 -s) and 197 that could cause TTS (threshold of 182 dB re 1 μPa^2 -s or 23 psi). The total number of exposures from explosives that NMFS would classify as MMPA Level B harassment would be 459. Modeling indicates 12 exposures from explosive sources that could cause slight injury, resulting in MMPA Level A harassment and no exposures causing mortality.

These exposure modeling results are estimates of marine mammal sonar exposures without consideration of standard mitigation and monitoring procedures. The implementation of the mitigation and monitoring procedures, as addressed in Chapter 11, will minimize the potential for marine mammal exposures to MFA and HFA sonar.

A large body of research on terrestrial animal and human response to airborne sound exists, but results from those studies are not readily applicable to the development of behavioral criteria and thresholds for marine mammals. Differences in hearing thresholds, dynamic range of the ear, and the typical exposure patterns of interest (e.g., human data tend to focus on 8-hour-long exposures), and the difference between acoustics in air and in water make extrapolation of human sound exposure standards inappropriate.

Behavioral observations of marine mammals exposed to anthropogenic sound sources exists, however, there are few observations and no controlled measurements of behavioral disruption of cetaceans caused by sound sources with frequencies, waveforms, durations, and repetition rates comparable to those employed by the tactical sonars described in this EIS/OEIS (Deecke 2006) or for multiple explosives. Controlled studies in the laboratory have been conducted to determine physical changes (TTS) in hearing of marine mammals associated with sound exposure (Finneran et al. 2001, 2003, 2005). Research on behavioral effects has been difficult because of the difficulty and complexity of implementing controlled conditions.

At the present time there is no general scientifically accepted consensus on how to account for behavioral effects on marine mammals exposed to anthropogenic sounds including military sonar and explosions (National Research Council [NRC] 2003, 2005). While the first elements in Figure 6-9 can be easily defined (source, propagation, receiver) the remaining elements (perception, behavior, and life functions) are not well understood given the difficulties in studying marine mammals at sea (NRC 2005). The NRC (2005) acknowledges "there is not one case in which data can be integrated into models to demonstrate that noise is causing adverse effects on a marine mammal population."

currently no information to suggest that if an animal has PTS, it decreases the survival rate or reproductive fitness of that animal. The distance to PTS from a MFA sonar's 235 dB source level one second ping is approximately 33 ft. (10 m) from the bow of the ship under nominal oceanographic conditions.

6.6.1.4 Population Level Effects

Some NWTRC training activities will be conducted in the same general areas, so marine mammal populations could be exposed to repeated activities over time. This does not mean, however, that there will be a repetition of any effects given the vast number of variables involved. The acoustic analyses assume that short-term non-injurious sound levels predicted to cause TTS or temporary behavioral disruptions qualify as Level B harassment from TTS. However, it is unlikely that most behavioral disruptions or instances of TTS will result in long-term significant effects. Mitigation measures reduce the likelihood of exposures to sound levels that would cause significant behavioral disruption (the higher levels of 7-9 in Figure 6-10), TTS or PTS. Based on modeling the Navy has estimated that ~~129,111~~ marine mammals per year might be exposed to activities that NMFS would consider Level B harassment under MMPA (risk function [or non-TTS] and TTS from active sonar) as a result of the Proposed Actions. The Navy does not anticipate any indirectly caused mortality to result from the Proposed Actions. It is unlikely that the short term behavioral disruption would adversely affect the species or stock through effects on annual rates of recruitment or survival.

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6.6.2 Summary of Potential Mid or High-Frequency Acoustic Event Effects

Table 6-6 represents the number of sonar hours, dipping sonar, or sonobuoys usage per year from different sonar sources including the AN/SQS-53C and AN/SQS-56C surface ships sonars, the AN/AQS-22 helicopter dipping sonar, the AN/SSQ-62 DICASS sonobuoy, and the MK-48 torpedo sonar.

Table 6-6: Number of Passive and Active Sonar Events in the NWTRC.

Warfare Area	Ordnance	Number of Annual Events
	SSQ-36 BT Sonobuoy	302
Antisubmarine Warfare Tracking Exercise – Maritime Patrol Aircraft	SSQ-53 DIFAR Passive Sonobuoy	6,618
	SSQ-62 DICASS Active Sonobuoy	886
	SSQ-77 VLAD Passive Sonobuoy	412
Antisubmarine Warfare Tracking Exercise - Extended Echo Ranging (EER)	SSQ-77 Passive Sonobuoy	241
Antisubmarine Warfare Tracking Exercise - Surface Ships	Hull-mounted Mid-frequency Active Sonar	108 hours
Antisubmarine Warfare Tracking Exercise - Submarine	Hull-mounted Mid-frequency Active Sonar	0 hours
Intelligence, Surveillance, and reconnaissance (ISR).	SSQ-53 DIFAR Passive Sonobuoy	1,043

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Table 6-7 presents a summary of the estimated marine mammal exposures for potential non-injurious (MMPA Level B) harassment, as well as potential onset of injury (MMPA Level A) to cetaceans and pinnipeds. It is estimated that ~~129,111~~ marine mammals will exhibit

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responses NMFS will classify as behavioral harassment (MMPA Level B) as a result of MFA/HFA sonar use ~~128,583~~ using the Risk Function and ~~528~~ from TTS). One marine mammal (harbor seal) will be exposed to sonar in excess of permanent threshold shift (PTS) threshold indicative of MMPA Level A harassment.

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Table 6-7: Summary of Mid-Frequency Active Sonar Exposures

Species	Level B Sonar Exposures		Level A Sonar Exposures
	Risk Function	TTS	PTS
ESA Species			
Blue whale	17	0	0
Fin whale	127	2	0
Humpback whale	13	0	0
Southern resident killer whale	13	0	0
Sei whale	1	0	0
Sperm whale	101	2	0
Steller Sea Lion	113	0	0
Sea otter	N/A	N/A	N/A
Mysticetes			
Gray whale	4	0	0
Minke whale	2	0	0
Odontocetes			
Baird's beaked whale	11	0	0
Bottlenose dolphin	0	0	0
Cuvier's beaked whale	12	0	0
Dall's porpoise	4,458	147	0
Dwarf/ Pygmy sperm whale	3	0	0
Harbor porpoise*	119,103	45	0
Mesoplodon spp.	13	0	0
Northern right whale dolphin	698	18	0
Pacific white-sided dolphin	521	23	0
Risso's dolphin	85	2	0
Short beaked common dolphin	1,142	42	0
Short-finned pilot whale	2	0	0
Striped dolphin	38	1	0
Pinnipeds			
Northern elephant seal	288	0	0
Pacific harbor seal	258	245	1
California sea lion	281	0	0
Northern fur seal	1,272	1	0
Total	128,583	528	1

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N/A: Not applicable – Based on a few historic observations, its habitat preference or overall distribution, a species may occur rarely in the NWTRC, but no density estimates were available for modeling exposures

* Threshold for MMPA Level B Harassment is based on 120 dB step function

These exposure numbers are generated by the model without consideration of mitigation measures that would reduce the potential for marine mammal exposures to sonar. It should be noted, however, that these exposure modeling results are statistically derived estimates of potential marine mammal sonar exposures without consideration of standard mitigation and monitoring procedures. It is highly unlikely that a marine mammal would experience any long-

the use of certain habitats. Whether an animal responds, the types of behavioral changes, and the magnitude of those changes may depend on the intensity level of the exposure and the individual animal's prior status or behavior. Little information is available to determine the response of animals to mid-frequency active sonar and its effects on ultimate and proximate life functions or at the population or species level.

6.7.2 Estimated Effects on ESA Species

The endangered species that may be affected as a result of implementation of the NWTRC activities include the blue whale, fin whale, humpback whale, North Pacific right whale, sei whale, and sperm whale.

6.7.2.1 Blue Whale

The risk function and Navy post-modeling analysis estimates ~~17~~ blue whales will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be zero exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No blue whales would be exposed to sound levels that could cause PTS.

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Modeling indicates there would one exposure to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would one exposure to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the large size (up to 98 ft [30 m]) of individual blue whales (Leatherwood et al. 1982), pronounced vertical blow, and aggregation of approximately two to three animals in a group (probability of track line detection = 0.90 in Beaufort Sea States of 6 or less; Barlow 2003), it is very likely that lookouts would detect a group of blue whales at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar; therefore, blue whales that migrate into the operating area would be detected by visual observers. Implementation of mitigation measures and probability of detecting a large blue whale reduces the likelihood of exposure, such that effects would be discountable.

In the unlikely event that blue whales are exposed to mid-frequency sonar, the anatomical information available on blue whales suggests that they are not likely to hear mid-frequency (1 kHz–10 kHz) sounds (Ketten 1997). There are no audiograms of baleen whales, but blue whales tend to react to anthropogenic sound below 1 kHz (e.g., seismic air guns), and most of their vocalizations are also in that range, suggesting that they are more sensitive to low frequency sounds (Richardson et al. 1995). Based on this information, if they do not hear these sounds, they are not likely to respond physiologically or behaviorally to those received levels.

Based on the model results, behavioral patterns, acoustic abilities of blue whales, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not likely result in any death or injury to blue whales. Modeling does indicate the potential for MMPA Level B harassment, indicating the proposed ASW exercises may affect blue whales. An ESA consultation is ongoing, and includes the finding that the proposed ASW exercises **may affect blue whales**. Should consultation under the ESA conclude that the estimated exposures of humpback whales can be avoided via

mitigation measures or that the received sound is not likely to adversely affect blue whales, authorization for the predicted exposures would not be requested under MMPA. At this time, this application requests authorization for the annual harassment of ~~19~~ blue whales by MMPA Level B harassment (~~17~~ from mid-frequency active sonar and two from explosive sources) and one blue whale by MMPA Level A harassment from potential exposure to mid-frequency active sonar.

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6.7.2.2 Fin Whale

The risk function and Navy post-modeling analysis estimates ~~122~~ fin whales will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be two exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No fin whales would be exposed to sound levels that could cause PTS.

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Modeling indicates there would 12 exposure to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would be seven exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and one exposure to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the large size (up to 78 ft [24m]) of individual fin whales (Leatherwood et al. 1982), pronounced vertical blow, mean aggregation of three animals in a group (probability of trackline detection = 0.90 in Beaufort Sea States of 6 or less; Barlow 2003) it is very likely that lookouts would detect a group of fin whales at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar, therefore, fin whales in the vicinity of activities would be detected by visual observers. Implementation of mitigation measures and probability of detecting a large fin whale reduces the likelihood of exposure, such that effects would be discountable.

In the unlikely event that fin whales are exposed to mid-frequency sonar, the anatomical information available on fin whales suggests that they are not likely to hear mid-frequency (1 kHz–10 kHz) sounds (Richardson et al. 1995; Ketten 1997). Fin whales primarily produce low frequency calls (below 1 kHz) with source levels up to 186 dB re 1 μPa at 1 m, although it is possible they produce some sounds in the range of 1.5 to 28 kHz (review by Richardson et al. 1995; Croll et al. 2002). There are no audiograms of baleen whales, but they tend to react to anthropogenic sound below 1 kHz, suggesting that they are more sensitive to low frequency sounds (Richardson et al. 1995). Based on this information, if they do not hear these sounds, they are not likely to respond physiologically or behaviorally to those received levels.

In the St. Lawrence estuary area, fin whales avoided vessels with small changes in travel direction, speed and dive duration, and slow approaches by boats usually caused little response (MacFarlane 1981). Fin whales continued to vocalize in the presence of boat sound (Edds and MacFarlane 1987). Even though any undetected fin whales transiting the NWTRC may exhibit a reaction when initially exposed to active acoustic energy, field observations indicate the effects would not cause disruption of natural behavioral patterns to a point where such behavioral patterns would be abandoned or significantly altered.

Based on the model results, behavioral patterns, acoustic abilities of fin whales, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not likely result in any death or injury to fin whales. Modeling does indicate the potential for MMPA Level B harassment, indicating the proposed ASW exercises may affect fin whales. An ESA consultation is ongoing, and includes the finding that the proposed ASW exercises **may affect fin whales**. Should consultation under the ESA conclude that the estimated exposures of humpback whales can be avoided via mitigation measures or that the received sound is not likely to adversely affect fin whales, authorization for the predicted exposures would not be requested under MMPA. At this time, this application requests authorization for the annual harassment of ~~143~~ ¹³² fin whales by MMPA Level B harassment (~~124~~ from mid-frequency active sonar and 19 from explosive sources), and one fin whale by MMPA Level A harassment from potential exposure to underwater detonation.

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6.7.2.3 Humpback Whale

The risk function and Navy post-modeling analysis estimates ~~13~~ ¹² humpback whales will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be no exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No humpback whales would be exposed to sound levels that could cause PTS.

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Modeling indicates there would no exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would zero exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the large size (up to 53 ft [16m] of individual humpback whales (Leatherwood et al. 1982), and pronounced vertical blow, it is very likely that lookouts would detect humpback whales at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar, therefore, humpback whales that are present in the vicinity of ASW activities would be detected by visual observers reducing the likelihood of exposure, such that effects would be discountable.

There are no audiograms of baleen whales, but they tend to react to anthropogenic sound below 1 kHz, suggesting that they are more sensitive to low frequency sounds (Richardson et al. 1995). A single study suggested that humpback whales responded to mid-frequency sonar (3.1-3.6 kHz re 1 $\mu\text{Pa}^2\text{-s}$) sound (Maybaum 1989). The hand held sonar system had a sound artifact below 1,000 Hz which caused a response to the control playback (a blank tape) and may have affected the response to sonar (i.e., the humpback whale responded to the low frequency artifact rather than the mid-frequency active sonar sound). Humpback whales responded to small vessels (often whale watching boats) by changing swim speed, respiratory rates and social interactions depending on proximity to the vessel and vessel speed, with reponses varying by social status and gender (Watkins et al. 1981; Bauer 1986; Bauer and Herman 1986). Animals may even move out of the area in response to vessel noise (Salden 1988). Humpback whale mother-calf pairs are generally in the shallow protected waters. ASW mid-frequency active sonar activities takes place through out the extensive NWTRC but the areas inhabited by humpback whales is represents only a small portion of the NWTRC. Frankel and Clark (2000; 2002) reported that

there was only a minor response by humpback whales to the Acoustic Thermometry of Ocean Climate (ATOC) sound source and that response was variable with some animals being found closer to the sound source during operation.

Based on the model results, behavioral patterns, acoustic abilities of humpback whales, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not likely result in any death or injury to humpback whales. Modeling does indicate the potential for MMPA Level B harassment, indicating the proposed ASW exercises may affect humpback whales. An ESA consultation is ongoing, and includes the finding that the proposed ASW exercises **may affect humpback whales**. Should consultation under the ESA conclude that the estimated exposures of humpback whales can be avoided via mitigation measures or that the received sound is not likely to adversely affect humpback whales, authorization for the predicted exposures would not be requested under MMPA. At this time, this application requests authorization for the annual harassment of ~~13~~ ¹² humpback whales by MMPA Level B harassment (~~13~~ from mid-frequency active sonar and 0 from explosive sources) and no humpback whales by MMPA Level A harassment from potential exposure to mid-frequency active sonar or explosive sources.

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6.7.2.4 Sei Whale

The risk function and Navy post-modeling analysis estimates one sei whale will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be zero exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No sei whales would be exposed to sound levels that could cause PTS.

Modeling indicates there would no exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would zero exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the large size (up to 53 ft [16m] of individual sei whales (Leatherwood et al. 1982), pronounced vertical blow, aggregation of approximately three animals (probability of trackline detection = 0.90 in Beaufort Sea States of 6 or less; Barlow 2003), it is very likely that lookouts would detect a group of sei whales at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar, therefore, sei whales that migrate into the operating area would be detected by visual observers. Implementation of mitigation measures and probability of detecting a large sei whale reduces the likelihood of exposure, such that effects would be discountable.

There is little information on the acoustic abilities of sei whales or their response to human activities. The only recorded sounds of sei whales are frequency modulated sweeps in the range of 1.5 to 3.5 kHz (Thompson et al. 1979) but it is likely that they also vocalized at frequencies below 1 kHz as do fin whales. There are no audiograms of baleen whales but they tend to react to anthropogenic sound below 1 kHz suggesting that they are more sensitive to low frequency sounds (Richardson et al. 1995). Sei whales were more difficult to approach than were fin whales and moved away from boats but were less responsive when feeding (Gunther 1949).

Based on the model results, behavioral patterns, acoustic abilities of sei whales, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not likely result in any death or injury to sei whales. Modeling does indicate the potential for MMPA Level B harassment, indicating the proposed ASW exercises **may affect sei whales**. An ESA consultation is ongoing, and includes the finding that the proposed ASW exercises may affect sei whales. Should consultation under the ESA conclude that the estimated exposures of sei whales can be avoided via mitigation measures or that the received sound is not likely to adversely affect sei whales, authorization for the predicted exposures would not be requested under MMPA. At this time, this application requests authorization for the annual harassment of one sei whale by MMPA Level B harassment and no sei whales by MMPA Level A harassment from potential exposure to mid-frequency active sonar or explosive sources.

6.7.2.5 Sperm Whales

The risk function and Navy post-modeling analysis estimates 101 sperm whales will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be two exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No sperm whale would be exposed to sound levels that could cause PTS.

Modeling indicates there would 13 exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would ten exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and one exposure to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the large size (up to 56 ft [17m]) of individual sperm whales (Leatherwood et al. 1982), pronounced blow (large and angled), mean group size of approximately seven animals (probability of trackline detection = 0.87 in Beaufort Sea States of 6 or less; Barlow 2003; 2006), it is very likely that lookouts would detect a group of sperm whales at the surface. Sperm whales can make prolonged dives of up to two hours (Watwood et al. 2006) making detection more difficult. Additionally, mitigation measures call for continuous visual observation during activities with active sonar; therefore, sperm whales that migrate into the operating area would be detected by visual observers. Implementation of mitigation measures and probability of detecting a large sperm whale reduces the likelihood of exposure, such that effects would be discountable.

In the unlikely event that sperm whales are exposed to mid-frequency sonar, the information available on sperm whales exposed to received levels of active mid-frequency sonar suggests that the response to mid-frequency (1 kHz to 10 kHz) sounds is variable (Richardson et al. 1995). While Watkins et al. (1985) observed that sperm whales exposed to 3.25 kHz to 8.4 kHz pulses interrupted their activities and left the area, other studies indicate that, after an initial disturbance, the animals return to their previous activity. During playback experiments off the Canary Islands, André et al. (1997) reported that foraging whales exposed to a 10 kHz pulsed signal did not exhibit any general avoidance reactions. When resting at the surface in a compact group, sperm whales initially reacted strongly but then ignored the signal completely (André et al. 1997).

Based on the model results, behavioral patterns, acoustic abilities of sperm whales, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not likely result in any death or injury to sperm whales. Modeling does indicate the potential for MMPA Level B harassment, indicating the proposed ASW exercises **may affect sperm whales**. An ESA consultation is ongoing, and includes the finding that the proposed ASW exercises may affect sperm whales. Should consultation under the ESA conclude that the estimated exposures of sperm whales can be avoided via mitigation measures or that the received sound is not likely to adversely affect sperm whales, authorization for the predicted exposures would not be requested under MMPA. At this time, this application requests authorization for the annual harassment of 126 sperm whales by MMPA Level B harassment (103 from mid-frequency active sonar and 23 from explosive sources) and one sperm whale by MMPA Level A harassment from potential exposure to explosive sources.

6.7.2.6 Southern Resident Killer Whales

Due to the difficulty in determining particular stocks of killer whales in the wild, all stocks of killer whales were combined for modeling exposures. While overly conservative, all killer whales were assumed to belong to the southern resident killer whale stock. The risk function and Navy post-modeling analysis estimates 13 killer whales will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be no exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No killer whales would be exposed to sound levels that could cause PTS.

Modeling indicates there would no exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would zero exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given their size (up to 23 ft [7.0 m]), conspicuous coloring, pronounce dorsal fin and large mean group size of 6.5 animals (probability of trackline detection = 0.90 in Beaufort Sea States of 6 or less; Barlow, 2003). It is very likely that lookouts would detect a group of killer whales at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar, therefore, killer whales that migrate into the operating area would be detected by visual observers. Implementation of mitigation measures and probability of detecting large groups of killer whales reduces the likelihood of exposure.

Based on the model results, behavioral patterns, acoustic abilities of killer whales, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to killer whales. Modeling does indicate the potential for MMPA Level B harassment, indicating the proposed ASW exercises **may affect killer whales**. At this time, this application requests authorization for the annual harassment of 12 killer whales by MMPA Level B harassment (13 from mid-frequency active sonar and zero from explosive sources) and no killer whales by MMPA Level A harassment from potential exposure to mid-frequency active sonar or underwater detonation.

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6.7.2.7 Steller Sea Lion

The risk function and Navy post-modeling analysis estimates ~~113~~ Steller sea lions will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be no exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No Steller sea lions would be exposed to sound levels that could cause PTS.

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Modeling indicates there would three exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would three exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and no exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Based on the model results, behavioral patterns, acoustic abilities of Steller sea lions, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not likely result in any death or injury to Steller sea lions. Modeling does indicate the potential for MMPA Level B harassment, indicating the proposed ASW exercises **may affect Steller sea lions**. An ESA consultation is ongoing, and includes the finding that the proposed ASW exercises may affect Steller sea lions. Should consultation under the ESA conclude that the estimated exposures of Steller sea lions can be avoided via mitigation measures or that the received sound is not likely to adversely affect Steller sea lions, authorization for the predicted exposures would not be requested under MMPA. At this time, this application requests authorization for the annual harassment of ~~119~~ Steller sea lions by MMPA Level B harassment (~~113~~ from mid-frequency active sonar and six from explosive sources) only.

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6.7.3 Estimated Exposures for Non-ESA Species

6.7.3.1 Gray Whale

The risk function and Navy post-modeling analysis estimates four gray whales will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be zero exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No gray whales would be exposed to sound levels that could cause PTS.

Modeling indicates there would no exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would zero exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the large size (up to 46 ft. [14 m]) of individual gray whales, pronounced blow, and group size of up to 16 animals (Leatherwood et al. 1982) and (probability of trackline detection = 0.87 in Beaufort Sea States of 6 or less; Barlow 2003; 2006), it is very likely that lookouts would detect a group of gray whales at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar, therefore, gray whales that migrate into the operating area would be detected by visual observers. Implementation of

mitigation measures and probability of detecting a gray whale reduces the likelihood of exposure, such that effects would be discountable.

Based on the model results, behavioral patterns, acoustic abilities of gray whales, results of past training, and the implementation of procedure protective measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to gray whales. At this time, this application requests authorization for the annual harassment of four gray whales by MMPA Level B harassment from mid-frequency active sonar only.

6.7.3.2 Minke Whale

The risk function and Navy post-modeling analysis estimates ~~nine~~ minke whales will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be no exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No minke whales would be exposed to sound levels that could cause PTS.

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Modeling indicates there would no exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would zero exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Minke whales are difficult to spot visually but can be detected using passive acoustic monitoring. Additionally, mitigation measures call for continuous visual observation during activities with active sonar, therefore, minke whales that migrate into the operating area would be detected by visual observers. Implementation of mitigation measures and probability of detecting a minke whale reduces the likelihood of exposure, such that effects would be discountable.

Based on the model results, behavioral patterns, acoustic abilities of minke whales, results of past training, and the implementation of procedure protective measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to minke whales. At this time, this application requests authorization for the annual harassment of ~~nine~~ minke whales by MMPA Level B harassment from mid-frequency active sonar only.

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6.7.3.3 Baird's Beaked Whale

The risk function and Navy post-modeling analysis estimates ~~11~~ Baird's beaked whales will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be no exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No Baird's beaked whales would be exposed to sound levels that could cause PTS.

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Modeling indicates there would one exposure to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would zero exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the size (up to 15.5 ft. [4.7 m]) of individual Baird's beaked whales, aggregation of 2.3 animals, it is likely that lookouts would detect a group of Baird's beaked whales at the surface although beaked whales make prolonged dives that can last up to an hour (Baird et al. 2004). Implementation of mitigation measures and probability of detecting a large sei whale reduces the likelihood of exposure, such that effects would be discountable.

Based on the model results, behavioral patterns, acoustic abilities of Baird's beaked whales, results of past training, and the implementation of procedure protective measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to Baird's beaked whales. At this time, this application requests authorization for the annual harassment of 12 Baird's beaked whales by MMPA Level B harassment (11 from mid-frequency active sonar and one from explosive sources) only.

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6.7.3.4 Bottlenose Dolphin

The risk function and Navy post-modeling analysis estimates no bottlenose dolphins will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be zero exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No bottlenose dolphins would be exposed to sound levels that could cause PTS.

Modeling indicates there would no exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would zero exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the frequent surfacing, aggregation of approximately 9 animals (probability of trackline detection = 0.76 in Beaufort Sea States of 6 or less; Barlow 2003), it is very likely that lookouts would detect a group of bottlenose dolphins at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar, therefore, bottlenose dolphins that migrate into the operating area would be detected by visual observers. Implementation of mitigation measures and probability of detecting bottlenose dolphins reduces the likelihood of exposure, such that effects would be discountable.

Based on the model results, behavioral patterns, acoustic abilities of bottlenose dolphins, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to bottlenose dolphins. At this time, this application does not request authorization for the annual harassment bottlenose dolphins by MMPA Level B or MMPA Level A harassment from potential exposure to mid-frequency active sonar or explosive sources.

6.7.3.5 Cuvier's Beaked Whale

The risk function and Navy post-modeling analysis estimates 12 Cuvier's beaked whales will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be zero exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No Cuvier's beaked whale would be exposed to sound levels that could cause PTS.

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Modeling indicates there would one exposure to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would one exposure to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the medium size (up to 23 ft. [7.0 m]) of individual Cuvier's beaked whales, aggregation of approximately two animals (Barlow 2006), it is likely that lookouts would detect a group of Cuvier's beaked whales at the surface although beaked whales make prolonged dives that can last up to an hour (Baird et al. 2004). Implementation of mitigation measures and probability of detecting a large sei whale reduces the likelihood of exposure, such that effects would be discountable.

Based on the model results, behavioral patterns, acoustic abilities of Cuvier's beaked whales, results of past training, and the implementation of procedure protective measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to Cuvier's beaked whales. At this time, this application requests authorization for the annual harassment of 14 Cuvier's beaked whales by MMPA Level B harassment (12 from mid-frequency active sonar and two from explosive sources) only.

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6.7.3.6 Dall's Porpoise

The risk function and Navy post-modeling analysis estimates 4,458 Dall's porpoises will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be 147 exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No Dall's porpoises would be exposed to sound levels that could cause PTS.

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Modeling indicates there would 62 exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would 58 exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and three exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the frequent surfacing and aggregation of approximately 2-20 animals, it is very likely that lookouts would detect a group of Dall's porpoises at the surface. Additionally, protective measures call for continuous visual observation during activities with active sonar, therefore, Dall's porpoises that migrate into the operating area would be detected by visual observers. Implementation of mitigation measures and probability of detecting large groups of Dall's porpoises reduces the likelihood of exposure.

Based on the model results, behavioral patterns, acoustic abilities of Dall's porpoise, results of past training, and the implementation of procedure protective measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects to Dall's porpoise. At this time, this application requests authorization for the annual harassment of 4,725 Dall's porpoise by MMPA Level B harassment (4,605 from mid-frequency active sonar and 120 from explosive sources) and three Dall's porpoise by MMPA Level A harassment from potential exposure to explosive sources.

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6.7.3.7 Dwarf or Pygmy Sperm Whale

The risk function and Navy post-modeling analysis estimates three dwarf or pygmy sperm whales will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be no exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No dwarf or pygmy sperm whales would be exposed to sound levels that could cause PTS.

Modeling indicates there would be one exposure to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would zero exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given their size (up to 10 ft [3 m]) and behavior of resting at the surface (Leatherwood et al. 1982), it is very likely that lookouts would detect a dwarf or pygmy sperm whale at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar and explosive sources, therefore, dwarf or pygmy sperm whales that migrate into the operating area would be detected by visual observers. Implementation of mitigation measures and probability of detecting large groups of dwarf or pygmy sperm whales reduces the likelihood of exposure.

Based on the model results, behavioral patterns, acoustic abilities of dwarf or pygmy sperm whales, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to dwarf or pygmy sperm whale. At this time, this application requests authorization for the annual harassment of four pygmy sperm whales by MMPA Level B harassment (three from mid-frequency active sonar and one from explosive sources) only.

6.7.3.8 Harbor Porpoise

The 120 dB step function and Navy post-modeling analysis estimates ~~119,103~~ harbor porpoises will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be ~~45~~ exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No harbor porpoises would be exposed to sound levels that could cause PTS.

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Modeling indicates there would nine exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would five exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and one exposure to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the frequent surfacing with characteristic rooster tail and aggregation of approximately 2-20 animals, it is very likely that lookouts would detect a group of harbor porpoises at the surface (Leatherwood et al., 1982). Additionally, mitigation measures call for continuous visual observation during activities with active sonar and explosive sources, therefore, harbor porpoises that migrate into the operating area would be detected by visual observers. Implementation of

ROP and probability of detecting large groups of harbor porpoises reduces the likelihood of exposure.

Based on the model results, behavioral patterns, acoustic abilities of harbor porpoises, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to harbor porpoises. At this time, this application requests authorization for the annual harassment of ~~119,162~~ harbor porpoises by MMPA Level B harassment (~~119,148~~ from mid-frequency active sonar and 14 from explosive sources) and one harbor porpoise by MMPA Level A harassment from potential exposure to explosive sources.

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6.7.3.9 Mesoplodont Whales

The risk function and Navy post-modeling analysis estimates ~~13~~ Mesoplodont whales will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be zero exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No Mesoplodont whales would be exposed to sound levels that could cause PTS.

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Modeling indicates there would be one exposure to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would zero exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the size (up to 15.5 ft. [4.7 m]) of individual Mesoplodont beaked whales, it is likely that lookouts would detect a group of Mesoplodont beaked whales at the surface although beaked whales make prolonged dives that can last up to an hour (Baird et al. 2004). Implementation of mitigation measures and probability of detecting a Mesoplodont whale reduces the likelihood of exposure, such that effects would be discountable.

Based on the model results, behavioral patterns, acoustic abilities of Mesoplodont beaked whales, results of past training, and the implementation of procedure protective measures presented in Section 11 for explosive sources, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to Mesoplodont beaked whales.

At this time, this application requests authorization for the annual harassment of ~~14~~ Mesoplodont whales by MMPA Level B harassment (~~13~~ from mid-frequency active sonar and one from explosive sources) and zero Mesoplodont whales by MMPA Level A harassment from potential exposure to mid-frequency active sonar or explosive sources.

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6.7.3.10 Northern Right Whale Dolphin

The risk function and Navy post-modeling analysis estimates ~~698~~ northern right whale dolphins will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be ~~18~~ exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No northern right whale dolphins would be exposed to sound levels that could cause PTS.

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Modeling indicates there would be 11 exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would seven exposures to impulsive sound or pressures from

explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and one exposure to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given their large group size of up to 100 animals (Leatherwood et al. 1982), it is very likely, that lookouts would detect a group of northern right whale dolphins at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar and explosive sources, therefore, northern right whale dolphins that migrate into the operating area would be detected by visual observers. Implementation of protective measures and probability of detecting large groups of northern right whale dolphins reduces the likelihood of exposure.

Based on the model results, behavioral patterns, acoustic abilities of northern right whale dolphins, results of past training, and the implementation of procedure protective measures presented in Section 11 for explosive sources, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to northern right whale dolphins. At this time, this application requests authorization for the annual harassment of 734 northern right whale dolphins by MMPA Level B harassment (716 from mid-frequency active sonar and 18 from explosive sources) and one northern right whale dolphin by MMPA Level A harassment from potential exposure to explosive sources.

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6.7.3.11 Pacific White-sided Dolphin

The risk function and Navy post-modeling analysis estimates 521 Pacific white-sided dolphin will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be 23 exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No Pacific white-sided dolphins would be exposed to sound levels that could cause PTS.

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Modeling indicates there would be eight exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would three exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given their frequent surfacing and large group size of up to several thousand animals (Leatherwood et al. 1982), it is very likely that lookouts would detect a group of Pacific white-sided dolphins at the surface. Additionally, protective measures call for continuous visual observation during activities with active sonar and explosive sources, therefore, Pacific white-sided dolphins that migrate into the operating area would be detected by visual observers. Implementation of mitigation measures and probability of detecting large groups of Pacific white-sided dolphins reduces the likelihood of exposure.

Based on the model results, behavioral patterns, acoustic abilities of Pacific white-sided dolphins, results of past training, and the implementation of procedure protective measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to Pacific white-sided dolphins. At this time, this application requests authorization for the annual harassment of 555 Pacific white-sided dolphins by MMPA Level B harassment (544 from mid-frequency active sonar and 11 from explosive sources) only.

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6.7.3.12 Risso's Dolphin

The risk function and Navy post-modeling analysis estimates 85 Risso's dolphins will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be two exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No Risso's dolphins would be exposed to sound levels that could cause PTS.

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Modeling indicates there would be nine exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would four exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given their frequent surfacing, light coloration and large group size of up to several hundred animals (Leatherwood et al. 1982), probability of trackline detection of 0.76 in Beaufort Sea States of 6 or less (Barlow 2006), it is very likely that lookouts would detect a group of Risso's dolphins at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar and explosive sources, therefore, Risso's dolphins that migrate into the operating area would be detected by visual observers. Implementation of mitigation measures and probability of detecting large groups of Risso's dolphins reduces the likelihood of exposure.

Based on the model results, behavioral patterns, acoustic abilities of Risso's dolphins, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to Risso's dolphins. At this time, this application requests authorization for the annual harassment of 100 Risso's dolphins by MMPA Level B harassment (87 from mid-frequency active sonar and 13 from explosive sources).

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6.7.3.13 Short-Beaked Common Dolphin

The risk function and Navy post-modeling analysis estimates 1,142 short-beaked common dolphins will exhibit behavioral responses NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be 42 exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No short-beaked common dolphins would be exposed to sound levels that could cause PTS.

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Modeling indicates there would be 49 exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would 23 exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and two exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given the frequent surfacing and their large group size of up to 1,000 animals (Leatherwood et al. 1982), it is very likely, that lookouts would detect a group of short-beaked common dolphins at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar and explosive sources, therefore, common dolphins that migrate into the operating area would be detected by visual observers. Exposure of short-beaked common

dolphins to energy levels associated with MMPA Level A harassment would not occur because mitigation measures would be implemented, large groups of short-beaked common dolphins would be observed, and explosive sources result in a small zone of influence.

Based on the model results, behavioral patterns, acoustic abilities of short-beaked common dolphins, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to short-beaked common dolphins. At this time, this application requests authorization for the annual harassment of ~~1,256~~ short-beaked common dolphins by MMPA Level B harassment (~~1,184~~ from mid-frequency active sonar and ~~72~~ from explosive sources), and two short-beaked common dolphins by MMPA Level A harassment from underwater detonations).

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6.7.3.14 Short-finned Pilot Whale

The risk function and Navy post-modeling analysis estimates two short-finned pilot whales will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be zero exposures to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No short-finned pilot whale would be exposed to sound levels that could cause PTS.

Modeling indicates there would be no exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would zero exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given their size (up to 20 ft [6.1 m]), and large mean group size of 22.5 animals (probability of trackline detection = 0.76 in Beaufort Sea States of 6 or less; Barlow 2006). It is very likely that lookouts would detect a group of short-finned pilot whales at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar, therefore, short-finned pilot whales that migrate into the operating area would be detected by visual observers. Implementation of mitigation measures and probability of detecting groups of short-finned pilot whales reduces the likelihood of exposure.

Based on the model results, behavioral patterns, acoustic abilities of short-finned pilot whale, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to short-finned pilot whale. At this time, this application requests authorization for the annual harassment of two short-finned pilot whales by MMPA Level B harassment from mid-frequency active sonar.

6.7.3.15 Striped Dolphin

The risk function and Navy post-modeling analysis estimates ~~38~~ striped dolphins will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be one exposure to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No striped dolphins would be exposed to sound levels that could cause PTS.

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Modeling indicates there would be no exposure to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would one exposure to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Given their frequent surfacing, aerobatics and large mean group size of 37.3 animals (probability of trackline detection = 1.00 in Beaufort Sea States of 6 or less; Barlow 2006), it is very likely that lookouts would detect a group of striped dolphins at the surface. Additionally, mitigation measures call for continuous visual observation during activities with active sonar, therefore, striped dolphins that migrate into the operating area would be detected by visual observers. Implementation of mitigation measures and probability of detecting groups of striped dolphins reduces the likelihood of exposure.

Based on the model results, behavioral patterns, acoustic abilities of striped dolphins, results of past training, and the implementation of procedure mitigation measures presented in Section 11 for explosive sources, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to striped dolphins. At this time, this application requests authorization for the annual harassment of ~~40~~ striped dolphins by MMPA Level B harassment (~~39~~ from mid-frequency active sonar and one from explosive sources).

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6.7.3.16 Northern Elephant Seal

The risk function and Navy post-modeling analysis estimates ~~288~~ northern elephant seals will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be no exposures to accumulated acoustic energy above 204 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS for northern elephant seals. No northern elephant seals would be exposed to sound levels that could cause PTS.

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Modeling indicates there would be 53 exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would 29 exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and two exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Northern elephant seals tend to dive for long periods, 20-30 minutes, and only spend about 10% of the time at the surface making them difficult to detect. Elephant seals migrate out of the southern California area to forage for several months at a time (Le Boeuf 1994).

Based on the model results, behavioral patterns, acoustic abilities of Northern elephant seals, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to Northern elephant seals. At this time, this application requests authorization for the annual harassment of ~~370~~ northern elephant seals by MMPA Level B harassment (~~288~~ from mid-frequency active sonar and ~~82~~ from explosive sources) and two northern elephant seals by MMPA Level A harassment from potential exposure to explosive sources.

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6.7.3.17 Pacific Harbor Seal

The risk function and Navy post-modeling analysis estimates ~~258~~ Pacific harbor seals will exhibit behavioral responses to sonar NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be ~~245~~ exposures to accumulated acoustic energy above 183 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS for Pacific harbor seals. One Pacific harbor seal would be exposed to sound levels that could cause PTS.

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Modeling indicates there would be two exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would zero exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Harbor seals forage near their rookeries (usually within 50 km) therefore they tend to remain in the southern California area most of the time in comparison to northern elephant seals.

Based on the model results, behavioral patterns, acoustic abilities of harbor seals, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to harbor seals. At this time, this application requests authorization for the annual harassment of ~~505~~ Pacific harbor seals by MMPA Level B harassment (~~503~~ from mid-frequency active sonar and two from explosive sources) and one Pacific harbor seal by MMPA Level A harassment from mid-frequency active sonar.

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6.7.3.18 California Sea Lion

The risk function and Navy post-modeling analysis estimates ~~281~~ California sea lions will exhibit behavioral responses NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be no exposures to accumulated acoustic energy above 206 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS for California sea lions. No California sea lions would be exposed to sound levels that could cause PTS.

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Modeling indicates there would be two exposures to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would one exposure to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and zero exposures to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

California sea lions make short duration dives and may rest at the surface (Feldkamp et al. 1989) making them easier to detect than other pinnipeds.

Based on the model results, behavioral patterns, acoustic abilities of California sea lions, results of past training, and the implementation of procedure mitigation measures presented in Sections 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to harbor seals. At this time, this application requests authorization for the annual harassment of ~~284~~ California sea lions by MMPA Level B harassment (~~281~~ from mid-frequency active sonar and three from explosive sources) only.

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6.7.3.19 Northern Fur Seal

The risk function and Navy post-modeling analysis estimates ~~1,277~~ northern fur seals will exhibit behavioral responses NMFS will classify as harassment under the MMPA (Table 6-7). Modeling also indicates there would be one exposure to accumulated acoustic energy above 195 dB re 1 $\mu\text{Pa}^2\text{-s}$, which is the threshold established indicative of onset TTS. No northern fur seals would be exposed to sound levels that could cause PTS.

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Modeling indicates there would be 24 exposure to impulsive sound or pressures from explosive sources of 177 dB, which is the threshold indicative of sub-TTS behavioral disturbance. Modeling also indicates there would 44 exposures to impulsive sound or pressures from explosive sources of 182 dB or 23 psi, which is the threshold indicative of onset TTS, and one exposure to impulsive sound or pressures from explosive sources that would cause slight physical injury (Table 6-8).

Northern fur seals make short duration dives and often rest at the surface (Antonelis et al. 1990) making them easier to detect.

Based on the model results, behavioral patterns, acoustic abilities of northern fur seals, results of past training, and the implementation of procedure mitigation measures presented in Section 11, the Navy finds that the NWTRC training events would not result in any population level effects, death or injury to northern fur seals. At this time, this application requests authorization for the annual harassment of ~~1,346~~ northern fur seals by MMPA Level B harassment (~~1,278~~ from mid-frequency active sonar and 68 from explosive sources) and one northern fur seal by MMPA Level A harassment from explosive sources.

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7 IMPACTS TO MARINE MAMMAL SPECIES OR STOCKS

Overall, the conclusions in this analysis find that impacts to marine mammal species and stocks would be negligible for the following reasons:

- Most acoustic harassments are within the non-injurious temporary threshold shift (TTS) or behavioral effects zones (Level B harassment). Thirteen exposures to sound levels or pressure that could cause permanent threshold shift (PTS)/injury (Level A harassment) resulted from the summation of the modeling.
- Although the numbers presented in Tables 6-7 and 6-8 represent estimated harassment under the Marine Mammal Protection Act (MMPA), as described above, they are conservative estimates of harassment, primarily by behavioral disturbance. In addition, the model calculates harassment without taking into consideration standard mitigation measures, and is not indicative of a likelihood of either injury or harm.
- Additionally, the mitigation measures described in Chapter 11 are designed to reduce sound exposure of marine mammals to levels below those that may cause "behavioral disruptions" and to achieve the least practicable adverse effect on marine mammal species or stocks.

Consideration of negligible impact is required for National Marine Fisheries Service (NMFS) to authorize incidental take of marine mammals. By definition, an activity has a "negligible impact" on a species or stock when it is determined that the total taking is not likely to reduce annual rates of adult survival or recruitment (i.e., offspring survival, birth rates). Using each species' life history information, the expected behavioral patterns in the Northwest Training Range Complex (NWTRC) training and exercise locations, and an analysis of the behavioral disturbance levels in comparison to the overall population presented for each species, these species-specific analyses support the conclusion that proposed NWTRC training events would have a negligible impact on marine mammal populations.

This authorization request assumes that short-term non-injurious sound exposure levels predicted to cause TTS or temporary behavioral disruptions qualify as MMPA Level B harassment. As discussed, this will overestimate reactions qualifying as harassment under MMPA because there is no established scientific correlation between mid-frequency active sonar use and long term abandonment or significant alteration of behavioral patterns in marine mammals. As detailed in Table 6-7 and Table 6-8, there are 129,570 MMPA Level B takes (Risk Function and TTS), 13 MMPA Level A takes, and no takes for mortality in this authorization request.

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3. Salmon Bycatch: Final action on Bering Sea Chinook Salmon Bycatch Environmental Impact Statement (EIS).

4. Groundfish Issues: Review discussion paper on proposed Bristol Bay Trawl Closure and Walrus issues, and receive Council direction; Review discussion paper on GOA Tanner and Chinook Bycatch and receive Council direction.

5. Amendment 80 Cooperatives: Review annual report from cooperative; Final action on Amendment 80 Cooperative Formation criteria.

6. Marine Protection Act Nomination Process: Review NMFS letter and discuss next steps. (T)

7. Other Groundfish Issues: Review and approve halibut sorting Exempted Fishery Permit (TF); Review Habitat Area of Particular Concern (HAPC) evaluation criteria and Essential Fish Habitat (EFH) 5-year review methodology (SSC Only).

8. Scallop Issues: Receive Plan Team Report and review and approve Stock Assessment Fishery Evaluation (SAFE) Report.

9. Staff Tasking: Review Committees and tasking.

10. Other Business

The SSC agenda will include the following issues:

1. Salmon Bycatch
2. Halibut Sorting EFP
3. HAPC evaluation criteria and EFH 5 year review methodology
4. Scallop Issues

The Advisory Panel will address most of the same agenda issues as the Council, except for t1 reports. The Agenda is subject to change, and the latest version will be posted at <http://www.fakr.noaa.gov/npfmc/>.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271-2809 at least 7 working days prior to the meeting date.

Dated: March 5, 2009.

Tracey L. Thompson,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E9-5085 Filed 3-10-09; 8:45 am]
BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648-XN98

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting of the North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (PNCIAC).

SUMMARY: The PNCIAC will meet in Seattle, WA. The meeting is open to the public.

DATES: The meeting will be held on Monday, March 23, 2009, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Leif Erikson Hall, 2247 NW 57th Street, Suite 403, Seattle, WA 98107 (in Ballard); telephone: (206) 769-3474.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: Dr. Diana Stram, Council Staff; telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION: The PNCIAC will review the Economic Data Reports: Review Alaska Fishery Science Center draft metadata and continue work on revisions of EDR forms; and discuss of Marine Stewardship Council/sustainable fisheries certification issues and take action as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271-2809 at least 7 working days prior to the meeting date.

Dated: March 5, 2009.

Tracey L. Thompson,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E9-5104 Filed 3-10-09; 8:45 am]
BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XN87

Taking and Importing Marine Mammals; Navy Training and Research, Development, Testing, and Evaluation Activities Conducted within the Northwest Training Range Complex

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 military readiness training activities and research, development, testing and evaluation (RDT&E) to be conducted in the Northwest Training Range Complex (NWTRC) for the period beginning September 2009 and ending September 2014. Pursuant to the implementing regulations of 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 April 10, 2009.

ADDRESSES: Comments on the application should be addressed to Michael Payne, 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 PRI.0648-XN87@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.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713-2289, ext. 166.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application may be obtained by writing to the address specified above

(See **ADDRESSES**), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. The Navy's Draft Environmental Impact Statement (DEIS) for NWTRC was made available to the public on December 26, 2008, and may be viewed at <http://www.nwtrangecomplexeis.com/>. During the initial 45-day public comment period, the Navy hosted five public hearings. The comment period was subsequently extended 30 days and another public hearing was held at an additional location.

Background

In the case of military readiness activities, 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.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than 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, and that 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:

(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

In September, 2008, NMFS received an application from the Navy requesting authorization to take individuals of 32 species of marine mammals (4 pinniped and 28 cetacean) incidental to upcoming training and RDT&E activities to be conducted in the NWTRC (off the coasts of Washington, Oregon, and northern California) over the course of 5 years. These training and RDT&E activities are classified as military readiness activities. The Navy states that these training activities may expose some of the marine mammals present in the area to sound from various mid-frequency and high-frequency active tactical sonar sources or to pressure from underwater detonations. The Navy requests authorization to take individuals of 32 species of marine mammals by Level B Harassment.

Specified Activities

In the application submitted to NMFS, the Navy requests authorization to take marine mammals incidental to conducting training events and RDT&E utilizing mid- and high frequency active sonar sources and explosive detonations. These sonar and explosive sources will be utilized during Anti-submarine Warfare (ASW) Tracking Exercises, Mine Avoidance Training, Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) events, Missile Exercises, Gunnery Exercises, Bombing Exercises, Sinking Exercises, and Mine Warfare Training. Table 1-1 in the application lists the activity types, the equipment and platforms involved, and the duration and potential locations of the activities.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). All information, suggestions, and comments related to the Navy's NWTRC request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by the Navy's NWTRC activities will be considered by NMFS in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization.

Dated: March 6, 2009.

P. Michael Payne,
Chief, Division of Permits, Conservation, and
Education, Office of Protected Resources,
National Marine Fisheries Service.
[FR Doc. E9-5287 Filed 3-10-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF EDUCATION

**Notice of Proposed Information
Collection Requests**

AGENCY: Department of Education.
SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.
DATES: Interested persons are invited to submit comments on or before May 11, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be

Wauer, Brian D

From: Petitpas, Linda S. CIV (OPNAV CNO) [linda.petitpas@navy.mil]
Sent: Monday, May 18, 2009 11:26 AM
To: Jolie.Harrison@noaa.gov
Cc: Petitpas, Linda S. CIV (OPNAV CNO); Mosher, John G CIV COMPACFLT N01CE1JM; MacDowell, Ken CONT COMPACFLT N77/N01CE1KM; Kler, Kimberly H CIV NAVFAC NW, EV1; Foster, Larry M CIV (CPF N01CE1); Sheehan, Neil A CIV COMPACFLT, N01CE1NS; Foskey, Karen CIV; Peters, Agnes CIV; Carmichael, Ronald B CIV OPNAV, CNO N45; Morrison, Jillian L CDR OPNAV, N45J
Subject: NWTRC Admin Record Date Change

Jolie,

On 3 Sep 08 Navy submitted a request for a 5-year authorization to take marine mammals incidental to training activities conducted in the Northwest Training Range Complex (NWTRC) for the period October 2009 through September 2014.

Subsequent to submission of that request, Navy requests to slip the date of authorization to the period February 2010 through February 2015. The Navy does not anticipate any change to the proposed action or effects analysis presented in the original application.

This e-mail serves as the administrative record of the requested change.

Linda
Linda S. Petitpas
Chief of Naval Operations (CNO)
Environmental Readiness (N45)
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Federal Register

Monday,
July 13, 2009

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals; Navy Training Activities Conducted Within the Northwest Training Range Complex; Proposed Rule

33828

Federal Register / Vol. 74, No. 132 / Monday, July 13, 2009 / Proposed Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 0906101030-91038-01]

RIN 0648-AX88

Taking and Importing Marine Mammals; Navy Training Activities Conducted Within the Northwest Training Range Complex

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to training activities conducted in the Northwest Training Range Complex (NWTRC), off the coasts of Washington, Oregon, and northern California, for the period of February 2010 through February 2015 (updated from initial request for October 2009 through September 2014). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requesting information, suggestions, and comments on these proposed regulations.

DATES: Comments and information must be received no later than August 12, 2009.

ADDRESSES: You may submit comments, identified by 0648-AX88, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Hand delivery or mailing of paper, disk, or CD-ROM comments should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> 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.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713-2289, ext. 166.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application may be obtained by writing to the address specified above (*See ADDRESSES*), telephoning the contact listed above (*see FOR FURTHER INFORMATION CONTACT*), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. The Navy's Draft Environmental Impact Statement (DEIS) for NWTRC was published on December 29 2008, and may be viewed at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. NMFS is participating in the development of the Navy's EIS as a cooperating agency under NEPA.

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) during periods of not more than five consecutive years each 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.

Authorization 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, 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."

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108-136) modified the MMPA by removing 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].

In January 2009, the Council on Environmental Quality requested that NOAA conduct a comprehensive review of the Navy's mitigation measures applicable to the use of sonar in its training activities.

Summary of Request

In September 2008, NMFS received an application from the Navy requesting authorization for the take of individuals of 26 species of marine mammals incidental to upcoming Navy training activities to be conducted within the NWTRC, which extends west to 250 nautical miles (nm) (463 kilometers [km]) beyond the coast of Northern California, Oregon, and Washington and east to Idaho and encompasses 122,400 nm² (420,163 km²) of surface/subsurface ocean operating areas. These training activities are military readiness activities under the provisions of the NDAA. The Navy states, and NMFS concurs, that these military readiness activities may incidentally take marine mammals present within the NWTRC by exposing them to sound from mid-frequency or high frequency active sonar (MFAS/HFAS) or underwater detonations. The Navy requests authorization to take individuals of 26 species of marine mammals by Level B Harassment and 14 individuals of 10 species by Level A Harassment. The Navy's model, which did not factor in any potential benefits of mitigation measures, predicted that 14 individual marine mammals would be exposed to levels of sound or pressure that would result in injury; thus, NMFS is proposing to authorize the take, by Level A Harassment of 14 individuals. However, NMFS and the Navy have determined preliminarily that injury can be avoided through the implementation of the Navy's proposed mitigation measures. NMFS neither anticipates, nor does it propose to authorize mortality of marine mammals incidental to naval exercises in the NWTRC.

Background of Request

The Navy's mission is to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. Section 5062 of Title 10 of the United States Code directs the Chief of Naval Operations to train all naval forces for combat. The Chief of Naval Operations meets that direction, in part, by conducting at-sea training exercises and ensuring naval forces have access to ranges, operating areas (OPAREAs) and airspace where they can develop and maintain skills for wartime missions and conduct research, development, testing, and evaluation (RDTE&E) of naval weapons systems.

The proposed action would result in selectively focused, but critical enhancements and increases in training that are necessary for the Navy to maintain a state of military readiness commensurate with the national defense mission. The Navy proposes to implement actions within the NWTRC to:

- Conduct training and Unmanned Aerial Systems (UAS) RDTE&E activities of the same types as currently conducted, but also;
- Increase training activities from current levels as necessary in support of the Fleet Response Training Plan (FRTP);
- Accommodate force structure changes (new platforms and weapons systems) and
- Implement range enhancements associated with the NWTRC.

The proposed action would result in the following increases (above those conducted in previous years, *i.e.*, the No Action Alternative in the Navy's DEIS) in activities:

- *Antisubmarine Warfare*—10% increase.
- *Gunnery Exercises*—100% increase (increased from 90 to 176 events).
- *Bombing Exercises*—25% increase (increased from 24 to 30 sorties).
- *Sinking Exercises*—100% increase (increased from 1 to 2 exercises).

Overview of the NWTRC

The U.S. Navy has been training and operating in the area now defined as the NWTRC for over 60 years. The NWTRC includes ranges and airspace that extend west to 250 nm (463 km) beyond the coast of Northern California, Oregon, and Washington and east to Idaho. The components of the NWTRC encompass 122,461 nm² (420,163 km²) of surface/subsurface ocean operating areas (OPAREAs), 46,048 nm² (157,928 km²) of special use airspace (SUA), and 875 acres (354 hectares) of land. For range

management and scheduling purposes, the NWTRC is divided into numerous sub-component ranges or training areas used to conduct training and RDTE&E of military hardware, personnel, tactics, munitions, explosives, and electronic combat systems, as described in detail in the NWTRC DEIS. As the take of marine mammals is inherently tied to the surface/subsurface OPAREAs of the NWTRC, only those areas are discussed in more detail below.

The LOA application includes graphics (Figures 1-1, 2-1, and 2-2) that depict the sea, undersea, and air spaces used by the Navy. To aid in the description of the range complexes that will be addressed in this proposed rule, the ranges are divided into three major geographic and functional subdivisions. Each of the depicted individual ranges falls into one of these three major range subdivisions:

The Offshore Area—The Pacific Northwest (PACNW) OPAREA (same footprint as Offshore Area) serves as maneuver water space for ships and submarines to conduct training and to use as transit lanes. It extends from the Strait of Juan de Fuca in the north, to approximately 50 nm (93 km) south of Eureka, California in the south, and from the coast line of Washington, Oregon, and California westward to 130° W. longitude. The PACNW OPAREA is approximately 510 nm (945 km) in length from the northern boundary to the southern boundary, and 250 nm (463 km) from the coastline to the western boundary at 130° W longitude. Total surface area of the PACNW OPAREA is 122,400 nm² (420,163 km²).

Commander Submarine Force, U.S. Pacific Fleet (COMSUBPAC) Pearl Harbor manages this water space as transit lanes for U.S. submarines. While the sea space is ample for all levels of Navy training, no infrastructure is currently in place to support training. There are no dedicated training frequencies, no permanent instrumentation, no meteorological and oceanographic activities (METOC) system, and no Opposition Forces (OPFOR) or Electronic Combat (EC) target systems. In this region of the Pacific Ocean, storms and high sea states can create challenges to surface ship training between October and April. In addition, strong undersea currents in the PACNW make it difficult to place permanent bottom-mounted instrumentation such as hydrophones.

The Offshore Area undersea space lies beneath the PACNW OPAREA as described above. The bathymetry chart depicts a 100-fathom (182-m) curve parallel to the coastline approximately 12 nm (22 km) to sea, and in places 20

nm (37 km) out to sea. The area of deeper water of more than 100 fathoms (182 m) is calculated to be approximately 115,800 nm² (397,194 km²), while the shallow water area of less than 100 fathoms (600 ft, 182 m) is all near shore and amounts to approximately 6,600 nm² (22,638 km²).

The Inshore Area—This area includes all sea and undersea ranges and OPAREAs inland of the coastline, including Puget Sound. This area is composed of approximately 61 nm² of surface and subsurface area. NWTRC Inshore Areas include land ranges, airspace, and two surface/subsurface restricted areas—Navy 7 and 3. Activities conducted in each of these areas are not expected to take marine mammals, as defined by the MMPA and therefore, will not be discussed further in this proposed rule. Also included in the Inshore Area, Explosive Ordnance Disposal (EOD) Ranges are land, sea, and undersea ranges used by NSW and EOD forces specifically for EOD training and are composed of approximately 0.4 nm² of surface and subsurface area within the area identified as the Inshore Area. EOD units located in the NWTRC conduct underwater detonations as part of mine countermeasure training. This training is conducted at one of three locations: Crescent Harbor Underwater EOD Range, offshore from the Seaplane Base at Naval Air Station Whidbey Island; at the Floral Point Underwater EOD Range, located in Hood Canal near NAVBASE Kitsap-Bangor; and the Indian Island Underwater EOD Range, adjacent to Indian Island.

Description of Specified Activities

As mentioned above, the Navy has requested MMPA authorization to take marine mammals incidental to training activities in the NWTRC that would result in the generation of sound or pressure waves in the water at or above levels that NMFS has determined will likely result in take (see Acoustic Take Criteria Section), either through the use of MFAS/HFAS or the detonation of explosives in the water. These activities are discussed in the subsections below. In addition to use of active sonar sources and explosives, these activities include the operation and movement of vessels that are necessary to conduct the training, and the effects of this part of the activities are also analyzed in this document.

The Navy's application also briefly summarizes Anti-Air Warfare Training, Naval Special Warfare Training and Support Operations; however, these activities are primarily land and air based and do not utilize sound sources

or explosives for the portions that are in the water and, therefore, no take of marine mammals is anticipated from these activities and they are not discussed further.

Activities Utilizing Active Sonar Sources

For the NWTRC, the training activities that utilize active tactical sonar sources fall primarily into the category of Anti-submarine Warfare (ASW) exercises (MFAS/HFAS is also used in the mine avoidance exercises, which are considered Mine Warfare Training (MIW) activities; however, it is in such a small amount that impacts to marine mammals are minimal). This section includes a description of ASW, the active acoustic devices used in ASW exercises, and the exercise types in which these acoustic sources are used. Of note, the use of MFAS/HFAS in the NWTRC is minimal as compared to previous rules issued by NMFS (approximately 110 hours annual use of the most powerful surface vessel sonar versus approximately 2,500 hours annual use of AN/SQS-53C and AN/SQS-56C sonar in the Southern California Range Complex), does not include major exercises that involve the use of more than one surface vessel MFAS (AN/SQS-53C or AN/SQS-56C) at a time, and will not occur in the inshore area (*i.e.*, inland from the mouth of the Strait of Juan de Fuca).

ASW Training and Active Sonar

ASW involves helicopter and sea control aircraft, ships, and submarines, operating alone or in combination, to locate, track, and neutralize submarines. Various types of active and passive sonars are used by the Navy to determine water depth, locate mines, and identify, track, and target submarines. Passive sonar "listens" for

sound waves by using underwater microphones, called hydrophones, which receive, amplify and process underwater sounds. No sound is introduced into the water when using passive sonar. Passive sonar can indicate the presence, character and movement of submarines. However, passive sonar provides only a bearing (direction) to a sound-emitting source; it does not provide an accurate range (distance) to the source. Also, passive sonar relies on the underwater target itself to provide sufficient sound to be detected by hydrophones. Active sonar is needed to locate objects that emit little or no noise (such as mines or diesel-electric submarines operating in electric mode) and to establish both bearing and range to the detected contact.

Active sonar transmits pulses of sound that travel through the water, reflect off objects and return to a receiver. By knowing the speed of sound in water and the time taken for the sound wave to travel to the object and back, active sonar systems can quickly calculate direction and distance from the sonar platform to the underwater object. There are three types of active sonar: low frequency, mid-frequency, and high-frequency.

LFA sonar is not presently utilized in the NWTRC, and is not part of the Proposed Action.

MFAS, as defined in the Navy's NWTRC LOA application, operates between 1 and 10 kHz, with detection ranges up to 10 nm (19 km). Because of this detection ranging capability, MFAS is the Navy's primary tool for conducting ASW. Many ASW experiments and exercises have demonstrated that this improved capability for long range detection of adversary submarines before they are

able to conduct an attack is essential to U.S. ship survivability. Today, ASW is the Navy's number one war-fighting priority. Navies across the world utilize modern, quiet, diesel-electric submarines that pose the primary threat to the U.S. Navy's ability to perform a number of critical missions. Extensive training is necessary if Sailors, ships, and strike groups are to gain proficiency in using MFAS. If a strike group does not demonstrate MFAS proficiency, it cannot be certified as combat ready.

HFAS, as defined in the Navy's NWTRC LOA application, operates at frequencies greater than 10 kilohertz (kHz). At higher acoustic frequencies, sound rapidly dissipates in the ocean environment, resulting in short detection ranges, typically less than five nm (9 km). High-frequency sonar is used primarily for determining water depth, hunting mines and guiding torpedoes.

Acoustic Sources Used for ASW Exercises in the NWTRC

Modern sonar technology has developed a multitude of sonar sensor and processing systems. In concept, the simplest active sonars emit omnidirectional pulses ("pings") and time the arrival of the reflected echoes from the target object to determine range. More sophisticated active sonar emits an omni-directional ping and then rapidly scans a steered receiving beam to provide directional, as well as range, information. More advanced active sonars transmit multiple preformed beams, listening to echoes from several directions simultaneously and providing efficient detection of both direction and range. The types of active sonar sources employed during ASW active sonar training exercises in the NWTRC are identified in Table 1.

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Sonar Sources	Frequency (kHz)	Source Level (dB) re 1 µPa @ 1 m	Emission Spacing (m)*	Vertical Directivity	Horizontal Directivity	Associated Platform	System Description	Annual Amount	Unit
AN/SQS-53C	3.5	235	154	Omni	240° forward-looking	Cruiser (CG) and Destroyer (DDG) hull mounted sonar	ASW search, detection, & localization (approximately 120 pings per hour)	43	Hours
AN/SQS-56C	7.5	225	129	13°	30°	Frigate (FFG) hull mounted sonar	ASW search, detection, & localization (approximately 120 pings per hour)	65	Hours
AN/BQS-15	Classified (HF)	Classified				Submarine (SSN)	Submarine navigation and mine detection sonar	42	Hours
AN/SSQ-62 (sonobuoy, total)	8	201	450	Omni	Omni	Helicopter and maritime patrol aircraft (P3 and P8 MPA) dropped sonobuoy	Remotely commanded expendable sonar-equipped buoy (approximately 12 pings per use, 30 secs between pings, 8 buoys per hour)	886	Buoys
MK-48 torpedo sonar	Classified (>10)	Classified	144	Omni	Omni	Submarine (SSN) launched torpedo (used during SINKEX)	Recoverable and non-explosive exercise torpedo; sonar is active approximately 15 min per torpedo run	2	Torpedoes
AN/SSQ-110A (IEER)	Classified (impulsive, broadband)	Classified	n/a	Omni	Omni	MPA deployed	ASW system consists of explosive acoustic source buoy (contains two 4.1 lb charges) and expendable passive receiver sonobuoy	149	Buoys
AN/SSQ-125 (AEER)	MF	Classified	n/a	Omni	Omni	MPA deployed	ASW system consists of active sonobuoy and expendable passive receiver sonobuoy	Replaces SSQ-110A, same effects as SSQ-62	
Range Pingers	12.9	194				Ships, submarines, and ASW targets when ASW TRACKEX training is conducted on the PUTR	1-3 pingers used in each ASW exercise, average of 3 hours each during PUTR operational days	180	Hours
PUTR Uplink	8.8, 17, or 40	190				Portable Undersea Tracking Range, deployed on ocean floor	Used 10 days per month June-Aug, 5 hours/day. Deployed in at least 3nm from shore in 300-12000 ft of water	150	Hours

Table 1. Active sonar sources in the NWTRC and parameters used for modeling them. Many of the actual parameters and capabilities of these sonars are classified. Parameters used for modeling were derived to be as representative as possible. When, however, there were a wide range of potential modeling values, a nominal parameter likely to result in the most impact was used so that the model would err towards overestimation. *Spacing means distance between pings at the nominal speed

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ASW sonar systems are deployed from certain classes of surface ships, submarines, and fixed-wing maritime

patrol aircraft (MPA). Maritime patrol aircraft is a category of fixed-wing aircraft that includes the current P-3C

Orion, and the future P-8 Poseidon multimission maritime aircraft. No ASW helicopters train in the NWTRC. The

surface ships used are typically equipped with hull-mounted sonars (passive and active) for the detection of submarines. Fixed-wing MPA are used to deploy both active and passive sonobuoys to assist in locating and tracking submarines or ASW targets during the exercise. Submarines are equipped with passive sonar sensors used to locate and prosecute other submarines and/or surface ships during the exercise. The platforms used in ASW exercises are identified below.

Surface Ship Sonars—A variety of surface ships participate in training events. Of the ships that operate in the NWTRC, only two classes employ MFAS: the Fast Frigate (FFG) and the Guided Missile Destroyer (DDG). These two classes of ship are equipped with active as well as passive tactical sonars for mine avoidance and submarine detection and tracking. DDG class ships are equipped with the AN/SQS-53C sonar system (the most powerful system), with a nominal source level of 235 decibels (dB) re 1 µPa @ 1 m. The FFG class ship uses the SQS-56 sonar system, with a nominal source level of 225 decibels (dB) re 1 µPa @ 1 m. Sonar ping transmission durations were modeled as lasting 1 second per ping and omni-directional, which is a conservative assumption that will overestimate potential effects. Actual ping durations will be less than 1 second. The AN/SQS-53C hull-mounted sonar transmits at a center frequency of 3.5 kHz. The SQS-56 transmits at a center frequency of 7.5 kHz. Details concerning the tactical use of specific frequencies and the repetition rate for the sonar pings is classified but was modeled based on the required tactical training setting.

Submarine Sonars—Submarine active sonars are not used for ASW training in the NWTRC. However, the AN/BQS-15 sonar would be used for mine detection training. The AN/BQS-15, installed on guided missile nuclear submarines (SSGN) and fast attack nuclear submarines (SSN), uses high frequency (> 10 kHz) active sonar to locate mine shapes. A total of seven mine avoidance exercises would take place annually in the NWTRC. Each exercise would last six hours, for a total of 42 hours annually.

Aircraft Sonar Systems—Sonobuoys are the only aircraft sonar systems that would operate in the NWTRC. Sonobuoys are deployed by MPAs and are expendable devices used for the detection of submarines. Most sonobuoys are passive, but some can generate active acoustic signals, as well as listen passively. During ASW training, these systems' active modes are

used for localization of contacts and are not typically used in primary search capacity. The AN/SSQ-62 Directional Command Activated Sonobuoy System (DICASS) is the only MFAS sonobuoy used in the NWTRC. Because no ASW helicopters train in the NWTRC, no dipping sonar system is carried forward for any further analysis of effects.

Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) Systems—EER/IEER are airborne ASW systems used to conduct "large area" searches for submarines. These systems are made up of airborne avionics ASW acoustic processing and sonobuoy types that are deployed in pairs. The EER/IEER System's active sonobuoy component, the AN/SSQ-110A Sonobuoy, generates an explosive sound impulse and a passive sonobuoy (ADAR, AN/SSQ-101A) would "listen" for the return echo that has been bounced off the surface of a submarine. These sonobuoys are designed to provide underwater acoustic data necessary for naval aircrews to quickly and accurately detect submerged submarines. The sonobuoy pairs are dropped from a maritime patrol aircraft into the ocean in a predetermined pattern with a few buoys covering a very large area. The AN/SSQ-110A Sonobuoy Series is an expendable and commandable sonobuoy. Upon command from the aircraft, the explosive charge would detonate, creating the sound impulse. Within the sonobuoy pattern, only one detonation is commanded at a time. Twelve to twenty SSQ-110A source sonobuoys are used in a typical exercise. Both charges of each sonobuoy would be detonated during the course of the training, either tactically to locate the submarine, or when the sonobuoys are commanded to scuttle at the conclusion of the exercise. The AN/SSQ-110A is listed in this table because it functions like a sonar ping, however, the source creates an explosive detonation and its effects are considered in the underwater explosive section.

Advanced Extended Echo Ranging (AEER) System—The proposed AEER system is operationally similar to the existing EER/IEER system. The AEER system will use the same ADAR sonobuoy (SSQ-101A) as the acoustic receiver and will be used for a large area ASW search capability in both shallow and deep water. However, instead of using an explosive AN/SQS-110A as an impulsive source for the active acoustic wave, the AEER system will use a battery powered (electronic) source for the AN/SSQ 125 sonobuoy. The output and operational parameters for the AN/SSQ-125 sonobuoy (source levels,

frequency, wave forms, etc.) are classified. However, this sonobuoy is intended to replace the EER/IEER use of explosives and is scheduled to enter the fleet in 2011. Acoustic impact analysis for the AN/SSQ-125 in this document assumes a similar per-buoy effect as that modeled for the DICASS sonobuoy. For purposes of analysis, replacement of the EER/IEER system by the AEER system will be assumed to occur at 25% per year as follows: 2011—25% replacement; 2012—50% replacement; 2013—75% replacement; 2014—100% replacement with no further use of the EER/IEER system beginning in 2015 and beyond.

Torpedoes—Torpedoes are the primary ASW weapon used by surface ships, aircraft, and submarines. The guidance systems of these weapons can be autonomous or electronically controlled from the launching platform through an attached wire. The autonomous guidance systems are acoustically based. They operate either passively, exploiting the emitted sound energy by the target, or actively, ensnaring the target and using the received echoes for guidance. The MK-48 submarine-launched torpedo, used in its anti-surface ship mode, was modeled for active sonar transmissions in Sinking Exercises conducted within the NWTRC.

Portable Undersea Tracking Range—The Portable Undersea Tracking Range (PUTR) has been developed to support ASW training in areas where the ocean depth is between 300 ft and 12,000 ft and at least 3 nm from land. This proposed project would temporarily instrument 25-square-mile or smaller areas on the seafloor, and would provide high fidelity feedback and scoring of crew performance during ASW training activities. When training is complete, the PUTR equipment would be recovered. All of the potential PUTR areas have been used for ASW training for decades.

No on-shore construction would take place. Seven electronics packages, each approximately 3 ft long by 2 ft in diameter, would be temporarily installed on the seafloor by a range boat, in water depths greater than 600 ft. The anchors used to keep the electronics packages on the seafloor would be either concrete or sand bags, approximately 1.5 ft-by-1.5 ft and 300 pounds. Each package consists of a hydrophone that receives pinger signals, and a transducer that sends an acoustic "uplink" of locating data to the range boat. The uplink signal is transmitted at 8.8 kilohertz (kHz), 17 kHz, or 40 kHz, at a source level of 190 decibels (dB). The Portable Undersea Tracking Range

system also incorporates an underwater voice capability that transmits at 8–11 kHz and a source level of 190 dB. Each of these packages is powered by a D cell alkaline battery. After the end of the battery life, the electronic packages would be recovered and the anchors would remain on the seafloor. The Navy proposes to deploy this system for 3 months of the year (approximately June–August), and to conduct TRACKEX activities for 10 days per month in an area beyond 3 nm from shore. During each of the 30 days of annual operation, the PUTR would be in use for 5 hours each day. No additional ASW activity is proposed as a result of PUTR use. Operation of this range requires that underwater participants transmit their locations via pingers and that the receiving transducers transmit that information the range boat via the Uplink transmitter (see "Range Tracking Pingers" and uplink transmitter "below").

Range Tracking Pingers—MK–84 range tracking pingers would be used on ships, submarines, and ASW targets when ASW TRACKEX training is conducted on the PUTR. The MK–84 pinger generates a 12.93 kHz sine wave in pulses with a maximum duty cycle of 30 milliseconds (3% duty cycle) and has a design power of 194 dB re 1 micro-Pascal at 1 meter. Although the specific exercise, and number and type of participants will determine the number of pingers in use at any time, a minimum of one and a maximum of three pingers would be used for each ASW training activity. On average, two pingers would be in use for 3 hours each during PUTR operational days.

Uplink Transmitters—Each package consists of a hydrophone that receives pinger signals, and a transducer that sends an acoustic "uplink" of locating data to the range boat. The uplink signal is transmitted at 8.8 kilohertz (kHz), 17 kHz, or 40 kHz, at a source level of 190 decibels (dB). The Portable Undersea Tracking Range system also incorporates an underwater voice capability that transmits at 8–11 kHz and a source level of 190 dB. Under the proposed action, the uplink transmitters would operate 30 days per year, for 5 hours each day of use. The total time of use would be 150 hours annually.

Exercises Utilizing MFAS in the NWTRC

ASW Tracking Exercises are the exercises that primarily utilize MFAS and HFAS sources in the NWTRC, although Mine Avoidance MIW exercises also utilize a less powerful HFAS source. ASW Tracking Exercise (TRACKEX) trains aircraft, ship, and

submarine crews in tactics, techniques, and procedures for search, detection, localization, and tracking of submarines with the goal of determining a firing solution that could be used to launch a torpedo and destroy the submarine. ASW Tracking Exercises occur during both day and night. A typical unit-level exercise involves one (1) ASW unit (aircraft, ship, or submarine) versus one (1) target—either a MK–39 Expendable Mobile ASW Training Target (EMATT), or a live submarine. The target may be non-evading while operating on a specified track or fully evasive. Participating units use active and passive sensors, including hull-mounted sonar, towed arrays, and sonobuoys for tracking. If the exercise continues into the firing of a practice torpedo it is termed a Torpedo Exercise (TORPEX). The ASW TORPEX usually starts as a TRACKEX to achieve the firing solution. No torpedoes are fired during ASW training conducted in the NWTRC. The exercise types that utilize MFAS/HFAS are described below and summarized in Table 2, which also includes a summary of the exercise types utilizing explosives.

ASW TRACKEX (Maritime Patrol Aircraft)—During an ASW TRACKEX (MPA), a typical scenario would involve a single MPA dropping sonobuoys, from an altitude below 3,000 ft (914 m) above mean sea level (MSL), and sometimes as low as 400 ft (122 m), into specific patterns designed for both the anticipated threat submarine and the specific water conditions. These patterns vary in size and coverage area based on the threat and water conditions.

Typically, passive sonobuoys will be used first, so the threat submarine is not alerted. Active buoys will be used as required either to locate extremely quiet submarines, or to further localize and track submarines previously detected by passive buoys. A TRACKEX (MPA) usually takes two to four hours. The P–8 Multi-mission Maritime Aircraft (MMA), a modified Boeing 737 that is the Navy's replacement for the aging P–3 Orion aircraft, is a long-range aircraft that is capable of broad-area, maritime and littoral activities. As P–8 live training is expected to be supplemented with virtual training to a greater degree than P–3 training, P–8 training activities in the NWTRC are likely to be less numerous than those currently conducted by P–3 aircraft crews. P–3 replacement is expected to begin by 2013. None of the potential marine mammal impacts associated with the P–3 aircraft are expected to differ as a result of the P–3 being replaced by the MMA.

ASW TRACKEX (EER/IEER or AEER)—This activity is an at-sea flying event, typically conducted below 3,000 ft (914 m) MSL, that is designed to train P–3 crews in the deployment and use of the EER/IEER (and in the future, AEER) sonobuoy systems. These systems use the SSQ–110A as the signal source and the SSQ–77 (VLAD) as the receiver buoy. The signal source is a small explosive charge that detonates underwater. The SSQ–110A sonobuoy has two charges, each being individually detonated during the exercise. This activity typically lasts six hours, with one hour for buoy pattern deployment and five hours for active search. Between 12 and 20 SSQ–110A source sonobuoys and approximately 20 SSQ–77 passive sonobuoys are used in a typical exercise.

ASW TRACKEX (Surface Ship)—In the PACNW OPAREA, locally based surface ships do not routinely conduct ASW Tracking exercises. However, MFAS is used during ship transits through the OPAREA. In a typical year, 24 DDG ship transits and 36 FFG transits will take place, with 1.5 hours of active sonar use during each transit. All surface ship MFAS use is documented in this training activity description. 10% of surface ship MFAS used in NWTRC is training associated with the PUTR.

ASW TRACKEX (Submarine)—ASW TRACKEX is a primary training exercise for locally based submarines. Training is conducted within the NWTRC and involves aircraft approximately 30% of the time. Training events in which aircraft are used typically last 8 to 12 hours. During these activities submarines use passive sonar sensors to search, detect, classify, localize and track the threat submarine with the goal of developing a firing solution that could be used to launch a torpedo and destroy the threat submarine. However, no torpedoes are fired during this training activity. All submarine ASW TRACKEX conducted in the NWTRC is passive only; therefore, these activities are not carried forward for any further analysis of effects. All aircraft ASW is analyzed under ASW TRACKEX (MPA).

Mine Avoidance—Mine avoidance exercises train ship and submarine crews to detect and avoid underwater mines. In the NWTRC, submarine crews will use the AN/BQS–15 high frequency active sonar to locate mine shapes in a training minefield in the PACNW OPAREA. A small-scale underwater minefield will be added in the NWTRC for these exercises. Each mine avoidance exercise involves one submarine operating the AN/BQS–15 sonar for six hours to navigate through

the training minefield. A total of seven

mine avoidance exercises will occur in the NWTRC annually.

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Exercise Type	ASW TRACKEX	Mine Avoidance	EER/IEER	MISSILEX (Air based)	GUNEX	BOMBEX	SINKEX	MIW
Anticipated Takes	Yes	No	Yes	No *	No *	Yes	Yes	No *
Explosion in or on water	No	No	Yes	No	No	Yes	Yes	Yes
Length of Exercise	1.5 hours	6 hours	6 hours	2-3 hours	2-3 hours	1 hour	8-48 hours	5 hours
Number Exercises per Year	65	7	12	28	340	30	2	4
Area Used	Pacific Northwest Surface/Subsurface OPAREA	Pacific Northwest Surface/Subsurface OPAREA	Pacific Northwest Surface/Subsurface OPAREA	Pacific Northwest Surface/Subsurface OPAREA	Pacific Northwest Surface/Subsurface OPAREA	Pacific Northwest Surface/Subsurface OPAREA	Pacific Northwest Surface/Subsurface OPAREA	EOD Crescent Harbor, EOD Indian Island, EOD Floral Point
Months of Year conducted								
Sonar hours, sonobuoys, torpedoes, detonations, or rounds per year SQS-55 (Search Mode) = 39 hrs/year SQS-56 = 58.5 hrs/year SSQ-62 DICASS = 886 sonobuoys/year MK-48 Torpedo = 2 torpedoes/yr AN/BQS-15 Sonar = 42 hrs/year SSQ-110A or AN/SSQ-125 = 149 sonobuoys/year 8 NATO Sea Sparrow or 8 Rolling Airframe Missiles 13 AIM-7 missiles 9 AIM-9 missiles 7 AIM-120 missiles 5 in gun (2,463 rounds) 20 mm (16,000 rounds) 25 mm (31,500 rounds) 57 mm (1,260 rounds) 76 mm (720 rounds) 80 caliber (117,000 rounds) 10 MK-82 Bombs (High Explosive) 110 BDU-45 Bombs (Inert) See Narrative SINKEX section 2.5-lb NEW-4/year								

Table 2. Summary of exercise types in NWTRC noting duration, location, sources and explosives used, and time of year. * Though take is not anticipated to result from these exercises, they are included for information because they have been addressed in other rules.

Activities Utilizing Underwater Detonations

Underwater detonation activities can occur at various depths depending on the activity, but may also include activities which may have detonations at or just below the surface (such as SINKEX or gunnery exercise [GUNEX]). When the weapons hit the target, except for live torpedo shots, there is no explosion in the water, and so a "hit" is not modeled (*i.e.*, the energy (either acoustic or pressure) from the hit is not

expected to reach levels that would result in take of marine mammals). When a live weapon misses, it is modeled as exploding below the water surface at 1 ft (5-inch naval gunfire, 76mm rounds), 2 meters (Maverick, Harpoon, MK-82, MK-83, MK-84), or 50-ft (MK-48 torpedo) as shown in Appendix A of the Navy's application (the depth is chosen to represent the worst case of the possible scenarios as related to potential marine mammal impacts). Exercises may utilize either

live or inert ordnance of the types listed in Table 3. Additionally, successful hit rates are known to the Navy and are utilized in the effects modeling. Training events that involve explosives and underwater detonations occur throughout the year and are described below and summarized in Table 2. Of note, the only Inshore Area exercises that use explosives are on EOD ranges described under Mine Countermeasures (No more than 4 total detonations of 2.5 lb. charges annually).

	NEW lbs	TTTS		Injury		Mortality 13 psi-ms	Exclusion Zone Used (m)
		182 SEL	23 psi	205 SEL	13 psi-ms		
5" Naval gunfire	9.5	247	273	46	44	24	548
76mm rounds	1.6	102	151	21	25	13	548
Demolition	2.5	179	175	35	74	31	548
Maverick	78.5	959	554	182	191	107	1852 (SINKEX), 1645 (MISSILEX)
HARM	41.6	689	448	133	156	86	1853 (SINKEX), 1645 (MISSILEX)
Hellfire	16.4	424	327	84	112	59	1854 (SINKEX), 1645 (MISSILEX)
SLAM	164.3	1406	726	262	237	137	1855 (SINKEX), 1645 (MISSILEX)
Harpoon	448	1811	866	120	270	158	1852 (SINKEX), 1645 (MISSILEX)
MK-82	238	1723	836	315	263	153	1852 (SINKEX), 914 (BOMBEX)
MK-48	851	3469	1278	662	694	424	1852 (SINKEX), 914 (BOMBEX)
GBU-10	945	3626	1326	613	373	223	1853 (SINKEX), 914 (BOMBEX)
GBU-12	238	1712	832	315	262	153	1854 (SINKEX), 914 (BOMBEX)
GBU-16	445	2390	1054	428	310	183	1855 (SINKEX), 914 (BOMBEX)
AN/SSQ-110A (IEER)	5	325	281	72	159	77	914

Table 3. Representative ordnance used in NWTRC Explosive Exercises for which take of marine mammals is anticipated. Table also indicates range to indicated threshold and size of Navy exclusion zone used in mitigation. Units are meters.

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Anti-Surface Warfare Training (ASUW)

Anti-Surface Warfare (ASUW) is the category of activity that addresses

combat (or interdiction) activities training by air, surface, or submarine forces against hostile surface ships and boats. The ASUW exercises conducted

in NWTRC are described in the sections below. Because all of the rounds used in GUNEX in the NWTRC are inert, no take of marine mammals is anticipated to

result from the activity. However, a description is included here for comparison and clarity as NMFS has authorized take of marine mammals incidental to these activities in the past when explosive rounds were used instead of inert rounds.

Air-to-Surface Bombing Exercise—During an Air-to-Surface Bombing Exercise (BOMBEX A–S), fixed-wing aircraft deliver bombs against simulated surface maritime targets, typically a smoke float, with the goal of destroying or disabling enemy ships or boats. MPA use bombs to attack surfaced submarines and surface craft that would not present a major threat to the MPA itself. A single MPA approaches the target at a low altitude. In most training exercises, the aircraft drops inert training ordnance, such as the Bomb Dummy Unit (BDU–45) on a MK–58 smoke float used as the target. Historically, ordnance has been released throughout W–237 (off WA State), just south of W–237, and in international waters in accordance with international laws, rules, and regulations. Annually, 120 pieces of ordnance, consisting of 10 MK–82 live bombs and 110 BDU 45 inert bombs, are dropped in the NWTRC. In accordance with the regulations for the Olympic Coast National Marine Sanctuary (OCNMS) the Navy does not conduct live bombing in the sanctuary. Each BOMBEX A–S can take up to 4 hours to complete.

Sinking Exercise—A Sinking Exercise (SINKEX) is typically conducted by aircraft, surface ships, and submarines in order to take advantage of a full size ship target and an opportunity to fire live weapons. The target is typically a decommissioned combatant or merchant ship that has been made environmentally safe for sinking. In accordance with EPA permits, it is towed out to sea (at least 50 nm [92.6 km]) and set adrift at the SINKEX location in deep water (at least 1,000 fathoms [6,000 feet]) where it will not be a navigation hazard to other shipping. The Environmental Protection Agency (EPA) granted the Department of the Navy a general permit through the Marine Protection, Research, and Sanctuaries Act to transport vessels “for the purpose of sinking such vessels in ocean waters * * *” (40 CFR Part 229.2). Subparagraph (a)(3) of this regulation states “All such vessel sinkings shall be conducted in water at least 1,000 fathoms (6,000 feet) deep and at least 50 nautical miles from land.”

Ship, aircraft, and submarine crews typically are scheduled to attack the target with coordinated tactics and deliver live ordnance to sink the target.

Inert ordnance is often used during the first stages of the event so that the target may be available for a longer time. The duration of a SINKEX is unpredictable because it ends when the target sinks, but the goal is to give all forces involved in the exercise an opportunity to deliver their live ordnance. Sometimes the target will begin to sink immediately after the first weapon impact and sometimes only after multiple impacts by a variety of weapons. Typically, the exercise lasts 4 to 8 hours, especially if inert ordnance such as 5-inch gun projectiles or MK–76 dummy bombs are used during the first hours. In the worst case of maximum exposure, the following ordnance are all expended (in the indicated amounts): MK82 Live Bomb (4); MK83 Live Bomb (4); MK84 Live Bomb (4); HARM Missile (2); AGM–114 Hellfire Missile (1); M–65 Maverick Missile (3); M–84 Harpoon Missile (3); AMER Missile (1); 5 in/62 Shell (500); 76 mm Shell (200); 48 ADCAP Torpedo (1). If the hulk is not sunk by weapons, it will be sunk by Explosive Ordnance Disposal (EOD) personnel setting off demolition charges previously placed on the ship. Since the target may sink at any time during the exercise, the actual number of weapons used can vary widely.

Surface-to-Surface Gunnery Exercise—Surface-to-Surface Gunnery Exercises (S–S GUNEX) take place in the open ocean to provide gunnery practice for Navy ship crews. Exercises can involve a variety of surface targets that are either stationary or maneuverable. Gun systems employed against surface targets include the 5”, 76 mm, 57 mm, .50 caliber and the 7.62 mm. A GUNEX lasts approximately one to two hours, depending on target services and weather conditions. All rounds fired are inert, containing no explosives.

Mine Warfare Training (MIW)

Mine Warfare Training includes Mine Countermeasures and Mine Avoidance. Mine Avoidance includes use of an active sonar source (although in very small amounts) and, therefore, was addressed in the appropriate section previously. Because of the location of the EOD ranges, the very limited use of explosives (4 individual explosions) proposed annually for these Mine Countermeasure exercises, and the likely effectiveness of the mitigation (e.g., marine mammal take is only expected within 180 m of the impact area, which is well within the shutdown zone of 700 yds from the point of impact), take of marine mammals is not anticipated to occur in the NWTRC. However, a description is included here

for comparison as NMFS has authorized take of marine mammals incidental to these activities in other areas where the amount of activity is significantly greater.

Mine Countermeasures—Naval EOD personnel require proficiency in underwater mine neutralization. Mine neutralization activities consist of underwater demolitions designed to train personnel in the destruction of mines, unexploded ordnance (UXO), obstacles, or other structures in an area to prevent interference with friendly or neutral forces and non-combatants. EOD units conduct underwater demolition training in Crescent Harbor Underwater EOD Range, Indian Island Underwater EOD Range, and Floral Point Underwater EOD Range. A 2.5 lb (1.1 kg) charge of C–4 is used, consisting of one surface or one subsurface detonation. No more than two detonations will take place annually at Crescent Harbor, and no more than one each at Indian Island and Floral Point. The total duration of the exercise is four hours for an underwater detonation and one hour for a surface detonation. Small boats such as the MK–5 Combat Rubber Raiding Craft and MK–7, or 9 (meters in length, respectively) Rigid Hull Inflatable Boats (RHIB) are used to insert personnel for underwater activities and either a helicopter (H–60) or RHIB is used for insertion for surface activities.

Vessel Movement

The operation and movement of vessels that is necessary to conduct the training described above is also analyzed here. Training exercises involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to 2 weeks. During training, speeds vary and depend on the specific type of activity, although 10–14 knots is considered the typical speed. Approximately 490 training activities that involve Navy vessels occur within the Study Area during a typical year. Training activities are widely dispersed throughout the large OPAREA, which encompasses 122,468 nm² (420,054 km²). Consequently, the density of Navy ships within the Study Area at any given time is low.

Research, Development, Testing, and Evaluation

RDT&E proposed in this action is limited to Unmanned Aerial Systems (UAS) activities, the use of which is not anticipated to result in the take of marine mammals because it utilizes small, relatively quiet airborne, not undersea, gliders. Undersea RDT&E in the Pacific Northwest is conducted at

the Naval Sea Systems Command (NAVSEA) Keyport range and is analyzed in the NAVSEA Naval Undersea Warfare Center (NUWC) Keyport Range Extension EIS/OEIS.

Additional information on the Navy’s proposed activities may be found in the LOA Application and the Navy’s NWTRC DEIS.

Description of Marine Mammals in the Area of the Specified Activities

The California Current passes through the NWTRC, creating a mixing of temperate and tropical waters, thereby making this area one of the most productive ocean systems in the world (Department of the Navy [DoN], 2002a). Because of this productive environment, there is a rich marine mammal fauna, as evidenced in abundance and species diversity (Leatherwood *et al.*, 1988; Bonnell and Dailey, 1993). In addition to many marine mammal species that live here year-round and use the region’s coasts and islands for breeding and hauling out, there is a community of seasonal residents and migrants. The narrow continental shelf along the Pacific coast and the presence of the cold California Current sweeping down from Alaska allows cold-water marine mammal species to reach nearshore waters as far south as Baja California.

Thirty-three marine mammal species or populations/stocks have confirmed or possible occurrence within the NWTRC, including six species of baleen whales (mysticetes), 21 species of toothed whales (odontocetes), five species of seals and sea lions (pinnipeds), and the sea otter (mustelids). Table 4 summarizes their abundance, Endangered Species Act (ESA) status, population trends, and occurrence in the area. Most of these species are listed

as “common” in the table, indicating that they occur routinely, either year-round or during annual migrations into or through the area. The other species are indicated as “rare” because of sporadic sightings or as “very rare” because they have been documented once or twice as appearing outside their normal range. All of the species that occur in the NWTRC are either cosmopolitan (occur worldwide), or associated with the temperate and sub-Arctic oceans (Leatherwood *et al.*, 1988). Seven of the species are ESA-listed and considered depleted under the MMPA: Blue whale; fin whale; humpback whale; sei whale; sperm whale; southern resident killer whale; and Steller sea lion.

Temperate and warm-water toothed whales often change their distribution and abundance as oceanographic conditions vary both seasonally (Forney and Barlow, 1998) and inter-annually (Forney, 2000). Forney and Barlow (1998) noted significant north/south shifts in distribution for Dall’s porpoises, common dolphins, and Pacific white-sided dolphins, and they identified significant inshore/offshore differences for northern right whale dolphins and humpback whales. Several authors have noted the impact of the El Niño events of 1982/1983 and 1997/1998 on marine mammal occurrence patterns and population dynamics in the waters off California (Wells *et al.*, 1990; Forney and Barlow, 1998; Benson *et al.*, 2002).

The distribution of some marine mammal species is based on the presence of salmon, an important prey source. Seals and sea lions congregate near areas where migrating salmon run. For example, in the San Juan Islands, harbor seals (*Phoca vitulina richardii*)

congregate near a constricted channel where incoming tidal currents funnel migrating salmon (Zamon, 2001). In Oregon, harbor seals wait for chum salmon runs during the incoming tide near a constriction in Netarts Bay (Brown and Mat, 1983). During the summer, southern resident killer whales (*Orcinus orca*) congregate at locations associated with high densities of migrating salmon (Heimlich-Boran, 1986; Nichol and Shackleton, 1996; Olson, 1998; National Marine Fisheries Service [NMFS], 2005i). Their strong preference for Chinook salmon may influence the year-round distribution patterns of southern resident killer whales in the NWTRC (Ford and Ellis, 2005).

The Navy has compiled information on the abundance, behavior, status and distribution, and vocalizations of marine mammal species in the NWTRC waters from the Navy Marine Resource Assessment for NWTRC (which was recently updated, during the development of the application for this rule, based on peer-reviewed literature and government reports such as NMFS’ Stock Assessment Reports) and marine mammal experts engaged in current research utilizing tagging and tracking. This information may be viewed in the Navy’s LOA application and/or the Navy’s DEIS for NWTRC (*see* Availability), and is incorporated by reference herein. Included below, however, are summaries of some important biological issues that are needed to further inform the MMPA effects analysis. Additional information is available in NMFS Stock Assessment Reports, which may be viewed at: <http://www.nmfs.noaa.gov/pr/sars/species.htm>.

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Common Name	Abundance (CV)	Stock	Calculated Density (animals per km ²)	Population Trend	Occurrence	Warm Season (May-Oct)	Cold Season (Nov-Apr)
ESA Listed Baleen Whales							
Blue whale ^{2,3}	1,186 (0.19)	Eastern North Pacific	0.0005 ²	May be increasing	Common	Yes	No
<i>Balaenoptera musculus</i>							
Fin whale ^{2,3}	3454 (0.27)	California, Oregon, and Washington	0.0014 ²	May be increasing	Common	Yes	Yes
<i>Balaenoptera physalus</i>							
Humpback whale ^{2,3}	1,396 (0.15)	Eastern North Pacific	0.0007 ²	Increasing	Common	Yes	No
<i>Megaptera novaeangliae</i>							
Sei whale ^{2,3}	43 (0.61)	Eastern North Pacific	0.000115 ² 0.000182 ²	May be increasing	Common	Yes	No
<i>Balaenoptera borealis</i>							
ESA Listed Toothed Whales							
Sperm whale ^{2,3}	2,265 (0.34)	California, Oregon, and Washington, Offshore	0.0026 ²	Unknown	Common	Yes	Yes
<i>Physeter macrocephalus</i>							
Southern resident killer whale ²	89	Eastern North Pacific, Southern Resident	0.00055/00162	possibly decreasing	Common	Yes	Yes
<i>Orcinus orca</i>							
ESA Listed Pinnipeds							
Steller sea lion ⁴	48,519	Eastern	0.000011 / 0.011 ³	possibly increasing	Common	Yes	Yes
<i>Eumetopias jubatus</i>							
Non-ESA Listed Baleen Whales							
Gray whale	18,178	Eastern North Pacific	--	Increasing	Common	No	Yes
<i>Eschschichius robustus</i>							
Minke whale	898 (0.65)	California, Oregon, and Washington	0.000655 ² 0.000395 ²	No trends	Common	No	Yes
<i>Balaenoptera acutorostrata</i>							
Non-ESA Listed Toothed Whales							
Baird's beaked whale	313 (0.55)	California, Oregon, and Washington	0.001614 ² 0.000775 ²	Unknown	Common	Yes	Yes
<i>Berardius bairdii</i>							
Bottlenose dolphin offshore	3,257 (0.43)	California, Oregon, Washington, Offshore	0.000515 ²	No trend	Very Rare	Yes	Yes
<i>Tursiops truncatus</i>							
Cuvier's beaked whale	2,171 (0.75)	California, Oregon, and Washington	0.003038 ²	Unknown	Common	Yes	Unknown
<i>Ziphius cavirostris</i>							
Dall's porpoise	57,549 (0.34)	California, Oregon, and Washington	0.0970 ²	Unknown	Common	No	Yes
<i>Phocoenoides dalli</i>							
Dwarf sperm whale	unknown	California, Oregon, and Washington	--	Unknown	Very Rare	Unknown	Yes
<i>Agassizium</i>							
Harbor porpoise	17,763 (0.39)	Northern California/Southern Oregon	--	Stable	Common	Yes	Yes
<i>Phocoena phocoena</i>							
	37,745 (0.38)	Washington/Oregon Coastal	--	Stable			
	10,682 (0.38)	Washington Inland Waters	--	Stable			
Killer whale offshore	422	Eastern North Pacific Offshore	.00055/00162	Unknown	Common	No	Yes
<i>Orcinus orca</i>							
Killer whale transient	346	Eastern North Pacific Transient	.00055/00162	Unknown	Common	No	Yes
<i>Orcinus orca</i>							
Mesoplodon beaked whales ²	1,024 (0.77)	Washington, Oregon, and California	0.00135 ² 0.001321 ⁴	Unknown	Rare	Unknown	Unknown
<i>Mesoplodon sp.</i>							
Northern right whale dolphin	15,305 (0.232)	California, Oregon, and Washington	0.0014 ²	No trend	Common	Yes	Yes
<i>Lissodelphis borealis</i>							
Pacific white-sided dolphin	25,233 (0.25)	California, Oregon, and Washington	0.0441 ²	No trend	Common	Yes	Yes
<i>Lagenorhynchus obliquidens</i>							
Non-ESA Listed Toothed Whales (continued)							
Pygmy sperm whale	Unknown	California, Oregon, and Washington	0.001232 ² 0.000504 ²	Unknown	Common	Unknown	Unknown
<i>Ziphius cavirostris</i>							
Risso's Dolphin	12,093 (0.24)	California, Oregon, and Washington	0.013222 ² 0.004014 ²	No trend	Common	Yes	Yes
<i>Grampus griseus</i>							
Short-beaked common dolphin	48,622 (0.26)	California, Oregon, and Washington	0.1570 ²	Varies by oceanographic	Common	Yes	Yes
<i>Delphinus delphis</i>							
Short-finned pilot whale	245 (0.97)	California, Oregon, and Washington	--	Unknown	Rare	Unknown	Unknown
<i>Coffinophala macrorhynchus</i>							
Striped dolphin	23,883 (0.44)	California, Oregon, and Washington	0.0000497 ² 0.012652 ²	No trend	Rare	No	Unknown
<i>Stenella coeruleoalba</i>							
Non-ESA Listed Pinnipeds							
California sea lion	238,000	U.S.	--	Increasing	Common	Yes	Yes
<i>Zalophus californianus</i>							
Harbor seal	24,233 (0.12)	California	--	Increasing			
	24,732 (0.12)	Washington/Oregon Coastal	--	Stable	Common	Yes	Yes
	14,612 (0.15)	Washington Inland	--	Stable			
Northern elephant seal	124,000	California Breeding	--	Increasing	Common	Yes	Yes
<i>Mirounga angustirostris</i>							
Northern fur seal	721,935	Eastern Pacific	--	Increasing	Common	Yes	Yes
<i>Callorhinus ursinus</i>							

Table 4. Marine mammals of known occurrence in the NWTRC.

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Species Not Considered Further

The North Pacific right whale is classified as endangered under the ESA. Although there is designated critical habitat for this species in the western Gulf of Alaska and an area in the

southeastern Bering Sea (NMFS, 2006), there is no designated critical habitat for this species within the NWTRC. Census data are too limited to suggest a population trend for this species. In the western North Pacific, the population may number in the low hundreds (Brownell *et al.*, 2001; Clapham *et al.*,

2004). The eastern population likely now numbers in the tens of animals. Right whales were probably never common along the west coast of North America (Scarff, 1986; Brownell *et al.*, 2001). Historical whaling records provide the most complete information on likely North Pacific right whale

distribution. Presently, sightings are extremely rare, occurring primarily in the Okhotsk Sea and the eastern Bering Sea (Brownell *et al.*, 2001; Sheldon *et al.*, 2005; Sheldon and Clapham, 2006; Wade *et al.*, 2006). There were no sightings of North Pacific right whales during ship surveys conducted off California, Oregon, and Washington from 1991 through 2005 (Barlow and Forney, 2007), although recent deployment of directional sonobuoys (focused on the gunshot call) in the southeastern Bering Sea has resulted in multiple recordings of the rarely detected marine mammals (Berchok *et al.*, 2009). The area of densest concentration in the Gulf of Alaska is east from 170° W to 150° W and south to 52° N (Sheldon and Clapham, 2006). Based upon the extremely low probability of encountering this species anywhere in the coastal and offshore waters in the NWTRC, this species will not be included in this analysis.

Designated Critical Habitat

Southern Resident Killer Whale

NMFS designated critical habitat for the southern resident killer whale (*Orcinus orca*) distinct population segment (DPS). Three specific areas (which comprise approximately 2,560 square miles (6,630 sq km) of marine habitat) are designated:

(1) *The Summer Core Area in Haro Strait and waters around the San Juan Islands*—Occurrence of Southern Residents in Area 1 coincides with concentrations of salmon, and is more consistent and concentrated in the summer months of June through August, though they have been sighted in Area 1 during every month of the year;

(2) *Puget Sound*—southern resident killer whale occurrence in Area 2 has been correlated with fall salmon runs; and

(3) *The Strait of Juan de Fuca*—All pods regularly use the Strait of Juan de Fuca for passage from Areas 1 and 2 to outside waters in the Pacific Ocean and to access outer coastal water feeding grounds.

The designated physical and biological features which are essential to the conservation of southern resident killer whales and that may require special management considerations or protection (Primary Constituent Elements/PCEs) are as follows:

(1) *Water quality to support growth and development*—Because of their long life span, position at the top of the food chain, and their blubber stores, southern resident killer whales accumulate high concentrations of contaminants;

(2) *Prey species of sufficient quantity, quality and availability to support individual growth, reproduction and development, as well as overall population growth*—Fish are the major dietary component of southern resident killer whales in the northeastern Pacific. Salmon comprise the southern resident killer whales' preferred prey, and are likely consumed in large amounts; and

(3) *Passage conditions to allow for migration, resting, and foraging*—In order to move between important habitat areas, find prey, and fulfill their life history requirements, southern resident killer whales require open waterways that are free from obstruction.

As noted previously, the Navy's proposed action does not include the use of MFAS/HFAS in southern resident killer whale critical habitat, and explosive use is limited to four detonations of 2.5-lb charges annually in EOD exercises.

Steller Sea Lion

In California and Oregon, major Steller sea lion rookeries and associated air and aquatic zones are designated as critical habitat. Critical habitat includes an air zone extending 3,000 ft above rookery areas historically occupied by sea lions and an aquatic zone extending 3,000 seaward. Three rookeries located along the southern Oregon Coast have been designated as critical habitat sites in the NWTRC. These include: Orford Reef (Long Brown Rock); Oxord Reef (Seal Rock); Rogue Reef (Pyramid Rock). The PCEs for Steller sea lions are: Nearshore waters around rookeries and haulouts and prey resources and foraging habitats.

Gray Whale Migration

The gray whale makes a well-defined seasonal north-south migration. Most of the population summers in the shallow waters of the northern Bering Sea, the Chukchi Sea, and the western Beaufort Sea (Rice and Wolman, 1971), whereas some individuals also summer along the Pacific coast from Vancouver Island to central California (Rice and Wolman, 1971; Darling 1984; Nerini, 1984). In October and November, the whales begin to migrate southeast through Unimak Pass and follow the shoreline south to breeding grounds on the west coast of Baja California and the southeastern Gulf of California (Braham, 1984; Rugh, 1984). The average gray whale migrates 7,500–10,000 km at a rate of 147 km/d (Rugh *et al.*, 2001; Jones and Swartz, 2002). Although some calves are born along the coast of California, most are born in the shallow, protected waters on the Pacific coast of

Baja California from Morro de Santo Domingo (28° N) south to Isla Cresciente (24° N) (Urban *et al.*, 2003). The main calving sites are Laguna Guerrero Negro, Laguna Ojo de Liebre, Laguna San Ignacio, and Estero Soledad (Rice *et al.*, 1981).

Gray whales occur in the Pacific Northwest OPAREA and Puget Sound throughout the year. In addition, larger numbers of migratory animals transit along the coast of Washington, Oregon, and California during migrations between breeding and feeding grounds. Peak sightings in the NWTRC during the southbound migration occur in January (Rugh *et al.*, 2001). There are two phases of the northbound migration, including an early phase from mid-February through April and a later phase, which consists of mostly cows and calves, from late April through May (Herzing and Mate, 1984).

Marine Mammal Hearing and Vocalizations

Cetaceans have an auditory anatomy that follows the basic mammalian pattern, with some changes to adapt to the demands of hearing in the sea. The typical mammalian ear is divided into an outer ear, middle ear, and inner ear. The outer ear is separated from the inner ear by a tympanic membrane, or eardrum. In terrestrial mammals, the outer ear, eardrum, and middle ear transmit airborne sound to the inner ear, where the sound waves are propagated through the cochlear fluid. Since the impedance of water is close to that of the tissues of a cetacean, the outer ear is not required to transduce sound energy as it does when sound waves travel from air to fluid (inner ear). Sound waves traveling through the inner ear cause the basilar membrane to vibrate. Specialized cells, called hair cells, respond to the vibration and produce nerve pulses that are transmitted to the central nervous system. Acoustic energy causes the basilar membrane in the cochlea to vibrate. Sensory cells at different positions along the basilar membrane are excited by different frequencies of sound (Pickles, 1998). Baleen whales have inner ears that appear to be specialized for low-frequency hearing. Conversely, dolphins and porpoises have ears that are specialized to hear high frequencies.

Marine mammal vocalizations often extend both above and below the range of human hearing; vocalizations with frequencies lower than 18 Hertz (Hz) are labeled as infrasonic and those higher than 20 kHz as ultrasonic (National Research Council [NRC], 2003; Figure 4–1). Measured data on the hearing

abilities of cetaceans are sparse, particularly for the larger cetaceans such as the baleen whales. The auditory thresholds of some of the smaller odontocetes have been determined in captivity. It is generally believed that cetaceans should at least be sensitive to the frequencies of their own vocalizations. Comparisons of the anatomy of cetacean inner ears and models of the structural properties and the response to vibrations of the ear's components in different species provide an indication of likely sensitivity to various sound frequencies. The ears of small toothed whales are optimized for receiving high-frequency sound, while baleen whale inner ears are best in low to infrasonic frequencies (Ketten, 1992; 1997; 1998).

Baleen whale vocalizations are composed primarily of frequencies below 1 kHz, and some contain fundamental frequencies as low as 16 Hz (Watkins *et al.*, 1987; Richardson *et al.*, 1995; Rivers, 1997; Moore *et al.*, 1998; Stafford *et al.*, 1999; Wartzok and Ketten, 1999) but can be as high as 24 kHz (humpback whale; Au *et al.*, 2006). Clark and Ellison (2004) suggested that baleen whales use low frequency sounds not only for long-range communication, but also as a simple form of echo ranging, using echoes to navigate and orient relative to physical features of the ocean. Information on auditory function in mysticetes is extremely lacking. Sensitivity to low-frequency sound by baleen whales has been inferred from observed vocalization frequencies, observed reactions to playback of sounds, and anatomical analyses of the auditory system. Although there is apparently much variation, the source levels of most baleen whale vocalizations lie in the range of 150–190 dB re 1 μ Pa at 1 m. Low-frequency vocalizations made by baleen whales and their corresponding auditory anatomy suggest that they have good low-frequency hearing (Ketten, 2000), although specific data on sensitivity, frequency or intensity discrimination, or localization abilities are lacking. Marine mammals, like all mammals, have typical U-shaped audiograms that begin with relatively low sensitivity (high threshold) at some specified low frequency with increased sensitivity (low threshold) to a species specific optimum followed by a generally steep rise at higher frequencies (high threshold) (Fay, 1988).

The toothed whales produce a wide variety of sounds, which include species-specific broadband “clicks” with peak energy between 10 and 200 kHz, individually variable “burst pulse”

click trains, and constant frequency or frequency-modulated (FM) whistles ranging from 4 to 16 kHz (Wartzok and Ketten, 1999). The general consensus is that the tonal vocalizations (whistles) produced by toothed whales play an important role in maintaining contact between dispersed individuals, while broadband clicks are used during echolocation (Wartzok and Ketten, 1999). Burst pulses have also been strongly implicated in communication, with some scientists suggesting that they play an important role in agonistic encounters (McCowan and Reiss, 1995), while others have proposed that they represent “emotive” signals in a broader sense, possibly representing graded communication signals (Herzing, 1996). Sperm whales, however, are known to produce only clicks, which are used for both communication and echolocation (Whitehead, 2003). Most of the energy of toothed whales social vocalizations is concentrated near 10 kHz, with source levels for whistles as high as 100–180 dB re 1 μ Pa at 1 m (Richardson *et al.*, 1995). No odontocete has been shown audiometrically to have acute hearing (<80 dB re 1 μ Pa) below 500 Hz (DoN, 2001). Sperm whales produce clicks, which may be used to echolocate (Mullins *et al.*, 1988), with a frequency range from less than 100 Hz to 30 kHz and source levels up to 230 dB re 1 μ Pa 1 m or greater (Mohr *et al.*, 2000).

Table 5 includes a summary of the vocalizations of the species found in the NWTRC. The “Brief Background on Sound” section contained a description of the functional hearing groups designated by Southall *et al.* (2007), which includes the functional hearing range of various marine mammal groups (*i.e.*, what frequencies that can actually hear).

Marine Mammal Density Estimates

Understanding the distribution and abundance of a particular marine mammal species or stock is necessary to analyze the potential impacts of an action on that species or stock. Further, in order to assess quantitatively the likely acoustic impacts of a potential action on individuals and to estimate take it is necessary to know the density of the animals in the affected area. Density estimates for cetaceans were obtained from the Marine Mammal and Sea Turtle Density Estimates for the Pacific Northwest Study Area (DoN, 2007a). The abundance of most cetaceans was derived from shipboard surveys conducted by the Southwest Fisheries Science Center in 1991, 1993, 1996, 2001, and 2005 (Barlow, 1995; Barlow, 2003; Barlow and Forney, 2007). These estimates are used to

develop NMFS Stock Assessment Reports (Garretta *et al.*, 2007); interpret the impacts of human-caused mortality associated with fishery bycatch, ship strikes, and other sources; and evaluate the ecological role of cetaceans in the eastern North Pacific. In the density study, predictive species-habitat models were built for species with sufficient numbers of sightings to estimate densities for the NWTRC (described in detail Appendix B of the Navy's application). For species with insufficient numbers of sightings, density estimates were obtained from Barlow and Forney (2007).

There are limited depth distribution data for most marine mammals. This is especially true for cetaceans, as they must be tagged at-sea and by using a tag that either must be implanted in the skin/blubber in some manner or adhere to the skin. There is slightly more data for some pinnipeds, as they can be tagged while on shore during breeding or molting seasons and the tags can be glued to the pelage rather than implanted. There are a few different methodologies/techniques that can be used to determine depth distribution percentages, but by far the most widely used technique currently is the time-depth recorder. These instruments are attached to the animal for a fairly short period of time (several hours to a few days) via a suction cup or glue, and then retrieved immediately after detachment or when the animal returns to the beach. Depth information can also be collected via satellite tags, sonic tags, digital tags, and, for sperm whales, via acoustic tracking of sounds produced by the animal itself.

There are somewhat suitable depth distribution data for a few marine mammal species. Sample sizes are usually extremely small, nearly always fewer than 10 animals total and often only one or two animals. Depth distribution information often must be interpreted from other dive and/or preferred prey characteristics. Depth distributions for species for which no data are available are extrapolated from similar species.

Density is nearly always reported for an area, *e.g.*, animals/km². Analyses of survey results using Distance Sampling techniques include correction factors for animals at the surface but not seen as well as animals below the surface and not seen. Therefore, although the area (*e.g.*, km²) appears to represent only the surface of the water (two-dimensional), density actually implicitly includes animals anywhere within the water column under that surface area. Density assumes that animals are uniformly distributed within the prescribed area,

even though this is likely rarely true. Marine mammals are usually clumped in areas of greater importance (and often in groups), for example, areas of high productivity, lower predation, safe calving, *etc.* Density can occasionally be calculated for smaller areas that are used regularly by marine mammals, but more often than not there are insufficient data to calculate density for small areas. Therefore, assuming an even distribution within the prescribed area remains the norm.

Assuming that marine mammals are distributed evenly within the water column is not accurate. The ever-expanding database of marine mammal behavioral and physiological parameters obtained through tagging and other technologies has demonstrated that marine mammals use the water column in various ways, with some species capable of regular deep dives (<800 m) and others regularly diving to <200 m, regardless of the bottom depth. Assuming that all species are evenly distributed from surface to bottom is

almost never appropriate and can present a distorted view of marine mammal distribution in any region.

By combining marine mammal density with depth distribution information, a more accurate three-dimensional density estimate is possible. These 3-D estimates allow more accurate modeling of potential marine mammal exposures from specific noise sources. Density estimates are included in Table 4.

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Species	Signal Type	Frequency Range (kHz)	Frequency Near Max energy (kHz)	Source Level (dB re 1 µPa)	Duration / Other
Blue whale	moans, long duration songs	0.012 - .4	.012 - .025	188	up to 36 s, repeated every 1 - 2 min
	FM sweeps	0.858 + 0.148			< 5 s
	vocalizations	0.012 - .4	.012 - .025		
Fin whale	vocalizations	-. / .015 - .028	-. / -	159-184 / 185-192	
	moans	0.016 - 0.75	0.02	160-190	
	pulses	0.04 - 0.075 / 0.018 -	-. / 0.02		
	ragged pulse	< 0.03			
	rumbles	-. / 0.01 - 0.03	< 0.03 / -		
	moans, downsweeps	0.014 - 0.118	0.02	160-186	
	constant call	0.02 - 0.04			
	moans, tones, upsweeps	0.03 - 0.75		155-165	
	whistles, chirps	1.5 - 5	1.5 - 2.5		
	clicks	16 - 28			
	vocal sequence, ♂ only	0.015 - 0.03			
	FM sweeps	0.018 - .23		184 - 186	1 s
Humpback whale	social	.020 - 10 / 0.05 - 10	< 3 / 0.1 - 4		
	songs	0.03 - 8 / -	0.12 - 4 / -	144 - 186 / 151-173	
	shrieks		0.75 - 1.8	179-181	
	horn blasts		0.41 - 0.42	181-185	
	moans	0.02 - 1.8	0.035 - 0.36	175	
	grunts	0.025 - 1.9		190	
	pulse trains	0.025 - 1.25	0.025 - 0.080	179-181	
	slap	0.03 - 1.2		183-192	
	feeding calls	0.02 - 2	0.5	162-192	< 1 s
	simple vocalization	0.14 - 4	0.22 (mean)		
	Sei whale	FM sweeps	1.5 - 3.5		
growls, whooshes, tonal calls		0.433		156	.45 s
growls and whooshes		0.241 - 0.625		152.4 - 159.6	
Gray whale	broadband signals	0.1 - 12			
	call	0.2 - 2.5	1 - 1.5		
	moans	0.02 - 1.2 / -	0.2 - 0.2 / 0.7 - 1.	185 / -	
	modulated pulse	0.08 - 1.8	0.225 - 0.6		
	FM sweeps	0.10 - 0.35	0.3		
Gray whale, Calf	pulses	0.1 - 2	0.3 - 0.825		
	clicks	0.1 - 20	3.4 - 4		
Minke whale	sweeps, moans	0.06 - 0.14		151-175	
	down sweeps	0.06 - 0.13		165	
	moans, grunts	0.06 - 0.14	0.06 - 0.14	151-175	
	ratchet	0.85 - 6	0.85		
	thump trains	0.1 - 2	0.1 - 0.2		
	speed up pulse train	0.2 - 0.4			40 to 60 ms
	slow down pulse train	0.25 - 0.35			70 to 140 ms
	Star Wars vocalization	0.05 - 9.4		150-165	
	Breeding Boings (pulse then amp-mod. call)	1.3 - 1.4			2.5 s with slight frequency modulation
	vocalizations	0.06 - 12			

Table 5a. Summary of mysticete vocalization information compiled from The Biology of Marine Mammals (Reynolds and Rommel (eds), 1999) and the Navy's SOCAL, AFAST, HRC, and NWTRC EISs - see those documents for specific information.

Species	Signal Type	Frequency Range (kHz)	Frequency Near Max energy	Source Level (dB re 1 µPa)	Duration / Other	
Sperm whale	clicks	0.1 - 30	2 - 4, 10 - 16	160 - 180	< 30 ms	
	short clicks			236	< 1 µs, highly directional	
	trumpets			172		
Sperm (Neonate)	clicks		0.5	140 - 162	< 2 to 12 ms, low directionality	
S. Resident Killer Whale	whistles	1.5 - 18	6 - 12			
	clicks	0.1 - 35 / 0.25 - 0.5	12 - 25	180		
	scream	2				
	pulsed calls	0.5 - 25	1 - 6	160		
	echolocation clicks			45 - 80	195 - 224	< 80 - 120 µs
Bottlenose dolphin	echolocation clicks			22 - 49	173 - 202	< 31 - 203 µs
	whistles	0.8 - 24	3.5 - 14.5	125-173		
	whistle	4 - 20				
	click	0.2 - 150	30 - 60			
	click		110 - 130	218 - 228		
Northern right whale dolphin	clicks and burst-pulses	110 - 130		218 - 228		
	bark	0.2 - 16				
	clicks high repetition		170			
Pacific white-sided dolphin	echolocation clicks	23 - 41				
	whistles, tones	16-Jan	1.8, 3			
	whistles	.002 - .02	12-Apr			
Risso's dolphin	pulse trains for echolocation	-. / -	50 - 80 / 60 - 80	170 / 180		
	whistles		3.5 - 4.5			
	rasp / pulse burst	0.1 - > 8	2 - 5			
Common dolphin	click		65	-120		
	whistle / burst	4 - 22			< 1 sec to several s	
	broadband clicks	6 - > 22				
	narrowband grunts	0.4 - 0.8				
	echolocation clicks	30 - 50, 80 - 100		up to 216		
	echolocation clicks		50 - 65	up to 222	< 40 - 70 µs	
	whistles, chirps		0.5 - 18			
Striped dolphin	whistles	4 - 16		180		
	click	0.2 - 150	30 - 60	170		
	clicks		23 - 67			
	chips and barks	0.5 - 14				
	whistles	2 - 18		180		
Dall's porpoise	whistles	1 - 22.5	6.8 - 16.9	109-125		
	whistles	6 - 24	8 - 12.5			
	pulse bursts	wideband	5 - 60	108-115		
Harbor Porpoise	clicks	0.04 - 12 / -	120 - 160	120 - 148 / 165-175	50 to 1,500 µsec	
	clicks		-. / 135 - 149			
Short-finned pilot whale	clicks	2		100		
	click		110-150	135-177		
	pulse	100-160	110-150			
Dwarf sperm w.	whistles	0.5 - > 20	2 to 14	180		
	click		30 - 60	180		
Pygmy sperm whale	clicks	13-33			0.3 - 0.5 s	
	clicks	60 - 200	120			
	narrowband pulses		129	175	119 µs, interclick intervals 40-70 ms	
Baird's beaked whale	echolocation clicks	60 - 200	120 - 130			
	social	3 - 129				
	social	0.002 - 0.016				
Cuvier's beaked whale	echolocation clicks	20 - 40, 20 - 70		214	< 200 to 250 µs, depths > 200 m	
	whistles	8 - 12			upsweep lasts 1 s	
N. elephant seal	pulses	13 - 17			15 to 44 s	
	communication	.100 - 1				
Pacific harbor seal	clicks	8 - 150	12 - 40			
	roar	0.4 - 4	0.4 - 0.8			
	growl, grunt, groan	< 0.1 - 0.4	< 0.1 - 0.25			
	tweak	0.7 - 4	0.7 - 2			
	barks	< 8	< 3.5			
California sea lion	whimpy	< 1 - 3				
	clicks		0.5 - 4			
	buzzing	< 1 - 4	< 1			
Northern fur seal	clicks, bleats					
Steller Sea Lion						

Table 5b. Summary of odontocete and pinniped vocalization information compiled from The Biology of Marine Mammals (Reynolds and Rommel (eds), 1999) and the Navy's SOCAL, AFAST, HRC, and NWTRC EISs - see those documents for specific information.

Brief Background on Sound

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document. A summary is included below.

Sound is a wave of pressure variations propagating through a medium (for the MFAS/HFAS considered in this proposed rule, the medium is marine water). Pressure variations are created by compressing and relaxing the medium. Sound measurements can be expressed in two forms: Intensity and pressure. Acoustic intensity is the average rate of energy transmitted through a unit area in a specified direction and is expressed in watts per square meter (W/m^2). Acoustic intensity is rarely measured directly, it is derived from ratios of pressures; the standard reference pressure for underwater sound is 1 microPascal (μPa); for airborne sound, the standard reference pressure is 20 μPa (Richardson *et al.*, 1995).

Acousticians have adopted a logarithmic scale for sound intensities, which is denoted in decibels (dB). Decibel measurements represent the ratio between a measured pressure value and a reference pressure value (in this case 1 μPa or, for airborne sound, 20 μPa). The logarithmic nature of the scale means that each 10 dB increase is a tenfold increase in power (e.g., 20 dB is a 100-fold increase, 30 dB is a 1,000-fold increase). Humans perceive a 10-dB increase in noise as a doubling of loudness, or a 10 dB decrease in noise as a halving of loudness. The term "sound pressure level" implies a decibel measure and a reference pressure that is used as the denominator of the ratio. Throughout this document, NMFS uses 1 microPascal (denoted re: μPa) as a standard reference pressure unless noted otherwise.

It is important to note that decibels underwater and decibels in air are not the same and cannot be directly compared. To estimate a comparison between sound in air and underwater, because of the different densities of air and water and the different decibel standards (i.e., reference pressures) in water and air, a sound with the same intensity (i.e., power) in air and in water would be approximately 63 dB quieter in air. Thus a sound that is 160 dB loud underwater would have the same approximate effective intensity as a sound that is 97 dB loud in air.

Sound frequency is measured in cycles per second, or Hertz (abbreviated Hz), and is analogous to musical pitch; high-pitched sounds contain high frequencies and low-pitched sounds

contain low frequencies. Natural sounds in the ocean span a huge range of frequencies: From earthquake noise at 5 Hz to harbor porpoise clicks at 150,000 Hz (150 kHz). These sounds are so low or so high in pitch that humans cannot even hear them; acousticians call these infrasonic (typically below 20 Hz) and ultrasonic (typically above 20,000 Hz) sounds, respectively. A single sound may be made up of many different frequencies together. Sounds made up of only a small range of frequencies are called "narrowband", and sounds with a broad range of frequencies are called "broadband"; explosives are an example of a broadband sound source and active tactical sonars are an example of a narrowband sound source.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential (AEP) techniques, anatomical modeling, and other data, Southall *et al.* (2007) designate "functional hearing groups" for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. Further, the frequency range in which each group's hearing is estimated as being most sensitive is represented in the flat part of the M-weighting functions developed for each group. The functional groups and the associated frequencies are indicated below (though, again, animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- *Pinnipeds in Water*: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with

the greatest sensitivity between approximately 700 Hz and 20 kHz.

Because ears adapted to function underwater are physiologically different from human ears, comparisons using decibel measurements in air would still not be adequate to describe the effects of a sound on a whale. When sound travels away from its source, its loudness decreases as the distance traveled (propagates) by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of a sound on a kilometer distant. Acousticians often refer to the loudness of a sound at its source (typically measured one meter from the source) as the source level and the loudness of sound elsewhere as the received level. For example, a humpback whale three kilometers from an airgun that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound propagates (in this example, it is spherical spreading). As a result, it is important not to confuse source levels and received levels when discussing the loudness of sound in the ocean or its impacts on the marine environment.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual MFAS/HFAS operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

Metrics Used in This Document

This section includes a brief explanation of the two sound measurements (sound pressure level (SPL) and sound exposure level (SEL)) frequently used in the discussions of acoustic effects in this document.

SPL

Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 Pa is the pressure resulting from a force of one newton exerted over an area of one square meter. SPL is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa , and the units for SPLs are dB re: 1 μPa .

$SPL \text{ (in dB)} = 20 \log (\text{pressure} / \text{reference pressure})$

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square. SPL does not take the duration of a sound into account. SPL is the applicable metric used in the risk continuum, which is used to estimate behavioral harassment takes (see Level B Harassment Risk Function (Behavioral Harassment) Section).

SEL

SEL is an energy metric that integrates the squared instantaneous sound pressure over a stated time interval. The units for SEL are dB re: 1 $\mu Pa^2 \cdot s$.

SEL = SPL + 10log (duration in seconds)

As applied to MFAS/HFAS, the SEL includes both the SPL of a sonar ping and the total duration. Longer duration pings and/or pings with higher SPLs will have a higher SEL. If an animal is exposed to multiple pings, the SEL in each individual ping is summed to calculate the total SEL. The total SEL depends on the SPL, duration, and number of pings received. The thresholds that NMFS uses to indicate at what received level the onset of temporary threshold shift (TTS) and permanent threshold shift (PTS) in hearing are likely to occur are expressed in SEL.

Potential Effects of Specified Activities on Marine Mammals

The Navy has requested authorization for the take of marine mammals that may occur incidental to training activities in the NWTRC utilizing MFAS/HFAS or underwater detonations. In addition to MFAS/HFAS and underwater detonations, the Navy has analyzed other potential impacts to marine mammals from training activities in the NWTRC DEIS, including ship strike, aerial overflights,

ship noise and movement, and others, and, in consultation with NMFS as a cooperating agency for the NWTRC DEIS, has determined that take of marine mammals incidental to these non-acoustic components of the NWTRC is unlikely and, therefore, has not requested authorization for take of marine mammals that might occur incidental to these non-acoustic components. In this document, NMFS analyzes the potential effects on marine mammals from exposure to MFAS/HFAS and underwater detonations, but also includes some additional analysis of the potential impacts from vessel operation in the NWTRC.

For the purpose of MMPA authorizations, NMFS' effects assessments serve four primary purposes: (1) To help identify the permissible methods of taking, meaning: the nature of the take (e.g., resulting from anthropogenic noise vs. from ship strike, etc.), the regulatory level of take (i.e., mortality vs. Level A or Level B harassment), and; the amount of take; (2) to inform the prescription of means of affecting the least practicable adverse impact on such species or stock and its habitat (i.e., mitigation); (3) to support the determination of whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); and (4) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities that would be affected in the NWTRC).

More specifically, for activities involving sonar or underwater detonations, NMFS' analysis will identify the probability of lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), behavioral disturbance (that rises to the level of harassment), and social responses that would be classified as behavioral harassment or injury and/or would be likely to adversely affect the species or stock through effects on annual rates of recruitment or survival. In this section, we will focus qualitatively on the different ways that MFAS/HFAS and underwater explosive detonations may affect marine mammals (some of which NMFS would not classify as harassment). Then, in the Estimated Take of Marine Mammals Section, NMFS will relate the potential effects to

marine mammals from MFAS/HFAS and underwater detonation of explosives to the MMPA regulatory definitions of Level A and Level B Harassment and attempt to quantify those effects.

Exposure to MFAS/HFAS

In the subsections below, the following types of impacts are discussed in more detail: Direct physiological impacts, stress responses, acoustic masking and impaired communication, behavioral disturbance, and strandings. An additional useful graphic tool for better understanding the layered nature of potential marine mammal responses to anthropogenic sound is presented in NMFS' January 14, 2009 Programmatic biological opinion on the U.S. Navy's proposal to conduct training exercises in the Southern California Range Complex from January 2009 to January 2014 (available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>). This document presents a conceptual model of the potential responses of endangered and threatened species upon being exposed to MFAS/HFAS and the pathways by which those responses might affect the fitness of individual animals that have been exposed, and the resulting impact on the individual animal's ability to reproduce or survive. Literature supporting the framework, with examples drawn from many taxa (both aquatic and terrestrial) was included in the "Application of this Approach" and "Response Analyses" sections of that document.

Direct Physiological Effects

Based on the literature, there are two basic ways that MFAS/HFAS might directly result in physical trauma or damage: Noise-induced loss of hearing sensitivity (more commonly-called "threshold shift") and acoustically mediated bubble growth. Separately, an animal's behavioral reaction to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the Stranding section.

Threshold Shift (Noise-Induced Loss of Hearing)

When animals exhibit reduced hearing sensitivity (i.e., sounds must be louder for an animal to recognize them) following exposure to a sufficiently intense sound, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is

recovery), occurs in specific frequency ranges (*i.e.*, an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced by only 6 dB or reduced by 30 dB). PTS is permanent (*i.e.*, there is no recovery), but also occurs in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TSs: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.*, 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. Human non-impulsive noise exposure guidelines are based on exposures of equal energy (the same SEL) producing equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH, 1998). Until recently, previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.*, 2007). Three newer studies, two by Mooney *et al.* (2009a, 2009b) on a single bottlenose dolphin either exposed to playbacks of Navy MFAS or octave-band noise (4–8 kHz) and one by Kastak *et al.* (2007) on a single California sea lion exposed to airborne octave-band noise (centered at 2.5 kHz), concluded that for all noise exposure situations the equal energy relationship may not be the best indicator to predict TTS levels. All three of these studies highlight the inherent complexity of TTS in marine mammals, as well as the importance of considering exposure duration when assessing impacts. With exposures of equal energy, quieter, longer duration exposures were found to induce greater levels of TTS than those of exposures that were louder and of shorter duration (more similar to MFAS). For intermittent sounds, less TTS will occur than from a continuous exposure with the same energy (some recovery will occur between intermittent exposures) (Kryter *et al.*, 1966; Ward, 1997). For example, one short but loud (higher

SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985) (although in the case of MFAS/HFAS, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS).

PTS is considered auditory injury (Southall *et al.*, 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS, however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.*, 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin and beluga (Finneran *et al.*, 2000, 2002b, 2005a; Schlundt *et al.*, 2000; Nachtigall *et al.*, 2003, 2004). For pinnipeds in water, data are limited to Kastak *et al.*'s measurement of TTS in one harbor seal, one elephant seal, and one California sea lion.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during

time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of development and aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost. There is no empirical evidence that exposure to MFAS/HFAS can cause PTS in any marine mammals; instead the probability of PTS has been inferred from studies of TTS (*see* Richardson *et al.*, 1995).

Acoustically Mediated Bubble Growth

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.*, 2001b). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of MFAS pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested: Stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long

enough period of time for bubbles to become of a problematic size.

Yet another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.*, 2003; Fernandez *et al.*, 2005). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Collectively, these hypotheses can be referred to as “hypotheses of acoustically mediated bubble growth.”

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (*i.e.*, rectified diffusion). More recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, Energy Levels (ELs) predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002b). Although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.*, 2003), there is no conclusive evidence of this. However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005) concluded that in vivo bubble formation, which may be exacerbated by deep, long-duration, repetitive dives may explain why beaked whales appear to be particularly vulnerable to MFAS/HFAS exposures. Further investigation is needed to further assess the potential validity of these hypotheses. More information regarding hypotheses that attempt to explain how behavioral responses to MFAS/HFAS can lead to strandings is included in the Behaviorally Mediated Bubble Growth Section, after the summary of strandings.

Acoustic Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and

learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than and of a similar frequency to, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus decreases also. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995b) argued that the maximum radius of influence of an industrial noise (including broadband low frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (*i.e.*, surf noise, prey noise, *etc.*; Richardson *et al.*, 1995).

The echolocation calls of toothed whales are subject to masking by high frequency sound. Human data indicate low-frequency sound can mask high-frequency sounds (*i.e.*, upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (*e.g.*, adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.*, 1980). A recent study by Nachtigall and Supin (2008) showed that false killer whales

adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals.

As mentioned previously, the functional hearing ranges of odontocetes, pinnipeds underwater, and mysticetes all encompass the frequencies of the MFAS/HFAS sources used in the Navy's MFAS/HFAS training exercises (although some mysticete's best hearing capacities are likely at frequencies somewhat lower than MFAS). Additionally, in almost all species, vocal repertoires span across the frequencies of these MFAS/HFAS sources used by the Navy. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. For hull-mounted MFAS/HFAS—which accounts for the largest part of the takes of marine mammals (because of the source strength and number of hours it's conducted), the pulse length and duty cycle of the MFAS/HFAS signal (~1 second pulse twice a minute) makes it less likely that masking will occur as a result.

Impaired Communication

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the “active space” of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.*, 2004; Lohr *et al.*, 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which is more important than simply detecting that a vocalization is occurring (Brenowitz, 1982; Brumm *et al.*, 2004; Dooling, 2004; Marten and Marler, 1977; Patricelli *et al.*, 2006). Most animals that vocalize have evolved with an ability to make adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability/distinguishability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.*, 2004; Patricelli *et al.*, 2006). Vocalizing animals can make one or more of the following adjustments to their vocalizations: Adjust the frequency structure; adjust the amplitude; adjust temporal structure; or adjust temporal delivery (*see* Biological Opinion).

Many animals will combine several of these strategies to compensate for high levels of background noise.

Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations, impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments remain unknown, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.*, 2006). For example, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezzerinac, 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

Stress Responses

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.*, 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune response.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical "fight or flight" response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with "stress." These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or

sympathetic nervous systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995) and altered metabolism (Elasser *et al.*, 2000), reduced immune competence (Blecha, 2000) and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.*, 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impairs those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called "distress" (sensu Seyle, 1950) or "allostatic loading" (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see,

Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as "distress" upon exposure to high frequency, mid-frequency and low-frequency sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.*, (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.*, (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.*, (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.*, goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress

responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways) (Southall *et al.*, 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.*, calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.*, 2007). Individuals (of different age, gender, reproductive status, *etc.*) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.*, proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Exposure of marine mammals to sound sources can result in (but is not limited to) no response or any of the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; avoidance; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.*, 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson (1995). A more recent review (Nowacek *et al.*, 2007) addresses studies conducted since

1995 and focuses on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. The following subsections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Estimates of the types of behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species, or extrapolated from closely related species when no information exists.

Alteration of Diving or Movement—Changes in dive behavior can vary widely. They may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive. Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.*, foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (*e.g.*, increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Nowacek *et al.*, (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, an action, they noted, that could lead to an increased likelihood of ship-strike. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise, highlighting the importance of the sound characteristics in producing a behavioral reaction. Conversely, Indo-Pacific humpback dolphins have been observed to dive for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating interpretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach and speed of approach, seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low frequency signals of the Acoustic Thermometry of Ocean Climate (ATOC) sound source

were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.*, 2003). They did, however, produce subtle effects that varied in direction and degree among the individual seals, illustrating the equivocal nature of behavioral effects and consequent difficulty in defining and predicting them.

Foraging—Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. Noise from seismic surveys was not found to impact the feeding behavior in western grey whales off the coast of Russia (Yazvenko *et al.*, 2007) and sperm whales engaged in foraging dives did not abandon dives when exposed to distant signatures of seismic airguns (Madsen *et al.*, 2006). Balaenopterid whales exposed to moderate low-frequency signals similar to the ATOC sound source demonstrated no variation in foraging activity (Croll *et al.*, 2001), whereas five out of six North Atlantic right whales exposed to an acoustic alarm interrupted their foraging dives (Nowacek *et al.*, 2004). Although the received sound pressure level at the animals was similar in the latter two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are likely contributing factors to the differential response. A determination of whether foraging disruptions incur fitness consequences will require information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Brownell (2004) reported the behavioral responses of western gray whales off the northeast coast of Sakhalin Island to sounds produced by seismic activities in that region. In 1997, the gray whales responded to seismic activities by changing their swimming speed and orientation, respiration rates, and distribution in waters around the seismic surveys. In 2001, seismic activities were conducted in a known feeding area of these whales and the whales left the feeding area and moved to areas farther south in the Sea of Okhotsk. They only returned to the feeding area several days after the seismic activities stopped. The potential fitness consequences of displacing these

whales, especially mother-calf pairs and "skinny whales," outside of their normal feeding area is not known; however, because gray whales, like other large whales, must gain enough energy during the summer foraging season to last them the entire year, sounds or other stimuli that cause them to abandon a foraging area for several days could disrupt their energetics and force them to make trade-offs like delaying their migration south, delaying reproduction, reducing growth, or migrating with reduced energy reserves.

Social relationships—Social interactions between mammals can be affected by noise via the disruption of communication signals or by the displacement of individuals. Disruption of social relationships therefore depends on the disruption of other behaviors (e.g., avoidance, masking, etc.). Sperm whales responded to military sonar, apparently from a submarine, by dispersing from social aggregations, moving away from the sound source, remaining relatively silent and becoming difficult to approach (Watkins *et al.*, 1985). Social disruptions must be considered, however, in context of the relationships that are affected. While some disruptions may not have deleterious effects, long-term disruptions of mother/calf pairs or interruption of mating behaviors have the potential to affect the growth and survival or reproductive effort/success of individuals, respectively.

Vocalizations (also see Masking section)—Vocal changes in response to anthropogenic noise can occur across the repertoire of sound production modes used by marine mammals, such as whistling, echolocation click production, calling, and singing. Changes may result in response to a need to compete with an increase in background noise or may reflect an increased vigilance or startle response. For example, in the presence of low-frequency active sonar, humpback whales have been observed to increase the length of their "songs" (Miller *et al.*, 2000; Fristrup *et al.*, 2003), possibly due to the overlap in frequencies between the whale song and the low-frequency active sonar. A similar compensatory effect for the presence of low-frequency vessel noise has been suggested for right whales; right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007). Killer whales off the northwestern coast of the United States have been observed to increase the duration of primary calls once a threshold in observing vessel density (e.g., whale watching) was

reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.*, 2004). In contrast, both sperm and pilot whales potentially ceased sound production during the Heard Island feasibility test (Bowles *et al.*, 1994), although it cannot be absolutely determined whether the inability to acoustically detect the animals was due to the cessation of sound production or the displacement of animals from the area.

Avoidance—Avoidance is the displacement of an individual from an area as a result of the presence of a sound. Richardson *et al.* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals. It is qualitatively different from the flight response, but also differs in the magnitude of the response (*i.e.*, directed movement, rate of travel, etc.). Oftentimes avoidance is temporary, and animals return to the area once the noise has ceased. Longer term displacement is possible, however, which can lead to changes in abundance or distribution patterns of the species in the affected region if they do not become acclimated to the presence of the sound (Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006). Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.*, 2001; Finneran *et al.*, 2003; Kastelein *et al.*, 2006a; Kastelein *et al.*, 2006b). Short term avoidance of seismic surveys, low-frequency emissions, and acoustic deterrents has also been noted in wild populations of odontocetes (Bowles *et al.*, 1994; Goold, 1996; 1998; Stone *et al.*, 2000; Morton and Symonds, 2002) and to some extent in mysticetes (Gailey *et al.*, 2007), while longer term or repetitive/chronic displacement for some dolphin groups and for manatees has been suggested to be due to the presence of chronic vessel noise (Haviland-Howell *et al.*, 2007; Miksis-Olds *et al.*, 2007).

Maybaum (1993) conducted sound playback experiments to assess the effects of mid-frequency active sonar on humpback whales in Hawaiian waters. Specifically, he exposed focal pods to sounds of a 3.3-kHz sonar pulse, a sonar frequency sweep from 3.1 to 3.6 kHz, and a control (blank) tape while monitoring the behavior, movement, and underwater vocalizations. The two types of sonar signals differed in their effects on the humpback whales, but both resulted in avoidance behavior. The whales responded to the pulse by increasing their distance from the sound source and responded to the frequency

sweep by increasing their swimming speeds and track linearity. In the Caribbean, sperm whales avoided exposure to mid-frequency submarine sonar pulses, in the range of 1,000 Hz to 10,000 Hz (IWC 2005).

Kvadsheim *et al.* (2007) conducted a controlled exposure experiment in which killer whales (*Orcinus orca*) that had been fitted with D-tags were exposed to mid-frequency active sonar (Source A: a 1.0 s upswEEP 209 dB @ 1–2 kHz every 10 seconds for 10 minutes; Source B: with a 1.0 s upswEEP 197 dB @ 6–7 kHz every 10 s for 10 min). When exposed to Source A, a tagged whale and the group it was traveling with did not appear to avoid the source. When exposed to Source B, the tagged whales along with other whales that had been carousel feeding, ceased feeding during the approach of the sonar and moved rapidly away from the source. When exposed to Source B, Kvadsheim and his co-workers reported that a tagged killer whale seemed to try to avoid further exposure to the sound field by immediately swimming away (horizontally) from the source of the sound; by engaging in a series of erratic and frequently deep dives that seem to take it below the sound field; or by swimming away while engaged in a series of erratic and frequently deep dives. Although the sample sizes in this study are too small to support statistical analysis, the behavioral responses of the orcas were consistent with the results of other studies.

In 2007, the first in the series of behavioral response studies conducted by NMFS and other scientists showed one beaked whale (*Mesoplodon densirostris*) responding to an MFAS playback. The BRS-07 Cruise report indicates that the playback began when the tagged beaked whale was vocalizing at depth (at the deepest part of a typical feeding dive), following a previous control with no sound exposure. The whale appeared to stop clicking significantly earlier than usual, when exposed to mid-frequency signals in the 130–140 dB (rms) range. After a few more minutes of the playback, when the received level reached a maximum of 140–150 dB, the whale ascended on the slow side of normal ascent rates with a longer than normal ascent, at which point the exposure was terminated. The BRS-07 Cruise report notes that the results are from a single experiment and that a greater sample size is needed before robust and definitive conclusions can be drawn (NMFS, 2008).

Flight Response—A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound

source. Flight responses have been speculated as being a component of marine mammal strandings associated with MFAS activities (Evans and England, 2001). If marine mammals respond to Navy vessels that are transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses should increase when they perceive that Navy vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990, Cooper, 1997, 1998). The probability of avoidance responses should also increase as received levels of active sonar increase (and the ship is, therefore, closer) and as ship speeds increase (that is, as approach speeds increase). For example, the probability of flight responses in Dall's sheep *Ovis dalli dalli* (Frid 2001a, 2001b), ringed seals *Phoca hispida* (Born *et al.*, 1999), Pacific brant (*Branta bernicli nigricans*) and Canada geese (*B. canadensis*) increased as a helicopter or fixed-wing aircraft approached groups of these animals more directly (Ward *et al.*, 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Breathing—Variations in respiration naturally vary with different behaviors and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Mean exhalation rates of gray whales at rest and while diving were found to be unaffected by seismic surveys conducted adjacent to the whale feeding grounds (Gailey *et al.*, 2007). Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.*, 2001; Kastelein *et al.*, 2006a) and emissions for underwater data transmission (Kastelein *et al.*, 2005). However, exposure of the same acoustic alarm to a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.*, 2006a), again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure.

Continued Pre-Disturbance Behavior, Habituation, or No Response

Under some circumstances, some of the individual marine mammals that are exposed to active sonar transmissions will continue their normal behavioral activities; in other circumstances, individual animals will become aware of the sonar transmissions at lower received levels and move to avoid additional exposure or exposures at higher received levels (Richardson *et al.*, 1995).

It is difficult to distinguish between animals that continue their pre-disturbance behavior without stress responses, animals that continue their behavior but experience stress responses (that is, animals that cope with disturbance), animals that habituate to disturbance (that is, they may have experienced low-level stress responses initially, but those responses abated over time), and animals that do not respond to the potential disturbance. Watkins (1986) reviewed data on the behavioral reactions of fin, humpback, right and minke whales that were exposed to continuous, broadband low-frequency shipping and industrial noise in Cape Cod Bay. He concluded that underwater sound was the primary cause of behavioral reactions in these species of whales and that the whales responded behaviorally to acoustic stimuli within their respective hearing ranges. Watkins also noted that whales showed the strongest behavioral reactions to sounds in the 15 Hz to 28 kHz range, although negative reactions (avoidance, interruptions in vocalizations, etc.) were generally associated with sounds that were either unexpected, too loud, suddenly louder or different, or perceived as being associated with a potential threat (such as an approaching ship on a collision course). In particular, whales seemed to react negatively when they were within 100 m of the source or when received levels increased suddenly in excess of 12 dB relative to ambient sounds. At other times, the whales ignored the source of the signal and all four species habituated to these sounds.

Nevertheless, Watkins concluded that whales ignored most sounds in the background of ambient noise, including the sounds from distant human activities even though these sounds may have had considerable energies at frequencies well within the whales' range of hearing. Further, he noted that of the whales observed, fin whales were the most sensitive of the four species, followed by humpback whales; right whales were the least likely to be disturbed and generally did not react to

low-amplitude engine noise. By the end of his period of study, Watkins (1986) concluded that fin and humpback whales have generally habituated to the continuous and broad-band noise of Cape Cod Bay while right whales did not appear to change their response. As mentioned above, animals that habituate to a particular disturbance may have experienced low-level stress responses initially, but those responses abated over time. In most cases, this likely means a lessened immediate potential effect from a disturbance; however, concern exists where the habituation occurs in a potentially more harmful situation, for example: animals may become more vulnerable to vessel strikes once they habituate to vessel traffic (Swingle *et al.*, 1993; Wiley *et al.*, 1995).

Aicken *et al.* (2005) monitored the behavioral responses of marine mammals to a new low-frequency active sonar system that was being developed for use by the British Navy. During those trials, fin whales, sperm whales, Sowerby's beaked whales, long-finned pilot whales (*Globicephala melas*), Atlantic white-sided dolphins, and common bottlenose dolphins were observed and their vocalizations were recorded. These monitoring studies detected no evidence of behavioral responses that the investigators could attribute to exposure to the low-frequency active sonar during these trials.

Behavioral Responses (Southall *et al.* (2007))

Southall *et al.* (2007) reports the results of the efforts of a panel of experts in acoustic research from behavioral, physiological, and physical disciplines that convened and reviewed the available literature on marine mammal hearing and physiological and behavioral responses to human-made sound with the goal of proposing exposure criteria for certain effects. This peer-reviewed compilation of literature is very valuable, though Southall *et al.* (2007) note that not all data are equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables—such data were reviewed and sometimes used for qualitative illustration but were not included in the quantitative analysis for the criteria recommendations. All of the studies considered, however, contain an estimate of the received sound level when the animal exhibited the indicated response.

In the Southall *et al.* (2007) publication, for the purposes of

analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. MFAS/HFAS is considered a non-pulse sound. Southall *et al.*, (2007) summarize the studies associated with low-frequency, mid-frequency, and high-frequency cetacean and pinniped responses to non-pulse sounds, based strictly on received level, in Appendix C of their article (incorporated by reference and summarized in the three paragraphs below).

The studies that address responses of low frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to MFAS/HFAS) including: vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These studies generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re: 1 μ Pa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, though, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts or sound sources, so it is not surprising that responses differ.

The studies that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: Pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), MFAS, and non-pulse bands and tones. Southall *et al.*, (2007) were unable to come to a clear conclusion

regarding the results of these studies. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: Pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.*, (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (~90–120 dB), at least for initial exposures. All recorded exposures above 140 dB induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.*, 2007). Rapid habituation was noted in some but not all studies. There is no data to indicate whether other high frequency cetaceans are as sensitive to anthropogenic sound as harbor porpoises are.

The studies that address the responses of pinnipeds in water to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: AHDs, ATOC, various non-pulse sounds used in underwater data communication; underwater drilling, and construction noise. Few studies exist with enough information to include them in the analysis. The limited data suggested that exposures to non-pulse sounds between 90 and 140 dB generally do not result in strong behavioral responses in pinnipeds in water, but no data exist at higher received levels.

In addition to summarizing the available data, the authors of Southall *et al.*, (2007) developed a severity scaling system with the intent of ultimately being able to assign some level of biological significance to a response. Following is a summary of their scoring system, a comprehensive list of the behaviors associated with each score may be found in the report:

- 0–3 (Minor and/or brief behaviors) includes, but is not limited to: No response; minor changes in speed or locomotion (but with no avoidance); individual alert behavior; minor cessation in vocal behavior; minor changes in response to trained behaviors (in laboratory);

- 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival) includes, but is not limited to: Moderate changes in speed, direction, or dive profile; brief shift in group distribution; prolonged cessation or modification of vocal behavior (duration > duration of sound), minor or moderate individual and/or group avoidance of sound; brief cessation of reproductive behavior; or refusal to initiate trained tasks (in laboratory);

- 7–9 (Behaviors considered likely to affect the aforementioned vital rates) includes, but is not limited to: Extensive or prolonged aggressive behavior; moderate, prolonged or significant separation of females and dependent offspring with disruption of acoustic reunion mechanisms; long-term avoidance of an area; outright panic, stampede, stranding; threatening or attacking sound source (in laboratory).

In Table 6 we have summarized the scores that Southall *et al.*, (2007) assigned to the papers that reported behavioral responses of low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds in water to non-pulse sounds. This table is included simply to summarize the findings of the studies and opportunistic observations (all of which were capable of estimating received level) that Southall *et al.*, (2007) compiled in the effort to develop acoustic criteria.

Response Score	Received RMS Sound Pressure Level (dB re: 1 μ Pa)											
	80 to < 90	90 to < 100	100 to < 110	110 to < 120	120 to < 130	130 to < 140	140 to < 150	150 to < 160	160 to < 170	170 to < 180	180 to < 190	190 to < 200
9												
8			M	M		M		M				M
7							L	L				M
6	H	L/H	L/PH	L/M/H	L/M/H	L	L/H	H	M/H	M		
5			H	H	M							
4				L/M	L/M/P	P	L/H					
3		M	L/M	L/M	M/P	P						
2			L	L/M	L	L	L					
1			M	M	M	M						
0	L/H/P	L/H/P	L/M/H	L/M/H/P	L/M/H/P	L	M				M	M

Table 6. Data compiled from three tables from Southall *et al.*, (2007) indicating when marine mammals (low-frequency cetaceans = L, mid-frequency cetaceans = M, high frequency cetaceans = H, and pinnipeds = P) were reported as having a behavioral response of the indicated severity to a non-pulse sound of the indicated received level. As discussed in the text, responses are highly variable and context specific.

Potential Effects of Behavioral Disturbance

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, *etc.*) of an animal. There is little quantitative marine mammal data relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals. Several authors have reported that disturbance stimuli cause animals to abandon nesting and foraging sites, Sutherland and Crockford, 1993), cause animals to increase their activity levels and suffer premature deaths or reduced reproductive success when their energy expenditures exceed their energy budgets (Daan *et al.*, 1996, Feare 1976, Giese 1996, Mullner *et al.*, 2004, Waunters *et al.*, 1997), or cause animals to experience higher predation rates when they adopt risk-prone foraging or migratory strategies (Frid and Dill, 2002). Each of these studies addressed the consequences that result when animals shift from one behavioral state (for example, resting or foraging) to another behavioral state (avoidance or escape behavior) because of human disturbance or disturbance stimuli.

One consequence of behavioral avoidance results from changing the energetics of marine mammals because of the energy required to avoid surface vessels or the sound field associated with active sonar (Frid and Dill, 2002). Most animals can avoid that energetic cost by swimming away at slow speeds or those speeds that are at or near the minimum cost of transport (Miksis-Olds, 2006), as has been demonstrated in Florida manatees (Hartman, 1979, Miksis-Olds, 2006).

Those costs increase, however, when animals shift from a resting state, which is designed to conserve an animal's

energy, to an active state that consumes energy the animal would have conserved had it not been disturbed. Marine mammals that have been disturbed by anthropogenic noise and vessel approaches are commonly reported to shift from resting behavioral states to active behavioral states, which would imply that they incur an energy cost. Morete *et al.*, (2007) reported that undisturbed humpback whale cows that were accompanied by their calves were frequently observed resting while their calves circled them (milling) and rolling interspersed with dives. When vessels approached, the amount of time cows and calves spent resting and milling, respectively declined significantly. These results are similar to those reported by Scheidat *et al.* (2004) for the humpback whales they observed off the coast of Ecuador.

Constantine and Brunton (2001) reported that bottlenose dolphins in the Bay of Islands, New Zealand only engaged in resting behavior 5% of the time when vessels were within 300 meters compared with 83% of the time when vessels were not present. Miksis-Olds (2006) and Miksis-Olds *et al.* (2005) reported that Florida manatees in Sarasota Bay, Florida, reduced the amount of time they spent milling and increased the amount of time they spent feeding when background noise levels increased. Although the acute costs of these changes in behavior are not likely to exceed an animal's ability to compensate, the chronic costs of these behavioral shifts are uncertain.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called "attentional capture" occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) "captures" an animal's attention. This shift in attention can occur consciously or unconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a "watch and wait" posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or "vigilance" (Cowlishaw *et al.*, 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time: when animals focus their attention on specific environmental cues, they are not attending to other activities such as foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002). Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (for example, multiple surface vessels, which, of note, will not be utilized in the NWTRC), or when they co-occur with times that an animal perceives increased risk (for example, when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. For example, bighorn sheep and Dall's sheep dedicated more time to

being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.*, 1991).

Several authors have established that long-term and intense disturbance stimuli can cause population declines by reducing the body condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.*, 1996; Madsen, 1994; White, 1983). For example, Madsen (1994) reported that pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46-percent reproductive success rate compared with geese in disturbed habitat (being consistently scored off the fields on which they were foraging) which did not gain mass and has a 17% reproductive success rate. Similar reductions in reproductive success have been reported for mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.*, 1988), caribou disturbed by seismic exploration blasts (Bradshaw *et al.*, 1998), caribou disturbed by low-elevation military jet-fights (Luick *et al.*, 1996), and caribou disturbed by low-elevation jet flights (Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Allredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand). For example, a study of grizzly bears (*Ursus horribilis*) reported that bears disturbed by hikers reduced their energy intake by an average of 12 kcal/min (50.2 × 10³ kJ/min), and spent energy fleeing or acting aggressively toward hikers (White *et al.*, 1999). Alternately, Ridgway *et al.*, (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five day period did not cause any sleep deprivation or stress effects such as changes in cortisol or epinephrine levels.

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one

diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007).

Stranding and Mortality

When a live or dead marine mammal swims or floats onto shore and becomes "beached" or incapable of returning to sea, the event is termed a "stranding" (Geraci *et al.*, 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; National Marine Fisheries Service, 2007p). The legal definition for a stranding within the United States is that (A) "a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance." (16 U.S.C. 1421h).

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxins, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.*, 1976; Eaton, 1979; Odell *et al.*, 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.*, 2003; Fair and Becker, 2000; Foley *et al.*, 2001; Moberg, 2000; Relyea, 2005a; 2005b; Romero, 2004; Sih *et al.*, 2004).

Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships

between those stranding events and military active sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.*, 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events of Cuvier's beaked whales that had been reported and one mass stranding of four Baird's beaked whale (*Berardius bairdii*). The IWC concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been coincident with the use of MFAS, one of those seven had been associated with the use of tactical low-frequency sonar, and the remaining stranding event had been associated with the use of seismic airguns.

Most of the stranding events reviewed by the IWC involved beaked whales. A mass stranding of Cuvier's beaked whales in the eastern Mediterranean Sea occurred in 1996 (Franz, 1998) and mass stranding events involving Gervais' beaked whales, Blainville's beaked whales, and Cuvier's beaked whales occurred off the coast of the Canary Islands in the late 1980s (Simmonds and Lopez-Jurado, 1991). The stranding events that occurred in the Canary Islands and Kyparissiakos Gulf in the late 1990s and the Bahamas in 2000 have been the most intensively-studied mass stranding events and have been associated with naval exercises involving the use of MFAS.

Strandings Associated With MFAS

Over the past 12 years, there have been five stranding events coincident with military mid-frequency active sonar use in which exposure to sonar is believed by NMFS and the Navy to have been a contributing factor: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). Additionally, in 2004, during the RIMPAC exercises, between 150–200 usually pelagic melon-headed whales occupied the shallow waters of the Hanalei Bay, Kaua'i, Hawaii for over 28 hours. NMFS determined that the mid-frequency sonar was a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the Hanalei Bay stranding. A number of other stranding events coincident with the operation of MFAS including the death of beaked whales or other species (minke whales, dwarf sperm whales, pilot whales) have been reported; however, the majority have not been investigated to the degree necessary to determine the cause of the stranding.

Greece (1996)

Twelve Cuvier's beaked whales stranded atypically (in both time and space) along a 38.2-kilometer strand of the coast of the Kyparissiakos Gulf on May 12 and 13, 1996 (Frantzis, 1998). From May 11 through May 15, the NATO research vessel Alliance was conducting active sonar tests with signals of 600 Hz and 3 kHz and source levels of 228 and 226 dB re: 1 µPa, respectively (D'Amico and Verboom, 1998; D'Spain *et al.*, 2006). The timing and the location of the testing encompassed the time and location of the whale strandings (Frantzis, 1998).

Necropsies of eight of the animals were performed but were limited to basic external examination and sampling of stomach contents, blood, and skin. No ears or organs were collected, and no histological samples were preserved. No apparent abnormalities or wounds were found (Frantzis, 2004). Examination of photos of the animals, taken soon after their death, revealed that the eyes of at least four of the individuals were bleeding. Photos were taken soon after their death (Frantzis, 2004). Stomach contents contained the flesh of cephalopods, indicating that feeding had recently taken place (Frantzis, 1998).

All available information regarding the conditions associated with this stranding event were compiled, and many potential causes were examined including major pollution events, prominent tectonic activity, unusual physical or meteorological events, magnetic anomalies, epizootics, and conventional military activities (International Council for the Exploration of the Sea, 2005a). However, none of these potential causes coincided in time or space with the mass stranding, or could explain its characteristics (International Council for the Exploration of the Sea, 2005a). The robust condition of the animals, plus the recent stomach contents, is inconsistent with pathogenic causes (Frantzis, 2004). In addition, environmental causes can be ruled out as there were no unusual environmental circumstances or events before or during this time period and within the general proximity (Frantzis, 2004).

Because of the rarity of this mass stranding of Cuvier's beaked whales in the Kyparissiakos Gulf (first one in history), the probability for the two events (the military exercises and the strandings) to coincide in time and location, while being independent of each other, was thought to be extremely low (Frantzis, 1998). However, because full necropsies had not been conducted,

and no abnormalities were noted, the cause of the strandings could not be precisely determined (Cox *et al.*, 2006). A Bioacoustics Panel convened by NATO concluded that the evidence available did not allow them to accept or reject sonar exposures as a causal agent in these stranding events. Their official finding was "An acoustic link can neither be clearly established, nor eliminated as a direct or indirect cause for the May 1996 strandings." The analysis of this stranding event provided support for, but no clear evidence for, the cause-and-effect relationship of active sonar training activities and beaked whale strandings (Cox *et al.*, 2006).

Bahamas (2000)

NMFS and the Navy prepared a joint report addressing the multi-species stranding in the Bahamas in 2000, which took place within 24 hours of U.S. Navy ships using MFAS as they passed through the Northeast and Northwest Providence Channels on March 15–16, 2000. The ships, which operated both AN/SQS–53C and AN/SQS–56, moved through the channel while emitting MFAS pings approximately every 24 seconds. Of the 17 cetaceans that stranded over a 36-hr period (Cuvier's beaked whales, Blainville's beaked whales, Minke whales, and a spotted dolphin), seven animals died on the beach (5 Cuvier's beaked whales, 1 Blainville's beaked whale, and the spotted dolphin), while the other 10 were returned to the water alive (though their ultimate fate is unknown). As discussed in the Bahamas report (DOC/DON, 2001), there is no likely association between the minke whale and spotted dolphin strandings and the operation of MFAS.

Necropsies were performed on five of the stranded beaked whales. All five necropsied beaked whales were in good body condition, showing no signs of infection, disease, ship strike, blunt trauma, or fishery related injuries, and three still had food remains in their stomachs. Auditory structural damage was discovered in four of the whales, specifically bloody effusions or hemorrhaging around the ears. Bilateral intracochlear and unilateral temporal region subarachnoid hemorrhage, with blood clots in the lateral ventricles, were found in two of the whales. Three of the whales had small hemorrhages in their acoustic fats (located along the jaw and in the melon).

A comprehensive investigation was conducted and all possible causes of the stranding event were considered, whether they seemed likely at the outset or not. Based on the way in which the

strandings coincided with ongoing naval activity involving tactical MFAS use, in terms of both time and geography, the nature of the physiological effects experienced by the dead animals, and the absence of any other acoustic sources, the investigation team concluded that MFAS aboard U.S. Navy ships that were in use during the active sonar exercise in question were the most plausible source of this acoustic or impulse trauma to beaked whales. This sound source was active in a complex environment that included the presence of a surface duct, unusual and steep bathymetry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these active sonars. The investigation team concluded that the cause of this stranding event was the confluence of the Navy MFAS and these contributory factors working together, and further recommended that the Navy avoid operating MFAS in situations where these five factors would be likely to occur. This report does not conclude that all five of these factors must be present for a stranding to occur, nor that beaked whales are the only species that could potentially be affected by the confluence of the other factors. Based on this, NMFS believes that the operation of MFAS in situations where surface ducts exist, or in marine environments defined by steep bathymetry and/or constricted channels, may increase the likelihood of producing a sound field with the potential to cause cetaceans (especially beaked whales) to strand, and therefore suggests the need for increased vigilance while operating MFAS in these areas, especially when beaked whales (or potentially other deep divers) are likely present.

Madeira, Spain (2000)

From May 10–14, 2000, three Cuvier's beaked whales were found atypically stranded on two islands in the Madeira archipelago, Portugal (Cox *et al.*, 2006). A fourth animal was reported floating in the Madeiran waters by fishermen but did not come ashore (Woods Hole Oceanographic Institution, 2005). Joint NATO amphibious training peacekeeping exercises involving participants from 17 countries and 80 warships, took place in Portugal during May 2–15, 2000.

The bodies of the three stranded whales were examined post mortem (Woods Hole Oceanographic Institution, 2005), though only one of the stranded whales was fresh enough (24 hours after stranding) to be necropsied (Cox *et al.*,

2006). Results from the necropsy revealed evidence of hemorrhage and congestion in the right lung and both kidneys (Cox *et al.*, 2006). There was also evidence of intercochlear and intracranial hemorrhage similar to that which was observed in the whales that stranded in the Bahamas event (Cox *et al.*, 2006). There were no signs of blunt trauma, and no major fractures (Woods Hole Oceanographic Institution, 2005). The cranial sinuses and airways were found to be clear with little or no fluid deposition, which may indicate good preservation of tissues (Woods Hole Oceanographic Institution, 2005).

Several observations on the Madeira stranded beaked whales, such as the pattern of injury to the auditory system, are the same as those observed in the Bahamas strandings. Blood in and around the eyes, kidney lesions, pleural hemorrhages, and congestion in the lungs are particularly consistent with the pathologies from the whales stranded in the Bahamas, and are consistent with stress and pressure related trauma. The similarities in pathology and stranding patterns between these two events suggest that a similar pressure event may have precipitated or contributed to the strandings at both sites (Woods Hole Oceanographic Institution, 2005).

Even though no definitive causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): Exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 (1,000–6,000 m) fathoms occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships were operating around Madeira, though it is not known if MFAS was used, and the specifics of the sound sources used are unknown (Cox *et al.*, 2006, Freitas, 2004); exercises took place in an area surrounded by land masses separated by less than 35 nm (65 km) and at least 10 nm (19 km) in length, or in an embayment. Exercises involving multiple ships employing MFA near land may produce sound directed towards a channel or embayment that may cut off the lines of egress for marine mammals (Freitas, 2004).

Canary Islands, Spain (2002)

The southeastern area within the Canary Islands is well known for aggregations of beaked whales due to its ocean depths of greater than 547

fathoms (1,000 m) within a few hundred meters of the coastline (Fernandez *et al.*, 2005). On September 24, 2002, 14 beaked whales were found stranded on Fuerteventura and Lanzarote Islands in the Canary Islands (International Council for Exploration of the Sea, 2005a). Seven whales died, while the remaining seven live whales were returned to deeper waters (Fernandez *et al.*, 2005). Four beaked whales were found stranded dead over the next 3 days either on the coast or floating offshore. These strandings occurred within near proximity of an international naval exercise that utilized MFAS and involved numerous surface warships and several submarines. Strandings began about 4 hours after the onset of MFAS activity (International Council for Exploration of the Sea, 2005a; Fernandez *et al.*, 2005).

Eight Cuvier's beaked whales, one Blainville's beaked whale, and one Gervais' beaked whale were necropsied, six of them within 12 hours of stranding (Fernandez *et al.*, 2005). No pathogenic bacteria were isolated from the carcasses (Jepson *et al.*, 2003). The animals displayed severe vascular congestion and hemorrhage especially around the tissues in the jaw, ears, brain, and kidneys, displaying marked disseminated microvascular hemorrhages associated with widespread fat emboli (Jepson *et al.*, 2003; International Council for Exploration of the Sea, 2005a). Several organs contained intravascular bubbles, although definitive evidence of gas embolism *in vivo* is difficult to determine after death (Jepson *et al.*, 2003). The livers of the necropsied animals were the most consistently affected organ, which contained macroscopic gas-filled cavities and had variable degrees of fibrotic encapsulation. In some animals, cavity lesions had extensively replaced the normal tissue (Jepson *et al.*, 2003). Stomachs contained a large amount of fresh and undigested contents, suggesting a rapid onset of disease and death (Fernandez *et al.*, 2005). Head and neck lymph nodes were enlarged and congested, and parasites were found in the kidneys of all animals (Fernandez *et al.*, 2005).

The association of NATO MFAS use close in space and time to the beaked whale strandings, and the similarity between this stranding event and previous beaked whale mass strandings coincident with active sonar use, suggests that a similar scenario and causative mechanism of stranding may be shared between the events. Beaked whales stranded in this event demonstrated brain and auditory system

injuries, hemorrhages, and congestion in multiple organs, similar to the pathological findings of the Bahamas and Madeira strandings events. In addition, the necropsy results of the Canary Islands stranding event lead to the hypothesis that the presence of disseminated and widespread gas bubbles and fat emboli were indicative of nitrogen bubble formation, similar to what might be expected in decompression sickness (Jepson *et al.*, 2003; Fernández *et al.*, 2005).

Spain (2006)

The Spanish Cetacean Society reported an atypical mass stranding of four beaked whales that occurred January 26, 2006, on the southeast coast of Spain, near Mojacar (Gulf of Vera) in the Western Mediterranean Sea. According to the report, two of the whales were discovered the evening of January 26 and were found to be still alive. Two other whales were discovered during the day on January 27, but had already died. The fourth animal was found dead on the afternoon of January 27, a few kilometers north of the first three animals. From January 25–26, 2006, Standing North Atlantic Treaty Organization (NATO) Response Force Maritime Group Two (five of seven ships including one U.S. ship under NATO Operational Control) had conducted active sonar training against a Spanish submarine within 50 nm (93 km) of the stranding site.

Veterinary pathologists necropsied the two male and two female Cuvier's beaked whales. According to the pathologists, the most likely primary cause of this type of beaked whale mass stranding event was anthropogenic acoustic activities, most probably anti-submarine MFAS used during the military naval exercises. However, no positive acoustic link was established as a direct cause of the stranding. Even though no causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000–6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships (in this instance, five) were operating MFAS in the same area over extended periods of time (in this case, 20 hours) in close proximity; Exercises took place in an area surrounded by landmasses, or in an embayment. Exercises involving

multiple ships employing MFAS near land may have produced sound directed towards a channel or embayment that may have cut off the lines of egress for the affected marine mammals (Freitas, 2004).

Hanalei Bay (2004)

On July 3–4, 2004, approximately 150–200 melon-headed whales occupied the shallow waters of the Hanalei Bay, Kaua'i, Hawaii for over 28 hours. Attendees of a canoe blessing observed the animals entering the Bay in a single wave formation at 7 a.m. on July 3, 2004. The animals were observed moving back into the shore from the mouth of the Bay at 9 a.m. The usually pelagic animals milled in the shallow bay and were returned to deeper water with human assistance beginning at 9:30 a.m. on July 4, 2004, and were out of sight by 10:30 a.m.

Only one animal, a calf, was known to have died following this event. The animal was noted alive and alone in the Bay on the afternoon of July 4, 2004 and was found dead in the Bay the morning of July 5, 2004. A full necropsy, magnetic resonance imaging, and computerized tomography examination were performed on the calf to determine the manner and cause of death. The combination of imaging, necropsy and histological analyses found no evidence of infectious, internal traumatic, congenital, or toxic factors. Although cause of death could not be definitively determined, it is likely that maternal separation, poor nutritional condition, and dehydration contributed to the final demise of the animal. Although we do not know when the calf was separated from its mother, the movement into the Bay, the milling and re-grouping may have contributed to the separation or lack of nursing especially if the maternal bond was weak or this was a primiparous calf.

Environmental factors, abiotic and biotic, were analyzed for any anomalous occurrences that would have contributed to the animals entering and remaining in Hanalei Bay. The Bay's bathymetry is similar to many other sites within the Hawaiian Island chain and dissimilar to sites that have been associated with mass strandings in other parts of the United States. The weather conditions appeared to be normal for that time of year with no fronts or other significant features noted. There was no evidence of unusual distribution or occurrence of predator or prey species, or unusual harmful algal blooms. Weather patterns and bathymetry that have been associated with mass strandings elsewhere were not found to occur in this instance.

A separate event involving melon-headed whales and rough-toothed dolphins took place over the same period of time in the Northern Mariana Islands (Jefferson *et al.*, 2006), which is several thousand miles from Hawaii. Some 500–700 melon-headed whales came into Sasanahaya Bay on 4 July 2004 on the island of Rota and then left of their own accord after 5.5 hours; no known active sonar transmissions occurred in the vicinity of that event. Global reports of these types of events or sightings are of great interest to the scientific community and continuing efforts to enhance reporting in island nations will contribute to our increased understanding of animal behavior and potential causes of stranding events. Exactly what, if any, relationship this event has to the simultaneous events in Hawaii and whether they might be related to some common factor (*e.g.*, there was a full moon on July 2, 2004) is and will likely remain unknown. However, these two synchronous, nearshore events involving a rarely-sighted species are curious and may point to the range of potential contributing factors for which we lack detailed understanding and which the authors acknowledged might have played some role in the "confluence of events" in Hanalei Bay.

The Hanalei event was spatially and temporally correlated with RIMPAC. Official sonar training and tracking exercises in the Pacific Missile Range Facility (PMRF) warning area did not commence until approximately 8 a.m. on July 3 and were thus ruled out as a possible trigger for the initial movement into the Bay.

However, six naval surface vessels transiting to the operational area on July 2 intermittently transmitted active sonar (for approximately 9 hours total from 1:15 p.m. to 12:30 a.m.) as they approached from the south. The potential for these transmissions to have triggered the whales' movement into Hanalei Bay was investigated. Analyses with the information available indicated that animals to the south and east of Kaua'i could have detected active sonar transmissions on July 2, and reached Hanalei Bay on or before 7 a.m. on July 3, 2004. However, data limitations regarding the position of the whales prior to their arrival in the Bay, the magnitude of sonar exposure, behavioral responses of melon-headed whales to acoustic stimuli, and other possible relevant factors preclude a conclusive finding regarding the role of sonar in triggering this event. Propagation modeling suggest that transmissions from sonar use during the July 3 exercise in the PMRF warning area may

have been detectable at the mouth of the Bay. If the animals responded negatively to these signals, it may have contributed to their continued presence in the Bay. The U.S. Navy ceased all active sonar transmissions during exercises in this range on the afternoon of July 3, 2004. Subsequent to the cessation of sonar use, the animals were herded out of the Bay.

While causation of this stranding event may never be unequivocally determined, we consider the active sonar transmissions of July 2–3, 2004, a plausible, if not likely, contributing factor in what may have been a confluence of events. This conclusion is based on: (1) The evidently anomalous nature of the stranding; (2) its close spatiotemporal correlation with wide-scale, sustained use of sonar systems previously associated with stranding of deep-diving marine mammals; (3) the directed movement of two groups of transmitting vessels toward the southeast and southwest coast of Kauai; (4) the results of acoustic propagation modeling and an analysis of possible animal transit times to the Bay; and (5) the absence of any other compelling causative explanation. The initiation and persistence of this event may have resulted from an interaction of biological and physical factors. The biological factors may have included the presence of an apparently uncommon, deep-diving cetacean species (and possibly an offshore, non-resident group), social interactions among the animals before or after they entered the Bay, and/or unknown predator or prey conditions. The physical factors may have included the presence of nearby deep water, multiple vessels transiting in a directed manner while transmitting active sonar over a sustained period, the presence of surface sound ducting conditions, and/or intermittent and random human interactions while the animals were in the Bay.

Association Between Mass Stranding Events and Exposure to MFAS

Several authors have noted similarities between some of these stranding incidents: They occurred in islands or archipelagos with deep water nearby, several appeared to have been associated with acoustic waveguides like surface ducting, and the sound fields created by ships transmitting MFAS (Cox *et al.*, 2006, D'Spain *et al.*, 2006). Although Cuvier's beaked whales have been the most common species involved in these stranding events (81% of the total number of stranded animals), other beaked whales (including *Mesoplodon europaeus*, *M. densirostris*, and

Hyperoodon ampullatus) comprise 14% of the total. Other species, such as *Kogia breviceps*, have stranded in association with the operation of MFAS, but in much lower numbers and less consistently than beaked whales.

Based on the evidence available, however, we cannot determine whether (a) Cuvier's beaked whale is more prone to injury from high-intensity sound than other species, (b) their behavioral responses to sound makes them more likely to strand, or (c) they are more likely to be exposed to MFAS than other cetaceans (for reasons that remain unknown). Because the association between active sonar exposures and marine mammals mass stranding events is not consistent—some marine mammals strand without being exposed to active sonar and some sonar transmissions are not associated with marine mammal stranding events despite their co-occurrence—other risk factors or a grouping of risk factors probably contribute to these stranding events.

Behaviorally Mediated Responses to MFAS That May Lead to Stranding

Although the confluence of Navy MFAS with the other contributory factors noted in the report was identified as the cause of the 2000 Bahamas stranding event, the specific mechanisms that led to that stranding (or the others) are not understood, and there is uncertainty regarding the ordering of effects that led to the stranding. It is unclear whether beaked whales were directly injured by sound (acoustically mediated bubble growth, addressed above) prior to stranding or whether a behavioral response to sound occurred that ultimately caused the beaked whales to be injured and to strand.

Although causal relationships between beaked whale stranding events and active sonar remain unknown, several authors have hypothesized that stranding events involving these species in the Bahamas and Canary Islands may have been triggered when the whales changed their dive behavior in a startled response to exposure to active sonar or to further avoid exposure (Cox *et al.*, 2006; Rommel *et al.*, 2006). These authors proposed three mechanisms by which the behavioral responses of beaked whales upon being exposed to active sonar might result in a stranding event. These include: gas bubble formation caused by excessively fast surfacing; remaining at the surface too long when tissues are supersaturated with nitrogen; or diving prematurely when extended time at the surface is necessary to eliminate excess nitrogen.

More specifically, beaked whales that occur in deep waters that are in close proximity to shallow waters (for example, the “canyon areas” that are cited in the Bahamas stranding event; see D’Spain and D’Amico, 2006), may respond to active sonar by swimming into shallow waters to avoid further exposures and strand if they were not able to swim back to deeper waters. Second, beaked whales exposed to active sonar might alter their dive behavior. Changes in their dive behavior might cause them to remain at the surface or at depth for extended periods of time which could lead to hypoxia directly by increasing their oxygen demands or indirectly by increasing their energy expenditures (to remain at depth) and increase their oxygen demands as a result. If beaked whales are at depth when they detect a ping from an active sonar transmission and change their dive profile, this could lead to the formation of significant gas bubbles, which could damage multiple organs or interfere with normal physiological function (Cox *et al.*, 2006; Rommel *et al.*, 2006; Zimmer and Tyack, 2007). Baird *et al.*, (2005) found that slow ascent rates from deep dives and long periods of time spent within 50 m of the surface were typical for both Cuvier's and Blainville's beaked whales, the two species involved in mass strandings related to naval MFAS. These two behavioral mechanisms may be necessary to purge excessive dissolved nitrogen concentrated in their tissues during their frequent long dives (Baird *et al.*, 2005). Baird *et al.*, (2005) further suggests that abnormally rapid ascents or premature dives in response to high-intensity active sonar could indirectly result in physical harm to the beaked whales, through the mechanisms described above (gas bubble formation or non-elimination of excess nitrogen).

Because many species of marine mammals make repetitive and prolonged dives to great depths, it has long been assumed that marine mammals have evolved physiological mechanisms to protect against the effects of rapid and repeated decompressions. Although several investigators have identified physiological adaptations that may protect marine mammals against nitrogen gas supersaturation (alveolar collapse and elective circulation; Kooyman *et al.*, 1972; Ridgway and Howard, 1979). Ridgway and Howard (1979) reported that bottlenose dolphins (*Tursiops truncatus*) that were trained to dive repeatedly had muscle tissues that were substantially supersaturated with nitrogen gas. Houser *et al.* (2001) used

these data to model the accumulation of nitrogen gas within the muscle tissue of other marine mammal species and concluded that cetaceans that dive deep and have slow ascent or descent speeds would have tissues that are more supersaturated with nitrogen gas than other marine mammals. Based on these data, Cox *et al.*, (2006) hypothesized that a critical dive sequence might make beaked whales more prone to stranding in response to acoustic exposures. The sequence began with (1) very deep (to depths of up to 2 kilometers) and long (as long as 90 minutes) foraging dives with (2) relatively slow, controlled ascents, followed by (3) a series of “bounce” dives between 100 and 400 meters in depth (*also see* Zimmer and Tyack, 2007). They concluded that acoustic exposures that disrupted any part of this dive sequence (for example, causing beaked whales to spend more time at surface without the bounce dives that are necessary to recover from the deep dive) could produce excessive levels of nitrogen supersaturation in their tissues, leading to gas bubble and emboli formation that produces pathologies similar to decompression sickness.

Recently, Zimmer and Tyack (2007) modeled nitrogen tension and bubble growth in several tissue compartments for several hypothetical dive profiles and concluded that repetitive shallow dives (defined as a dive where depth does not exceed the depth of alveolar collapse, approximately 72 m for *Ziphius*), perhaps as a consequence of an extended avoidance reaction to active sonar sound, could pose a risk for decompression sickness and that this risk should increase with the duration of the response. Their models also suggested that unrealistically rapid ascent rates of ascent from normal dive behaviors are unlikely to result in supersaturation to the extent that bubble formation would be expected. Tyack *et al.*, (2006) suggested that emboli observed in animals exposed to MFAS (Jepson *et al.*, 2003; Fernandez *et al.*, 2005) could stem from a behavioral response that involves repeated dives shallower than the depth of lung collapse. Given that nitrogen gas accumulation is a passive process (*i.e.* nitrogen is metabolically inert), a bottlenose dolphin was trained to repetitively dive a profile predicted to elevate nitrogen saturation to the point that nitrogen bubble formation was predicted to occur. However, inspection of the vascular system of the dolphin via ultrasound did not demonstrate the formation of asymptomatic nitrogen gas bubbles (Houser *et al.*, 2007). Baird *et*

al., (2008), in a beaked whale tagging study off Hawaii, showed that deep dives are equally common during day or night, but “bounce dives” are typically a daytime behavior, possibly associated with visual predator avoidance (Baird *et al.*, 2008). This may indicate that “bounce dives” are associated with something other than behavioral regulation of dissolved nitrogen levels, which would be necessary day and night.

Despite the many theories involving bubble formation (both as a direct cause of injury (*see* Acoustically Mediated Bubble Growth Section) and an indirect cause of stranding (*See* Behaviorally Mediated Bubble Growth Section). Southall *et al.*, (2007) summarizes that there is either scientific disagreement or a lack of information regarding each of the following important points: (1) Received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral reactions (such as atypical diving behavior) that secondarily cause bubble formation and tissue damage; and (5) the extent the post mortem artifacts introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions.

Of note, no major ASW training exercises are proposed to be conducted in the NWTRC. The exercises utilizing MFAS will not utilize more than one surface vessel MFAS source at once. Additionally, while beaked whales may be present in the NWTRC where surface duct and steep bathymetry (in the form of sea mounts) characteristics exist, none of the training events will take place in a location having a constricted channel less than 35 miles wide or with limited egress similar to the Bahamas. Moreover, no sonar is proposed to be used in the Inshore area east of the mouth of the Strait of Juan de Fuca. Additionally, only approximately 110 hours of the highest power surface vessel MFAS use will be conducted annually (in short duration 1.5 hour exercises) in the NWTRC per year. Although the five environmental factors believed to have contributed to the Bahamas stranding (at least 3 surface vessel MFAS sources operating simultaneously or in conjunction with one another, beaked whale presence, surface ducts, steep bathymetry, and constricted channels with limited egress) will not be present during exercises in NWTRC, NMFS

recommends caution when either steep bathymetry, surface ducting conditions, or a constricted channel is present when mid-frequency active sonar is employed and cetaceans (especially beaked whales) are present.

Exposure to Underwater Detonation of Explosives

Some of the Navy's training exercises include the underwater detonation of explosives. For many of the exercises discussed, inert ordnance is used for a subset of the exercises. For exercises that involve “shooting” at a target that is above the surface of the water, underwater explosions only occur when the target is missed, which is the minority of the time (the Navy has historical hit/miss ratios and uses them in their exposure estimates). The underwater explosion from a weapon would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing related effects with or without behavioral responses, or exhibit temporary behavioral responses or tolerance from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels would result in worse impacts to an individual animal.

Injuries resulting from a shock wave take place at boundaries between tissues of different density. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.*, 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.*, 1973).

Because the ears are the most sensitive to pressure, they are the organs

most sensitive to injury (Ketten, 2000). Sound-related trauma associated with blast noise can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If an animal is able to hear a noise, at some level it can fatigue or damage its hearing by causing decreased sensitivity (Ketten, 1995) (*See* Noise-induced Threshold Shift Section above). Sound-related trauma can be lethal or sublethal. Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

There have been fewer studies addressing the behavioral effects of explosives on marine mammals than MFAS/HFAS. However, though the nature of the sound waves emitted from an explosion is different (in shape and rise time) from MFAS/HFAS, we still anticipate the same sorts of behavioral responses (*see* Exposure to MFAS/HFAS: Behavioral Disturbance Section) to result from repeated explosive detonations (a smaller range of likely less severe responses would be expected to occur as a result of exposure to a single explosive detonation).

Potential Effects of Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. Both scenarios are discussed below.

Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is large amount of vessel

traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (e.g., killer whales in Puget Sound; Foote *et al.*, 2004; Holt *et al.*, 2008). In cases where vessels actively approach marine mammals (e.g., whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.*, 2002; Constantine *et al.*, 2003), reduced blow interval (Ritcher *et al.*, 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.*, 2003; 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammals taxonomy groups, Richardson *et al.* (1995) provided the following assessment regarding cetacean reactions to vessel traffic:

Toothed whales: "In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic."

Baleen whales: "When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale."

It is important to recognize that behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal, and physical status of the animal. For example, studies have shown that beluga whales reacted differently when exposed to vessel noise and traffic. In some cases, nava beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km away,

and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.*, 1990). In other cases, beluga whales were more tolerant of vessels, but differentially responsive by reducing their calling rates, to certain vessels and operating characteristics (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were "modified by their previous experience and current activity; habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli." Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales (*Balaenoptera acutorostrata*) changed from frequent positive (such as approaching vessels) interest to generally uninterested reactions; finback whales (*B. physalus*) changed from mostly negative (such as avoidance) to uninterested reactions; right whales (*Eubalaena glacialis*) apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks (*Megaptera novaeangliae*) dramatically changed from mixed responses that were often negative to often strongly positive reactions. Watkins (1986) summarized that "whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had P [positive] reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways."

The Northwest Training Range Complex is well traveled by a variety of commercial and recreational vessels and a fair portion of the marine mammals in the area are expected to be habituated to vessel noise. Washington state handles seven percent of the country's exports and six percent of its imports. Cruise ships make daily use of the Seattle Port. A substantial volume of small boat traffic, primarily recreational, occurs

throughout Puget Sound, which has 244 marinas with 39,400 moorage slips and another 331 launch sites for smaller boats.

As described in the Description of the Specified Activity section, training exercises involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to 2 weeks. During training, speeds vary and depend on the specific type of activity, although 10–14 knots is considered the typical speed. Approximately 490 activities that involve Navy vessels occur within the Study Area during a typical year. Training activities are widely dispersed throughout the large OPAREA, which encompasses 122,468 nm² (420,054 km²). Consequently, the density of Navy ships within the Study Area at any given time is low.

Moreover, naval vessels transiting the study area or engaging in the training exercises will not actively or intentionally approach a marine mammal or change speed drastically. While in transit, naval vessels will be alert at all times, use extreme caution, and proceed at a "safe speed" so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions. When whales have been sighted in the area, Navy vessels will increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and would be dictated by environmental and other conditions (e.g., safety, weather).

Although the radiated sound from Navy vessels will be audible to marine mammals over a large distance, it is unlikely that animals will respond behaviorally (in a manner that NMFS would consider MMPA harassment) to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.*, 2004). In light of these facts, NMFS does not expect the Navy's vessel movements to result in Level B harassment.

Vessel Strike

Commercial and Navy ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's

propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (for example, the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.*, 2004). These species are primarily large, slow-moving whales. Smaller marine mammals (for example, bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 knots.

Jensen and Silber (2003) detailed 292 records of known or probable ship strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Of these cases, 39 (or 67%) resulted in serious injury or death (19 or 33% resulted in serious injury as determined by blood in the water, propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae, hemorrhaging, massive bruising or other injuries noted during necropsy and 20 to 35% resulted in death). Operating speeds of vessels that struck various species of large whales ranged from 2 to 51 knots. The majority (79%) of these strikes occurred at speeds of 13 knots or greater. The average speed that resulted in serious injury or death was 18.6 knots. Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45% to 75% as vessel speed increased from 10 to 14 knots, and exceeded 90% at 17 knots. Higher speeds during collisions result in greater

force of impact, but higher speeds also appear to increase the chance of severe injuries or death by pulling whales toward the vessel. Computer simulation modeling showed that hydrodynamic forces pulling whales toward the vessel hull increase with increasing speed (Clyne, 1999, Knowlton *et al.*, 1995). The Jensen and Silber (2003) report notes that the database represents a minimum number of collisions, because the vast majority probably go undetected or unreported. In contrast, Navy vessels are likely to detect any strike that does occur, and they are required to report all ship strikes involving marine mammals. Overall, the percentages of Navy traffic relative to overall large shipping traffic are very small (on the order of 2%).

The ability of a ship to avoid a collision and to detect a collision depends on a variety of factors, including environmental conditions, ship design, size, and manning. The majority of ships participating in NWTRC training activities have a number of advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following:

- Navy ships have their bridges positioned forward, offering good visibility ahead of the bow.
- Crew size is much larger than that of merchant ships allowing for more potential observers on the bridge.
- Dedicated lookouts are posted during a training activity scanning the ocean for anything detectable in the water; anything detected is reported to the Officer of the Deck.
- Navy lookouts receive extensive training including Marine Species Awareness Training designed to provide marine species detection cues and information necessary to detect marine mammals.
- Navy ships are generally much more maneuverable than commercial merchant vessels.

The Navy has adopted mitigation measures to reduce the potential for collisions with surfaced marine mammals. For a thorough discussion of mitigation measures, please see the Mitigation section. Briefly, these measures include:

- At all times when vessels are underway, trained lookouts are used to detect all objects on the surface of the water, including marine mammals.
- Reasonable and prudent actions are implemented to avoid the close interaction of Navy assets and marine mammals.
- While in transit, naval vessels will be alert at all times, use extreme caution, and proceed at a "safe speed"

so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

Based on the implementation of Navy mitigation measures and the relatively low density of Navy ships in the Study Area, NMFS has concluded preliminarily that the probability of a ship strike is very low, especially for dolphins and porpoises, killer whales, social pelagic odontocetes and pinnipeds that are highly visible, and/or comparatively small and maneuverable. Though more probable, NMFS also believes that the likelihood of a Navy vessel striking a mysticete or sperm whale is low. The Navy did not request take from a ship strike and based on our preliminary determination, NMFS is not recommending that they modify their request at this time. However, NMFS is currently engaged in an internal Section 7 consultation under the ESA and the outcome of that consultation will further inform our final decision.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the "permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance." 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 the NWTRC application are considered military readiness activities.

NMFS reviewed the proposed NWTRC activities and the proposed NWTRC mitigation measures as described in the Navy's LOA application to determine if they would result in the least practicable adverse effect on marine mammals, which includes a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the effectiveness of the "military-readiness activity." NMFS determined that further discussion was necessary regarding the use of MFAS/

HFAS for training in the Inshore Area that contains the southern resident killer whale critical habitat.

To address the concerns above, the Navy clarified for NMFS (subsequent to their submittal of the LOA application) that no training utilizing MFAS/HFAS had occurred in the Inshore Area of NWTRC for the last six years, that it is not being conducted now, and that there are no plans to utilize MFAS/HFAS in the Inshore Area. This information has been factored into NMFS' effects analysis. Because MFAS/HFAS will not be used in this area, there is no reason to authorize take from these activities. However, the Navy indicated that should their plans change in the future they will request authorization under the MMPA. The Navy further explained that no explosive training occurs in the Inshore Area other than the annual detonation of four 2.5lb charges, which are not anticipated to result in the take of marine mammals. Included below are the mitigation measures the Navy proposed (see "Mitigation Measures Proposed in the Navy's LOA Application")

Mitigation Measures Proposed in the Navy's LOA Application

This section includes the protective measures proposed by the Navy and is taken directly from their application (with the exception of headings, which have been modified for increased clarity within the context of this proposed rule). In their proposed mitigation, the Navy has included measures to protect sea turtles—those measures are included here as part of the Navy's proposed action. Although measures to protect sea turtles are important, they are not required by the MMPA, and therefore, will not be codified through this regulation or required in any subsequent MMPA LOA. Measures to protect sea turtles will, however, be addressed in the Endangered Species Act section 7 consultation.

General Maritime Measures for All Training at Sea

Personnel Training (for All Training Types)

The use of shipboard lookouts is a critical component of all Navy protective measures. Lookout duties require that they report all objects sighted in the water to the officer of the deck (OOD) (e.g., trash, a periscope, marine mammals, sea turtles) and all disturbances (e.g., surface disturbance, discoloration) that may be indicative of a threat to the vessel and its crew. There are personnel serving as lookouts on station at all times (day and night) when

a ship or surfaced submarine is moving through the water.

- All commanding officers (COs), executive officers (XOs), lookouts, officers of the deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-submarine Warfare (ASW)/Mine Warfare (MIW) helicopter crews will complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge lookouts will complete both parts one and two of the MSAT; part two is optional for other personnel. This training addresses the lookout's role in environmental protection, laws governing the protection of marine species, Navy stewardship commitments and general observation information to aid in avoiding interactions with marine species.
- Navy lookouts will undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Education and Training Command [NAVEDTRA] 12968–D).
- Lookout training will include on-the-job instruction under the supervision of a qualified, experienced lookout. Following successful completion of this supervised training period, lookouts will complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). Personnel being trained as lookouts can be counted among those listed below as long as supervisors monitor their progress and performance.
- Lookouts will be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of protective measures if marine species are spotted.

Operating Procedures and Collision Avoidance (for All Training Types)

- Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order will be issued to further disseminate the personnel training requirement and general marine species protective measures.
- COs will make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.
- While underway, surface vessels will have at least two lookouts with binoculars; surfaced submarines will have at least one lookout with binoculars. Lookouts already posted for

safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts will watch for and report to the OOD the presence of marine mammals.

- On surface vessels equipped with a multi-function active sensor, pedestal mounted "Big Eye" (20x110) binoculars will be properly installed and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.
- Personnel on lookout will employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).
- After sunset and prior to sunrise, lookouts will employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).
- While in transit, naval vessels will be alert at all times, use extreme caution, and proceed at a "safe speed" so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.
- When whales have been sighted in the area, Navy vessels will increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and would be dictated by environmental and other conditions (e.g., safety, weather).
- Navy aircraft participating in exercises at sea will conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections will be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

Measures for MFAS Operations

Personnel Training (for MFAS Operations)

- All lookouts onboard platforms involved in ASW training events will review the NMFS-approved Marine Species Awareness Training material prior to use of mid-frequency active sonar.

- All COs, XOs, and officers standing watch on the bridge will have reviewed the Marine Species Awareness Training material prior to a training event employing the use of MFAS/HFAS.
- Navy lookouts will undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Educational Training [NAVEDTRA], 12968–D).
- Lookout training will include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts will complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). This does not forbid personnel being trained as lookouts from being counted as those listed in previous measures so long as supervisors monitor their progress and performance.
- Lookouts will be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

Lookout and Watchstander Responsibilities (for MFAS Operations)

- On the bridge of surface ships, there will always be at least three people on watch whose duties include observing the water surface around the vessel.
- All surface ships participating in ASW training events will, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as marine mammal lookouts.
- Personnel on lookout and officers on watch on the bridge will have at least one set of binoculars available for each person to aid in the detection of marine mammals.
- Personnel on lookout will be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine species that may need to be avoided as warranted.

Operating Procedures (for MFAS Operations)

- All personnel engaged in passive acoustic sonar operation (including

aircraft, surface ships, or submarines) will monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

- During MFAS operations, personnel will utilize all available sensor and optical systems (such as night vision goggles) to aid in the detection of marine mammals.
- Navy aircraft participating in exercises at sea will conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.
- Aircraft with deployed sonobuoys will use only the passive capability of sonobuoys when marine mammals are detected within 200 yds (183 m) of the sonobuoy.
- Marine mammal detections will be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.
- *Safety Zones*—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) within or closing to inside 1,000 yds (914 m) of the sonar dome (the bow), the ship or submarine will limit active transmission levels to at least 6 decibels (dB) below normal operating levels (a 6-dB reduction equals a 75-percent reduction in power).
- Ships and submarines will continue to limit maximum transmission levels by this 6-dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.
- Should a marine mammal be detected within or closing to inside 500 yds (457 m) of the sonar dome, active sonar transmissions will be limited to at least 10 dB below the equipment's normal operating level. (A 10-dB reduction equates to a 90-percent power reduction from normal operating levels.) Ships and submarines will continue to limit maximum ping levels by this 10-dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.
- Should the marine mammal be detected within or closing to inside 200

yd (183 m) of the sonar dome, active sonar transmissions will cease. Active sonar will not resume until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

■ Special conditions applicable for dolphin and porpoise only: If, after conducting an initial maneuver to avoid close quarters with dolphin or porpoise, the OOD concludes that dolphin or porpoise are deliberately closing to ride the vessel's bow wave, no further mitigation actions would be necessary while the dolphin or porpoise continue to exhibit bow wave riding behavior.

■ If the need for power-down should arise as detailed in "Safety Zones" above, the Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of what level above 235 dB active sonar was being operated).

- Prior to start up or restart of active sonar, operators will check that the Safety Zone radius around the sound source is clear of marine mammals.
- *Active sonar levels (generally)*—Navy will operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.
- Submarine sonar operators will review detection indicators of close-aboard marine mammals prior to the commencement of ASW training events involving MFAS.

Measures for Underwater Detonations Surface-to-Surface Gunnery (Non-Explosive Rounds)

- A 200-yd (183 m) radius buffer zone will be established around the intended target.
- From the intended firing position, trained lookouts will survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable. Due to the distance between the firing position and the buffer zone, lookouts are only expected to visually detect breaching whales, whale blows, and large pods of dolphins and porpoises.
- If applicable, target towing vessels will maintain a lookout. If a marine mammal is sighted in the vicinity of the exercise, the tow vessel will immediately notify the firing vessel in order to secure gunnery firing until the area is clear.
- The exercise will be conducted only when the buffer zone is visible and marine mammals are not detected

within the target area and the buffer zone.

Surface-to-Air Gunnery (Explosive and Non-Explosive Rounds)

- Vessels will orient the geometry of gunnery exercises in order to prevent debris from falling in the area of sighted marine mammals, algal mats, and floating kelp.
- Vessels will expedite the recovery of any parachute deploying aerial targets to reduce the potential for entanglement of marine mammals.
- Target towing aircraft shall maintain a lookout. If a marine mammal is sighted in the vicinity of the exercise, the tow aircraft will immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

Air-to-Surface At-Sea Bombing Exercises (Explosive and Non-Explosive)

- If surface vessels are involved, trained lookouts will survey for floating kelp, which may be inhabited by marine mammals. Ordnance shall not be targeted to impact within 1,000 yds (914 m) of known or observed floating kelp or marine mammals.
- A 1,000 yd (914 m) radius buffer zone will be established around the intended target.
- Aircraft will visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area will be made by flying at 1,500 ft (457 m) or lower, if safe to do so, and at the slowest safe speed. Release of ordnance through cloud cover is prohibited: Aircraft must be able to actually see ordnance impact areas. Survey aircraft should employ most effective search tactics and capabilities.
- The exercise will be conducted only if marine mammals are not visible within the buffer zone.

Air-to-Surface Missile Exercises (Explosive and Non-Explosive)

- Aircraft will visually survey the target area for marine mammals. Visual inspection of the target area will be made by flying at 1,500 (457 m) feet or lower, if safe to do so, and at slowest safe speed. Firing or range clearance aircraft must be able to actually see ordnance impact areas. Explosive ordnance shall not be targeted to impact within 1,800 yds (1646 m) of sighted marine mammals.

Underwater Detonations (Up to 2.5-lb Charges)

Exclusion Zones—All Mine Warfare and Mine Countermeasures Operations involving the use of explosive charges

must include exclusion zones for marine mammals to prevent physical and/or acoustic effects to those species. These exclusion zones shall extend in a 700-yard arc (640 yd) radius around the detonation site.

Pre-Exercise Surveys—For Demolition and Ship Mine Countermeasures Operations, pre-exercise surveys shall be conducted within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air, and personnel shall be alert to the presence of any marine mammal. Should such an animal be present within the survey area, the explosive event shall not be started until the animal voluntarily leaves the area. The Navy will ensure the area is clear of marine mammals for a full 30 minutes prior to initiating the explosive event. Personnel will record any marine mammal observations during the exercise as well as measures taken if species are detected within the exclusion zone.

Post-Exercise Surveys—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

Reporting—If there is evidence that a marine mammal may have been stranded, injured or killed by the action, Navy training activities will be suspended immediately and the situation reported immediately by the participating unit to the Officer in Charge of the Exercise (OCE), who will follow Navy procedures for reporting the incident to Commander, Pacific Fleet, Commander, Navy Region Southwest, Environmental Director, and the chain-of-command. The situation will also be reported to NMFS immediately or as soon as clearance procedures allow.

Sinking Exercise

The selection of sites suitable for SINKEXs involves a balance of operational suitability, requirements established under the Marine Protection, Research and Sanctuaries Act (MPRSA) permit granted to the Navy (40 CFR 229.2), and the identification of areas with a low likelihood of encountering ESA-listed species. To meet operational suitability criteria, the locations of SINKEXs must be within a reasonable distance of the target vessels' originating location. The locations should also be close to active military bases to allow participating assets access to shore facilities. For safety purposes, these locations should also be in areas that are not generally used by non-military air or watercraft. The MPRSA permit requires vessels to

be sunk in waters which are at least 6000 ft (1829 m) deep and at least 50 nm from land. In general, most listed species prefer areas with strong bathymetric gradients and oceanographic fronts for significant biological activity such as feeding and reproduction. Typical locations include the continental shelf and shelf-edge.

The Navy has developed range clearance procedures to maximize the probability of sighting any ships or marine mammal in the vicinity of an exercise, which are as follows:

- All weapons firing would be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

- Extensive range clearance activities would be conducted in the hours prior to commencement of the exercise, ensuring that no shipping is located within the hazard range of the longest-range weapon being fired for that event.

- An exclusion zone with a radius of 1.0 nm (1.9 km) would be established around each target. This exclusion zone is based on calculations using a 990-lb (450-kg) H6 net explosive weight high explosive source detonated 5 ft (1.5 m) below the surface of the water, which yields a distance of 0.85 nm (1.57 km) (cold season) and 0.89 nm (1.65 km) (warm season) beyond which the received level is below the 182 decibels (dB) re: 1 micropascal squared-seconds ($\mu\text{Pa}^2\text{-s}$) threshold established for the WINSTON S. CHURCHILL (DDG 81) shock trials (U.S. Navy, 2001). An additional buffer of 0.5 nm (0.9 km) would be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which would extend beyond the buffer zone by an additional 0.5 nm (0.9 km), would be surveyed. Together, the zones extend out 2 nm (3.7 km) from the target.

- A series of surveillance overflights shall be conducted prior to the event to ensure that no marine mammals are present in the exclusion zone. Survey protocol will be as follows:

- Overflights within the exclusion zone would be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy's Search and Rescue Tactical Aid, which provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.

- All visual surveillance activities would be conducted by Navy personnel

trained in visual surveillance. At least one member of the mitigation team would have completed the Navy's marine mammal training program for lookouts.

- In addition to the overflights, the exclusion zone would be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring would be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals (particularly sperm whales) in the vicinity of the exercise. The sonobuoys would be re-seeded as necessary throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE would be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

- On each day of the exercise, aerial surveillance of the exclusion and safety zones would commence 2 hours prior to the first firing.

- The results of all visual, aerial, and acoustic searches would be reported immediately to the OCE. No weapons launches or firing would commence until the OCE declares the safety and exclusion zones free of marine mammals and threatened and endangered species.

- If a marine mammal observed within the exclusion zone is diving, firing would be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes have elapsed, whichever occurs first. After 30 minutes, if the animal has not been re-sighted it would be assumed to have left the exclusion zone. The OCE would determine if the marine mammal is in danger of being adversely affected by commencement of the exercise.

- During breaks in the exercise of 30 minutes or more, the exclusion zone would again be surveyed for any marine mammal. If a marine mammal is sighted within the exclusion zone, the OCE would be notified, and the procedure described above would be followed.

- Upon sinking of the vessel, a final surveillance of the exclusion zone would be monitored for 2 hours, or until sunset, to verify that no marine mammals were harmed.

- Aerial surveillance would be conducted using helicopters or other aircraft based on necessity and availability. The Navy has several types of aircraft capable of performing this task; however, not all types are available for every exercise. For each exercise, the available asset best suited for

identifying objects on and near the surface of the ocean would be used. These aircraft would be capable of flying at the slow safe speeds necessary to enable viewing of marine vertebrates with unobstructed, or minimally obstructed, downward and outward visibility. The exclusion and safety zone surveys may be cancelled in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

- Every attempt would be made to conduct the exercise in sea states that are ideal for marine mammal sighting—Beaufort Sea State 3 or less. In the event of a sea state of 4 or above, survey efforts would be increased within the zones. This would be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.
- The exercise would not be conducted unless the exclusion zone could be adequately monitored visually. Should low cloud cover or surface visibility prevent adequate visual monitoring as described previously, the exercise would be delayed until conditions improved, and all of the above monitoring criteria could be met.

- In the unlikely event that any marine mammal is observed to be harmed in the area, a detailed description of the animal would be taken, the location noted, and if possible, photos taken. This information would be provided to NMFS via the Navy's regional environmental coordinator for purposes of identification (see the draft Stranding Plan for detail).
- An after action report detailing the exercise's time line, the time the surveys commenced and terminated, amount, and types of all ordnance expended, and the results of survey efforts for each event would be submitted to NMFS.

Explosive Source Sonobuoys Used in EER/IEER (AN/SSQ-110A)

- Crews will conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search should be conducted below 457 m (500 yd) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft operations, crews are allowed to conduct coordinated area clearances.

- Crews shall conduct a minimum of 30 minutes of visual and aural monitoring of the search area prior to commencing the first post detonation. This 30-minute observation period may include pattern deployment time.

- For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 914 m (1,000 yd) of observed marine mammal activity, deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 914 m (1,000 yd) of the intended post position, co-locate the explosive source sonobuoy (AN/SSQ-110A) (source) with the receiver.

- When operationally feasible, crews will conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of RF range of these sensors.

- *Aural Detection*—If the presence of marine mammals is detected aurally, then that should cue the aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

- *Visual Detection*—If marine mammals are visually detected within 914 m (1,000 yd) of the explosive source sonobuoy (AN/SSQ-110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 914 m (1,000 yd) safety buffer, whichever occurs first. Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 914 m (1,000 yd) safety buffer.

- Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the "Payload 1 Release" command followed by the "Payload 2 Release" command. Aircrews shall refrain from using the "Scuttle" command when two payloads remain at a given post. Aircrews will ensure that a 914 m (1,000 yd) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

- Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary (detonation occurs by timer approximately 6 hours after water entry) or tertiary (detonation occurs by salt water soluble plug approximately 12 hours after water entry) method.

- Aircrews shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ-110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.
- Mammal monitoring shall continue until out of own-aircraft sensor range.

Mitigation Conclusions

NMFS has carefully evaluated the Navy's proposed mitigation measures and considered a broad range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse 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.
- 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.

In some cases, additional mitigation measures are required beyond those that the applicant proposes. Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(a) Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

(b) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(c) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(d) A reduction in the intensity of exposures (either total number or

number at biologically important time or location) to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(e) Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(f) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

Based on our evaluation of the Navy's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined preliminarily that the Navy's proposed mitigation measures (especially when the Adaptive Management (see Adaptive Management below) component is taken into consideration) are adequate means of effecting the least practicable adverse impacts on marine mammals 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. Further detail is included below.

The proposed rule comment period will afford the public an opportunity to submit recommendations, views and/or concerns regarding this action and the proposed mitigation measures. While NMFS has determined preliminarily that the Navy's proposed mitigation measures will effect the least practicable adverse impact on the affected species or stocks and their habitat, NMFS will consider all public comments to help inform our final decision. Consequently, the proposed mitigation measures may be refined, modified, removed, or added to prior to the issuance of the final rule based on public comments received, and where appropriate, further analysis of any additional mitigation measures.

NMFS believes that the range clearance procedures and shutdown/safety zone/exclusion zone measures the Navy has proposed will enable the Navy to avoid injuring marine mammals and will enable them to minimize the numbers of marine mammals exposed to

levels associated with TTS for the following reasons:

MFAS/HFAS

The Navy's standard protective measures indicate that they will ensure powerdown of MFAS/HFAS by 6-dB when a marine mammal is detected within 1,000 yd (914 m), powerdown of 4 more dB (or 10-dB total) when a marine mammal is detected within 500 yd (457 m), and will cease MFAS/HFAS transmissions when a marine mammal is detected within 200 yd (183 m).

PTS/Injury—NMFS believes that the proposed mitigation measures will allow the Navy to avoid exposing marine mammals to received levels of MFAS/HFAS sound that would result in injury for the following reasons:

- The estimated distance from the most powerful source at which cetaceans and all pinnipeds except harbor seals would receive levels at or above the threshold for PTS/injury/Level A Harassment is approximately 10 m (10.9 yd). The PTS threshold for harbor seals is lower, and the associated distance in which a harbor seal would experience PTS is approximately 50 m.
- NMFS believes that the probability that a marine mammal would approach within the above distances of the sonar dome (to the sides or below) without being seen by the watchstanders (who would then activate a shutdown if the animal was within 200 yd (183 m)) is very low, especially considering that animals would likely avoid approaching a source transmitting at that level at that distance.

- The model predicted that one harbor seal would be exposed to levels associated with injury, however, the model does not consider the mitigation or likely avoidance behaviors and NMFS believes that injury is unlikely when those factors are considered.
- *TTS*—NMFS believes that the proposed mitigation measures will allow the Navy to minimize exposure of marine mammals to received levels of MFAS/HFAS sound associated with TTS for the following reasons:
 - The estimated maximum distance from the most powerful source at which cetaceans and all pinnipeds except harbor seals would receive levels at or above the threshold for TTS is approximately 140 m from the source in most operating environments (except for harbor seals for which the distance is approximately 400 m).
 - Based on the size of the animals, average group size, behavior, and average dive time, NMFS believes that the probability that Navy watchstanders will visually detect mysticetes or sperm whales, dolphins, social pelagic species

(pilot whales, melon-headed whales, etc.), and sea lions at some point within the 1,000 yd (914 km) safety zone before they are exposed to the TTS threshold levels is high, which means that the Navy would often be able to shutdown or powerdown to avoid exposing these species to sound levels associated with TTS.

- However, seals and more cryptic (animals that are difficult to detect and observe), deep-diving cetaceans (beaked whales and *Kogia* spp.) are less likely to be visually detected and could potentially be exposed to levels of MFAS/HFAS expected to cause TTS. Animals at depth in one location would not be expected to be continuously exposed to repeated sonar signals given the typical 5–10+ knot speed of Navy surface ships during ASW events. During a typical one-hour subsurface dive by a beaked whale, the ship will have moved over 5 to 10 nm from the original location. Additionally, the Navy's model does not predict TTS exposures of beaked whales or *Kogia*, although it does predict TTS exposure of 245 harbor seals.

Additionally, the Navy's bow-riding mitigation exception for dolphins may sometimes result in dolphins being exposed to levels of MFAS/HFAS likely to result in TTS. However, there are combinations of factors that reduce the acoustic energy received by dolphins approaching ships to ride in bow waves. Dolphins riding a ship's bow wave are outside of the main beam of the MFAS vertical beam pattern. Source levels drop quickly outside of the main beam. Sidelobes of the radiate beam pattern that point to the surface are significantly lower in power. Together with spherical spreading losses, received levels in the ship's bow wave can be more than 42 dB less than typical source level (i.e., 235 dB – 42 dB = 193 dB SPL). Finally, bow wave riding dolphins are frequently in and out of a bubble layer generated by the breaking bow waves. This bubble layer is an excellent scatterer of acoustic energy and can further reduce received energy.

Underwater Explosives

The Navy utilizes exclusion zones (wherein explosive detonation will not begin/continue if animals are within the zone) for explosive exercises. Table 3 identifies the various explosives, the estimated distance at which animals will receive levels associated with take (see Acoustic Take Criteria Section), and the exclusion zone associated with the explosive types.

Mortality and Injury—NMFS believes that the mitigation measures will allow the Navy to avoid exposing marine mammals to underwater detonations that would result in injury or mortality for the following reasons:

- Surveillance for large charges (which includes aerial and passive acoustic detection methods, when available, to ensure clearance) begins two hours before the exercise and extends to 2 nm (3,704 m) from the source. Surveillance for all charges extends out 2–12 times the farthest distance from the source at which injury would be anticipated to occur (see Table 3).
- Animals would need to be less than 120–694 m (131–759 yd) (large explosives) or 21–112 m (23–123 yd) (smaller charges) from the source to be injured.
- Unlike for active sonar, an animal would need to be present at the exact moment of the explosion(s) (except for the short series of gunfire example in GUNEX) to be taken.
- The model predicted that 14 animals would be exposed to levels associated with injury, and 2 animals would be exposed to levels associated with death (though for the reasons explained above, NMFS does not believe they will be exposed to those levels).
- When the implementation of the exclusion zones (i.e., the fact that the Navy will not start a detonation or will not continue to detonate explosives if an animal is detected within the exclusion zone) is considered in combination with the factors described in the above bullets, NMFS believes that the Navy's mitigation will prevent injury and mortality to marine mammals from explosives.
- *TTS*—NMFS believes that the proposed mitigation measures will allow the Navy to minimize the exposure of marine mammals to underwater detonations that would result in TTS for the following reasons:
 - About 200 animals annually were predicted to be exposed to explosive levels that would result in TTS. For the reasons explained above, NMFS believes that most modeled TTS takes can be avoided, especially dolphins, mysticetes and sperm whales, and social pelagic species.
 - However, pinnipeds and more cryptic, deep-diving species (beaked whales and *Kogia* spp.) are less likely to be visually detected and could potentially be exposed to explosive levels expected to cause TTS. The model estimated that one beaked whale, zero *Kogia*, 44 northern fur seal, 29 northern elephant seal, 2 harbor seal, 1 California sea lion, and 3 Steller sea lions would be exposed to TTS levels.

Additionally, for two of the exercise types (SINKEX and BOMBEX), the distance at which an animal would be expected to receive sound or pressure levels associated with TTS (182 dB SEL or 23 psi) is sometimes larger than the exclusion zone, which means that for those two exercise types, some individuals will likely be exposed to levels associated with TTS outside of the exclusion zone.

Research

The Navy provides a significant amount of funding and support to marine research. In the past five years the agency funded over \$100 million (\$26 million in FY08 alone) to universities, research institutions, Federal laboratories, private companies, and independent researchers around the world to study marine mammals. The U.S. Navy sponsors 70% of all U.S. research concerning the effects of human-generated sound on marine mammals and 50% of such research conducted worldwide. Major topics of Navy-supported research include the following:

- Better understanding of marine species distribution and important habitat areas.
- Developing methods to detect and monitor marine species before and during training.
- Understanding the effects of sound on marine mammals, sea turtles, fish, and birds.
- Developing tools to model and estimate potential effects of sound.

This research is directly applicable to Fleet training activities, particularly with respect to the investigations of the potential effects of underwater noise sources on marine mammals and other protected species. Proposed training activities employ active sonar and underwater explosives, which introduce sound into the marine environment. The Marine Life Sciences Division of the Office of Naval Research currently coordinates six programs that examine the marine environment and are devoted solely to studying the effects of noise and/or the implementation of technology tools that will assist the Navy in studying and tracking marine mammals. The six programs are as follows:

- Environmental Consequences of Underwater Sound.
- Non-Auditory Biological Effects of Sound on Marine Mammals.
- Effects of Sound on the Marine Environment.
- Sensors and Models for Marine Environmental Monitoring.
- Effects of Sound on Hearing of Marine Animals, and

Environmental Consequences of Underwater Sound.

Non-Auditory Biological Effects of Sound on Marine Mammals.

Effects of Sound on the Marine Environment.

Sensors and Models for Marine Environmental Monitoring.

Effects of Sound on Hearing of Marine Animals, and

- Passive Acoustic Detection, Classification, and Tracking of Marine Mammals.

The Navy has also developed the technical reports referenced within this document, which include the Marine Resource Assessments and the Navy OPAREA Density Estimates (NODE) reports. Furthermore, research cruises by the National Marine Fisheries Service (NMFS) and by academic institutions have received funding from the U.S. Navy.

The Navy has sponsored several workshops to evaluate the current state of knowledge and potential for future acoustic monitoring of marine mammals. The workshops brought together acoustic experts and marine biologists from the Navy and other research organizations to present data and information on current acoustic monitoring research efforts and to evaluate the potential for incorporating similar technology and methods on instrumented ranges. However, acoustic detection, identification, localization, and tracking of individual animals still requires a significant amount of research effort to be considered a reliable method for marine mammal monitoring. The Navy supports research efforts on acoustic monitoring and will continue to investigate the feasibility of passive acoustics as a potential mitigation and monitoring tool.

Overall, the Navy will continue to fund ongoing marine mammal research, and is planning to coordinate long term monitoring/studies of marine mammals on various established ranges and operating areas. The Navy will continue to research and contribute to university/external research to improve the state of the science regarding marine species biology and acoustic effects. These efforts include mitigation and monitoring programs; data sharing with NMFS and via the literature for research and development efforts; and future research as described previously.

Memorandum of Agreement (MOA) for Navy Assistance With Stranding Investigations

The Navy and NMFS are currently developing a nationwide MOA (or other mechanism consistent with Federal fiscal law requirements (and all other applicable laws)), that will establish a framework whereby the Navy can (and NMFS will provide examples of how best to) assist NMFS with stranding investigations in certain circumstances.

Long-Term Prospective Study

Apart from this proposed rule, NMFS, with input and assistance from the Navy and several other agencies and entities,

will perform a longitudinal observational study of marine mammal strandings to systematically observe for and record the types of pathologies and diseases and investigate the relationship with potential causal factors (e.g., active sonar, seismic, weather). The study will not be a true "cohort" study, because we will be unable to quantify or estimate specific active sonar or other sound exposures for individual animals that strand. However, a cross-sectional or correlational analyses, a method of descriptive rather than analytical epidemiology, can be conducted to compare population characteristics, e.g., frequency of strandings and types of specific pathologies between general periods of various anthropogenic activities and non-activities within a prescribed geographic space. In the long-term study, we will more fully and consistently collect and analyze data on the demographics of strandings in specific locations and consider anthropogenic activities and physical, chemical, and biological environmental parameters. This approach in conjunction with true cohort studies (tagging animals, measuring received sounds, and evaluating behavior or injuries) in the presence of activities and non-activities will provide critical information needed to further define the impacts of MTEs and other anthropogenic and non-anthropogenic stressors. In coordination with the Navy and other Federal and non-Federal partners, the comparative study will be designed and conducted for specific sites during intervals of the presence of anthropogenic activities such as active sonar transmission or other sound exposures and absence to evaluate demographics of morbidity and mortality, lesions found, and cause of death or stranding. Additional data that will be collected and analyzed in an effort to control potential confounding factors include variables such as average sea temperature (or just season), meteorological or other environmental variables (e.g., seismic activity), fishing activities, etc. All efforts will be made to include appropriate controls (i.e., no active sonar or no seismic); environmental variables may complicate the interpretation of "control" measurements. The Navy and NMFS along with other partners are evaluating mechanisms for funding this study.

Monitoring

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth "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 LOAs 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.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(a) An increase in our understanding of how many marine mammals are likely to be exposed to levels of MFAS/HFAS (or explosives or other stimuli) that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.

(b) An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to MFAS/HFAS (at specific received levels), explosives, or other stimuli expected to result in take.

(c) An increase in our understanding of how anticipated takes of individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival).

(d) An increased knowledge of the affected species.

(e) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

(f) A better understanding and record of the manner in which the authorized entity complies with the incidental take authorization.

(g) An increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to better achieve the above goals.

Proposed Monitoring Plan for the NWTRC

The Navy has submitted a draft Monitoring Plan for the NWTRC which may be viewed at NMFS' Web site: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. NMFS and the Navy have worked together on the development of this plan in the months preceding the publication of this proposed rule; however, we are still refining the plan and anticipate that it will contain more details by the time NMFS issues the final rule.

Additionally, the plan may be modified or supplemented based on comments or new information received from the public during the public comment period. A summary of the primary components of the plan follows.

The draft Monitoring Plan for NWTRC has been designed as a collection of focused "studies" (described fully in the NWTRC draft Monitoring Plan) to gather data that will allow the Navy to address the following questions:

(a) Are marine mammals exposed to MFAS/HFAS, especially at levels associated with adverse effects (i.e., based on NMFS' criteria for behavioral harassment, TTS, or PTS)? If so, at what levels are they exposed?

(b) If marine mammals are exposed to MFAS/HFAS in the NWTRC Range Complex, do they redistribute geographically as a result of continued exposure? If so, how long does the redistribution last?

(c) If marine mammals are exposed to MFAS/HFAS, what are their behavioral responses to various levels?

(d) What are the behavioral responses of marine mammals and that are exposed to explosives at specific levels?

(e) Is the Navy's suite of mitigation measures for MFAS/HFAS (e.g., measures agreed to by the Navy through permitting) effective at preventing TTS, injury, and mortality of marine mammals?

Data gathered in these studies will be collected by qualified, professional marine mammal biologists that are experts in their field. They will use a combination of the following methods to collect data:

- Conducted vessel and aerial surveys.
- Passive acoustics.
- Marine mammal observers on Navy ships.
- Tagging (satellite and acoustic).

In the three proposed study designs (all of which cover multiple years), the above methods will be used separately or in combination to monitor marine mammals in different combinations before, during, and after training activities utilizing MFAS/HFAS.

This monitoring plan has been designed to gather data on all species of marine mammals that are observed in the NWTRC, however, where appropriate priority will be given to beaked whales, ESA-listed species, killer whales, and harbor porpoises. The Plan recognizes that deep-diving and cryptic species of marine mammals such as beaked whales have a low probability of detection (Barlow and Gisiner, 2006). Therefore, methods will be utilized to attempt to address this issue (e.g., passive acoustic monitoring).

In addition to the Monitoring Plan for NWTRC, by the end of 2009, the Navy will have completed an Integrated Comprehensive Monitoring Program (ICMP) Plan. The ICMP will provide the overarching structure and coordination

that will, over time, compile data from both range specific monitoring plans (such as AFAST, the Hawaii Range Complex, and the Southern California Range Complex) as well as Navy funded research and development (R&D) studies. The primary objectives of the ICMP are to:

- Monitor Navy training events, particularly those involving MFAS and underwater detonations, for compliance with the terms and conditions of ESA Section 7 consultations or MMPA authorizations;
- Collect data to support estimating the number of individuals exposed to sound levels above current acoustic thresholds;
- Assess the efficacy of the Navy's current marine species mitigation;
- Add to the knowledge base on potential behavioral and physiological effects to marine species from mid-frequency active sonar and underwater detonations; and,
- Assess the practicality and effectiveness of a number of mitigation tools and techniques (some not yet in use).

More information about the ICMP may be found in the draft Monitoring Plan for NWTRC.

Monitoring Workshop

The Navy, with guidance and support from NMFS, will convene a Monitoring Workshop, including marine mammal and acoustic experts as well as other interested parties, in 2011. The Monitoring Workshop participants will review the monitoring results from the previous two years of monitoring pursuant to the NWTRC rule as well as monitoring results from other Navy rules and LOAs (e.g., the Southern California Range Complex (SOCAL), Hawaii Range Complex (HRC), etc.). The Monitoring Workshop participants would provide their individual

recommendations to the Navy and NMFS on the monitoring plan(s) after also considering the current science (including Navy research and development) and working within the framework of available resources and feasibility of implementation. NMFS and the Navy would then analyze the input from the Monitoring Workshop participants and determine the best way forward from a national perspective. Subsequent to the Monitoring Workshop, modifications would be applied to monitoring plans as appropriate.

Adaptive Management

The final regulations governing the take of marine mammals incidental to Navy training exercises in the NWTRC

will contain an adaptive management component. Our understanding of the effects of MFAS/HFAS and explosives on marine mammals is still in its relative infancy, and yet the science in this field is evolving fairly quickly. These circumstances make the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations for activities that have been associated with marine mammal mortality in certain circumstances and locations (though not the NWTRC in the Navy's over 60 years of use of the area for testing and training). The use of adaptive management will allow NMFS to consider new data from different sources to determine (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added (or deleted) if new data suggests that such modifications are appropriate (or are not appropriate) for subsequent annual LOAs.

Following are some of the possible sources of applicable data:

- Results from the Navy's monitoring from the previous year (either from NWTRC or other locations).

- Findings of the Workshop that the Navy will convene in 2011 to analyze monitoring results to date, review current science, and recommend modifications, as appropriate to the monitoring protocols to increase monitoring effectiveness.

- Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP, which is discussed elsewhere in this document).

- Results from specific stranding investigations (either from NWTRC or other locations, and involving coincident MFAS/HFAS of explosives training or not involving coincident use).

- Results from the Long Term Prospective Study described above.

- Results from general marine mammal and sound research (funded by the Navy (described above) or otherwise).

- Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

Mitigation measures could be modified or added (or deleted) if new data suggests that such modifications would have (or do not have) a reasonable likelihood of accomplishing the goals of mitigation laid out in this proposed rule and if the measures are practicable. NMFS will also coordinate with the Navy to modify or

add to (or delete) the existing monitoring requirements if the new data suggest that the addition of (or deletion of) a particular measure would more effectively accomplish the goals of monitoring laid out in this proposed rule. The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider the data and issue annual LOAs. NMFS and the Navy will meet annually, prior to LOA issuance, to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate.

Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth “requirements pertaining to the monitoring and reporting of such taking”. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. Some of the reporting requirements are still in development and the final rule may contain additional details not contained in the proposed rule. Additionally, proposed reporting requirements may be modified, removed, or added based on information or comments received during the public comment period. Currently, there are several different reporting requirements pursuant to these proposed regulations:

General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS is notified immediately (see Communication Plan) or as soon as clearance procedures allow) if an injured, stranded, or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or during or shortly after MFAS, HFAS, or underwater explosive detonations, the Navy will report the same information as listed above as soon as operationally feasible and clearance procedures allow.

General Notification of a Ship Strike

In the event of a ship strike by any Navy vessel, at any time or place, the Navy shall do the following:

- Immediately report to NMFS the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead (or unknown).
- Report to NMFS as soon as operationally feasible the size and length of animal, an estimate of the injury status (ex., dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status.
- Report to NMFS the vessel length, speed, and heading as soon as feasible.
- Provide NMFS a photo or video, if equipment is available.

Event Communication Plan

The Navy shall develop a communication plan that will include all of the communication protocols (phone trees, etc.) and associated contact information required for NMFS and the Navy to carry out the necessary expeditious communication required in the event of a stranding or ship strike, including as described in the proposed notification measures above.

Annual NWTRC Report

The Navy will submit an Annual NWTRC Report on October 1 of every year (covering data gathered through August 1). This report shall contain the subsections and information indicated below.

ASW Summary

This section shall include the following information as summarized from non-major training exercises (unit-level exercises, such as TRACKEXs and MIW):

(a) *Total Hours*—Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.))

(b) *Cumulative Impacts*—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major training (*i.e.*, ULT) utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across NWTRC. The Navy shall include (in the NWTRC annual report) a brief annual progress update on the status of the development of an effective and unclassified method to report this information until an agreed-upon (with

NMFS) method has been developed and implemented.

Sinking Exercises (SINKEXs)

This section shall include the following information for each SINKEX completed that year:

(a) *Exercise info*:

- (i) Location.
- (ii) Date and time exercise began and ended.
- (iii) Total hours of observation by watchstanders before, during, and after exercise.
- (iv) Total number and types of rounds expended/explosives detonated.
- (v) Number and types of passive acoustic sources used in exercise.
- (vi) Total hours of passive acoustic search time.
- (vii) Number and types of vessels, aircraft, etc., participating in exercise.
- (viii) Wave height in feet (high, low and average during exercise).
- (ix) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(b) *Individual marine mammal observation during SINKEX (by Navy lookouts) info*:

- (i) Location of sighting.
- (ii) Species (if not possible— indication of whale/dolphin/pinniped).
- (iii) Number of individuals.
- (iv) Calves observed (y/n).
- (v) Initial detection sensor.
- (vi) Length of time observers maintained visual contact with marine mammal.
- (vii) Wave height.
- (viii) Visibility.
- (ix) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.
- (x) Distance of marine mammal from actual detonations (or target spot if not yet detonated)—use four categories to define distance: (1) The modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (694 m for SINKEX in NWTRC); (2) the required exclusion zone (1 nm for SINKEX in NWTRC); (3) the required observation distance (if different than the exclusion zone (2 nm for SINKEX in NWTRC); and (4) greater than the required observed distance. For example, in this case, the observer would indicate if < m, from 694 m–1 nm, from 1 nm–2 nm, and > 2 nm.
- (xi) *Observed behavior*— Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/ speed, floating on surface and not

swimming etc.), including speed and direction.

(xii) *Resulting mitigation implementation*—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

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

Improved Extended Echo-Ranging System (IEER) Summary

This section shall include an annual summary of the following IEER information:

- (a) Total number of IEER events conducted in NWTRC.
- (b) Total expended/detonated rounds (buoys).
- (c) Total number of self-scuttled IEER rounds.

Explosives Summary

The Navy is in the process of improving the methods used to track explosive use to provide increased granularity. To the extent practicable, the Navy will provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy’s explosive tracking methods, including improvements from the previous year.

- (a) Total annual number of each type of explosive exercise (of those identified as part of the “specified activity” in this final rule) conducted in NWTRC.
- (b) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

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NWTRC 5-Yr Comprehensive Report

The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which annual reports are required (Annual NWTRC Exercise Reports and NWTRC Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2013), covering activities that have occurred through June 1, 2013.

Comprehensive National ASW Report

By June, 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans for the Northwest Training Range Complex, the Southern

California Range Complex, the Atlantic Fleet Active Sonar Training, the Hawaii Range Complex, the Marianas Islands Range Complex, and the Gulf of Alaska.

Estimated Take of Marine Mammals

As mentioned previously, one of the main purposes of NMFS’ effects assessments is to identify the permissible methods of taking, meaning: The nature of the take (*e.g.*, resulting from anthropogenic noise vs. from ship strike, etc.); the regulatory level of take (*i.e.*, mortality vs. Level A or Level B harassment) and the amount of take. In the Potential Effects of Exposure of Marine Mammal to MFAS/HFAS and Underwater Detonations section, NMFS identified the lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), and behavioral responses that could potentially result from exposure to MFAS/HFAS or underwater explosive detonations. In this section, we will relate the potential effects to marine mammals from MFAS/HFAS and underwater detonation of explosives to the MMPA statutory definitions of Level A and Level B Harassment and attempt to quantify the effects that might occur from the specific training activities that the Navy is proposing in the NWTRC.

As mentioned previously, behavioral responses are context-dependent, complex, and influenced to varying degrees by a number of factors other than just received level. For example, an animal may respond differently to a sound emanating from a ship that is moving towards the animal than it would to an identical received level coming from a vessel that is moving away, or to a ship traveling at a different speed or at a different distance from the animal. At greater distances, though, the nature of vessel movements could also potentially not have any effect on the animal’s response to the sound. In any case, a full description of the suite of factors that elicited a behavioral response would sometimes include a mention of the vicinity, speed and movement of the vessel, or other factors. So, while sound sources and the received levels are the primary focus of the analysis and those that are laid out quantitatively in the regulatory text, it is with the understanding that other factors related to the training are sometimes contributing to the behavioral responses of marine mammals, although they cannot be quantified.

Definition of Harassment

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines “harassment” as: (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].

Level B Harassment

Of the potential effects that were described in the Potential Effects of Exposure of Marine Mammal to MFAS/HFAS and Underwater Detonations Section, the following are the types of effects that fall into the Level B Harassment category:

Behavioral Harassment—Behavioral disturbance that rises to the level described in the definition above, when resulting from exposures to MFAS/HFAS or underwater detonations (or another stressor), is considered Level B Harassment. Louder sounds (when other factors are not considered) are generally expected to elicit a stronger response. Some of the lower level physiological stress responses discussed in the Potential Effects of Exposure of Marine Mammal to MFAS/HFAS and Underwater Detonations Section: Stress Section will also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When Level B Harassment is predicted based on estimated behavioral responses, those takes may have a stress-related physiological component as well.

In the effects section above, we described the Southall *et al.*, (2007) severity scaling system and listed some examples of the three broad categories of behaviors: (0–3: Minor and/or brief behaviors); 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival); 7–9 (Behaviors considered likely to affect the aforementioned vital rates). Generally speaking, MMPA Level B Harassment, as defined in this document, would include the behaviors described in the 7–9 category, and a subset, dependent on context and other considerations, of the behaviors described in the 4–6 categories.

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Behavioral harassment would not typically include behaviors ranked 0–3 in Southall *et al.* (2007).

Acoustic Masking and Communication Impairment—The severity or importance of an acoustic masking event can vary based on the length of time that the masking occurs, the frequency of the masking signal (which determines which sounds that are masked, which may be of varying importance to the animal), and other factors. Some acoustic masking would be considered Level B Harassment, if it can disrupt natural behavioral patterns by interrupting or limiting the marine mammal's receipt or transmittal of important information or environmental cues.

TTS—As discussed previously, TTS can disrupt behavioral patterns by inhibiting an animal's ability to communicate with conspecifics and interpret other environmental cues important for predator avoidance and prey capture. However, depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication.

The following physiological mechanisms are thought to play a role in inducing auditory fatigue: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than PTS, they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicate that although PTS is a tissue

injury, TTS is not, because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to either MFAS/HFAS or underwater detonations) as Level B Harassment, not Level A Harassment (injury).

Level A Harassment

Of the potential effects that were described in the Potential Effects of Exposure of Marine Mammals to MFAS/HFAS and Underwater Detonations Section, following are the types of effects that fall into the Level A Harassment category:

PTS—PTS (resulting either from exposure to MFAS/HFAS or explosive detonations) is irreversible and considered an injury. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and result in changes in the chemical composition of the inner ear fluids. Although PTS is considered an injury, the effects of PTS on the fitness of an individual can vary based on the degree of TTS and the frequency band that it is in.

Tissue Damage due to Acoustically Mediated Bubble Growth—A few theories suggest ways in which gas bubbles become enlarged through exposure to intense sounds (MFAS/HFAS) to the point where tissue damage results. In rectified diffusion, exposure to a sound field would cause bubbles to increase in size. A short duration of active sonar pings (such as that which an animal exposed to MFAS would be most likely to encounter) would not likely be long enough to drive bubble growth to any substantial size. Alternately, bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. The degree of supersaturation and exposure levels observed to cause microbubble destabilization are unlikely to occur, either alone or in concert because of how close an animal would need to be to the sound source to be exposed to high enough levels, especially considering the likely avoidance of the sound source and the required mitigation. Still, possible tissue damage from either of these processes would be considered an injury.

Tissue Damage due to Behaviorally Mediated Bubble Growth—Several authors suggest mechanisms in which marine mammals could behaviorally

respond to exposure to MFAS/HFAS by altering their dive patterns in a manner (unusually rapid ascent, unusually long series of surface dives, *etc.*) that might result in unusual bubble formation or growth ultimately resulting in tissue damage (emboli, *etc.*). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. There is considerable disagreement among scientists as to the likelihood of this phenomenon (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Although it has been argued that the tissue effects observed from recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.*, 2003; Fernandez *et al.*, 2005), nitrogen bubble formation as the cause of the traumas has not been verified. If tissue damage does occur by this phenomenon, it would be considered an injury.

Physical Disruption of Tissues Resulting from Explosive Shock Wave—Physical damage of tissues resulting from a shock wave (from an explosive detonation) is classified as an injury. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000) and gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill 1978; Yelverton *et al.*, 1973). Nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Severe damage (from the shock wave) to the ears can include tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear.

Vessel Strike, Ordnance Strike, Entanglement—Although not anticipated (or authorized) to occur, vessel strike, ordnance strike, or entanglement in materials associated with the specified action are considered Level A Harassment or mortality.

Acoustic Take Criteria

For the purposes of an MMPA incidental take authorization, three types of take are identified: Level B Harassment; Level A Harassment; and mortality (or serious injury leading to mortality). The categories of marine mammal responses (physiological and behavioral) that fall into the two harassment categories were described in the previous section.

Because the physiological and behavioral responses of the majority of the marine mammals exposed to MFAS/HFAS and underwater detonations

cannot be detected or measured (not all responses visible external to animal, portion of exposed animals underwater (so not visible), many animals located many miles from observers and covering very large area, *etc.*) and because NMFS must authorize take prior to the impacts to marine mammals, a method is needed to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the proposed action. To this end, NMFS developed acoustic criteria that estimate at what received level (when exposed to MFAS/HFAS or explosive detonations) Level B Harassment, Level A Harassment, and mortality (for explosives) of marine mammals would occur. The acoustic criteria for MFAS/HFAS and Underwater Detonations (IEER) are discussed below.

MFAS/HFAS Acoustic Criteria

Because relatively few applicable data exist to support acoustic criteria specifically for HFAS and because such a small percentage of the active sonar pings that marine mammals will likely be exposed to incidental to this activity come from a HFAS source (the vast majority come from MFAS sources), NMFS will apply the criteria developed for the MFAS to the HFAS as well.

NMFS utilizes three acoustic criteria for MFAS/HFAS: PTS (injury)—Level A Harassment, TTS (Level B Harassment), and behavioral harassment (Level B Harassment). Because the TTS and PTS criteria are derived similarly and the PTS criteria was extrapolated from the TTS data, the TTS and PTS acoustic criteria will be presented first, before the behavioral criteria.

For more information regarding these criteria, please see the Navy's DEIS for NWTRC.

Level B Harassment Threshold (TTS)

As mentioned above, behavioral disturbance, acoustic masking, and TTS are all considered Level B Harassment. Marine mammals would usually be behaviorally disturbed at lower received levels than those at which they would likely sustain TTS, so the levels at which behavioral disturbance are likely to occur is considered the onset of Level B Harassment. The behavioral responses of marine mammals to sound are variable, context specific, and, therefore, difficult to quantify (*see Risk Function section, below*). Alternately, TTS is a physiological effect that has been studied and quantified in laboratory conditions. Because data exist to support an estimate of at what received levels marine mammals will incur TTS, NMFS uses an acoustic criteria to estimate the number of marine

mammals that might sustain TTS. TTS is a subset of Level B Harassment (along with sub-TTS behavioral harassment) and we are not specifically required to estimate those numbers; however, the more specifically we can estimate the affected marine mammal responses, the better the analysis.

A number of investigators have measured TTS in marine mammals. These studies measured hearing thresholds in trained marine mammals before and after exposure to intense sounds. The existing cetacean TTS data are summarized in the following bullets.

- Schlundt *et al.* (2007) reported the results of TTS experiments conducted with 5 bottlenose dolphins and 2 belugas exposed to 1-second tones. This paper also includes a reanalysis of preliminary TTS data released in a technical report by Ridgway *et al.* (1997). At frequencies of 3, 10, and 20 kHz, sound pressure levels (SPLs) necessary to induce measurable amounts (6 dB or more) of TTS were between 192 and 201 dB re 1 μ Pa (EL = 192 to 201 dB re 1 μ Pa²-s). The mean exposure SPL and EL for onset-TTS were 195 dB re 1 μ Pa and 195 dB re 1 μ Pa²-s, respectively.

- Finneran *et al.* (2001, 2003, 2005) described TTS experiments conducted with bottlenose dolphins exposed to 3-kHz tones with durations of 1, 2, 4, and 8 seconds. Small amounts of TTS (3 to 6 dB) were observed in one dolphin after exposure to ELs between 190 and 204 dB re 1 μ Pa²-s. These results were consistent with the data of Schlundt *et al.* (2000) and showed that the Schlundt *et al.* (2000) data were not significantly affected by the masking sound used.

These results also confirmed that, for tones with different durations, the amount of TTS is best correlated with the exposure EL rather than the exposure SPL.

- Nachtigall *et al.* (2003) measured TTS in a bottlenose dolphin exposed to octave-band sound centered at 7.5 kHz. Nachtigall *et al.* (2003a) reported TTSs of about 11 dB measured 10 to 15 minutes after exposure to 30 to 50 minutes of sound with SPL 179 dB re 1 μ Pa (EL about 213 dB re μ Pa²-s). No TTS was observed after exposure to the same sound at 165 and 171 dB re 1 μ Pa. Nachtigall *et al.* (2004) reported TTSs of around 4 to 8 dB 5 minutes after exposure to 30 to 50 minutes of sound with SPL 160 dB re 1 μ Pa (EL about 193 to 195 dB re 1 μ Pa²-s). The difference in results was attributed to faster post-exposure threshold measurement—TTS may have recovered before being detected by Nachtigall *et al.* (2003). These studies showed that, for long-duration exposures, lower sound

pressures are required to induce TTS than are required for short-duration tones.

- Finneran *et al.* (2000, 2002) conducted TTS experiments with dolphins and belugas exposed to impulsive sounds similar to those produced by distant underwater explosions and seismic waterguns. These studies showed that, for very short-duration impulsive sounds, higher sound pressures were required to induce TTS than for longer-duration tones.
- Finneran *et al.* (2007) conducted TTS experiments with bottlenose dolphins exposed to intense 20 kHz fatiguing tone. Behavioral and auditory evoked potentials (using sinusoidal amplitude modulated tones creating auditory steady state response [AASSR]) were used to measure TTS. The fatiguing tone was either 16 (mean = 193 re 1 μ Pa, SD = 0.8) or 64 seconds (185–186 re 1 μ Pa) in duration. TTS ranged from 19–33 dB from behavioral measurements and 40–45 dB from ASSR measurements.

- Kastak *et al.* (1999a, 2005) conducted TTS experiments with three species of pinnipeds, California sea lion, northern elephant seal and a Pacific harbor seal, exposed to continuous underwater sounds at levels of 80 and 95 dB sensation level at 2.5 and 3.5 kHz for up to 50 minutes. Mean TTS shifts of up to 12.2 dB occurred with the harbor seals showing the largest shift of 28.1 dB. Increasing the sound duration had a greater effect on TTS than increasing the sound level from 80 to 95 dB.

Some of the more important data obtained from these studies are onset-TTS levels (exposure levels sufficient to cause a just-measurable amount of TTS) often defined as 6 dB of TTS (for example, Schlundt *et al.*, 2000) and the fact that energy metrics (sound exposure levels (SEL), which include a duration component) better predict when an animal will sustain TTS than pressure (SPL) alone. NMFS' TTS criteria (which indicate the received level at which onset TTS (>6dB) is induced) for MFAS/HFAS are as follows:

- *Cetaceans*—195 dB re 1 μ Pa²-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low- or high-frequency cetaceans (Southall *et al.*, (2007)).
- *Harbor Seals (and closely related species)*—183 dB re 1 μ Pa²-s.
- *Northern Elephant Seals (and closely related species)*—204 dB re 1 μ Pa²-s.
- *California Sea Lions (and closely related species)*—206 dB re 1 μ Pa²-s.

A detailed description of how TTS criteria were derived from the results of the above studies may be found in Chapter 3 of Southall *et al.*, (2007), as well as the Navy's NWTRC LOA application. Because they are both otariids, the California sea lion criterion is used to estimate take of northern fur seals for this authorization.

Level A Harassment Threshold (PTS)

For acoustic effects, because the tissues of the ear appear to be the most susceptible to the physiological effects of sound, and because threshold shifts tend to occur at lower exposures than other more serious auditory effects, NMFS has determined that PTS is the best indicator for the smallest degree of injury that can be measured. Therefore, the acoustic exposure associated with onset-PTS is used to define the lower limit of the Level A harassment.

PTS data do not currently exist for marine mammals and are unlikely to be obtained due to ethical concerns. However, PTS levels for these animals may be estimated using TTS data from marine mammals and relationships between TTS and PTS that have been discovered through study of terrestrial mammals. NMFS uses the following acoustic criteria for injury:

- Cetaceans—215 dB re 1 $\mu\text{Pa}^2\text{-s}$ (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low-or high-frequency cetaceans (Southall *et al.*, (2007)).
- Harbor Seals (and closely related species)—203 dB re 1 $\mu\text{Pa}^2\text{-s}$.
- Northern Elephant Seals (and closely related species)—224 dB re 1 $\mu\text{Pa}^2\text{-s}$.
- California Sea Lions (and closely related species)—226 dB re 1 $\mu\text{Pa}^2\text{-s}$.

These criteria are based on a 20 dB increase in SEL over that required for onset-TTS. Extrapolations from terrestrial mammal data indicate that TTS occurs at 40 dB or more of TS, and that TS growth occurs at a rate of approximately 1.6 dB TS per dB increase in EL. There is a 34-dB TS difference between onset-TTS (6 dB) and onset-PTS (40 dB). Therefore, an animal would require approximately 20dB of additional exposure (34 dB divided by 1.6 dB) above onset-TTS to reach PTS. A detailed description of how TTS criteria were derived from the results of the above studies may be found in Chapter 3 of Southall *et al.* (2007), as well as the Navy's NWTRC LOA application. Southall *et al.* (2007) recommend a precautionary dual criteria for TTS (230 dB re 1 μPa (SPL peak pressure) in addition to 215 dB re 1 $\mu\text{Pa}^2\text{-s}$ (SEL)) to account for the potentially damaging transients

embedded within non-pulse exposures. However, in the case of MFAS/HFAS, the distance at which an animal would receive 215 dB (SEL) is farther from the source (*i.e.*, more conservative) than the distance at which they would receive 230 dB (SPL peak pressure) and therefore, it is not necessary to consider 230 dB peak.

We note here that behaviorally mediated injuries (such as those that have been hypothesized as the cause of some beaked whale strandings) could potentially occur in response to received levels lower than those believed to directly result in tissue damage. As mentioned previously, data to support a quantitative estimate of these potential effects (for which the exact mechanism is not known and in which factors other than received level may play a significant role) do not exist. However, based on the number of years (more than 40) and number of hours of MFAS per year that the U.S. (and other countries) has operated compared to the reported (and verified) cases of associated marine mammal strandings, NMFS believes that the probability of these types of injuries is very low (especially in the NWTRC, in which no major exercises using multiple surface vessel sources will occur and in which the surface vessel sonar use is less than 110 hours annually).

Level B Harassment Risk Function (Behavioral Harassment)

In 2006, NMFS issued the first MMPA authorization to allow the take of marine mammals incidental to MFAS (to the Navy for the Rim of the Pacific Exercises (RIMPAC)). For that authorization, NMFS used 173 dB SEL as the criterion for the onset of behavioral harassment (Level B Harassment). This type of single number criterion is referred to as a step function, in which (in this example) all animals estimated to be exposed to received levels above 173 dB SEL would be predicted to be taken by Level B Harassment and all animals exposed to less than 173 dB SEL would not be taken by Level B Harassment. As mentioned previously, marine mammal behavioral responses to sound are highly variable and context specific (affected by differences in acoustic conditions; differences between species and populations; differences in gender, age, reproductive status, or social behavior; or the prior experience of the individuals), which does not support the use of a step function to estimate behavioral harassment.

Unlike step functions, acoustic risk continuum functions (which are also called "exposure-response functions,"

"dose-response functions," or "stress-response functions" in other risk assessment contexts) allow for probability of a response that NMFS would classify as harassment to occur over a range of possible received levels (instead of one number) and assume that the probability of a response depends first on the "dose" (in this case, the received level of sound) and that the probability of a response increases as the "dose" increases (see Figure 1a). In January 2009, NMFS issued 3 final rules governing the incidental take of marine mammals (Navy's Hawaii Range Complex, Southern California Range Complex, and Atlantic Fleet Active Sonar Training) that used a risk continuum to estimate the percentage of marine mammals exposed to various levels of MFAS that would respond in a manner NMFS considers harassment. The Navy and NMFS have previously used acoustic risk functions to estimate the probable responses of marine mammals to acoustic exposures for other training and research programs. Examples of previous application include the Navy FEISs on the SURTASS LFA sonar (U.S. Department of the Navy, 2001c); the North Pacific Acoustic Laboratory experiments conducted off the Island of Kauai (Office of Naval Research, 2001), and the Supplemental EIS for SURTASS LFA sonar (U.S. Department of the Navy, 2007d). As discussed in the Effects section, factors other than received level (such as distance from or bearing to the sound source) can affect the way that marine mammals respond; however, data to support a quantitative analysis of those (and other factors) do not currently exist. NMFS will continue to modify these criteria as new data that meet NMFS standards of quality become available and can be appropriately and effectively incorporated.

The particular acoustic risk functions developed by NMFS and the Navy (see Figures 1a and 1b) estimate the probability of behavioral responses to MFAS/HFAS (interpreted as the percentage of the exposed population) that NMFS would classify as harassment for the purposes of the MMPA given exposure to specific received levels of MFAS/HFAS. The mathematical function (below) underlying this curve is a cumulative probability distribution adapted from a solution in Feller (1968) and was also used in predicting risk for the Navy's SURTASS LFA MMPA authorization as well.

$$R = \frac{1 - \left(\frac{L-B}{K} \right)^{-A}}{1 - \left(\frac{L-B}{K} \right)^{-2.4}}$$

Where:

R = Risk (0–1.0)

L = Received level (dB re: 1 μPa)

B = Basement received level = 120 dB re: 1 μPa

K = Received level increment above B where 50-percent risk = 45 dB re: 1 μPa

A = Risk transition sharpness parameter = 10 (odontocetes and pinnipeds) or 8 (mysticetes)

In order to use this function to estimate the percentage of an exposed population that would respond in a manner that NMFS classifies as Level B Harassment, based on a given received level, the values for B, K and A need to be identified.

B Parameter (Basement)—The B parameter is the estimated received level below which the probability of disruption of natural behavioral patterns, such as migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered approaches zero for the MFAS/HFAS risk assessment. At this received level, the curve would predict that the percentage of the exposed population that would be taken by Level B Harassment approaches zero. For MFAS/HFAS, NMFS has determined that B = 120 dB. This level is based on a broad overview of the levels at which many species have been reported responding to a variety of sound sources.

K Parameter (representing the 50 percent Risk Point)—The K parameter is based on the received level that corresponds to 50% risk, or the received level at which we believe 50% of the animals exposed to the designated received level will respond in a manner that NMFS classifies as Level B Harassment. The K parameter (K = 45 dB) is based on three data sets in which marine mammals exposed to mid-frequency sound sources were reported to respond in a manner that NMFS would classify as Level B Harassment. There is widespread consensus that marine mammal responses to MFA sound signals need to be better defined using controlled exposure experiments (Cox *et al.*, 2006; Southall *et al.*, 2007). The Navy is contributing to an ongoing 3-Phase behavioral response study in the Bahamas that is expected to provide some initial information on beaked whales, the species identified as the most sensitive to MFAS. NMFS is leading this international effort with

scientists from various academic institutions and research organizations to conduct studies on how marine mammals respond to underwater sound exposures. The results from Phase 1 of this study are discussed in the Potential Effects of Specified Activities on Marine Mammals section and the results from Phase 2 are expected to be available in the fall of 2009. Phase 3 will be conducted in the Mediterranean Sea in summer 2009. Additionally, the Navy recently tagged whales in conjunction with the 2008 RIMPAC exercises; however, analysis of these data is not yet complete. Until additional appropriate data are available, however, NMFS and the Navy have determined that the following three data sets are most applicable for direct use in establishing the K parameter for the MFAS/HFAS risk function. These data sets, summarized below, represent the only known data that specifically relate altered behavioral responses (that NMFS would consider Level B Harassment) to exposure—at specific received levels—to MFAS and sources within or having components within the range of MFAS (1–10 kHz).

Even though these data are considered the most representative of the proposed specified activities, and therefore the most appropriate on which to base the K parameter (which basically determines the midpoint) of the risk function, these data have limitations, which are discussed in Appendix D of the Navy's DEIS for NWTRC.

1. Controlled Laboratory Experiments with Odontocetes (SSC Data set)—Most of the observations of the behavioral responses of toothed whales resulted from a series of controlled experiments on bottlenose dolphins and beluga whales conducted by researchers at SSC's facility in San Diego, California (Finneran *et al.*, 2001, 2003, 2005; Finneran and Schlundt, 2004; Schlundt *et al.*, 2000). In experimental trials (designed to measure TTS) with marine mammals trained to perform tasks when prompted, scientists evaluated whether the marine mammals still performed these tasks when exposed to mid-frequency tones. Altered behavior during experimental trials usually involved refusal of animals to return to the site of the sound stimulus, but also included attempts to avoid an exposure in progress, aggressive behavior, or refusal to further participate in tests.

Finneran and Schlundt (2004) examined behavioral observations recorded by the trainers or test coordinators during the Schlundt *et al.*, (2000) and Finneran *et al.*, (2001, 2003, 2005) experiments. These included observations from 193 exposure sessions

(fatiguing stimulus level > 141 dB re 1 μPa) conducted by Schlundt *et al.*, (2000) and 21 exposure sessions conducted by Finneran *et al.*, (2001, 2003, 2005). The TTS experiments that supported Finneran and Schlundt (2004) are further explained below:

- Schlundt *et al.*, (2000) provided a detailed summary of the behavioral responses of trained marine mammals during TTS tests conducted at SSC San Diego with 1-sec tones and exposure frequencies of 0.4 kHz, 3 kHz, 10 kHz, 20 kHz and 75 kHz. Schlundt *et al.*, (2000) reported eight individual TTS experiments. The experiments were conducted in San Diego Bay. Because of the variable ambient noise in the bay, low-level broadband masking noise was used to keep hearing thresholds consistent despite fluctuations in the ambient noise. Schlundt *et al.*, (2000) reported that "behavioral alterations," or deviations from the behaviors the animals being tested had been trained to exhibit, occurred as the animals were exposed to increasing fatiguing stimulus levels.

- Finneran *et al.*, (2001, 2003, 2005) conducted 2 separate TTS experiments using 1-sec tones at 3 kHz. The test methods were similar to that of Schlundt *et al.*, (2000) except the tests were conducted in a pool with very low ambient noise level (below 50 dB re 1 $\mu\text{Pa}^2/\text{hertz}$ [Hz]), and no masking noise was used. In the first, fatiguing sound levels were increased from 160 to 201 dB SPL. In the second experiment, fatiguing sound levels between 180 and 200 dB SPL were randomly presented.

Bottlenose dolphins exposed to 1-second (sec) intense tones exhibited short-term changes in behavior above received sound levels of 178 to 193 dB re 1 μPa (rms), and beluga whales did so at received levels of 180 to 196 dB and above.

2. Mysticete Field Study (Nowacek *et al.*, 2004)—The only available and applicable data relating mysticete responses to exposure to mid-frequency sound sources is from Nowacek *et al.*, (2004). Nowacek *et al.*, (2004) documented observations of the behavioral response of North Atlantic right whales exposed to alert stimuli containing mid-frequency components in the Bay of Fundy. Investigators used archival digital acoustic recording tags (DTAG) to record the behavior (by measuring pitch, roll, heading, and depth) of right whales in the presence of an alert signal, and to calibrate received sound levels. The alert signal was 18 minutes of exposure consisting of three 2-minute signals played sequentially three times over. The three signals had a 60% duty cycle and

consisted of: (1) Alternating 1-sec pure tones at 500 Hz and 850 Hz; (2) a 2-sec logarithmic down-sweep from 4,500 Hz to 500 Hz; and (3) a pair of low (1,500 Hz)-high (2,000 Hz) sine wave tones amplitude modulated at 120 Hz and each 1-sec long. The purposes of the alert signal were (a) to pique the mammalian auditory system with disharmonic signals that cover the whales' estimated hearing range; (b) to maximize the signal to noise ratio (obtain the largest difference between background noise) and (c) to provide localization cues for the whale. The maximum source level used was 173 dB SPL.

Nowacek *et al.* (2004) reported that five out of six whales exposed to the alert signal with maximum received levels ranging from 133 to 148 dB re 1 μ Pa significantly altered their regular behavior and did so in identical fashion. Each of these five whales: (i) Abandoned their current foraging dive prematurely as evidenced by curtailing their 'bottom time'; (ii) executed a shallow-angled, high power (*i.e.*, significantly increased fluke stroke rate) ascent; (iii) remained at or near the surface for the duration of the exposure, an abnormally long surface interval; and (iv) spent significantly more time at subsurface depths (1–10 m) compared with normal surfacing periods when whales normally stay within 1 m (1.1 yd) of the surface.

3. *Odontocete Field Data (Haro Strait—USS SHOUP)*—In May 2003, killer whales (*Orcinus orca*) were observed exhibiting behavioral responses generally described as avoidance behavior while the U.S. Ship (USS) SHOUP was engaged in MFAS in the Haro Strait in the vicinity of Puget Sound, Washington. Those observations have been documented in three reports developed by Navy and NMFS (NMFS, 2005; Fromm, 2004a, 2004b; DON, 2003). Although these observations were made in an uncontrolled environment, the sound field that may have been associated with the active sonar operations was estimated using standard

acoustic propagation models that were verified (for some but not all signals) based on calibrated *in situ* measurements from an independent researcher who recorded the sounds during the event. Behavioral observations were reported for the group of whales during the event by an experienced marine mammal biologist who happened to be on the water studying them at the time. The observations associated with the USS SHOUP provide the only data set available of the behavioral responses of wild, non-captive animal upon actual exposure to AN/SQS-53 sonar.

U.S. Department of Commerce (National Marine Fisheries, 2005a); U.S. Department of the Navy (2004b); and Fromm (2004a, 2004b) documented reconstruction of sound fields produced by USS SHOUP associated with the behavioral response of killer whales observed in Haro Strait. Observations from this reconstruction included an approximate closest approach time which was correlated to a reconstructed estimate of received level. Observations from this reconstruction included an estimate of 169.3 dB SPL which represents the mean level at a point of closest approach within a 500 m wide area in which the animals were exposed. Within that area, the estimated received levels varied from approximately 150 to 180 dB SPL.

Calculation of K Parameter—NMFS and the Navy used the mean of the following values to define the midpoint of the function: (1) The mean of the lowest received levels (185.3 dB) at which individuals responded with altered behavior to 3 kHz tones in the SSC data set; (2) the estimated mean received level value of 169.3 dB produced by the reconstruction of the USS SHOUP incident in which killer whales exposed to MFAS (range modeled possible received levels: 150 to 180 dB); and (3) the mean of the 5 maximum received levels at which Nowacek *et al.* (2004) observed significantly altered responses of right whales to the alert stimuli than to the

control (no input signal) is 139.2 dB SPL. The arithmetic mean of these three mean values is 165 dB SPL. The value of K is the difference between the value of B (120 dB SPL) and the 50% value of 165 dB SPL; therefore, K = 45.

A Parameter (Steepness)—NMFS determined that a steepness parameter (A) = 10 is appropriate for odontocetes (except harbor porpoises) and pinnipeds and A = 8 is appropriate for mysticetes.

The use of a steepness parameter of A = 10 for odontocetes for the MFAS/HFAS risk function was based on the use of the same value for the SURTASS LFA risk continuum, which was supported by a sensitivity analysis of the parameter presented in Appendix D of the SURTASS/LFA FEIS (U.S. Department of the Navy, 2001c). As concluded in the SURTASS FEIS/EIS, the value of A = 10 produces a curve that has a more gradual transition than the curves developed by the analyses of migratory gray whale studies (Malme *et al.*, 1984; Buck and Tyack, 2000; and SURTASS LFA Sonar EIS, Subchapters 1.4.3, 4.2.4.3 and Appendix D, and National Marine Fisheries Service, 2008).

NMFS determined that a lower steepness parameter (A = 8), resulting in a shallower curve, was appropriate for use with mysticetes and MFAS/HFAS. The Nowacek *et al.* (2004) data set contains the only data illustrating mysticete behavioral responses to a sound source that encompasses frequencies in the mid-frequency sound spectrum. A shallower curve (achieved by using A = 8) better reflects the risk of behavioral response at the relatively low received levels at which behavioral responses of right whales were reported in the Nowacek *et al.* (2004) data. Compared to the odontocete curve, this adjustment results in an increase in the proportion of the exposed population of mysticetes being classified as behaviorally harassed at lower RLs, such as those reported in and supported by the only data set currently available.

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Risk Function for Odontocetes and Pinnipeds

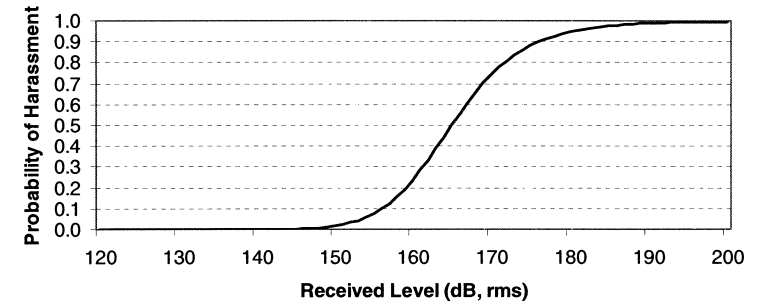


Figure 1a. Risk function for odontocetes and pinnipeds. B=120 dB, K=45 dB, A=10

Risk Function for Mysticetes

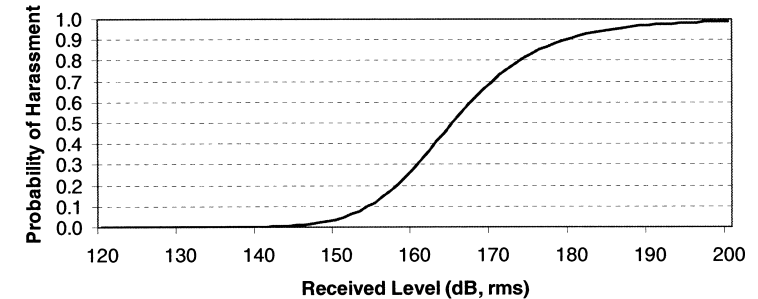


Figure 1b. Risk function for mysticetes. B=120 dB, K=45 dB, A=8.

Basic Application of the Risk Function—The risk function is used to estimate the percentage of an exposed population that is likely to exhibit behaviors that would qualify as harassment (as that term is defined by the MMPA applicable to military readiness activities, such as the Navy's testing and training with MFAS) at a given received level of sound. For

example, at 165 dB SPL (dB re: 1 μ Pa rms), the risk (or probability) of harassment is defined according to this function as 50%, and Navy/NMFS applies that by estimating that 50% of the individuals exposed at that received level are likely to respond by exhibiting behavior that NMFS would classify as behavioral harassment. The risk

function is not applied to individual animals, only to exposed populations.

The data primarily used to produce the risk function (the K parameter) were compiled from four species that had been exposed to sound sources in a variety of different circumstances. As a result, the risk function represents a general relationship between acoustic exposures and behavioral responses that

is then applied to specific circumstances. That is, the risk function represents a relationship that is deemed to be generally true, based on the limited, best-available science, but may not be true in specific circumstances. In particular, the risk function, as currently derived, treats the received level as the only variable that is relevant to a marine mammal's behavioral response. However, we know that many other variables—the marine mammal's gender, age, and prior experience; the activity it is engaged in during an exposure event, its distance from a sound source, the number of sound sources, and whether the sound sources are approaching or moving away from the animal—can be critically important in determining whether and how a marine mammal will respond to a sound source (Southall *et al.*, 2007). The data that are currently available do not allow for incorporation of these other variables in the current risk functions; however, the risk function represents the best use of the data that are available. Additionally, although these other factors cannot be taken into consideration quantitatively in the risk function, NMFS considers these other variables qualitatively in our analysis, when applicable data are available.

As more specific and applicable data become available for MFAS/HFAS sources, NMFS can use these data to modify the outputs generated by the risk function to make them more realistic. Ultimately, data may exist to justify the

use of additional, alternate, or multivariate functions. For example, as mentioned previously, the distance from the sound source and whether it is perceived as approaching or moving away can affect the way an animal responds to a sound (Wartzok *et al.*, 2003). In the NWTRC example, animals exposed to received levels between 120 and 140 dB may be 28–70 nm (51–130 km) from a sound source depending on seasonal variations; those distances could influence whether those animals perceive the sound source as a potential threat, and their behavioral responses to that threat. Though there are data showing response of certain marine mammal species to mid-frequency sound sources at that received level, NMFS does not currently have any data that describe the response of marine mammals to mid-frequency sounds at that distance, much less data that compare responses to similar sound levels at varying distances (much less for MFAS/HFAS). However, if applicable data meeting NMFS standards were to become available, NMFS would re-evaluate the risk function and to incorporate any additional variables into the "take" estimates.

Harbor Porpoise Behavioral Harassment Criteria

The information currently available regarding these inshore species that inhabit shallow and coastal waters suggests a very low threshold level of

response for both captive and wild animals. Threshold levels at which both captive (*e.g.* Kastelein *et al.*, 2000; Kastelein *et al.*, 2005; Kastelein *et al.*, 2006, Kastelein *et al.*, 2008) and wild harbor porpoises (*e.g.* Johnston, 2002) responded to sound (*e.g.* acoustic harassment devices (ADHs), acoustic deterrent devices (ADDs), or other non-pulsed sound sources) is very low (*e.g.* ~120 dB SPL), although the biological significance of the disturbance is uncertain. Therefore, a step function threshold of 120 dB SPL was used to estimate take of harbor porpoises instead of the risk functions used for other species (*i.e.*, we assume for the purpose of estimating take that all harbor porpoises exposed to 120 dB or higher MFAS/HFAS will be taken by Level B behavioral harassment).

Explosive Detonation Criteria

The criteria for mortality, Level A Harassment, and Level B Harassment resulting from explosive detonations were initially developed for the Navy's Seawolf and Churchill ship-shock trials and have not changed since other MMPA authorizations issued for explosive detonations. The criteria, which are applied to cetaceans and pinnipeds, are summarized in Table 7. Additional information regarding the derivation of these criteria is available in the Navy's DEIS for the NWTRC, the LOA application, and in the Navy's CHURCHILL FEIS (U.S. Department of the Navy, 2001c).

Type of Effect	Criteria	Metric	Threshold	MMPA
Mortality	Onset of Extensive Lung Injury	Goertner modified positive impulse	indexed to 30.5 psi-msec (assumes 100 percent small animal at 26.9 lbs)	Mortality
Injurious Physiological	50% Tympanic Membrane Rupture	Energy flux density	1.17 in-lb/in ² (about 205 dB re 1 microPa ² -sec)	Level A Harassment
Injurious Physiological	Onset Slight Lung Injury	Goertner modified positive impulse	indexed to 13 psi-msec (assumes 100 percent small animal at 26.9 lbs)	Level A Harassment
Non-injurious Physiological	TTS	Greatest energy flux density level in any 1/3-octave band (> 100 Hz for toothed whales and > 10 Hz for baleen whales) - for total energy over all exposures	182 dB re 1 microPa ² -sec	Level B Harassment
Non-injurious Physiological	TTS	Peak pressure over all exposures	23 psi	Level B Harassment
Non-injurious Behavioral	Multiple Explosions Without TTS	Greatest energy flux density level in any 1/3-octave (> 100 Hz for toothed whales and > 10 Hz for baleen whales) - for total energy over all exposures (multiple explosions only)	177 dB re 1 microPa ² -sec	Level B Harassment

Table 7. Summary of Explosive Criteria

Estimates of Potential Marine Mammal Exposure

Estimating the take that will result from the proposed activities entails the following three general steps: (1) Propagation model estimates animals exposed to sources at different levels; (2) further modeling determines number of exposures to levels indicated in criteria above (*i.e.*, number of takes); and (3) post-modeling corrections refine estimates to make them more accurate. More information regarding the models used, the assumptions used in the models, and the process of estimating take is available in Appendix D of the Navy's DEIS for NWTRC.

(1) In order to quantify the types of take described in previous sections that are predicted to result from the Navy's specified activities, the Navy first uses a sound propagation model that predicts the number of animals that will be exposed to a range of levels of pressure and energy (of the metrics used in the criteria) from MFAS/HFAS and explosive detonations based on several important pieces of information, including:

- Characteristics of the sound sources.

- Active sonar source characteristics include: Source level (with horizontal and vertical directivity corrections), source depth, center frequency, source directivity (horizontal/vertical beam width and horizontal/vertical steer direction), and ping spacing.
- Explosive source characteristics include: The weight of an explosive, the type of explosive, the detonation depth, number of successive explosions.
- Transmission loss (in 16 representative environmental provinces in two seasons) based on: Water depth; sound speed variability throughout the water column (warm season exhibits a weak surface duct, cold season exhibits a relatively strong surface duct); bottom geo-acoustic properties (bathymetry); and wind speed.
- The estimated density of each marine mammal species in the NWTRC (*see* Table 4), horizontally distributed uniformly and vertically distributed according to dive profiles based on field data.

(2) Next, the criteria discussed in the previous section are applied to the estimated exposures to predict the number of exposures that exceed the criteria, *i.e.*, the number of takes by

Level B Harassment, Level A Harassment, and mortality.

(3) During the development of the EIS for NWTRC, NMFS and the Navy determined that the output of the model could be made more realistic by applying post-modeling corrections to account for the following:

- Acoustic footprints for active sonar sources must account for land masses (by subtracting them out).
- Acoustic footprints for active sonar sources should not be added independently; rather, the degree to which the footprints from multiple ships participating in the same exercise would typically overlap needs to be taken into consideration.
- Acoustic modeling should account for the maximum number of individuals of a species that could potentially be exposed to active sonar within the course of 1 day or a discreet continuous sonar event if less than 24 hours.

Last, the Navy's specified activities have been described based on best estimates of the number of MFAS/HFAS hours that the Navy will conduct. The exact number of hours may vary from year to year but will not exceed the 5-year total indicated in Table 8 (by multiplying the yearly estimate by 5) by

more than 10%. NMFS estimates that a 10-percent increase in active sonar hours would result in approximately a 10-percent increase in the number of takes, and we have considered this possibility in our analysis.

The Navy's model provides a systematic and repeatable way of estimating the number of animals that

will be taken by Level A and Level B Harassment. The model is based on the sound propagation characteristics of the sound sources, physical characteristics of the surrounding environment, and a uniform density of marine mammals. As mentioned in the previous sections, many other factors will likely affect how and the degree to which marine

mammals are impacted both at the individual and species level by the Navy's activity (such as social ecology of the animals, long term exposures in one area, etc.); however, in the absence of quantitative data, NMFS has, and will continue, to evaluate that sort of information qualitatively.

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Species	Modeled Sonar Exposures to Indicated Thresholds			Modeled Explosive Exposures to Indicated Thresholds			NMFS Proposed Annual Take Authorization		
	Level B Exposures		Level A Exposures	Level B Exposures		Level A Exposures	Level B Harassment	Level A Harassment	Mortality
	Risk Function	TTS		Sub-TTS	TTS				
ESA-listed / MMPA depleted Species									
Blue whale	17	0	0	1	1	1	19	1	0
Fin whale	123	2	0	12	7	1	144	1	0
Humpback whale	15	0	0	0	0	0	15	0	0
Killer Whale	14	0	0	0	0	0	14	0	0
Sei whale	1	0	0	0	0	0	1	0	0
Sperm whale	102	2	0	13	10	1	127	1	0
Steller Sea Lion	114	0	0	3	3	1	120	1	0
Mysticetes									
Grey whale	4	0	0	0	0	0	4	0	0
Mink whale	9	0	0	0	0	0	9	0	0
Odontocetes									
Baird's beaked whale	12	0	0	1	0	0	13	0	0
Bottlenose dolphin	0	0	0	0	0	0	0	0	0
Cuvier's beaked whale	12	0	0	1	1	0	14	0	0
Dall's porpoise	4,485	147	0	62	58	3	4,752	3	0
Dwarf / Pygmy sperm whale	3	0	0	1	0	0	4	0	0
Harbor porpoise	119,215	45	0	9	5	1	119,274	1	0
Mesoplodon spp.	14	0	0	1	0	0	15	0	0
Northern right whale dolphin	705	18	0	11	7	1	741	1	0
Pacific white-sided dolphin	537	23	0	8	3	0	571	0	0
Risso's dolphin	85	2	0	9	4	0	100	0	0
Short beaked common dolphin	1,142	42	0	49	23	2	1,256	2	0
Short-finned pilot whale	2	0	0	0	0	0	2	0	0
Striped dolphin	38	1	0	0	1	0	40	0	0
Pinnipeds									
Northern elephant seal	296	0	0	53	29	2	378	2	0
Pacific harbor seal	394	290	1	2	0	0	566	1	0
California sea lion	283	0	0	2	1	0	286	0	0
Northern fur seal	1,296	1	0	24	44	1	1,365	1	0
Total	128,583	528	1	262	197	12	128,570	13	0

Table 8. Annual Navy estimated and NMFS proposed authorized take of marine mammals.

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Mortality

Evidence from five beaked whale strandings, all of which have taken

place outside the NWTRC Range Complex, and have occurred over approximately a decade, suggests that the exposure of beaked whales to MFAS in the presence of certain conditions

(e.g., multiple units using active sonar, steep bathymetry, constricted channels, strong surface ducts, etc.) may result in strandings, potentially leading to mortality. Although these physical

factors believed to have contributed to the likelihood of beaked whale strandings are not present, in their aggregate, in the NWTRC, scientific uncertainty exists regarding what other factors, or combination of factors, may contribute to beaked whale strandings. However, because none of the MFAS/HFAS ASW exercises conducted in the NWTRC are major exercises employing multiple surface vessels, the exercises last 1.5 hours or less, and only 65 exercises are planned (for a total of about 100 hours of surface vessel sonar operation), NMFS and the Navy believe it is highly unlikely that marine mammals would respond to these exercises in a manner that would result in a stranding. Therefore, no authorization for mortality has been requested or proposed.

Effects on Marine Mammal Habitat

The Navy's proposed training exercises could potentially affect marine mammal habitat through the introduction of pressure, sound, and expendable materials into the water column, which in turn could impact prey species of marine mammals, or cause bottom disturbance or changes in water quality. Each of these components was considered in the NWTRC DEIS and was determined by the Navy to have no effect on marine mammal habitat. Based on the information below and the supporting information included in the Navy's DEIS, NMFS has preliminarily determined that the NWTRC training activities will not have significant or long term impacts on marine mammal habitat. Unless the sound source or explosive detonation is stationary and/or continuous over a long duration in one area, the effects of the introduction of sound into the environment are generally considered to have a less severe impact on marine mammal habitat than the physical alteration of the habitat. Marine mammals may be temporarily displaced from areas where Navy training is occurring, but the area will likely be utilized again after the activities have ceased. A summary of the conclusions are included in subsequent sections.

Critical Habitat

Critical Habitat has been designated for 2 species in the NWTRC, southern resident killer whales (in the inshore area) and Steller sea lions (3 haulouts near the southern end of the offshore area). No sonar training is planned for the inshore area and explosive use will be limited to 4 detonations of small 2.5-lb charges annually. The Navy plans to abide by the 3000-ft air and water stand-off distances associated with the Steller

sea lion critical habitat. Effects to designated critical habitat will be fully analyzed in the Navy's ESA Section 7 consultation for the NWTRC.

Effects on Food Resources

Fish

The Navy's DEIS includes a detailed discussion of the effects of active sonar on marine fish. In summary, studies have indicated that acoustic communication and orientation of fish may be restricted by anthropogenic sound in their environment. However, the vast majority of fish species studied to date are hearing generalists and cannot hear sounds above 500 to 1,500 Hz (0.5 to 1.5 kHz) (depending upon the species). Therefore, these fish species are not likely to be affected behaviorally from higher frequency sounds such as MFAS/HFAS. Moreover, even those marine species that may hear above 1.5 kHz, such as a few sciaenids and the clupeids (and relatives), have relatively poor hearing above 1.5 kHz as compared to their hearing sensitivity at lower frequencies, so it is likely that the fish will only actually hear the sounds if the fish and source were fairly close to one another. Finally, since the vast majority of sounds that are of biological relevance to fish are below 1 kHz (*e.g.*, Zelic *et al.*, 1999; Ladich and Popper, 2004), even if a fish detects a mid- or high-frequency sound, these sounds will not likely mask detection of lower frequency biologically relevant sounds. Thus, based on the available information, a reasonable conclusion is that there will be few, and more likely no, impacts on the behavior of fish from active sonar.

Though mortality has been shown to occur in one species, a hearing specialist, as a result of exposure to non-impulsive sources, the available evidence does not suggest that exposures such as those anticipated from MFAS/HFAS would result in significant fish mortality on a population level. The mortality that was observed was considered insignificant in light of natural daily mortality rates. Experiments have shown that exposure to loud sound can result in significant threshold shifts in certain fish that are classified as hearing specialists (but not those classified as hearing generalists). Threshold shifts are temporary, and considering the best available data, no data exist that demonstrate any long-term negative effects on marine fish from underwater sound associated with active sonar activities. Further, while fish may respond behaviorally to mid-frequency sources, this behavioral

modification is only expected to be brief and not biologically significant.

There are currently no well-established thresholds for estimating effects to fish from explosives other than mortality models. Fish that are located in the water column, in proximity to the source of detonation could be injured, killed, or disturbed by the impulsive sound and possibly temporarily leave the area. Continental Shelf Inc. (2004) summarized a few studies conducted to determine effects associated with removal of offshore structures (*e.g.*, oil rigs) in the Gulf of Mexico. Their findings revealed that at very close range, underwater explosions are lethal to most fish species regardless of size, shape, or internal anatomy. For most situations, cause of death in fishes has been massive organ and tissue damage and internal bleeding. At longer range, species with gas-filled swimbladders (*e.g.*, snapper, cod, and striped bass) are more susceptible than those without swimbladders (*e.g.*, flounders, eels). Studies also suggest that larger fishes are generally less susceptible to death or injury than small fishes. Moreover, elongated forms that are round in cross section are less at risk than deep-bodied forms; and orientation of fish relative to the shock wave may affect the extent of injury. Open water pelagic fish (*e.g.*, mackerel) also seem to be less affected than reef fishes. The results of most studies are dependent upon specific biological, environmental, explosive, and data recording factors.

The huge variations in the fish population, including numbers, species, sizes, and orientation and range from the detonation point, make it very difficult to accurately predict mortalities at any specific site of detonation. As mentioned previously, though, only 4 small detonations are planned for the inshore area and the exercises involving larger detonations are conducted far offshore. Most fish species experience a large number of natural mortalities, especially during early life-stages, and any small level of mortality caused by the NWTRC training exercises involving explosives will likely be insignificant to the population as a whole.

Invertebrates

Very little is known about sound detection and use of sound by invertebrates (*see* Budelmann 1992a, b, Popper *et al.*, 2001 for reviews). The limited data shows that some crabs are able to detect sound, and there has been the suggestion that some other groups of invertebrates are also able to detect sound. In addition, cephalopods (octopus and squid) and decapods (lobster, shrimp, and crab) are thought

to sense low-frequency sound (Budelmann, 1992b). Packard *et al.* (1990) reported sensitivity to sound vibrations between 1–100 Hz for three species of cephalopods. McCauley *et al.* (2000) found evidence that squid exposed to seismic airguns show a behavioral response including inking. However, these were caged animals, and it is not clear how unconfined animals may have responded to the same signal and at the same distances used. In another study, Wilson *et al.* (2007) played back echolocation clicks of killer whales to two groups of squid (*Loligo pealeii*) in a tank. The investigators observed no apparent behavioral effects or any acoustic debilitation from playback of signals up to 199 to 226 dB re 1 µPa. It should be noted, however, that the lack of behavioral response by the squid may have been because the animals were in a tank rather than being in the wild. In another report on squid, Guerra *et al.* (2004) claimed that dead giant squid turned up around the time of seismic airgun operations off of Spain. The authors suggested, based on analysis of carcasses, that the damage to the squid was unusual when compared to other dead squid found at other times. However, the report presents conclusions based on a correlation to the time of finding of the carcasses and seismic testing, but the evidence in support of an effect of airgun activity was totally circumstantial. Moreover, the data presented showing damage to tissue is highly questionable since there was no way to differentiate between damage due to some external cause (*e.g.*, the seismic airgun) and normal tissue degradation that takes place after death, or due to poor fixation and preparation of tissue. To date, this work has not been published in peer reviewed literature, and detailed images of the reportedly damaged tissue are also not available.

In summary, baleen whales feed on the aggregations of krill and small schooling fish, while toothed whales feed on epipelagic, mesopelagic, and bathypelagic fish and squid. As summarized above and in the NWTRC EIS/OEIS in more detail, potential impacts to marine mammal food resources within the NWTRC is negligible given both lack of hearing sensitivity to mid-frequency sonar, the very geographic and spatially limited scope of most Navy at sea activities including underwater detonations, and the high biological productivity of these resources. No short or long term effects to marine mammal food resources from Navy activities are anticipated within the NWTRC.

Military Expendable Material

Marine mammals are subject to entanglement in expended materials, particularly anything incorporating loops or rings, hooks and lines, or sharp objects. Most documented cases of entanglements occur when whales encounter the vertical lines of fixed fishing gear. This section summarizes the potential effects of expended materials on marine mammals. Detailed discussion of military expendable material is contained within the NWTRC EIS.

The Navy endeavors to recover expended training materials. Notwithstanding, it is not possible to recover all training materials, and some may be encountered by marine mammals in the waters of the NWTRC. Debris related to military activities that is not recovered generally sinks; the amount that might remain on or near the sea surface is low, and the density of such expendable materials in the NWTRC would be very low. Types of training materials that might be encountered include: Parachutes of various types (*e.g.*, those employed by personnel or on targets, flares, or sonobuoys); torpedo guidance wires, torpedo "flex hoses;" cable assemblies used to facilitate target recovery; sonobuoys; and EMATT. Although sunken debris might be of increased concern for bottom-feeding marine mammals, like the gray whale, again, the low density is such that it is very unlikely that animals would interact with any of these materials.

Entanglement in military expendable material was not cited as a source of injury or mortality for any marine mammals recorded in a large marine mammal and sea turtle stranding database for California waters, an area with much higher density of marine mammals. Therefore as discussed in the NWTRC EIS, expendable material is highly unlikely to directly affect marine mammal species or potential habitat within the NWTRC.

NMFS Office of Habitat Conservation is working with the Navy to better identify the potential risks of expended materials from the Navy activities as they relate to Essential Fish Habitat. These effects are indirectly related to marine mammal habitat, but based on the extent of the likely effects described in the Navy's DEIS, NMFS' Office of Protected Resources has preliminarily determined that they will not result in significant impacts to marine mammal habitat. The outcome of this consultation will further inform the marine mammal habitat analysis in the final rule.

Water Quality

The NWTRC EIS/OEIS analyzed the potential effects to water quality Expendable Mobile ASW Training Target (EMATT) batteries. In addition, sonobuoys were not analyzed since, once scuttled, their electrodes are largely exhausted during use and residual constituent dissolution occurs more slowly than the releases from activated seawater batteries. As such, only the potential effects of batteries and explosions on marine water quality in and surrounding the sonobuoy training area were completed. It was determined that there would be no significant effect to water quality from seawater batteries, lithium batteries, and thermal batteries associated with scuttled sonobuoys.

EMATTs use lithium sulfur dioxide batteries. The constituents in the battery react to form soluble hydrogen gas and lithium dithionite. The hydrogen gas eventually enters the atmosphere and the lithium hydroxide dissociates, forming lithium ions and hydroxide ions. The hydroxide is neutralized by the hydronium formed from hydrolysis of the acidic sulfur dioxide, ultimately forming water. Sulfur dioxide, a gas that is highly soluble in water, is the major reactive component in the battery. The sulfur oxide ionizes in the water, forming bisulfite (HSO₃) that is easily oxidized to sulfate in the slightly alkaline environment of the ocean. Sulfur is present as sulfate in large quantities (*i.e.*, 885 milligrams per liter [mg/L]) in the ocean. Thus, it was determined that there would be no significant effect to water quality from lithium sulfur batteries associated with scuttled EMATTs.

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be "taken" by the specified activities (*i.e.*, takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a "negligible impact" on the affected species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects (for example: Pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46-

percent reproductive success compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and has a 17-percent reproductive success). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, *etc.*), the context of any responses (critical reproductive time or location, migration, *etc.*), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat. Generally speaking, and especially with other factors being equal, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels.

The Navy's specified activities have been described based on best estimates

of the number of MFAS/HFAS hours that the Navy will conduct. The exact number of hours (or torpedoes, or pings, whatever unit the source is estimated in) may vary from year to year, but will not exceed the 5-year total indicated in Table 8 (by multiplying the yearly estimate by 5) by more than 10 percent. NMFS estimates that a 10-percent increase in active sonar hours (torpedoes, pings, *etc.*) would result in approximately a 10-percent increase in the number of takes, and we have considered this possibility and the effect of the additional active sonar use in our analysis.

Taking the above into account, considering the sections discussed below, and dependent upon the implementation of the proposed mitigation measures, NMFS has preliminarily determined that Navy training exercises utilizing MFAS/HFAS and underwater detonations will have a negligible impact on the marine mammal species and stocks present in the NWTRC Range Complex.

Behavioral Harassment

As discussed in the Potential Effects of Exposure of Marine Mammals to MFAS/HFAS and illustrated in the conceptual framework, marine mammals can respond to MFAS/HFAS in many different ways, a subset of which qualify as harassment (*see*

Behavioral Harassment Section). One thing that the take estimates do not take into account is the fact that most marine mammals will likely avoid strong sound sources to one extent or another. Although an animal that avoids the sound source will likely still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, *etc.*) in other cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response. For MFAS/HFAS, the Navy provided information (Table 9) estimating what percentage of the total takes that will occur within the 10-dB bins (without considering mitigation or avoidance) that are within the received levels considered in the risk continuum and for TTS and PTS. This table applies specifically to AN/SQS-53C hull-mounted active sonar (the most powerful source), with less powerful sources the percentages would increase slightly in the lower received levels and correspondingly decrease in the higher received levels. As mentioned above, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to adversely affect the health of the animal.

Received Level (SPL)	Distance At Which Levels Occur in NWTRC	Percent of Total Harassment Takes Estimated to Occur at Indicated Level
Below 140 dB	51 km - 130 km	< 1%
140 < Level < 150 dB	25 km - 51 km	2%
150 < Level < 160 dB	10 km - 25 km	18%
160 < Level < 170 dB	3 km - 10 km	43%
170 < Level < 180 dB	560 m - 3 km	28%
180 < Level	0 m - 560 m	< 9%

Table 9. Approximate percent of estimated takes that occur in the indicated 10-dB bins for AN/SQS-53 (the most powerful source). For smaller sources, a higher % of the takes occur at lower levels, and a lower % at higher levels.

Because of the comparatively small amount of MFAS/HFAS sonar training the Navy has only been conducting offshore in the NWTRC, the fact that they have not been monitoring pursuant to those activities to date, and because of the overall data gap regarding the effects MFAS/HFAS has on marine mammals, not a lot is known regarding how marine mammals in the NWTRC will respond to MFAS/HFAS (with the exception of the SHOUP incident

mentioned previously—but since then no sonar training has been conducted in the Inshore area). Twelve monitoring reports from the Southern California Range Complex for major training exercises indicate that watchstanders have observed no instances of obvious behavioral disturbance in the more than 704 marine mammal sightings of 7,435 animals (9,000+ hours of effort, though only 4 of the 12 reports reported the total number of hours of observation).

One cannot conclude from these results that marine mammals were not harassed from MFAS/HFAS, as a portion of animals within the area of concern were not seen (especially those more cryptic, deep-diving species, such as beaked whales or *Kogia* spp.) and some of the non-biologist watchstanders might not be well-qualified to characterize behaviors. However, one can say that the animals that were observed did not respond in any of the obviously more

severe ways, such as panic, aggression, or anti-predator response.

In addition to the monitoring that will be required pursuant to these regulations and any corresponding LOAs, which is specifically designed to help us better understand how marine mammals respond to sound, the Navy and NMFS have developed, funded, and begun conducting a controlled exposure experiment with beaked whales in the Bahamas. Separately, the Navy and NMFS conducted an opportunistic tagging experiment with beaked whales in the area of the 2008 Rim of the Pacific training exercises in the HRC.

Diel Cycle

As noted previously, many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007).

In the previous section, we discussed the fact that potential behavioral responses to MFAS/HFAS that fall into the category of harassment could range in severity. By definition, the takes by behavioral harassment involve the disturbance of a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns (such as migration, surfacing, nursing, breeding, feeding, or sheltering) to a point where such behavioral patterns are abandoned or significantly altered. These reactions would, however, be more of a concern if they were expected to last over 24 hours or be repeated in subsequent days. As mentioned previously, 65 ASW exercises with a duration of 1.5 hours are planned annually for the NWTRC. Additionally, vessels with hull-mounted active sonar are typically moving at speeds of 10–12 knots, which would make it unlikely that the same animal could remain in the immediate vicinity of the ship for the entire duration of the exercise. Animals are not expected to be exposed to MFAS/HFAS at levels or for a duration likely to result in a substantive response that would then be carried on for more than one day or on successive days. With the exception of SINKEXs, the planned explosive exercises are also of a short duration (1–

6 hours). Although explosive exercises may sometimes be conducted in the same general areas repeatedly, because of their short duration and the fact that they are in the open ocean and animals can easily move away makes it similarly unlikely that animals would be exposed for long, continuous amounts of time. Although SINKEXs may last for up to 48 hours, only 2 are planned annually, they are stationary and conducted in deep, open water (where fewer marine mammals would typically be expected to be randomly encountered), and they have a rigorous monitoring and shutdown protocol, all of which make it unlikely that individuals would be exposed to the exercise for extended periods or in consecutive days.

TTS

NMFS and the Navy have estimated that some individuals of some species of marine mammals may sustain some level of TTS from MFAS/HFAS. As mentioned previously, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Table 8 indicates the estimated number of animals that might sustain TTS from exposure to MFAS/HFAS. The TTS sustained by an animal is primarily classified by three characteristics:

- **Frequency**—Available data (of mid-frequency hearing specialists exposed to mid to high frequency sounds—Southall *et al.*, 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above). The more MF powerful sources used (the two hull-mounted MFAS sources and the DICASS sonobuoys) have center frequencies between 3.5 and 8 kHz and the other unidentified MF sources are, by definition, less than 10 kHz, which suggests that TTS induced by any of these MF sources would be in a frequency band somewhere between approximately 2 and 20 kHz. There are fewer hours of HF source use and the sounds would attenuate more quickly, plus they have lower source levels, but if an animal were to incur TTS from these sources, it would cover a higher frequency range (sources are between 20 and 100 kHz, which means that TTS could range up to 200 kHz, however, HF systems are typically used less frequently and for shorter time periods than surface ship and aircraft MF systems, so TTS from these sources is even less likely). TTS from explosives would be broadband. Tables 5a and 5b

summarize the vocalization data for each species.

- **Degree of the shift (*i.e.*, how many dB is the sensitivity of the hearing reduced by)**—generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS (> 6 dB) is 195 dB (SEL), which might be received at distances of up to 140 m from the most powerful MFAS source, the AN/SQS-53 (the maximum ranges to TTS from other sources would be less, as modeled for NWTRC). An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the watchstanders and the nominal speed of an active sonar vessel (10–12 knots). Of all TTS studies, some using exposures of almost an hour in duration or up to 217 SEL, most of the TTS induced was 15 dB or less, though Finneran *et al.*, (2007) induced 43 dB of TTS with a 64-sec exposure to a 20 kHz source (MFAS emits a 1-s ping 2 times/minute).

- **Duration of TTS (Recovery time)**—See above. Of all TTS laboratory studies, some using exposures of almost an hour in duration or up to 217 SEL, almost all recovered within 1 day (or less, often in minutes), though in one study (Finneran *et al.*, (2007)), recovery took 4 days.

Based on the range of degree and duration of TTS reportedly induced by exposures to non-pulse sounds of energy higher than that to which free-swimming marine mammals in the field are likely to be exposed during MFAS/HFAS training exercises in NWTRC, it is unlikely that marine mammals would ever sustain a TTS from MFAS that alters their sensitivity by more than 20 dB for more than a few days (and the majority would be far less severe because of short duration of the exercises, the speed of a typical vessel, and the fact that only 1 MFAS source is in use at once). Also, for the same reasons discussed in the Diel Cycle section, and because of the short distance within which animals would need to approach the sound source, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that their recovery is impeded. Additionally (*see* Tables 5a and 5b), though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalization types, the frequency range of TTS from MFAS (the source from which TTS would more likely be

sustained because the higher source level and slower attenuation make it more likely that an animal would be exposed to a higher level) would not usually span the entire frequency range of one vocalization type, much less span all types of vocalizations. If impaired, marine mammals would typically be aware of their impairment and implement behaviors to compensate for it (see Communication Impairment Section), though these compensations may incur energetic costs.

Acoustic Masking or Communication Impairment

Table 5 is also informative regarding the nature of the masking or communication impairment that could potentially occur from MFAS (again, center frequencies are 3.5 and 7.5 kHz for the two types of hull-mounted active sonar). However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. Standard MFAS pings last on average one second and occur about once every 24–30 seconds for hull-mounted sources. For the sources for which we know the pulse length, most are significantly shorter than hull-mounted active sonar, on the order of several microseconds to 10s of microseconds. For hull-mounted active sonar, though some of the vocalizations that marine mammals make are less than one second long, there is only a 1 in 24 chance that they would occur exactly when the ping was received, and when vocalizations are longer than one second, only parts of them are masked. Alternately, when the pulses are only several microseconds long, the majority of most animals' vocalizations would not be masked. Masking effects from MFAS/HFAS are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of MFAS, which overlaps with some marine mammal vocalizations, however, it would likely not mask the entirety of any particular vocalization or communication series because the pulse length, frequency, and duty cycle of the MFAS/HFAS signal does not perfectly mimic the characteristics of any marine mammal's vocalizations.

PTS, Injury, or Mortality

The Navy's model estimated that one Pacific harbor seal would be exposed to levels of MFAS/HFAS that would result in PTS. This estimate does not take into consideration either the mitigation measures, the likely avoidance behaviors of some of the animals

exposed, the distance from the sonar dome of a surface vessel within which an animal would have to be exposed to incur PTS (10 m), and the nominal speed of a surface vessel engaged in ASW exercises. NMFS believes that many marine mammals would deliberately avoid exposing themselves to the received levels of active sonar necessary to induce injury by moving away from or at least modifying their path to avoid a close approach. Additionally, in the unlikely event that an animal approaches the sonar vessel at a close distance, NMFS believes that the mitigation measures (*i.e.*, shutdown/powerdown zones for MFAS/HFAS) would typically ensure that animals would not be exposed to injurious levels of sound. As discussed previously, the Navy utilizes both aerial (when available) and passive acoustic monitoring (during all ASW exercises) in addition to watchstanders on vessels to detect marine mammals for mitigation implementation and indicated that they are capable of effectively monitoring a 1,000-meter (1,093-yd) safety zone at night using night vision goggles, infrared cameras, and passive acoustic monitoring.

If a marine mammal is able to approach a surface vessel within the distance necessary to incur PTS, the likely speed of the vessel (nominal 10–12 knots) would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of PTS. As mentioned previously and in relation to TTS, the likely consequences to the health of an individual that incurs PTS can range from mild to more serious dependent upon the degree of PTS and the frequency band it is in, and many animals are able to compensate for the shift, although it may include energetic costs. While NMFS believes it is very unlikely that a harbor seal will incur PTS from exposure to MFAS/HFAS, seals may be difficult to detect at times and the Navy has requested authorization to take one by Level A Harassment and therefore, NMFS has considered this possibility in our analysis.

The Navy's model estimated that 14 total animals would be exposed to explosive detonations at levels that could result in injury (1 fin whale, 1 blue whale, 1 sperm whale, 3 Dall's porpoise, 1 harbor porpoise, 1 northern right whale dolphin, 2 short-beaked common dolphins, 2 northern elephant seals, 1 northern fur seal, and 1 Steller sea lion), and that 0 would be exposed to levels that would result in death—however, those estimates do not consider mitigation measures. Because

of the surveillance conducted prior to and during the exercises, the associated exclusion zones (see table 3 and the Mitigation section), and the distance within which the animal would have to be from the explosion, NMFS does not think it likely that any animals (especially these species, which are either large individuals or large gregarious groups) will be exposed to levels of sound or pressure from explosives that will result in injury. However, an authorization for Level A take of these individuals allows the Navy to remain in compliance in the unlikely event that animals go undetected and enter an area with injurious energy or pressure levels, and therefore NMFS has considered this possibility in our analysis. Injury incurred at these levels could (based on the data the thresholds are derived from) take the form of PTS (discussed above), tympanic membrane rupture, or slight lung injury.

As discussed previously, marine mammals could potentially respond to MFAS at a received level lower than the injury threshold in a manner that indirectly results in the animals stranding. The exact mechanisms of this potential response, behavioral or physiological, are not known. The naval exercises that have been associated with strandings in the past have typically had three or more vessels operating simultaneously, or in conjunction with one another, whereas the ASW exercises in the NWTRC only utilize one surface vessel sonar source at a time. Also, past sonar-associated strandings have involved constricted channels, semi-enclosed areas, and/or steep bathymetry—the sorts of features present in the Inshore area of the NWTRC; however, no ASW exercises will be conducted in the Inshore area. Last, even if the physical features that may contribute to a stranding (not all of which are known) were present in the NWTRC, it is unlikely that they would co-occur in time and space given the nature of the exercises, *e.g.*, low number and short duration of the planned exercises and no multi-vessel ASW exercises over an extended period of time.

60 Years of Navy Training Exercises Using MFAS/HFAS in the NWTRC Range Complex

The Navy has been conducting MFAS/HFAS training exercises in the NWTRC Range Complex for over 60 years. Although monitoring specifically in conjunction with training exercises to determine the effects of active sonar and explosives on marine mammals has not been conducted by the Navy in the past

in the NWTRC and the symptoms indicative of potential acoustic trauma were not as well recognized prior to the mid-nineties, people have been collecting stranding data in the NWTRC Range Complex for approximately 30 years. Though not all dead or injured animals are expected to end up on the shore (some may be eaten or float out to sea), one might expect that if marine mammals were being harmed by the Navy training exercises with any regularity, more evidence would have been detected over the 30-yr period.

Species-Specific Analysis

In the discussions below, the “acoustic analysis” refers to the Navy's analysis, which includes the use of several models and other applicable calculations as described in the Estimates of Potential Marine Mammal Exposure section. The numbers predicted by the “acoustic analysis” are based on a uniform and stationary distribution of marine mammals and do not take into consideration the implementation of mitigation measures or potential avoidance behaviors of marine mammals, and therefore, are likely overestimates of potential exposures to the indicated thresholds (PTS, TTS, behavioral harassments).

Blue Whale (MMPA Depleted/ESA-Listed)

Acoustic analysis predicts that 19 exposures of blue whales to MFAS/HFAS or explosive detonations at sound or pressure levels likely to result in Level B harassment will occur. This estimate represents the total number of takes and not necessarily the number of individuals taken, as a single individual may be taken multiple times over the course of a year. These Level B takes are anticipated to be primarily in the form of behavioral disturbance as described in the Definition of Harassment: Level B Harassment section, although one TTS take is estimated from explosive exposure and proposed to be authorized. It is unlikely that any blue whales will incur TTS because of: (1) The distance within which they would have to approach the explosive source; and (2) the likelihood that Navy monitors would, during pre- or during exercises monitoring, detect these large animals prior to an approach within this distance and require a delay of the exercise. Navy lookouts will likely detect a group of blue whales given their large size, average group size (2–3), and pronounced vertical blow.

Additionally, the Navy's acoustic analysis predicted that 1 blue whale would be exposed to injurious levels of energy or pressure from exposure to

explosive detonations. Because of the lengthy pre-monitoring, the size of the animal, and the pronounced blow, NMFS anticipates that the Navy watchstanders would likely detect blue whales in most instances and implement the mitigation to avoid exposure at injurious levels. Although NMFS does not anticipate Level A take of this species to occur, the Navy has requested Level A take authorization for this species to ensure MMPA compliance and NMFS will analyze the possibility of these effects. NMFS is currently engaged in an internal Section 7 consultation under the ESA and the outcome of that consultation will further inform our final decision.

Blue whales in the NWTRC belong to the Eastern North Pacific stock, which may be increasing in number. The best population estimate for this stock is 1,866. Blue whales are known to feed in the southern part of the NWTRC in the summer. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. The blue whale's large size and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects either during their selected feeding times or otherwise. The NWTRC activities are not expected to occur in an area/time of specific importance for reproduction, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of blue whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Fin Whale (MMPA Depleted/ESA-Listed)

Acoustic analysis indicates that up to 122 exposures of fin whales to sound levels likely to result in Level B harassment (2 from TTS) may result from MFAS/HFAS. This estimate represents the total number of takes and not necessarily the number of individuals taken, as a single individual may be taken multiple times over the course of a year. These Level B takes are anticipated to be primarily in the form of behavioral harassment as described in the Definition of Harassment: Level B Harassment section. Although 2 of the modeled Level B Harassment takes were predicted to be in the form of TTS from MFAS/HFAS, NMFS believes it is unlikely that any fin whales will incur TTS because of the distance within

which they would have to approach the MFAS source (approximately 140 m for the most powerful source for TTS), the fact that many animals will likely avoid active sonar sources to some degree, and the likelihood that Navy monitors would detect these animals prior to an approach within this distance and implement active sonar powerdown or shutdown. Navy lookouts will likely detect a group of fin whales because of their large size, mean group size (3), and pronounced blow.

Acoustic analysis also predicted that 19 Level B Harassment takes from explosives would occur (12 sub-TTS, 7 TTS). For the same reasons listed above, NMFS anticipates that the Navy watchstanders would likely detect these species and implement the mitigation to avoid exposure. However, the range to TTS for a few of the larger explosives is larger than the associated exclusion zones for BOMBEX or SINKEX (see Table 3), and therefore NMFS anticipates that TTS takes of a few whales might result from explosive detonations.

Additionally, the Navy's acoustic analysis predicted that 1 fin whale would be exposed to injurious levels of energy or pressure. Because of the lengthy pre-monitoring, the size of the animal, and the pronounced blow, NMFS anticipates that the Navy watchstanders would likely detect fin whales in most instances and implement the mitigation to avoid exposure at injurious levels. Although NMFS does not anticipate Level A take of this species to occur, the Navy has requested Level A take authorization for this species to ensure MMPA compliance and NMFS will analyze the possibility of these effects. NMFS is currently engaged in an internal Section 7 consultation under the ESA and the outcome of that consultation will further inform our final decision.

Fin whales in the NWTRC belong to the California/Oregon/Washington stock. The best population estimate for this stock is 3454, which may be increasing. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. The NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of fin whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified

activities will have a negligible impact on this stock.

Sei Whale (MMPA Depleted/ESA-Listed)

Acoustic analysis predicts that 1 sei whale will be behaviorally harassed by exposure to MFAS/HFAS. Sei whales in the NWTRC belong to the Eastern North Pacific stock. The best population estimate for this stock is 43, which may be increasing. The sei whales' large size and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects. No areas of specific importance for reproduction or feeding of sei whales have been identified in the NWTRC. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. The NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of sei whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Humpback Whale (MMPA Depleted/ESA-Listed)

Acoustic analysis predicts that 13 humpback whales will be behaviorally harassed by exposure to MFAS/HFAS. No humpback whales are expected to be taken as a result of exposure to explosive detonations. Humpback whales in the NWTRC belong to the Eastern North Pacific stock. The best population estimate for this stock is 1396, which is increasing. The humpback whales' large size, gregarious nature, and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects. No areas of specific importance for reproduction or feeding of humpbacks have been identified in the NWTRC. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. The NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of humpback whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-

specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Gray Whale

Acoustic analysis predicts that 4 gray whales will be behaviorally harassed by exposure to MFAS/HFAS. No gray whales are expected to be taken as a result of exposure to explosive detonations. Gray whales in the NWTRC belong to the Eastern North Pacific stock, which is increasing in number. The best population estimate for this stock is 18178. The gray whales' large size and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects. There is a well-defined north-south migratory path through the NWTRC and a known aggregation of gray whales (Pacific Coast Feeding Aggregation (PCFA)) that feeds along the Pacific coast between southeastern Alaska and southern California throughout the summer and fall. Relative to the population size, however, this activity is anticipated to result only in a very limited number of level B harassment takes and, consequently, the activities are not expected to adversely impact rates of recruitment or survival of gray whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Minke Whale

Acoustic analysis predicts that 9 minke whales will be behaviorally harassed by exposure to MFAS/HFAS. No minke whales are expected to be taken as a result of exposure to explosive detonations. Minke whales in the NWTRC belong to the California/Oregon/Washington stock. The best population estimate for this stock is 898. The whales' size and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects. Minke whales appear to establish home ranges in the Inshore Area and have been documented feeding in several areas within the Inshore Areas, however, no activities expected to result in the take of marine mammals will occur in the Inshore Area, so these behaviors should not be negatively impacted in that area. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment

takes. The NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of minke whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Sperm Whale (MMPA Depleted/ESA-Listed)

Acoustic analysis predicts that up to 101 exposures of sperm whales to MFAS/HFAS at energy levels likely to result in Level B harassment may occur. This estimate represents the total number of Level B takes and not necessarily the number of individuals taken, as a single individual may be taken multiple times over the course of a year. These Level B takes are anticipated to primarily be in the form of behavioral disturbance as described in the Definition of Harassment: Level B Harassment section. Two of the modeled Level B Harassment takes were predicted to be in the form of TTS.

As indicated in Table 5, some (but not all) sperm whale vocalizations might overlap with the MFAS/HFAS TTS frequency range (2–20 kHz), which could potentially temporarily decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFAS/HFAS. No sperm whales are predicted to be exposed to MFAS/HFAS sound levels associated with PTS or injury.

Acoustic analysis also predicted that 23 sperm whales would be exposed to sound or pressure from explosives at levels expected to result in Level B Harassment (10 from TTS). Additionally, the Navy's acoustic analysis predicted that 1 whale would be exposed to injurious levels of energy or pressure. Because of the lengthy pre-monitoring and the size of the animal, NMFS anticipates that the Navy watchstanders would likely detect sperm whales in most instances and implement the mitigation measures to avoid exposure at injurious levels. Although NMFS does not anticipate sperm whales to experience Level A Harassment, the Navy has requested Level A take authorization for this species to ensure MMPA compliance in the unlikely event that an animal is

exposed to injurious pressures from an explosive detonation and NMFS has analyzed the possibility of these effects. NMFS is currently engaged in an internal Section 7 consultation under the ESA and the outcome of that consultation will further inform our final decision. No areas of specific importance for reproduction or feeding of sperm whales have been identified in the NWTRC.

Relative to the population size, this activity is anticipated to result only in a limited number of Level B harassment takes. Additionally, the NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of sperm whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Killer Whale (Southern Resident Is MMPA Depleted/ESA-Listed)

Due to the difficulty in determining particular stocks of killer whales in the wild, all stocks of killer whales were combined for modeling exposures, and therefore the modeled takes could be applied to any combination of the three stocks. When observed offshore, the determination of a particular whale to either a transient, offshore, or a resident is often difficult. For this reason, all killer whales are considered to be part of the southern resident stock for analysis of effect. The southern resident stock of killer whales is depleted under the MMPA and listed under the ESA.

Acoustic analysis predicts that 13 killer whales will be behaviorally harassed by exposure to MFAS/HFAS. The best population estimate for the southern resident killer whale stock is 89. There was an increase in the overall population from 2002–2007, however the population declined in 2008 with 85 southern resident killer whales counted. Two additional whales have been reported missing since the 2008 census count. The whale's size and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects. As mentioned previously, there is designated critical habitat for southern resident killer whales in the Inshore Area; however, no sonar exercises and 4 very small detonations (2.5-lb), which are not expected to result in the take of marine

mammals, are planned to occur in the Inshore area annually. Southern resident killer whales spend the majority of their time in the Inshore Area from May/June through October/November, although they do make multi-day trips to the outer coast. Alternately, all of the Navy's sonar use is in the Offshore Area, occurring uniformly throughout the year.

Of note, the vocalizations of killer whales fall directly into the frequency range in which TTS would be incurred from the MFAS sources used in NWTRC for ASW exercises, so it is fortunate that the Navy is conducting limited ASW exercises in the NWTRC and that killer whales are predominantly situated in the Inshore area when ASW exercises are being conducted. Killer whales produce a wide-variety of clicks and whistles, but most social sounds are pulsed, with frequencies ranging from 0.5 to 25 kHz (dominant frequency range: 1 to 6 kHz) (Thomson and Richardson, 1995). Echolocation clicks indicate source levels ranging from 195 to 224 dB re 1 µPa-m peak-to-peak, dominant frequencies ranging from 20 to 60 kHz, and durations of about 0.1 sec (Au *et al.*, 2004). Source levels associated with social sounds have been calculated to range from 131 to 168 dB re 1 µPa-m and vary with vocalization type (Veirs, 2004).

Southern resident killer whales are very vocal, making calls during all types of behavioral states. Acoustic studies of resident killer whales in the Pacific Northwest have found that there are dialects in their highly stereotyped, repetitive discrete calls, which are group-specific and shared by all group members (Ford, 1991, 2002b). These dialects likely are used to maintain group identity and cohesion, and may serve as indicators of relatedness that help prevent inbreeding between closely related whales (Ford, 1991, 2002b). Dialects have been documented in northern Norway (Ford, 2002a) and southern Alaska killer whales populations (Yurk *et al.*, 2002) and likely occur in other regions.

Both behavioral and auditory brainstem response techniques indicate killer whales can hear a frequency range of 1 to 100 kHz and are most sensitive at 20 kHz. This is one the lowest maximum-sensitivity frequencies known among toothed whales (Szymanski *et al.*, 1999).

Population estimates for the Offshore and Transient killer whale stocks are 422 and 346, respectively. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. The NWTRC activities are not expected to

occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of killer whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on these stocks.

Pygmy and Dwarf Sperm Whale

Acoustic analysis predicts that 4 pygmy or dwarf sperm whales will be behaviorally harassed by exposure to MFAS/HFAS or explosives. Dwarf and pygmy sperm whales in the NWTRC belong to the California/Oregon/Washington stocks. There are no population estimates for these stocks, however, this activity is anticipated to result only in a very limited number of level B harassment takes. The NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of pygmy and dwarf sperm whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Beaked Whales

Acoustic analysis predicts that 12 Baird's beaked whales, 14 Cuvier's beaked whales, and 14 Mesoplodont sp. will be taken by Level B harassment by exposure to MFAS/HFAS or explosives (1, 2, and 1 take each from explosives, relatively). Beaked whales in the NWTRC belong to the California/Oregon/Washington stocks. Census data and life history are too limited to suggest a population trend for individual species of Mesoplodont whales. Until better methods are developed for distinguishing the different mesoplodont species from one another, the management unit is defined to include all mesoplodont populations. The best population estimate for these stocks is 313, 2171, and 1024, respectively. Although no areas of specific importance for reproduction or feeding of beaked whales have been identified in the NWTRC, beaked whales are generally found in deep waters over the continental slope, oceanic seamounts, and areas with submarine escarpments (very seldom

over the continental shelf). Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of beaked whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on these stocks.

Short-Finned Pilot Whale

Acoustic analysis predicts that 2 pilot whales will be behaviorally harassed by exposure to MFAS/HFAS or explosives. Pilot whales are rare in the NWTRC and belong to the California/Oregon/Washington stocks. The best population estimate for these stocks is 245. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. The NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of short-finned pilot whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on these stocks.

Dolphins and Porpoises

The acoustic analysis predicts that the following numbers of Level B behavioral harassments of the associated species will occur: 4725 Dall's Porpoises, 119162 harbor porpoises, 1256 short-beaked common dolphin, 1256 short-beaked common dolphin, 734 northern right whale dolphin, 555 Pacific white-sided dolphin, and 40 striped dolphin. This estimate represents the total number of exposures and not necessarily the number of individuals exposed, as a single individual may be exposed multiple times over the course of a year. No bottlenose dolphins are expected to be taken based on the Navy's acoustic analysis.

Although a portion (147 Dall's Porpoises, 45 harbor porpoises, 42 short-beaked common dolphin, 18 northern right whale dolphin, 23 Pacific white-sided dolphin, and 1 striped dolphin) of the modeled Level B Harassment takes for all of these species is predicted to be in the form of TTS

from MFAS, NMFS believes it is unlikely that all of the individuals estimated will incur TTS because of the distance within which they would have to approach the active sonar source (approximately 140 m for the most powerful source), the fact that many animals will likely avoid active sonar sources to some degree, and the likelihood that Navy monitors would detect these animals prior to an approach within this distance and implement active sonar powerdown or shutdown. Navy lookouts will likely detect a group of dolphins given their relatively short dives, gregarious behavior, and large average group size. However, the Navy's proposed mitigation has a provision that allows the Navy to continue operation of MFAS if the animals are clearly bow-riding even after the Navy has initially maneuvered to try and avoid closing with the animals. Since these animals sometimes bow-ride they could potentially be exposed to levels associated with TTS as they approach or depart from bow-riding. As mentioned above and indicated in Table 5, some dolphin vocalizations might overlap with the MFAS/HFAS TTS frequency range (2–20 kHz), which could potentially temporarily decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFAS/HFAS.

Acoustic analysis also predicted that 58 Dall's Porpoises, 5 harbor porpoises, 23 short-beaked common dolphin, 7 northern right whale dolphin, 3 Pacific white-sided dolphin, and 1 striped dolphin would be exposed to sound or pressure from explosives at levels expected to result in TTS. For the same reasons noted above, NMFS anticipates that the Navy watchstanders would likely detect these species and implement the mitigation to avoid exposure. However, the range to TTS for a few of the larger explosives is larger than the associated exclusion zones for BOMBEX, MISSILEX, or SINKEX (see Table 3), and therefore NMFS anticipates that TTS might not be entirely avoided during those exercises.

Acoustic analysis also predicted that 3 Dall's porpoise, a harbor porpoise, 2 short-beaked dolphin, and one northern right whale dolphin might be exposed to sound or pressure from explosive detonations that would result in PTS or injury. For the same reasons listed above (group size, dive and social behavior), NMFS anticipates that the Navy watchstanders would detect these species and implement the mitigation

measures to avoid exposure. In the case of all explosive exercises, the exclusion zones are 2–12 times larger than the estimated distance at which an animal would be exposed to injurious sounds or pressure waves.

No areas of specific importance for reproduction or feeding for dolphins have been identified in the NWTRC. Table 4 shows the estimated abundance of the affected stocks of dolphins and porpoise.

Of note, the number of harbor porpoises behaviorally harassed by exposure to MFAS/HFAS is higher than the other species (and, in fact, suggests that every member of the stock could potentially be taken by Level B harassment multiple times) because of the low Level B Harassment threshold, which essentially makes the ensounded area of effects significantly larger than for the other species. However, the fact that the threshold is a step function and not a curve (and assuming uniform density) means that the vast majority of the takes occur in the very lowest levels that exceed the threshold (approximately 80% of the takes are from exposures to 120 dB to 126 dB, and then approximately 80% of those takes are in the 126 dB to 132 dB range, etc.), which means that the anticipated effects are not expected to be severe.

Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on these stocks.

Pinnipeds

The Navy's acoustic analysis predicts that the following numbers of Level B harassments (from exposure to MFAS/HFAS or explosives) of the associated species will occur: 120 Steller sea lion, 1,365 Northern fur seal, 286 California sea lion, 378 northern elephant seals, and 586 Pacific harbor seal. This estimate represents the total number of exposures and not necessarily the number of individuals exposed, as a single individual may be exposed multiple times over the course of a year.

The model further predicted that of those Level B harassments listed above, 290 Pacific harbor seals and 1 northern fur seal, of the modeled Level B Harassment takes for all of these species were predicted to be in the form of TTS from MFAS exposure. NMFS believes it unlikely that northern fur seals, for which the TTS threshold is 206 dB SEL, will incur TTS because of the distance within which they would have to approach the MFAS source (approximately 37 m for the most

powerful source), the fact that many animals will likely avoid active sonar sources to some degree, and the likelihood that Navy monitors would detect these pinnipeds (because of the relatively short duration of their dives and their tendency to rest near the surface) prior to an approach within this distance and implement active sonar powerdown or shutdown. For harbor seals, more animals will be exposed to levels associated with TTS because of the lower threshold (183 SEL) that can be heard approximately 1,400 m from the highest powered AN/SQS–53C source. As mentioned above and indicated in Table 5, some pinniped vocalizations might overlap with the MFAS/HFAS TTS frequency range (2–20 kHz), which could potentially temporarily decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals.

However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFAS/HFAS.

The acoustic analysis also predicted that 1 Pacific harbor seal would be exposed to MFAS/HFAS sound levels that would result in Level A Harassment (PTS—injury). However, because of the distance within which they would have to approach the MFAS source (approximately 50 m for the most powerful source) and the fact that animals will likely avoid active sonar sources to some degree, NMFS does not believe that any animals will incur PTS or be otherwise injured by MFAS/HFAS. However, the Navy has requested authorization for one Level A take for Pacific harbor seals, so NMFS is considering it in our analysis.

Acoustic analysis also predicted that of the total level B harassment takes listed in the first paragraph, 44 Northern fur seals, 1 California sea lion, and 29 northern elephant seals would be exposed to sound or pressure from explosives at levels expected to result in TTS. For the same reasons listed above, NMFS anticipates that the Navy watchstanders would likely detect the majority of the individual northern elephant seals, northern fur seals, and California sea lions and implement the mitigation measures to avoid exposure. However, the range to TTS for a few of the larger explosives is larger than the associated exclusion zones for BOMBEX, MISSILEX, or SINKEX (see Table 3), therefore NMFS anticipates that some TTS might not be avoided during those exercises. Acoustic analysis also predicted that 2 northern elephant seals and 1 northern fur seal might be exposed to levels of sound or pressure from explosives that would

result in PTS or other injury. NMFS anticipates that the Navy watchstanders would likely detect these species and implement the mitigation measures to avoid exposure. In the case of all explosive exercises, the exclusion zones are 2–12 times larger than the estimated distance at which an animal would be exposed to injurious sounds or pressure waves. However, an authorization for Level A take of these individuals allows the Navy to remain in compliance in the unlikely event that animals go undetected and enter an area with injurious energy or pressure levels, and therefore NMFS considers it in our analysis.

Steller sea lions are MMPA depleted and ESA-listed with a decreasing population and they have designated critical habitat within the NWTRC. A small number, compared to the population estimate, are predicted to be taken by behavioral disturbance, and one potentially by injury, although NMFS does not anticipate this. Of note, the critical habitat (3 haulouts) has limitations for air approach distances and by sea approach distances and the Navy abides by these restrictions.

Generally speaking, pinniped stocks in the NWTRC are thought to be stable or increasing. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on these stocks.

Preliminary Determination

Negligible Impact

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the total taking from Navy training exercises utilizing MFAS/HFAS and underwater explosives in the NWTRC will have a negligible impact on the affected species or stocks. NMFS has proposed regulations for these exercises that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Subsistence Harvest of Marine Mammals

NMFS has preliminarily determined that the issuance of 5-year regulations and subsequent LOAs for Navy training exercises in the NWTRC would not have

an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use for any Alaska Natives or Tribal member in the Northwest (e.g., Oregon, Washington, and northern California). Specifically, the Navy's exercises would not affect any Alaskan Native because the activities will be limited to waters off the coast of Washington, Oregon, and northern California, areas outside of traditional Alaskan Native hunting grounds. Moreover, there are no cooperative agreements in force under the MMPA or Whaling Convention Act that would allow for the subsistence harvest of marine mammals in waters off the Northwest coast. Consequently, this action would not result in an unmitigable adverse impact on the availability of the affected species or stocks for taking for subsistence uses in the Northwest.

As noted above, NMFS will consider all comments, suggestions and/or concerns submitted by the public during the proposed rulemaking comment period to help inform our final decision, particularly with respect to our negligible impact determination and the proposed mitigation and monitoring measures.

ESA

There are seven marine mammal species and one sea turtle species that are listed as endangered under the ESA with confirmed or possible occurrence in the study area: Humpback whale, sei whale, fin whale, blue whale, sperm whale, southern resident killer whale, Steller sea lion, and the leatherback sea turtle. The Navy has begun consultation with NMFS pursuant to section 7 of the ESA, and NMFS will also consult internally on the issuance of an LOA under section 101(a)(5)(A) of the MMPA for NWTRC activities. Consultation will be concluded prior to a determination on the issuance of the final rule and an LOA.

NEPA

NMFS has participated as a cooperating agency on the Navy's Draft Environmental Impact Statement (DEIS) for the NWTRC, which was published on December 29, 2008. The Navy's DEIS is posted on NMFS' Web site: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. NMFS intends to adopt the Navy's Final EIS (FEIS), if adequate and appropriate. Currently, we believe that the adoption of the Navy's FEIS will allow NMFS to meet its responsibilities under NEPA for the issuance of an LOA for NWTRC. If the Navy's FEIS is deemed not to be adequate, NMFS would supplement the

existing analysis to ensure that we comply with NEPA prior to the issuance of the final rule or LOA.

Classification

This action does not contain any collection of information requirements for purposes of the Paperwork Reduction Act.

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act (RFA). Any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy. NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

Dated: July 2, 2009.

James Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 218 continues to read as follows:

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

2. Subpart M is added to part 218 to read as follows:

Subpart M—Taking and Importing Marine Mammals; U.S. Navy's Northwest Training Range Complex (NWTRC)

- Sec.
218.110 Specified activity and specified geographical area.
218.111 [Reserved]
218.112 Permissible methods of taking.
218.113 Prohibitions.
218.114 Mitigation.
218.115 Requirements for monitoring and reporting.
218.116 Applications for Letters of Authorization.
218.117 Letters of Authorization.
218.118 Renewal of Letters of Authorization and adaptive management.
218.119 Modifications to Letters of Authorization.

Subpart M—Taking and Importing Marine Mammals; U.S. Navy's Northwest Training Range Complex (NWTRC)

§ 218.110 Specified activity and specified geographical area.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the Offshore area of the Northwest Training Range Complex (NWTRC) (as depicted in Figure ES–1 in the Navy's Draft Environmental Impact Statement for NWTRC), which is bounded by 48°30' N. lat.; 130°00' W. long.; 40°00' N. lat.; and on the east by 124°00' W. long or by the shoreline where the shoreline extends west of 124°00' W. long (excluding the Strait of Juan de Fuca (east of 124°40' W. long), which is not included in the Offshore area).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The use of the following mid-frequency active sonar (MFAS) sources, high frequency active sonar (HFAS) sources for U.S. Navy anti-submarine warfare (ASW) and mine warfare (MIW) training, in the amounts and in the locations indicated below (±10%):

(i) AN/SQS–53 (hull-mounted active sonar)—up to 215 hours over the course of 5 years (an average of 43 hours per year);

(ii) AN/SQS–56 (hull-mounted active sonar)—up to 330 hours over the course of 5 years (an average of 65 hours per year);

(iii) SSQ–62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 4430 sonobuoys over the course of 5 years (an average of 886 sonobuoys per year)

(iv) MK–48 (heavyweight torpedoes)—up to 10 torpedoes over the course of 5 years (an average of 2 torpedoes per year);

(v) AN/BQS–15 (mine detection and submarine navigational sonar)—up to 210 hours over the course of 5 years (an average of 42 hours per year);

(vi) AN/SSQ–125 (AEER)—up to 745 buoys deployed over the course of 5 years (total combined with the AN/SSQ–110A (IEER)) (an average of 149 per year);

(vii) Range Pingers—up to 900 hours over the course of 5 years (an average of 180 hours per year); and

(viii) PUTR Uplink—up to 750 hours over the course of 5 years (an average of 150 hours per year).

(2) The detonation of the underwater explosives indicated in this paragraph (c)(2)(i) conducted as part of the training events indicated in this paragraph (c)(2)(ii):

(i) Underwater Explosives

(A) 5" Naval Gunfire (9.5 lbs);

(B) 76 mm rounds (1.6 lbs);

(C) Maverick (78.5 lbs);

(D) Harpoon (448 lbs);

(E) MK–82 (238 lbs);

(F) MK–48 (851 lbs);

(G) Demolition Charges (2.5 lbs);

(H) AN/SSQ–110A (IEER explosive sonobuoy—5 lbs);

(I) HARM;

(J) Hellfire;

(K) SLAM; and

(L) GBU 10, 12, and 16.

(ii) Training Events

(A) Surface-to-surface Gunnery Exercises (S–S GUNEX)—up to 1700 exercises over the course of 5 years (an average of 340 per year).

(B) Bombing Exercises (BOMBEX)—up to 150 exercises over the course of 5 years (an average of 30 per year).

(C) Sinking Exercises (SINKEX)—up to 10 exercises over the course of 5 years (an average of 2 per year).

(D) Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) Systems—up to 60 exercises (total combined with the AN/SSQ–125A (AEER)) over the course of 5 years (an average of 12 per year).

§ 218.111 [Reserved]

§ 218.112 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.117 of this chapter, the Holder of

the Letter of Authorization (hereinafter "Navy") may incidentally, but not intentionally, take marine mammals within the area described in § 218.110(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 218.110(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.110(c) is limited to the following species, by the indicated method of take and the indicated number of times (estimated based on the authorized amounts of sound source operation):

(1) Level B Harassment (±10% of the Take Estimate Indicated Below)

(i) Mysticetes

(A) Humpback whale (*Megaptera novaeangliae*)—75 (an average of 15 annually);

(B) Fin whale (*Balaenoptera physalus*)—720 (an average of 144 annually);

(C) Blue whale (*Balaenoptera musculus*)—95 (an average of 19 annually);

(D) Sei whale (*Balaenoptera borealis*)—5 (an average of 1 annually);

(E) Minke whale (*Balaenoptera acutorostrata*)—45 (an average of 9 annually); and

(F) Gray whale (*Eschrichtius robustus*)—20 (an average of 4 annually).

(ii) Odontocetes

(A) Sperm whales (*Physeter macrocephalus*)—635 (an average of 127 annually);

(B) Killer whale (*Orcinus orca*)—70 (an average of 14 annually);

(C) Pygmy or dwarf sperm whales (*Kogia breviceps* or *Kogia sima*)—20 (an average of 94 annually);

(D) Mesoplodont beaked whales—75 (an average of 15 annually);

(E) Cuvier's beaked whales (*Ziphius cavirostris*)—70 (an average of 14 annually);

(F) Baird's beaked whales (*Berardius bairdii*)—65 (an average of 13 annually);

(G) Short-finned pilot whale (*Globicephala macrorhynchus*)—10 (an average of 2 annually);

(H) Striped dolphin (*Stenella coeruleoalba*)—400 (an average of 40 annually);

(I) Short-beaked common dolphin (*Globicephala macrorhynchus*)—6280 (an average of 1256 annually);

(J) Risso's dolphin (*Grampus griseus*)—500 (an average of 100 annually);

(K) Northern right whale dolphin (*Lissodelphis borealis*)—3705 (an average of 741 annually);

(L) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)—2855 (an average of 571 annually);

(M) Dall's porpoise (*Phocoenoides dalli*)—23780 (an average of 4752 annually); and

(N) Harbor Porpoise (*Phocoena phocoena*)—596370 (an average of 119274 annually).

(ii) Pinnipeds

(A) Northern elephant seal (*Mirounga angustirostris*)—1890 (an average of 378 annually);

(B) Pacific harbor seal (*Phoca vitulina*)—2930 (an average of 586 annually);

(C) California sea lion (*Zalophus californianus*)—1430 (an average of 286 annually);

(D) Northern fur seal (*Callorhinus ursinus*)—6825 (an average of 1365 annually); and

(E) Steller sea lion (*Eumetopias jubatus*)—600 (an average of 120 annually).

(2) Level A Harassment

(i) Fin whale—5 (an average of 1 annually);

(ii) Blue Whale—5 (an average of 1 annually);

(iii) Sperm whale—5 (an average of 1 annually);

(iv) Dall's Porpoise—15 (an average of 3 annually);

(v) Harbor Porpoise—5 (an average of 1 annually);

(vi) Northern right whale dolphin—5 (an average of 1 annually);

(vii) Short-beaked common dolphin—10 (an average of 2 annually);

(viii) Northern elephant seal—10 (an average of 2 annually);

(ix) Pacific harbor seal—5 (an average of 1 annually); and

(x) Northern fur seal—5 (an average of 1 annually).

§ 218.113 Prohibitions.

No person in connection with the activities described in § 218.110 may:

(a) Take any marine mammal not specified in § 218.112(c);

(b) Take any marine mammal specified in § 218.112(c) other than by incidental take as specified in §§ 218.112(c)(1) and (c)(2);

(c) Take a marine mammal specified in § 218.112(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 218.117 of this chapter.

§ 218.114 Mitigation.

(a) When conducting training and utilizing the sound sources or explosives identified in § 218.110(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 218.117 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) Navy's General Maritime Measures for All Training at Sea

(i) Personnel Training (for All Training Types)

(A) All commanding officers (COs), executive officers (XOs), lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-submarine Warfare (ASW)/Mine Warfare (MIW) helicopter crews shall complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel.

(B) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Education and Training Command [NAVEDTRA] 12968–D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced lookout. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). Personnel being trained as lookouts can be counted among required lookouts as long as supervisors monitor their progress and performance.

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

(ii) Operating Procedures and Collision Avoidance

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel

training requirement and general marine species protective measures.

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

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

(D) On surface vessels equipped with a multi-function active sensor, pedestal mounted "Big Eye" (20x110) binoculars shall be properly installed and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

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

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

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

(H) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

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

a closing of the distance to the detected marine mammal.

(2) Navy's Measures for MFAS Operations

(i) Personnel Training (for MFAS Operations)

(A) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training material prior to use of mid-frequency active sonar.

(B) All COs, XOs, and officers standing watch on the bridge shall have reviewed the Marine Species Awareness Training material prior to a training event employing the use of mid-frequency active sonar.

(C) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Educational Training [NAVEDTRA], 12968-D).

(D) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). This does not forbid personnel being trained as lookouts from being counted as those listed in previous measures so long as supervisors monitor their progress and performance.

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

(ii) Lookout and Watchstander Responsibilities

(A) On the bridge of surface ships, there shall always be at least three people on watch whose duties include observing the water surface around the vessel.

(B) All surface ships participating in ASW training events shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as marine mammal lookouts.

(C) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

(D) Personnel on lookout shall be responsible for reporting all objects or

anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine species that may need to be avoided as warranted. Personnel on lookout and officers on watch on the bridge will have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(iii) Operating Procedures (for MFAS Operations)

(A) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(B) During mid-frequency active sonar operations, personnel shall utilize all available sensor and optical systems (such as night vision goggles) to aid in the detection of marine mammals.

(C) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(D) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yds (183 m) of the sonobuoy.

(E) Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(F) *Safety Zones*—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) within or closing to inside 1,000 yds (914 m) of the sonar dome (the bow), the ship or submarine shall limit active transmission levels to at least 6 decibels (dB) below normal operating levels.

(1) Ships and submarines shall continue to limit maximum transmission levels by this 6-dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(2) Should a marine mammal be detected within or closing to inside 500 yds (457 m) of the sonar dome, active sonar transmissions shall be limited to at least 10 dB below the equipment's normal operating level. Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(3) Should the marine mammal be detected within or closing to inside 200 yds (183 m) of the sonar dome, active sonar transmissions shall cease. Sonar shall not resume until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(4) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the OOD concludes that dolphins or porpoises are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(5) If the need for power-down should arise as detailed in "Safety Zones" above, the Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of what level above 235 dB active sonar was being operated).

(G) Prior to start up or restart of active sonar, operators will check that the Safety Zone radius around the sound source is clear of marine mammals.

(H) *Active sonar levels (generally)*—Navy shall operate active sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(3) Navy's Measures for Underwater Detonations

(i) Surface-to-Surface Gunnery (Non-Explosive Rounds)

(A) A 200-yd (183 m) radius buffer zone shall be established around the intended target.

(B) From the intended firing position, trained lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable.

(C) If applicable, target towing vessels shall maintain a lookout. If a marine mammal is sighted in the vicinity of the

exercise, the tow vessel shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(D) The exercise shall be conducted only when the buffer zone is visible and marine mammals are not detected within the target area and the buffer zone.

(ii) Surface-to-Air Gunnery (Explosive and Non-Explosive Rounds)

(A) Vessels shall orient the geometry of gunnery exercises in order to prevent debris from falling in the area of sighted marine mammals.

(B) Vessels will expedite the recovery of any parachute deploying aerial targets to reduce the potential for entanglement of marine mammals.

(C) Target towing aircraft shall maintain a lookout. If a marine mammal is sighted in the vicinity of the exercise, the tow aircraft shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(iii) Air-to-Surface At-Sea Bombing Exercises (Explosive and Non-Explosive)

(A) If surface vessels are involved, trained lookouts shall survey for floating kelp and marine mammals. Ordnance shall not be targeted to impact within 1,000 yds (914 m) of known or observed floating kelp or marine mammals.

(B) A 1,000 yd (914-m) radius buffer zone shall be established around the intended target.

(C) Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area shall be made by flying at 1,500 ft (457 m) or lower, if safe to do so, and at the slowest safe speed. Release of ordnance through cloud cover is prohibited; aircraft must be able to actually see ordnance impact areas. Survey aircraft should employ most effective search tactics and capabilities.

(D) The exercise will be conducted only if marine mammals are not visible within the buffer zone.

(iv) Air-to-Surface Missile Exercises (Explosive and Non-Explosive)

(A) Ordnance shall not be targeted to impact within 1,800 yds (1646 m) of observed floating kelp.

(B) Aircraft shall visually survey the target area for marine mammals. Visual inspection of the target area shall be made by flying at 1,500 (457 m) feet or lower, if safe to do so, and at slowest safe speed. Firing or range clearance aircraft must be able to actually see ordnance impact areas. Explosive ordnance shall not be targeted to impact

within 1,800 yds (1646 m) of sighted marine mammals.

(v) Demolitions, Mine Warfare, and Mine Countermeasures (Up to a 2.5-lb Charge)

(A) *Exclusion Zones*—All Mine Warfare and Mine Countermeasures Operations involving the use of explosive charges must include exclusion zones for marine mammals to prevent physical and/or acoustic effects to those species. These exclusion zones shall extend in a 700-yard arc radius around the detonation site.

(B) *Pre-Exercise Surveys*—For Demolition and Ship Mine Countermeasures Operations, pre-exercise surveys shall be conducted within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air, and personnel shall be alert to the presence of any marine mammal. Should such an animal be present within the survey area, the explosive event shall not be started until the animal voluntarily leaves the area. The Navy will ensure the area is clear of marine mammals for a full 30 minutes prior to initiating the explosive event. Personnel will record any marine mammal observations during the exercise as well as measures taken if species are detected within the exclusion zone.

(C) *Post-Exercise Surveys*—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

(D) *Reporting*—If there is evidence that a marine mammal may have been stranded, injured or killed by the action, Navy training activities shall be immediately suspended and the situation immediately reported by the participating unit to the Officer in Charge of the Exercise (OCE), who will follow Navy procedures for reporting the incident to the Commander, Pacific Fleet, Commander, Navy Region Northwest, Environmental Director, and the chain of command. The situation shall also be reported to NMFS (see Stranding Plan for details).

(vi) Sink Exercise

(A) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(B) An exclusion zone with a radius of 1.0 nm (1.9 km) would be established around each target. This exclusion zone is based on calculations using a 990-lb (450-kg) H6 net explosive weight high explosive source detonated 5 ft (1.5 m) below the surface of the water, which

yields a distance of 0.85 nm (1.57 km) (cold season) and 0.89 nm (1.65 km) (warm season) beyond which the received level is below the 182 decibels (dB) re: 1 micropascal squared-seconds ($\mu\text{Pa}^2\text{-s}$) threshold established for the WINSTON S. CHURCHILL (DDG 81) shock trials (U.S. Navy, 2001). An additional buffer of 0.5 nm (0.9 km) would be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which would extend beyond the buffer zone by an additional 0.5 nm (0.9 km), would be surveyed. Together, the zones extend out 2 nm (3.7 km) from the target.

(C) A series of surveillance overflights shall be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol shall be as follows:

(1) Overflights within the exclusion zone shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy's Search and Rescue Tactical Aid, which provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.

(2) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team would have completed the Navy's marine mammal training program for lookouts.

(3) In addition to the overflights, the exclusion zone shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring would be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals (particularly sperm whales) in the vicinity of the exercise. The sonobuoys shall be re-seeded as necessary throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE would be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

(4) On each day of the exercise, aerial surveillance of the exclusion and safety zones shall commence 2 hours prior to the first firing.

(5) The results of all visual, aerial, and acoustic searches shall be reported

immediately to the OCE. No weapons launches or firing may commence until the OCE declares the safety and exclusion zones free of marine mammals.

(6) If a marine mammal observed within the exclusion zone is diving, firing would be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes have elapsed. After 30 minutes, if the animal has not been re-sighted it would be assumed to have left the exclusion zone. The OCE would determine if the listed species is in danger of being adversely affected by commencement of the exercise.

(7) During breaks in the exercise of 30 minutes or more, the exclusion zone shall again be surveyed for any marine mammal. If marine mammals are sighted within the exclusion zone, the OCE shall be notified, and the procedure described above would be followed.

(8) Upon sinking of the vessel, a final surveillance of the exclusion zone shall be monitored for 2 hours, or until sunset, to verify that no marine mammals were harmed.

(D) Aerial surveillance shall be conducted using helicopters or other aircraft based on necessity and availability. The Navy has several types of aircraft capable of performing this task; however, not all types are available for every exercise. For each exercise, the available asset best suited for identifying objects on and near the surface of the ocean would be used. These aircraft would be capable of flying at the slow safe speeds necessary to enable viewing of marine vertebrates with unobstructed, or minimally obstructed, downward and outward visibility. The exclusion and safety zone surveys may be cancelled in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

(E) Every attempt would be made to conduct the exercise in sea states that are ideal for marine mammal sighting, Beaufort Sea State 3 or less. In the event of a 4 or above, survey efforts shall be increased within the zones. This shall be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.

(F) The exercise shall not be conducted unless the exclusion zone could be adequately monitored visually.

(G) In the event that any marine mammals are observed to be harmed in the area, a detailed description of the animal shall be taken, the location noted, and if possible, photos taken.

This information shall be provided to

NMFS via the Navy's regional environmental coordinator for purposes of identification (see the Stranding Plan for detail).

(H) An after action report detailing the exercise's time line, the time the surveys commenced and terminated, amount, and types of all ordnance expended, and the results of survey efforts for each event shall be submitted to NMFS.

(vii) Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER)

(A) Crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search shall be conducted at an altitude below 457 m (500 yd) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft operations, crews are allowed to conduct coordinated area clearances.

(B) Crews shall conduct a minimum of 30 minutes of visual and aural monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(C) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 914 m (1,000 yd) of observed marine mammal activity, the Navy shall deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 914 m (1,000 yd) of the intended post position, the Navy shall co-locate the explosive source sonobuoy (AN/SSQ-110A) (source) with the receiver.

(D) When operationally feasible, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of RF range of these sensors.

(E) *Aural Detection*—If the presence of marine mammals is detected aurally, then that shall cue the Navy aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

(F) *Visual Detection*—If marine mammals are visually detected within 914 m (1,000 yd) of the explosive source sonobuoy (AN/SSQ-110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 914 m (1,000 yd) safety buffer. Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 914 m (1,000 yd) safety buffer.

(G) Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the "Payload 1 Release" command followed by the "Payload 2 Release" command. Aircrews shall refrain from using the "Scuttle" command when two payloads remain at a given post. Aircrews will ensure that a 914 m (1,000 yd) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(H) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(I) The Navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ-110A) that can not be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(J) Mammal monitoring shall continue until out of own-aircraft sensor range.

(viii) Memorandum of Agreement (MOA)

The Navy and NMFS shall develop an MOA, and other mechanism consistent with Federal fiscal law requirements (and all other applicable laws), that allows the Navy to assist NMFS with the Phase 1 and 2 Investigations of USEs through the provision of in-kind services, such as (but not limited to) the use of plane/boat/truck for transport of personnel involved in the stranding response or investigation or animals, use of Navy property for necropsies or burial, or assistance with aerial surveys to discern the extent of a USE. The Navy may assist NMFS with the Investigations by providing one or more of the in-kind services outlined in the MOA, when available and logistically feasible and when the assistance does not negatively affect Fleet operational commitments.

(b) [Reserved]

§218.115 Requirements for monitoring and reporting.

(a) The Navy is required to cooperate with the NMFS, and any other Federal, State or local agency monitoring the impacts of the activity on marine mammals.

(b) *General Notification of Injured or Dead Marine Mammals*—Navy personnel shall ensure that NMFS is

notified immediately (*see* Communication Plan) or as soon as clearance procedures allow) if an injured, stranded, or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). In the event that an injured, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or during or shortly after, MFAS, HFAS, or underwater explosive detonations, the Navy will report the same information as listed above as soon as operationally feasible and clearance procedures allow.

(c) *General Notification of Ship Strike*—In the event of a ship strike by any Navy vessel, at any time or place, the Navy shall do the following:

(1) Immediately report to NMFS the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead (or unknown)

(2) Report to NMFS as soon as operationally feasible the size and length of animal, an estimate of the injury status (ex., dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status.

(3) Report to NMFS the vessel length, speed, and heading as soon as feasible.

(4) Provide NMFS a photo or video, if equipment is available

(d) *Event Communication Plan*—The Navy shall develop a communication plan that will include all of the communication protocols (phone trees, etc.) and associated contact information required for NMFS and the Navy to carry out the necessary expeditious communication required in the event of a stranding or ship strike, including as described in the proposed notification measures above.

(e) The Navy must conduct all monitoring and/or research required under the Letter of Authorization including abiding by the NWTRC Monitoring Plan (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>)

(f) *Report on Monitoring required in paragraph (c) of this section*—The Navy shall submit a report annually on September 1 describing the implementation and results (through June 1 of the same year) of the monitoring required in paragraph (c) of

this section. Navy will standardize data collection methods across ranges to allow for comparison in different geographic locations.

(g) *Annual NWTRC Report*—The Navy will submit an Annual NWTRC Report on October 1 of every year (covering data gathered through August 1). This report shall contain the subsections and information indicated below.

(1) *ASW Summary*—This section shall include the following information as summarized from non-major training exercises (unit-level exercises, such as TRACKEXs and MIW):

(i) *Total Hours*—Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.))

(ii) *Cumulative Impacts*—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major training (i.e., ULT) utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across NWTRC. The Navy shall include (in the NWTRC annual report) a brief annual progress update on the status of the development of an effective and unclassified method to report this information until an agreed-upon (with NMFS) method has been developed and implemented.

(h) *Sinking Exercises (SINKEXs)*—This section shall include the following information for each SINKEX completed that year:

(1) Exercise Info;

(i) Location;

(ii) Date and time exercise began and ended;

(iii) Total hours of observation by watchstanders before, during, and after exercise;

(iv) Total number and types of rounds expended/explosives detonated;

(v) Number and types of passive acoustic sources used in exercise;

(vi) Total hours of passive acoustic search time;

(vii) Number and types of vessels, aircraft, etc., participating in exercise;

(viii) Wave height in feet (high, low and average during exercise); and

(ix) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted

(2) Individual Marine Mammal Observation during SINKEX (by Navy Lookouts) Information

(i) Location of sighting;

(ii) Species (if not possible—indication of whale/dolphin/pinniped);

(iii) Number of individuals;
 (iv) Calves observed (y/n);
 (v) Initial detection sensor;
 (vi) Length of time observers maintained visual contact with marine mammal;
 (vii) Wave height;
 (viii) Visibility;
 (ix) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;
 (x) Distance of marine mammal from actual detonations (or target spot if not yet detonated)—use four categories to define distance:
 (A) The modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (TBD m for SINKEK in NWTRC);
 (B) The required exclusion zone (1 nm for SINKEK in NWTRC);
 (C) The required observation distance (if different than the exclusion zone (2 nm for SINKEK in NWTRC); and
 (D) Greater than the required observed distance. For example, in this case, the observer would indicate if < TBD m, from 738 m – 1 nm, from 1 nm – 2 nm, and > 2 nm.
 (xi) *Observed behavior*—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming *etc.*), including speed and direction.
 (xii) *Resulting mitigation implementation*—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.
 (xiii) If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection.
 (i) Improved Extended Echo-Ranging System (IEER) Summary
 (1) Total number of IEER events conducted in NWTRC;
 (2) Total expended/detonated rounds (buoys); and
 (3) Total number of self-scuttled IEER rounds.
 (f) *Explosives Summary*—The Navy is in the process of improving the methods used to track explosive use to provide increased granularity. To the extent practicable, the Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.
 (1) Total annual number of each type of explosive exercise (of those identified

as part of the “specified activity” in this final rule) conducted in NWTRC; and
 (2) Total annual expended/detonated rounds (missiles, bombs, *etc.*) for each explosive type.
 (k) *NWTRC 5-Yr Comprehensive Report*—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which annual reports are required (Annual NWTRC Exercise Reports and NWTRC Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2013), covering activities that have occurred through June 1, 2013.
 (l) *Comprehensive National ASW Report*—By June, 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans for the Northwest Training Range Complex, the Southern California Range Complex, the Atlantic Fleet Active Sonar Training, the Hawaii Range Complex, the Marianas Islands Range Complex, and the Gulf of Alaska.
§ 218.116 Applications for Letters of Authorization.
 To incidentally take marine mammals pursuant to these regulations, the U.S. Citizen (as defined by § 216.103) conducting the activity identified in § 218.110(c) (*i.e.*, the Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 218.117 or a renewal under § 218.118.
§ 218.117 Letters of Authorization.
 (a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 218.118.
 (b) Each Letter of Authorization shall set forth:
 (1) Permissible methods of incidental taking;
 (2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.*, mitigation); and
 (3) Requirements for mitigation, monitoring and reporting.
 (c) Issuance and renewal of the Letter of Authorization shall be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.118 Renewal of Letters of Authorization and adaptive management.
 (a) A Letter of Authorization issued under § 216.106 and § 218.177 of this chapter or the activity identified in § 218.170(c) will be renewed annually upon:
 (1) Notification to NMFS that the activity described in the application submitted under § 218.246 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;
 (2) Receipt of the monitoring reports and notifications within the indicated timeframes required under § 218.115(b through j); and
 (3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 218.114 and the Letter of Authorization issued under §§ 216.106 and 218.117 of this chapter, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.
 (b) *Adaptive Management*—Based on new information, NMFS may modify or augment the existing mitigation measures if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable. Similarly, NMFS may coordinate with the Navy to modify or augment the existing monitoring requirements if the new data suggest that the addition of a particular measure would likely fill in a specifically important data gap. The following are some possible sources of new and applicable data:
 (1) Results from the Navy's monitoring from the previous year (either from the NWTRC or other locations);
 (2) Results from specific stranding investigations (either from the NWTRC Range Complex or other locations, and involving coincident MFAS/HFAS training or not involving coincident use) or NMFS' long term prospective stranding investigation discussed in the preamble to this proposed rule;
 (3) Results from general marine mammal and sound research (funded by the Navy or otherwise);
 (4) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.
 (c) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 218.118 of this chapter indicates that a substantial modification to the described work, mitigation or

monitoring undertaken during the upcoming season will occur, or if NMFS utilizes the adaptive management mechanism addressed in paragraph (b) of this section to modify or augment the mitigation or monitoring measures, the NMFS shall provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization would be restricted to:
 (1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and
 (2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.
 (d) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.
§ 218.119 Modifications to Letters of Authorization.
 (a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 218.117 of this chapter and subject to the provisions of this subpart, shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.118, without

modification (except for the period of validity), is not considered a substantive modification.
 (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 § 218.110(b), a Letter of Authorization issued pursuant to §§ 216.106 and 218.117 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.
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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals; Navy Training Activities Conducted Within the Northwest Training Range Complex; Proposed Rule

33828

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 0906101030-91038-01]

RIN 0648-AX88

Taking and Importing Marine Mammals; Navy Training Activities Conducted Within the Northwest Training Range Complex

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to training activities conducted in the Northwest Training Range Complex (NWTRC), off the coasts of Washington, Oregon, and northern California, for the period of February 2010 through February 2015 (updated from initial request for October 2009 through September 2014). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requesting information, suggestions, and comments on these proposed regulations.

DATES: Comments and information must be received no later than August 12, 2009.

ADDRESSES: You may submit comments, identified by 0648-AX88, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Hand delivery or mailing of paper, disk, or CD-ROM comments should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> 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.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713-2289, ext. 166.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application may be obtained by writing to the address specified above (*See ADDRESSES*), telephoning the contact listed above (*see FOR FURTHER INFORMATION CONTACT*), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. The Navy's Draft Environmental Impact Statement (DEIS) for NWTRC was published on December 29 2008, and may be viewed at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. NMFS is participating in the development of the Navy's EIS as a cooperating agency under NEPA.

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) during periods of not more than five consecutive years each 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.

Authorization 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, 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."

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108-136) modified the MMPA by removing 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].

In January 2009, the Council on Environmental Quality requested that NOAA conduct a comprehensive review of the Navy's mitigation measures applicable to the use of sonar in its training activities.

Summary of Request

In September 2008, NMFS received an application from the Navy requesting authorization for the take of individuals of 26 species of marine mammals incidental to upcoming Navy training activities to be conducted within the NWTRC, which extends west to 250 nautical miles (nm) (463 kilometers [km]) beyond the coast of Northern California, Oregon, and Washington and east to Idaho and encompasses 122,400 nm² (420,163 km²) of surface/subsurface ocean operating areas. These training activities are military readiness activities under the provisions of the NDAA. The Navy states, and NMFS concurs, that these military readiness activities may incidentally take marine mammals present within the NWTRC by exposing them to sound from mid-frequency or high frequency active sonar (MFAS/HFAS) or underwater detonations. The Navy requests authorization to take individuals of 26 species of marine mammals by Level B Harassment and 14 individuals of 10 species by Level A Harassment. The Navy's model, which did not factor in any potential benefits of mitigation measures, predicted that 14 individual marine mammals would be exposed to levels of sound or pressure that would result in injury; thus, NMFS is proposing to authorize the take, by Level A Harassment of 14 individuals. However, NMFS and the Navy have determined preliminarily that injury can be avoided through the implementation of the Navy's proposed mitigation measures. NMFS neither anticipates, nor does it propose to authorize mortality of marine mammals incidental to naval exercises in the NWTRC.

Background of Request

The Navy's mission is to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. Section 5062 of Title 10 of the United States Code directs the Chief of Naval Operations to train all naval forces for combat. The Chief of Naval Operations meets that direction, in part, by conducting at-sea training exercises and ensuring naval forces have access to ranges, operating areas (OPAREAs) and airspace where they can develop and maintain skills for wartime missions and conduct research, development, testing, and evaluation (RDTE&E) of naval weapons systems.

The proposed action would result in selectively focused, but critical enhancements and increases in training that are necessary for the Navy to maintain a state of military readiness commensurate with the national defense mission. The Navy proposes to implement actions within the NWTRC to:

- Conduct training and Unmanned Aerial Systems (UAS) RDTE&E activities of the same types as currently conducted, but also;
- Increase training activities from current levels as necessary in support of the Fleet Response Training Plan (FRTTP);
- Accommodate force structure changes (new platforms and weapons systems) and
- Implement range enhancements associated with the NWTRC.

The proposed action would result in the following increases (above those conducted in previous years, *i.e.*, the No Action Alternative in the Navy's DEIS) in activities:

- *Antisubmarine Warfare*—10% increase.
- *Gunnery Exercises*—100% increase (increased from 90 to 176 events).
- *Bombing Exercises*—25% increase (increased from 24 to 30 sorties).
- *Sinking Exercises*—100% increase (increased from 1 to 2 exercises).

Overview of the NWTRC

The U.S. Navy has been training and operating in the area now defined as the NWTRC for over 60 years. The NWTRC includes ranges and airspace that extend west to 250 nm (463 km) beyond the coast of Northern California, Oregon, and Washington and east to Idaho. The components of the NWTRC encompass 122,461 nm² (420,163 km²) of surface/subsurface ocean operating areas (OPAREAs), 46,048 nm² (157,928 km²) of special use airspace (SUA), and 875 acres (354 hectares) of land. For range

management and scheduling purposes, the NWTRC is divided into numerous sub-component ranges or training areas used to conduct training and RDTE&E of military hardware, personnel, tactics, munitions, explosives, and electronic combat systems, as described in detail in the NWTRC DEIS. As the take of marine mammals is inherently tied to the surface/subsurface OPAREAs of the NWTRC, only those areas are discussed in more detail below.

The LOA application includes graphics (Figures 1-1, 2-1, and 2-2) that depict the sea, undersea, and air spaces used by the Navy. To aid in the description of the range complexes that will be addressed in this proposed rule, the ranges are divided into three major geographic and functional subdivisions. Each of the depicted individual ranges falls into one of these three major range subdivisions:

The Offshore Area—The Pacific Northwest (PACNW) OPAREA (same footprint as Offshore Area) serves as maneuver water space for ships and submarines to conduct training and to use as transit lanes. It extends from the Strait of Juan de Fuca in the north, to approximately 50 nm (93 km) south of Eureka, California in the south, and from the coast line of Washington, Oregon, and California westward to 130° W. longitude. The PACNW OPAREA is approximately 510 nm (945 km) in length from the northern boundary to the southern boundary, and 250 nm (463 km) from the coastline to the western boundary at 130° W longitude. Total surface area of the PACNW OPAREA is 122,400 nm² (420,163 km²).

Commander Submarine Force, U.S. Pacific Fleet (COMSUBPAC) Pearl Harbor manages this water space as transit lanes for U.S. submarines. While the sea space is ample for all levels of Navy training, no infrastructure is currently in place to support training. There are no dedicated training frequencies, no permanent instrumentation, no meteorological and oceanographic activities (METOC) system, and no Opposition Forces (OPFOR) or Electronic Combat (EC) target systems. In this region of the Pacific Ocean, storms and high sea states can create challenges to surface ship training between October and April. In addition, strong undersea currents in the PACNW make it difficult to place permanent bottom-mounted instrumentation such as hydrophones.

The Offshore Area undersea space lies beneath the PACNW OPAREA as described above. The bathymetry chart depicts a 100-fathom (182-m) curve parallel to the coastline approximately 12 nm (22 km) to sea, and in places 20

nm (37 km) out to sea. The area of deeper water of more than 100 fathoms (182 m) is calculated to be approximately 115,800 nm² (397,194 km²), while the shallow water area of less than 100 fathoms (600 ft, 182 m) is all near shore and amounts to approximately 6,600 nm² (22,638 km²).

The Inshore Area—This area includes all sea and undersea ranges and OPAREAs inland of the coastline, including Puget Sound. This area is composed of approximately 61 nm² of surface and subsurface area. NWTRC Inshore Areas include land ranges, airspace, and two surface/subsurface restricted areas—Navy 7 and 3. Activities conducted in each of these areas are not expected to take marine mammals, as defined by the MMPA and therefore, will not be discussed further in this proposed rule. Also included in the Inshore Area, Explosive Ordnance Disposal (EOD) Ranges are land, sea, and undersea ranges used by NSW and EOD forces specifically for EOD training and are composed of approximately 0.4 nm² of surface and subsurface area within the area identified as the Inshore Area. EOD units located in the NWTRC conduct underwater detonations as part of mine countermeasure training. This training is conducted at one of three locations: Crescent Harbor Underwater EOD Range, offshore from the Seaplane Base at Naval Air Station Whidbey Island; at the Floral Point Underwater EOD Range, located in Hood Canal near NAVBASE Kitsap-Bangor; and the Indian Island Underwater EOD Range, adjacent to Indian Island.

Description of Specified Activities

As mentioned above, the Navy has requested MMPA authorization to take marine mammals incidental to training activities in the NWTRC that would result in the generation of sound or pressure waves in the water at or above levels that NMFS has determined will likely result in take (see Acoustic Take Criteria Section), either through the use of MFAS/HFAS or the detonation of explosives in the water. These activities are discussed in the subsections below. In addition to use of active sonar sources and explosives, these activities include the operation and movement of vessels that are necessary to conduct the training, and the effects of this part of the activities are also analyzed in this document.

The Navy's application also briefly summarizes Anti-Air Warfare Training, Naval Special Warfare Training and Support Operations; however, these activities are primarily land and air based and do not utilize sound sources

or explosives for the portions that are in the water and, therefore, no take of marine mammals is anticipated from these activities and they are not discussed further.

Activities Utilizing Active Sonar Sources

For the NWTRC, the training activities that utilize active tactical sonar sources fall primarily into the category of Anti-submarine Warfare (ASW) exercises (MFAS/HFAS is also used in the mine avoidance exercises, which are considered Mine Warfare Training (MIW) activities; however, it is in such a small amount that impacts to marine mammals are minimal). This section includes a description of ASW, the active acoustic devices used in ASW exercises, and the exercise types in which these acoustic sources are used. Of note, the use of MFAS/HFAS in the NWTRC is minimal as compared to previous rules issued by NMFS (approximately 110 hours annual use of the most powerful surface vessel sonar versus approximately 2,500 hours annual use of AN/SQS-53C and AN/SQS-56C sonar in the Southern California Range Complex), does not include major exercises that involve the use of more than one surface vessel MFAS (AN/SQS-53C or AN/SQS-56C) at a time, and will not occur in the inshore area (*i.e.*, inland from the mouth of the Strait of Juan de Fuca).

ASW Training and Active Sonar

ASW involves helicopter and sea control aircraft, ships, and submarines, operating alone or in combination, to locate, track, and neutralize submarines. Various types of active and passive sonars are used by the Navy to determine water depth, locate mines, and identify, track, and target submarines. Passive sonar "listens" for

sound waves by using underwater microphones, called hydrophones, which receive, amplify and process underwater sounds. No sound is introduced into the water when using passive sonar. Passive sonar can indicate the presence, character and movement of submarines. However, passive sonar provides only a bearing (direction) to a sound-emitting source; it does not provide an accurate range (distance) to the source. Also, passive sonar relies on the underwater target itself to provide sufficient sound to be detected by hydrophones. Active sonar is needed to locate objects that emit little or no noise (such as mines or diesel-electric submarines operating in electric mode) and to establish both bearing and range to the detected contact.

Active sonar transmits pulses of sound that travel through the water, reflect off objects and return to a receiver. By knowing the speed of sound in water and the time taken for the sound wave to travel to the object and back, active sonar systems can quickly calculate direction and distance from the sonar platform to the underwater object. There are three types of active sonar: low frequency, mid-frequency, and high-frequency.

LFA sonar is not presently utilized in the NWTRC, and is not part of the Proposed Action.

MFAS, as defined in the Navy's NWTRC LOA application, operates between 1 and 10 kHz, with detection ranges up to 10 nm (19 km). Because of this detection ranging capability, MFAS is the Navy's primary tool for conducting ASW. Many ASW experiments and exercises have demonstrated that this improved capability for long range detection of adversary submarines before they are

able to conduct an attack is essential to U.S. ship survivability. Today, ASW is the Navy's number one war-fighting priority. Navies across the world utilize modern, quiet, diesel-electric submarines that pose the primary threat to the U.S. Navy's ability to perform a number of critical missions. Extensive training is necessary if Sailors, ships, and strike groups are to gain proficiency in using MFAS. If a strike group does not demonstrate MFAS proficiency, it cannot be certified as combat ready.

HFAS, as defined in the Navy's NWTRC LOA application, operates at frequencies greater than 10 kilohertz (kHz). At higher acoustic frequencies, sound rapidly dissipates in the ocean environment, resulting in short detection ranges, typically less than five nm (9 km). High-frequency sonar is used primarily for determining water depth, hunting mines and guiding torpedoes.

Acoustic Sources Used for ASW Exercises in the NWTRC

Modern sonar technology has developed a multitude of sonar sensor and processing systems. In concept, the simplest active sonars emit omnidirectional pulses ("pings") and time the arrival of the reflected echoes from the target object to determine range. More sophisticated active sonar emits an omnidirectional ping and then rapidly scans a steered receiving beam to provide directional, as well as range, information. More advanced active sonars transmit multiple preformed beams, listening to echoes from several directions simultaneously and providing efficient detection of both direction and range. The types of active sonar sources employed during ASW active sonar training exercises in the NWTRC are identified in Table 1.

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Sonar Sources	Frequency (kHz)	Source Level (dB) re 1 µPa @ 1 m	Emission Spacing (m)*	Vertical Directivity	Horizontal Directivity	Associated Platform	System Description	Annual Amount	Unit
AN/SQS-53C	3.5	235	154	Omni	240° forward-looking	Cruiser (CG) and Destroyer (DDG) hull mounted sonar	ASW search, detection, & localization (approximately 120 pings per hour)	43	Hours
AN/SQS-56C	7.5	225	129	13°	30°	Frigate (FFG) hull mounted sonar	ASW search, detection, & localization (approximately 120 pings per hour)	65	Hours
AN/BQS-15	Classified (HF)	Classified				Submarine (SSN)	Submarine navigation and mine detection sonar	42	Hours
AN/SSQ-62 (sonobuoy, tonal)	8	201	450	Omni	Omni	Helicopter and maritime patrol aircraft (P3 and P8 MPA) dropped sonobuoy	Remotely commanded expendable sonar-equipped buoy (approximately 12 pings per use, 30 secs between pings, 8 buoys per hour)	886	Buoys
MK-48 torpedo sonar	Classified (>10)	Classified	144	Omni	Omni	Submarine (SSN) launched torpedo (used during SINKEX)	Recoverable and non-explosive exercise torpedo; sonar is active approximately 15 min per torpedo run	2	Torpedoes
AN/SSQ-110A (IEER)	Classified (impulsive, broadband)	Classified	n/a	Omni	Omni	MPA deployed	ASW system consists of explosive acoustic source buoy (contains two 4.1 lb charges) and expendable passive receiver sonobuoy	149	Buoys
AN/SSQ-125 (AEER)	MF	Classified	n/a	Omni	Omni	MPA deployed	ASW system consists of active sonobuoy and expendable passive receiver sonobuoy	Replaces SSQ-110A, same effects as SSQ-62	
Range Pingers	12.9	194				Ships, submarines, and ASW targets when ASW TRACKEX training is conducted on the PUTR	1-3 pingers used in each ASW exercise, average of 3 hours each during PUTR operational days	180	Hours
PUTR Uplink	8.8, 17, or 40	190				Portable Undersea Tracking Range, deployed on ocean floor	Used 10 days per month June-Aug, 5 hours/day. Deployed in at least 3m from shore in 300-12000 ft of water	150	Hours

Table 1. Active sonar sources in the NWTRC and parameters used for modeling them. Many of the actual parameters and capabilities of these sonars are classified. Parameters used for modeling were derived to be as representative as possible. When, however, there were a wide range of potential modeling values, a nominal parameter likely to result in the most impact was used so that the model would err towards overestimation. *Spacing means distance between pings at the nominal speed

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ASW sonar systems are deployed from certain classes of surface ships, submarines, and fixed-wing maritime

patrol aircraft (MPA). Maritime patrol aircraft is a category of fixed-wing aircraft that includes the current P-3C

Orion, and the future P-8 Poseidon multimission maritime aircraft. No ASW helicopters train in the NWTRC. The

surface ships used are typically equipped with hull-mounted sonars (passive and active) for the detection of submarines. Fixed-wing MPA are used to deploy both active and passive sonobuoys to assist in locating and tracking submarines or ASW targets during the exercise. Submarines are equipped with passive sonar sensors used to locate and prosecute other submarines and/or surface ships during the exercise. The platforms used in ASW exercises are identified below.

Surface Ship Sonars—A variety of surface ships participate in training events. Of the ships that operate in the NWTRC, only two classes employ MFAS: the Fast Frigate (FFG) and the Guided Missile Destroyer (DDG). These two classes of ship are equipped with active as well as passive tactical sonars for mine avoidance and submarine detection and tracking. DDG class ships are equipped with the AN/SQS-53C sonar system (the most powerful system), with a nominal source level of 235 decibels (dB) re 1 µPa @ 1 m. The FFG class ship uses the SQS-56 sonar system, with a nominal source level of 225 decibels (dB) re 1 µPa @ 1 m. Sonar ping transmission durations were modeled as lasting 1 second per ping and omni-directional, which is a conservative assumption that will overestimate potential effects. Actual ping durations will be less than 1 second. The AN/SQS-53C hull-mounted sonar transmits at a center frequency of 3.5 kHz. The SQS-56 transmits at a center frequency of 7.5 kHz. Details concerning the tactical use of specific frequencies and the repetition rate for the sonar pings is classified but was modeled based on the required tactical training setting.

Submarine Sonars—Submarine active sonars are not used for ASW training in the NWTRC. However, the AN/BQS-15 sonar would be used for mine detection training. The AN/BQS-15, installed on guided missile nuclear submarines (SSGN) and fast attack nuclear submarines (SSN), uses high frequency (> 10 kHz) active sonar to locate mine shapes. A total of seven mine avoidance exercises would take place annually in the NWTRC. Each exercise would last six hours, for a total of 42 hours annually.

Aircraft Sonar Systems—Sonobuoys are the only aircraft sonar systems that would operate in the NWTRC. Sonobuoys are deployed by MPAs and are expendable devices used for the detection of submarines. Most sonobuoys are passive, but some can generate active acoustic signals, as well as listen passively. During ASW training, these systems' active modes are

used for localization of contacts and are not typically used in primary search capacity. The AN/SSQ-62 Directional Command Activated Sonobuoy System (DICASS) is the only MFAS sonobuoy used in the NWTRC. Because no ASW helicopters train in the NWTRC, no dipping sonar system is carried forward for any further analysis of effects.

Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) Systems—EER/IEER are airborne ASW systems used to conduct "large area" searches for submarines. These systems are made up of airborne avionics ASW acoustic processing and sonobuoy types that are deployed in pairs. The EER/IEER System's active sonobuoy component, the AN/SSQ-110A Sonobuoy, generates an explosive sound impulse and a passive sonobuoy (ADAR, AN/SSQ-101A) would "listen" for the return echo that has been bounced off the surface of a submarine. These sonobuoys are designed to provide underwater acoustic data necessary for naval aircrews to quickly and accurately detect submerged submarines. The sonobuoy pairs are dropped from a maritime patrol aircraft into the ocean in a predetermined pattern with a few buoys covering a very large area. The AN/SSQ-110A Sonobuoy Series is an expendable and commandable sonobuoy. Upon command from the aircraft, the explosive charge would detonate, creating the sound impulse. Within the sonobuoy pattern, only one detonation is commanded at a time. Twelve to twenty SSQ-110A source sonobuoys are used in a typical exercise. Both charges of each sonobuoy would be detonated during the course of the training, either tactically to locate the submarine, or when the sonobuoys are commanded to scuttle at the conclusion of the exercise. The AN/SSQ-110A is listed in this table because it functions like a sonar ping, however, the source creates an explosive detonation and its effects are considered in the underwater explosive section.

Advanced Extended Echo Ranging (AEER) System—The proposed AEER system is operationally similar to the existing EER/IEER system. The AEER system will use the same ADAR sonobuoy (SSQ-101A) as the acoustic receiver and will be used for a large area ASW search capability in both shallow and deep water. However, instead of using an explosive AN/SQS-110A as an impulsive source for the active acoustic wave, the AEER system will use a battery powered (electronic) source for the AN/SSQ 125 sonobuoy. The output and operational parameters for the AN/SSQ-125 sonobuoy (source levels,

frequency, wave forms, etc.) are classified. However, this sonobuoy is intended to replace the EER/IEER use of explosives and is scheduled to enter the fleet in 2011. Acoustic impact analysis for the AN/SSQ-125 in this document assumes a similar per-buoy effect as that modeled for the DICASS sonobuoy. For purposes of analysis, replacement of the EER/IEER system by the AEER system will be assumed to occur at 25% per year as follows: 2011—25% replacement; 2012—50% replacement; 2013—75% replacement; 2014—100% replacement with no further use of the EER/IEER system beginning in 2015 and beyond.

Torpedoes—Torpedoes are the primary ASW weapon used by surface ships, aircraft, and submarines. The guidance systems of these weapons can be autonomous or electronically controlled from the launching platform through an attached wire. The autonomous guidance systems are acoustically based. They operate either passively, exploiting the emitted sound energy by the target, or actively, ensnaring the target and using the received echoes for guidance. The MK-48 submarine-launched torpedo, used in its anti-surface ship mode, was modeled for active sonar transmissions in Sinking Exercises conducted within the NWTRC.

Portable Undersea Tracking Range—The Portable Undersea Tracking Range (PUTR) has been developed to support ASW training in areas where the ocean depth is between 300 ft and 12,000 ft and at least 3 nm from land. This proposed project would temporarily instrument 25-square-mile or smaller areas on the seafloor, and would provide high fidelity feedback and scoring of crew performance during ASW training activities. When training is complete, the PUTR equipment would be recovered. All of the potential PUTR areas have been used for ASW training for decades.

No on-shore construction would take place. Seven electronics packages, each approximately 3 ft long by 2 ft in diameter, would be temporarily installed on the seafloor by a range boat, in water depths greater than 600 ft. The anchors used to keep the electronics packages on the seafloor would be either concrete or sand bags, approximately 1.5 ft-by-1.5 ft and 300 pounds. Each package consists of a hydrophone that receives pinger signals, and a transducer that sends an acoustic "uplink" of locating data to the range boat. The uplink signal is transmitted at 8.8 kilohertz (kHz), 17 kHz, or 40 kHz, at a source level of 190 decibels (dB). The Portable Undersea Tracking Range

system also incorporates an underwater voice capability that transmits at 8–11 kHz and a source level of 190 dB. Each of these packages is powered by a D cell alkaline battery. After the end of the battery life, the electronic packages would be recovered and the anchors would remain on the seafloor. The Navy proposes to deploy this system for 3 months of the year (approximately June–August), and to conduct TRACKEX activities for 10 days per month in an area beyond 3 nm from shore. During each of the 30 days of annual operation, the PUTR would be in use for 5 hours each day. No additional ASW activity is proposed as a result of PUTR use. Operation of this range requires that underwater participants transmit their locations via pingers and that the receiving transducers transmit that information the range boat via the Uplink transmitter (see "Range Tracking Pingers" and uplink transmitter "below").

Range Tracking Pingers—MK–84 range tracking pingers would be used on ships, submarines, and ASW targets when ASW TRACKEX training is conducted on the PUTR. The MK–84 pinger generates a 12.93 kHz sine wave in pulses with a maximum duty cycle of 30 milliseconds (3% duty cycle) and has a design power of 194 dB re 1 micro-Pascal at 1 meter. Although the specific exercise, and number and type of participants will determine the number of pingers in use at any time, a minimum of one and a maximum of three pingers would be used for each ASW training activity. On average, two pingers would be in use for 3 hours each during PUTR operational days.

Uplink Transmitters—Each package consists of a hydrophone that receives pinger signals, and a transducer that sends an acoustic "uplink" of locating data to the range boat. The uplink signal is transmitted at 8.8 kilohertz (kHz), 17 kHz, or 40 kHz, at a source level of 190 decibels (dB). The Portable Undersea Tracking Range system also incorporates an underwater voice capability that transmits at 8–11 kHz and a source level of 190 dB. Under the proposed action, the uplink transmitters would operate 30 days per year, for 5 hours each day of use. The total time of use would be 150 hours annually.

Exercises Utilizing MFAS in the NWTRC

ASW Tracking Exercises are the exercises that primarily utilize MFAS and HFAS sources in the NWTRC, although Mine Avoidance MIW exercises also utilize a less powerful HFAS source. ASW Tracking Exercise (TRACKEX) trains aircraft, ship, and

submarine crews in tactics, techniques, and procedures for search, detection, localization, and tracking of submarines with the goal of determining a firing solution that could be used to launch a torpedo and destroy the submarine. ASW Tracking Exercises occur during both day and night. A typical unit-level exercise involves one (1) ASW unit (aircraft, ship, or submarine) versus one (1) target—either a MK–39 Expendable Mobile ASW Training Target (EMATT), or a live submarine. The target may be non-evading while operating on a specified track or fully evasive. Participating units use active and passive sensors, including hull-mounted sonar, towed arrays, and sonobuoys for tracking. If the exercise continues into the firing of a practice torpedo it is termed a Torpedo Exercise (TORPEX). The ASW TORPEX usually starts as a TRACKEX to achieve the firing solution. No torpedoes are fired during ASW training conducted in the NWTRC. The exercise types that utilize MFAS/HFAS are described below and summarized in Table 2, which also includes a summary of the exercise types utilizing explosives.

ASW TRACKEX (Maritime Patrol Aircraft)—During an ASW TRACKEX (MPA), a typical scenario would involve a single MPA dropping sonobuoys, from an altitude below 3,000 ft (914 m) above mean sea level (MSL), and sometimes as low as 400 ft (122 m), into specific patterns designed for both the anticipated threat submarine and the specific water conditions. These patterns vary in size and coverage area based on the threat and water conditions.

Typically, passive sonobuoys will be used first, so the threat submarine is not alerted. Active buoys will be used as required either to locate extremely quiet submarines, or to further localize and track submarines previously detected by passive buoys. A TRACKEX (MPA) usually takes two to four hours. The P–8 Multi-mission Maritime Aircraft (MMA), a modified Boeing 737 that is the Navy's replacement for the aging P–3 Orion aircraft, is a long-range aircraft that is capable of broad-area, maritime and littoral activities. As P–8 live training is expected to be supplemented with virtual training to a greater degree than P–3 training, P–8 training activities in the NWTRC are likely to be less numerous than those currently conducted by P–3 aircraft crews. P–3 replacement is expected to begin by 2013. None of the potential marine mammal impacts associated with the P–3 aircraft are expected to differ as a result of the P–3 being replaced by the MMA.

ASW TRACKEX (EER/IEER or AEER)—This activity is an at-sea flying event, typically conducted below 3,000 ft (914 m) MSL, that is designed to train P–3 crews in the deployment and use of the EER/IEER (and in the future, AEER) sonobuoy systems. These systems use the SSQ–110A as the signal source and the SSQ–77 (VLAD) as the receiver buoy. The signal source is a small explosive charge that detonates underwater. The SSQ–110A sonobuoy has two charges, each being individually detonated during the exercise. This activity typically lasts six hours, with one hour for buoy pattern deployment and five hours for active search. Between 12 and 20 SSQ–110A source sonobuoys and approximately 20 SSQ–77 passive sonobuoys are used in a typical exercise.

ASW TRACKEX (Surface Ship)—In the PACNW OPAREA, locally based surface ships do not routinely conduct ASW Tracking exercises. However, MFAS is used during ship transits through the OPAREA. In a typical year, 24 DDG ship transits and 36 FFG transits will take place, with 1.5 hours of active sonar use during each transit. All surface ship MFAS use is documented in this training activity description. 10% of surface ship MFAS used in NWTRC is training associated with the PUTR.

ASW TRACKEX (Submarine)—ASW TRACKEX is a primary training exercise for locally based submarines. Training is conducted within the NWTRC and involves aircraft approximately 30% of the time. Training events in which aircraft are used typically last 8 to 12 hours. During these activities submarines use passive sonar sensors to search, detect, classify, localize and track the threat submarine with the goal of developing a firing solution that could be used to launch a torpedo and destroy the threat submarine. However, no torpedoes are fired during this training activity. All submarine ASW TRACKEX conducted in the NWTRC is passive only; therefore, these activities are not carried forward for any further analysis of effects. All aircraft ASW is analyzed under ASW TRACKEX (MPA).

Mine Avoidance—Mine avoidance exercises train ship and submarine crews to detect and avoid underwater mines. In the NWTRC, submarine crews will use the AN/BQS–15 high frequency active sonar to locate mine shapes in a training minefield in the PACNW OPAREA. A small-scale underwater minefield will be added in the NWTRC for these exercises. Each mine avoidance exercise involves one submarine operating the AN/BQS–15 sonar for six hours to navigate through

the training minefield. A total of seven

mine avoidance exercises will occur in the NWTRC annually.

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Exercise Type	ASW TRACKEX	Mine Avoidance	EER/IEER	MISSILEX (Air based)	GUNEX	BOMBEX	SINKEX	MIW
Anticipated Takes	Yes	No	Yes	No *	No *	Yes	Yes	No *
Explosion in or on water	No	No	Yes	No	No	Yes	Yes	Yes
Length of Exercise	1.5 hours	6 hours	6 hours	2-3 hours	2-3 hours	1 hour	8-48 hours	5 hours
Number Exercises per Year	65	7	12	28	340	30	2	4
Area Used	Pacific Northwest Surface/Subsurface OPAREA	Pacific Northwest Surface/Subsurface OPAREA	Pacific Northwest Surface/Subsurface OPAREA	Pacific Northwest Surface/Subsurface OPAREA	Pacific Northwest Surface/Subsurface OPAREA	Pacific Northwest Surface/Subsurface OPAREA	Pacific Northwest Surface/Subsurface OPAREA	EOD Crescent Harbor, EOD Indian Island, EOD Floral Point
Months of Year conducted								
<p>SQS-55 (Search Mode) = 39 hrs/year SQS-56 = 58.5 hrs/year SSQ-62 DICASS = 886 sonobuoys/year MK-48 Torpedo = 2 torpedoes/yr</p> <p>Sonar hours, sonobuoys, torpedoes, detonations, or rounds per year</p>								
<p>10 MK-82 Bombs (High Explosive) 110 BDU-45 Bombs (Inert)</p>								
<p>5 in gun (2,463 rounds) 20 mm (16,000 rounds) 25 mm (31,500 rounds) 57 mm (1,260 rounds) 76 mm (720 rounds) 80 caliber (117,000 rounds)</p>								
<p>13 AIM-7 missiles 9 AIM-9 missiles 7 AIM-120 missiles 8 NATO Sea Sparrow or 8 Rolling Airframe Missiles</p>								
<p>SSQ-110A or AN/SSQ-125 = 149 sonobuoys/year</p>								
<p>See Narrative SINKEX section</p>								
<p>2.5-lb NEW-4/year</p>								

Table 2. Summary of exercise types in NWTRC noting duration, location, sources and explosives used, and time of year. * Though take is not anticipated to result from these exercises, they are included for information because they have been addressed in other rules.

Activities Utilizing Underwater Detonations

Underwater detonation activities can occur at various depths depending on the activity, but may also include activities which may have detonations at or just below the surface (such as SINKEX or gunnery exercise [GUNEX]). When the weapons hit the target, except for live torpedo shots, there is no explosion in the water, and so a "hit" is not modeled (*i.e.*, the energy (either acoustic or pressure) from the hit is not

expected to reach levels that would result in take of marine mammals). When a live weapon misses, it is modeled as exploding below the water surface at 1 ft (5-inch naval gunfire, 76mm rounds), 2 meters (Maverick, Harpoon, MK-82, MK-83, MK-84), or 50-ft (MK-48 torpedo) as shown in Appendix A of the Navy's application (the depth is chosen to represent the worst case of the possible scenarios as related to potential marine mammal impacts). Exercises may utilize either

live or inert ordnance of the types listed in Table 3. Additionally, successful hit rates are known to the Navy and are utilized in the effects modeling. Training events that involve explosives and underwater detonations occur throughout the year and are described below and summarized in Table 2. Of note, the only Inshore Area exercises that use explosives are on EOD ranges described under Mine Countermeasures (No more than 4 total detonations of 2.5 lb. charges annually).

	NEW lbs	TTTS		Injury		Mortality 13 psi-ms	Exclusion Zone Used (m)
		182 SEL	23 psi	205 SEL	13 psi-ms		
5" Naval gunfire	9.5	247	273	46	44	24	548
76mm rounds	1.6	102	151	21	25	13	548
Demolition	2.5	179	175	35	74	31	548
Maverick	78.5	959	554	182	191	107	1852 (SINKEX), 1645 (MISSILEX)
HARM	41.6	689	448	133	156	86	1853 (SINKEX), 1645 (MISSILEX)
Hellfire	16.4	424	327	84	112	59	1854 (SINKEX), 1645 (MISSILEX)
SLAM	164.3	1406	726	262	237	137	1855 (SINKEX), 1645 (MISSILEX)
Harpoon	448	1811	866	120	270	158	1852 (SINKEX), 1645 (MISSILEX)
MK-82	238	1723	836	315	263	153	1852 (SINKEX), 914 (BOMBEX)
MK-48	851	3469	1278	662	694	424	1852 (SINKEX), 914 (BOMBEX)
GBU-10	945	3626	1326	613	373	223	1853 (SINKEX), 914 (BOMBEX)
GBU-12	238	1712	832	315	262	153	1854 (SINKEX), 914 (BOMBEX)
GBU-16	445	2390	1054	428	310	183	1855 (SINKEX), 914 (BOMBEX)
AN/SSQ-110A (IEER)	5	325	281	72	159	77	914

Table 3. Representative ordnance used in NWTRC Explosive Exercises for which take of marine mammals is anticipated. Table also indicates range to indicated threshold and size of Navy exclusion zone used in mitigation. Units are meters.

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Anti-Surface Warfare Training (ASUW)

Anti-Surface Warfare (ASUW) is the category of activity that addresses

combat (or interdiction) activities training by air, surface, or submarine forces against hostile surface ships and boats. The ASUW exercises conducted

in NWTRC are described in the sections below. Because all of the rounds used in GUNEX in the NWTRC are inert, no take of marine mammals is anticipated to

result from the activity. However, a description is included here for comparison and clarity as NMFS has authorized take of marine mammals incidental to these activities in the past when explosive rounds were used instead of inert rounds.

Air-to-Surface Bombing Exercise—During an Air-to-Surface Bombing Exercise (BOMBEX A–S), fixed-wing aircraft deliver bombs against simulated surface maritime targets, typically a smoke float, with the goal of destroying or disabling enemy ships or boats. MPA use bombs to attack surfaced submarines and surface craft that would not present a major threat to the MPA itself. A single MPA approaches the target at a low altitude. In most training exercises, the aircraft drops inert training ordnance, such as the Bomb Dummy Unit (BDU–45) on a MK–58 smoke float used as the target. Historically, ordnance has been released throughout W–237 (off WA State), just south of W–237, and in international waters in accordance with international laws, rules, and regulations. Annually, 120 pieces of ordnance, consisting of 10 MK–82 live bombs and 110 BDU 45 inert bombs, are dropped in the NWTRC. In accordance with the regulations for the Olympic Coast National Marine Sanctuary (OCNMS) the Navy does not conduct live bombing in the sanctuary. Each BOMBEX A–S can take up to 4 hours to complete.

Sinking Exercise—A Sinking Exercise (SINKEX) is typically conducted by aircraft, surface ships, and submarines in order to take advantage of a full size ship target and an opportunity to fire live weapons. The target is typically a decommissioned combatant or merchant ship that has been made environmentally safe for sinking. In accordance with EPA permits, it is towed out to sea (at least 50 nm [92.6 km]) and set adrift at the SINKEX location in deep water (at least 1,000 fathoms [6,000 feet]) where it will not be a navigation hazard to other shipping. The Environmental Protection Agency (EPA) granted the Department of the Navy a general permit through the Marine Protection, Research, and Sanctuaries Act to transport vessels “for the purpose of sinking such vessels in ocean waters * * *” (40 CFR Part 229.2). Subparagraph (a)(3) of this regulation states “All such vessel sinkings shall be conducted in water at least 1,000 fathoms (6,000 feet) deep and at least 50 nautical miles from land.”

Ship, aircraft, and submarine crews typically are scheduled to attack the target with coordinated tactics and deliver live ordnance to sink the target.

Inert ordnance is often used during the first stages of the event so that the target may be available for a longer time. The duration of a SINKEX is unpredictable because it ends when the target sinks, but the goal is to give all forces involved in the exercise an opportunity to deliver their live ordnance. Sometimes the target will begin to sink immediately after the first weapon impact and sometimes only after multiple impacts by a variety of weapons. Typically, the exercise lasts 4 to 8 hours, especially if inert ordnance such as 5-inch gun projectiles or MK–76 dummy bombs are used during the first hours. In the worst case of maximum exposure, the following ordnance are all expended (in the indicated amounts): MK82 Live Bomb (4); MK83 Live Bomb (4); MK84 Live Bomb (4); HARM Missile (2); AGM–114 Hellfire Missile (1); M–65 Maverick Missile (3); M–84 Harpoon Missile (3); AMER Missile (1); 5 in/62 Shell (500); 76 mm Shell (200); 48 ADCAP Torpedo (1). If the hulk is not sunk by weapons, it will be sunk by Explosive Ordnance Disposal (EOD) personnel setting off demolition charges previously placed on the ship. Since the target may sink at any time during the exercise, the actual number of weapons used can vary widely.

Surface-to-Surface Gunnery Exercise—Surface-to-Surface Gunnery Exercises (S–S GUNEX) take place in the open ocean to provide gunnery practice for Navy ship crews. Exercises can involve a variety of surface targets that are either stationary or maneuverable. Gun systems employed against surface targets include the 5”, 76 mm, 57 mm, .50 caliber and the 7.62 mm. A GUNEX lasts approximately one to two hours, depending on target services and weather conditions. All rounds fired are inert, containing no explosives.

Mine Warfare Training (MIW)

Mine Warfare Training includes Mine Countermeasures and Mine Avoidance. Mine Avoidance includes use of an active sonar source (although in very small amounts) and, therefore, was addressed in the appropriate section previously. Because of the location of the EOD ranges, the very limited use of explosives (4 individual explosions) proposed annually for these Mine Countermeasure exercises, and the likely effectiveness of the mitigation (e.g., marine mammal take is only expected within 180 m of the impact area, which is well within the shutdown zone of 700 yds from the point of impact), take of marine mammals is not anticipated to occur in the NWTRC. However, a description is included here

for comparison as NMFS has authorized take of marine mammals incidental to these activities in other areas where the amount of activity is significantly greater.

Mine Countermeasures—Naval EOD personnel require proficiency in underwater mine neutralization. Mine neutralization activities consist of underwater demolitions designed to train personnel in the destruction of mines, unexploded ordnance (UXO), obstacles, or other structures in an area to prevent interference with friendly or neutral forces and non-combatants. EOD units conduct underwater demolition training in Crescent Harbor Underwater EOD Range, Indian Island Underwater EOD Range, and Floral Point Underwater EOD Range. A 2.5 lb (1.1 kg) charge of C–4 is used, consisting of one surface or one subsurface detonation. No more than two detonations will take place annually at Crescent Harbor, and no more than one each at Indian Island and Floral Point. The total duration of the exercise is four hours for an underwater detonation and one hour for a surface detonation. Small boats such as the MK–5 Combat Rubber Raiding Craft and MK–7, or 9 (meters in length, respectively) Rigid Hull Inflatable Boats (RHIB) are used to insert personnel for underwater activities and either a helicopter (H–60) or RHIB is used for insertion for surface activities.

Vessel Movement

The operation and movement of vessels that is necessary to conduct the training described above is also analyzed here. Training exercises involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to 2 weeks. During training, speeds vary and depend on the specific type of activity, although 10–14 knots is considered the typical speed. Approximately 490 training activities that involve Navy vessels occur within the Study Area during a typical year. Training activities are widely dispersed throughout the large OPAREA, which encompasses 122,468 nm² (420,054 km²). Consequently, the density of Navy ships within the Study Area at any given time is low.

Research, Development, Testing, and Evaluation

RDT&E proposed in this action is limited to Unmanned Aerial Systems (UAS) activities, the use of which is not anticipated to result in the take of marine mammals because it utilizes small, relatively quiet airborne, not undersea, gliders. Undersea RDT&E in the Pacific Northwest is conducted at

the Naval Sea Systems Command (NAVSEA) Keyport range and is analyzed in the NAVSEA Naval Undersea Warfare Center (NUWC) Keyport Range Extension EIS/OEIS.

Additional information on the Navy's proposed activities may be found in the LOA Application and the Navy's NWTRC DEIS.

Description of Marine Mammals in the Area of the Specified Activities

The California Current passes through the NWTRC, creating a mixing of temperate and tropical waters, thereby making this area one of the most productive ocean systems in the world (Department of the Navy [DoN], 2002a). Because of this productive environment, there is a rich marine mammal fauna, as evidenced in abundance and species diversity (Leatherwood *et al.*, 1988; Bonnell and Dailey, 1993). In addition to many marine mammal species that live here year-round and use the region's coasts and islands for breeding and hauling out, there is a community of seasonal residents and migrants. The narrow continental shelf along the Pacific coast and the presence of the cold California Current sweeping down from Alaska allows cold-water marine mammal species to reach nearshore waters as far south as Baja California.

Thirty-three marine mammal species or populations/stocks have confirmed or possible occurrence within the NWTRC, including six species of baleen whales (mysticetes), 21 species of toothed whales (odontocetes), five species of seals and sea lions (pinnipeds), and the sea otter (mustelids). Table 4 summarizes their abundance, Endangered Species Act (ESA) status, population trends, and occurrence in the area. Most of these species are listed

as “common” in the table, indicating that they occur routinely, either year-round or during annual migrations into or through the area. The other species are indicated as “rare” because of sporadic sightings or as “very rare” because they have been documented once or twice as appearing outside their normal range. All of the species that occur in the NWTRC are either cosmopolitan (occur worldwide), or associated with the temperate and sub-Arctic oceans (Leatherwood *et al.*, 1988). Seven of the species are ESA-listed and considered depleted under the MMPA: Blue whale; fin whale; humpback whale; sei whale; sperm whale; southern resident killer whale; and Steller sea lion.

Temperate and warm-water toothed whales often change their distribution and abundance as oceanographic conditions vary both seasonally (Forney and Barlow, 1998) and inter-annually (Forney, 2000). Forney and Barlow (1998) noted significant north/south shifts in distribution for Dall's porpoises, common dolphins, and Pacific white-sided dolphins, and they identified significant inshore/offshore differences for northern right whale dolphins and humpback whales. Several authors have noted the impact of the El Niño events of 1982/1983 and 1997/1998 on marine mammal occurrence patterns and population dynamics in the waters off California (Wells *et al.*, 1990; Forney and Barlow, 1998; Benson *et al.*, 2002).

The distribution of some marine mammal species is based on the presence of salmon, an important prey source. Seals and sea lions congregate near areas where migrating salmon run. For example, in the San Juan Islands, harbor seals (*Phoca vitulina richardii*)

congregate near a constricted channel where incoming tidal currents funnel migrating salmon (Zamon, 2001). In Oregon, harbor seals wait for chum salmon runs during the incoming tide near a constriction in Netarts Bay (Brown and Mat, 1983). During the summer, southern resident killer whales (*Orcinus orca*) congregate at locations associated with high densities of migrating salmon (Heimlich-Boran, 1986; Nichol and Shackleton, 1996; Olson, 1998; National Marine Fisheries Service [NMFS], 2005i). Their strong preference for Chinook salmon may influence the year-round distribution patterns of southern resident killer whales in the NWTRC (Ford and Ellis, 2005).

The Navy has compiled information on the abundance, behavior, status and distribution, and vocalizations of marine mammal species in the NWTRC waters from the Navy Marine Resource Assessment for NWTRC (which was recently updated, during the development of the application for this rule, based on peer-reviewed literature and government reports such as NMFS' Stock Assessment Reports) and marine mammal experts engaged in current research utilizing tagging and tracking. This information may be viewed in the Navy's LOA application and/or the Navy's DEIS for NWTRC (*see* Availability), and is incorporated by reference herein. Included below, however, are summaries of some important biological issues that are needed to further inform the MMPA effects analysis. Additional information is available in NMFS Stock Assessment Reports, which may be viewed at: <http://www.nmfs.noaa.gov/pr/sars/species.htm>.

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Common Name	Abundance (CV)	Stock	Calculated Density (animals per km ²)	Population Trend	Occurrence	Warm Season (May-Oct)	Cold Season (Nov-Apr)
ESA Listed Baleen Whales							
Blue whale ^{2,3}	1,186 (0.19)	Eastern North Pacific	0.0005 ^c	May be increasing	Common	Yes	No
Fin whale ^{2,3}	3454	California, Oregon, and Washington	0.0014 ^a	May be increasing	Common	Yes	Yes
Humpback whale ^{2,3}	1,396	Eastern North Pacific	0.0007 ^a	Increasing	Common	Yes	No
Sei whale ^{2,3}	413 (0.61)	Eastern North Pacific	0.000115 ^c 0.000182 ^d	May be increasing	Common	Yes	No
ESA Listed Toothed Whales							
Sperm whale ^{2,3}	2,265 (0.34)	California, Oregon, and Washington, Offshore	0.0026 ^a	Unknown	Common	Yes	Yes
Pygmy sperm whale ²	89	Eastern North Pacific, Southern Resident	0.00055/00162	possibly decreasing	Common	Yes	Yes
ESA Listed Pinnipeds							
Steller sea lion ⁴	48,519	Eastern	0.000011 / 0.011 ^b	possibly increasing	Common	Yes	Yes
Non-ESA Listed Baleen Whales							
Gray whale	18,178	Eastern North Pacific	--	Increasing	Common	No	Yes
Minke whale	898	California, Oregon, and Washington	0.000655 ^c 0.000395 ^d	No trends	Common	No	Yes
Non-ESA Listed Toothed Whales							
Baird's beaked whale	313 (0.55)	California, Oregon, and Washington	0.001614 ^d 0.000775 ^d	Unknown	Common	Yes	Yes
Common dolphin offshore	3,257 (0.43)	California, Oregon, Washington, Offshore	0.000515 ^d	No trend	Very Rare	Yes	Yes
Cuvier's beaked whale	2,171 (0.73)	California, Oregon, and Washington	0.003038 ^a	Unknown	Common	Yes	Unknown
Dall's porpoise	57,549 (0.34)	California, Oregon, and Washington	0.0970 ^a	Unknown	Common	No	Yes
Dwarf sperm whale	unknown	California, Oregon, and Washington	--	Unknown	Very Rare	Unknown	Yes
Harbor porpoise	17,763 (0.39)	Northern California / Southern Oregon	--	Stable	Common	Yes	Yes
Killer whale offshore	37,745 (0.38)	Washington / Oregon Coastal	--	Stable	Common	Yes	Yes
Killer whale transient	10,682 (0.38)	Washington Inland Waters	--	Stable	Common	Yes	Yes
Mesoplodon beaked whales ^a	1,024 (0.77)	Washington, Oregon, and California	0.00135 ^c 0.001321 ^d	Unknown	Rare	Unknown	Unknown
Northern right whale dolphin	15,305 (0.23)	California, Oregon, and Washington	0.0014 ^a	No trend	Common	Yes	Yes
Pacific white-sided dolphin	25,233 (0.25)	California, Oregon, and Washington	0.0441 ^a	No trend	Common	Yes	Yes
Non-ESA Listed Toothed Whales (continued)							
Pygmy sperm whale	Unknown	California, Oregon, and Washington	0.001232 ^c 0.000504 ^d	Unknown	Common	Unknown	Unknown
Risso's Dolphin	12,093 (0.24)	California, Oregon, and Washington	0.013222 ^c 0.004014 ^d	No trend	Common	Yes	Yes
Short-beaked common dolphin	48,622 (0.26)	California, Oregon, and Washington	0.1570 ^a	Varies by oceanographic	Common	Yes	Yes
Short-finned pilot whale	245 (0.97)	California, Oregon, and Washington	--	Unknown	Rare	Unknown	Unknown
Striped dolphin	23,883 (0.44)	California, Oregon, and Washington	0.0000497 ^c 0.014553 ^d	No trend	Rare	No	Unknown
Non-ESA Listed Pinnipeds							
California sea lion	238,000	U.S.	--	Increasing	Common	Yes	Yes
Harbor seal	24,233 (0.12)	California / Washington Coastal	--	Increasing	Common	Yes	Yes
	14,612 (0.15)	Washington Inland	--	Stable	Common	Yes	Yes
Northern elephant seal	124,000	California Breeding	--	Increasing	Common	Yes	Yes
Northern fur seal	721,935	Eastern Pacific	--	Increasing	Common	Yes	Yes

Table 4. Marine mammals of known occurrence in the NWTRC.

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Species Not Considered Further

The North Pacific right whale is classified as endangered under the ESA. Although there is designated critical habitat for this species in the western Gulf of Alaska and an area in the

southeastern Bering Sea (NMFS, 2006), there is no designated critical habitat for this species within the NWTRC. Census data are too limited to suggest a population trend for this species. In the western North Pacific, the population may number in the low hundreds (Brownell *et al.*, 2001; Clapham *et al.*,

2004). The eastern population likely now numbers in the tens of animals. Right whales were probably never common along the west coast of North America (Scarff, 1986; Brownell *et al.*, 2001). Historical whaling records provide the most complete information on likely North Pacific right whale

distribution. Presently, sightings are extremely rare, occurring primarily in the Okhotsk Sea and the eastern Bering Sea (Brownell *et al.*, 2001; Shelden *et al.*, 2005; Shelden and Clapham, 2006; Wade *et al.*, 2006). There were no sightings of North Pacific right whales during ship surveys conducted off California, Oregon, and Washington from 1991 through 2005 (Barlow and Forney, 2007), although recent deployment of directional sonobuoys (focused on the gunshot call) in the southeastern Bering Sea has resulted in multiple recordings of the rarely detected marine mammals (Berchok *et al.*, 2009). The area of densest concentration in the Gulf of Alaska is east from 170° W to 150° W and south to 52° N (Shelden and Clapham, 2006). Based upon the extremely low probability of encountering this species anywhere in the coastal and offshore waters in the NWTRC, this species will not be included in this analysis.

Designated Critical Habitat

Southern Resident Killer Whale

NMFS designated critical habitat for the southern resident killer whale (*Orcinus orca*) distinct population segment (DPS). Three specific areas (which comprise approximately 2,560 square miles (6,630 sq km) of marine habitat) are designated:

- (1) *The Summer Core Area in Haro Strait and waters around the San Juan Islands—*Occurrence of Southern Residents in Area 1 coincides with concentrations of salmon, and is more consistent and concentrated in the summer months of June through August, though they have been sighted in Area 1 during every month of the year;
- (2) *Puget Sound—*southern resident killer whale occurrence in Area 2 has been correlated with fall salmon runs; and
- (3) *The Strait of Juan de Fuca—*All pods regularly use the Strait of Juan de Fuca for passage from Areas 1 and 2 to outside waters in the Pacific Ocean and to access outer coastal water feeding grounds.

The designated physical and biological features which are essential to the conservation of southern resident killer whales and that may require special management considerations or protection (Primary Constituent Elements/PCEs) are as follows:

- (1) *Water quality to support growth and development—*Because of their long life span, position at the top of the food chain, and their blubber stores, southern resident killer whales accumulate high concentrations of contaminants;

- (2) *Prey species of sufficient quantity, quality and availability to support individual growth, reproduction and development, as well as overall population growth—*Fish are the major dietary component of southern resident killer whales in the northeastern Pacific. Salmon comprise the southern resident killer whales' preferred prey, and are likely consumed in large amounts; and

- (3) *Passage conditions to allow for migration, resting, and foraging—*In order to move between important habitat areas, find prey, and fulfill their life history requirements, southern resident killer whales require open waterways that are free from obstruction.

As noted previously, the Navy's proposed action does not include the use of MFAS/HFAS in southern resident killer whale critical habitat, and explosive use is limited to four detonations of 2.5-lb charges annually in EOD exercises.

Steller Sea Lion

In California and Oregon, major Steller sea lion rookeries and associated air and aquatic zones are designated as critical habitat. Critical habitat includes an air zone extending 3,000 ft above rookery areas historically occupied by sea lions and an aquatic zone extending 3,000 seaward. Three rookeries located along the southern Oregon Coast have been designated as critical habitat sites in the NWTRC. These include: Orford Reef (Long Brown Rock); Oxord Reef (Seal Rock); Rogue Reef (Pyramid Rock). The PCEs for Steller sea lions are: Nearshore waters around rookeries and haulouts and prey resources and foraging habitats.

Gray Whale Migration

The gray whale makes a well-defined seasonal north-south migration. Most of the population summers in the shallow waters of the northern Bering Sea, the Chukchi Sea, and the western Beaufort Sea (Rice and Wolman, 1971), whereas some individuals also summer along the Pacific coast from Vancouver Island to central California (Rice and Wolman, 1971; Darling 1984; Nerini, 1984). In October and November, the whales begin to migrate southeast through Unimak Pass and follow the shoreline south to breeding grounds on the west coast of Baja California and the southeastern Gulf of California (Braham, 1984; Rugh, 1984). The average gray whale migrates 7,500–10,000 km at a rate of 147 km/d (Rugh *et al.*, 2001; Jones and Swartz, 2002). Although some calves are born along the coast of California, most are born in the shallow, protected waters on the Pacific coast of

Baja California from Morro de Santo Domingo (28° N) south to Isla Creciente (24° N) (Urban *et al.*, 2003). The main calving sites are Laguna Guerrero Negro, Laguna Ojo de Liebre, Laguna San Ignacio, and Estero Soledad (Rice *et al.*, 1981).

Gray whales occur in the Pacific Northwest OPAREA and Puget Sound throughout the year. In addition, larger numbers of migratory animals transit along the coast of Washington, Oregon, and California during migrations between breeding and feeding grounds. Peak sightings in the NWTRC during the southbound migration occur in January (Rugh *et al.*, 2001). There are two phases of the northbound migration, including an early phase from mid-February through April and a later phase, which consists of mostly cows and calves, from late April through May (Herzing and Mate, 1984).

Marine Mammal Hearing and Vocalizations

Cetaceans have an auditory anatomy that follows the basic mammalian pattern, with some changes to adapt to the demands of hearing in the sea. The typical mammalian ear is divided into an outer ear, middle ear, and inner ear. The outer ear is separated from the inner ear by a tympanic membrane, or eardrum. In terrestrial mammals, the outer ear, eardrum, and middle ear transmit airborne sound to the inner ear, where the sound waves are propagated through the cochlear fluid. Since the impedance of water is close to that of the tissues of a cetacean, the outer ear is not required to transduce sound energy as it does when sound waves travel from air to fluid (inner ear). Sound waves traveling through the inner ear cause the basilar membrane to vibrate. Specialized cells, called hair cells, respond to the vibration and produce nerve pulses that are transmitted to the central nervous system. Acoustic energy causes the basilar membrane in the cochlea to vibrate. Sensory cells at different positions along the basilar membrane are excited by different frequencies of sound (Pickles, 1998). Baleen whales have inner ears that appear to be specialized for low-frequency hearing. Conversely, dolphins and porpoises have ears that are specialized to hear high frequencies.

Marine mammal vocalizations often extend both above and below the range of human hearing; vocalizations with frequencies lower than 18 Hertz (Hz) are labeled as infrasonic and those higher than 20 kHz as ultrasonic (National Research Council [NRC], 2003; Figure 4–1). Measured data on the hearing

abilities of cetaceans are sparse, particularly for the larger cetaceans such as the baleen whales. The auditory thresholds of some of the smaller odontocetes have been determined in captivity. It is generally believed that cetaceans should at least be sensitive to the frequencies of their own vocalizations. Comparisons of the anatomy of cetacean inner ears and models of the structural properties and the response to vibrations of the ear's components in different species provide an indication of likely sensitivity to various sound frequencies. The ears of small toothed whales are optimized for receiving high-frequency sound, while baleen whale inner ears are best in low to infrasonic frequencies (Ketten, 1992; 1997; 1998).

Baleen whale vocalizations are composed primarily of frequencies below 1 kHz, and some contain fundamental frequencies as low as 16 Hz (Watkins *et al.*, 1987; Richardson *et al.*, 1995; Rivers, 1997; Moore *et al.*, 1998; Stafford *et al.*, 1999; Wartzok and Ketten, 1999) but can be as high as 24 kHz (humpback whale; Au *et al.*, 2006). Clark and Ellison (2004) suggested that baleen whales use low frequency sounds not only for long-range communication, but also as a simple form of echo ranging, using echoes to navigate and orient relative to physical features of the ocean. Information on auditory function in mysticetes is extremely lacking. Sensitivity to low-frequency sound by baleen whales has been inferred from observed vocalization frequencies, observed reactions to playback of sounds, and anatomical analyses of the auditory system. Although there is apparently much variation, the source levels of most baleen whale vocalizations lie in the range of 150–190 dB re 1 μ Pa at 1 m. Low-frequency vocalizations made by baleen whales and their corresponding auditory anatomy suggest that they have good low-frequency hearing (Ketten, 2000), although specific data on sensitivity, frequency or intensity discrimination, or localization abilities are lacking. Marine mammals, like all mammals, have typical U-shaped audiograms that begin with relatively low sensitivity (high threshold) at some specified low frequency with increased sensitivity (low threshold) to a species specific optimum followed by a generally steep rise at higher frequencies (high threshold) (Fay, 1988).

The toothed whales produce a wide variety of sounds, which include species-specific broadband “clicks” with peak energy between 10 and 200 kHz, individually variable “burst pulse”

click trains, and constant frequency or frequency-modulated (FM) whistles ranging from 4 to 16 kHz (Wartzok and Ketten, 1999). The general consensus is that the tonal vocalizations (whistles) produced by toothed whales play an important role in maintaining contact between dispersed individuals, while broadband clicks are used during echolocation (Wartzok and Ketten, 1999). Burst pulses have also been strongly implicated in communication, with some scientists suggesting that they play an important role in agonistic encounters (McCowan and Reiss, 1995), while others have proposed that they represent “emotive” signals in a broader sense, possibly representing graded communication signals (Herzing, 1996). Sperm whales, however, are known to produce only clicks, which are used for both communication and echolocation (Whitehead, 2003). Most of the energy of toothed whales social vocalizations is concentrated near 10 kHz, with source levels for whistles as high as 100–180 dB re 1 μ Pa at 1 m (Richardson *et al.*, 1995). No odontocete has been shown audiometrically to have acute hearing (<80 dB re 1 μ Pa) below 500 Hz (DoN, 2001). Sperm whales produce clicks, which may be used to echolocate (Mullins *et al.*, 1988), with a frequency range from less than 100 Hz to 30 kHz and source levels up to 230 dB re 1 μ Pa 1 m or greater (Mohl *et al.*, 2000).

Table 5 includes a summary of the vocalizations of the species found in the NWTRC. The “Brief Background on Sound” section contained a description of the functional hearing groups designated by Southall *et al.* (2007), which includes the functional hearing range of various marine mammal groups (*i.e.*, what frequencies that can actually hear).

Marine Mammal Density Estimates

Understanding the distribution and abundance of a particular marine mammal species or stock is necessary to analyze the potential impacts of an action on that species or stock. Further, in order to assess quantitatively the likely acoustic impacts of a potential action on individuals and to estimate take it is necessary to know the density of the animals in the affected area. Density estimates for cetaceans were obtained from the Marine Mammal and Sea Turtle Density Estimates for the Pacific Northwest Study Area (DoN, 2007a). The abundance of most cetaceans was derived from shipboard surveys conducted by the Southwest Fisheries Science Center in 1991, 1993, 1996, 2001, and 2005 (Barlow, 1995; Barlow, 2003; Barlow and Forney, 2007). These estimates are used to

develop NMFS Stock Assessment Reports (Garretta *et al.*, 2007); interpret the impacts of human-caused mortality associated with fishery bycatch, ship strikes, and other sources; and evaluate the ecological role of cetaceans in the eastern North Pacific. In the density study, predictive species-habitat models were built for species with sufficient numbers of sightings to estimate densities for the NWTRC (described in detail Appendix B of the Navy's application). For species with insufficient numbers of sightings, density estimates were obtained from Barlow and Forney (2007).

There are limited depth distribution data for most marine mammals. This is especially true for cetaceans, as they must be tagged at-sea and by using a tag that either must be implanted in the skin/blubber in some manner or adhere to the skin. There is slightly more data for some pinnipeds, as they can be tagged while on shore during breeding or molting seasons and the tags can be glued to the pelage rather than implanted. There are a few different methodologies/techniques that can be used to determine depth distribution percentages, but by far the most widely used technique currently is the time-depth recorder. These instruments are attached to the animal for a fairly short period of time (several hours to a few days) via a suction cup or glue, and then retrieved immediately after detachment or when the animal returns to the beach. Depth information can also be collected via satellite tags, sonic tags, digital tags, and, for sperm whales, via acoustic tracking of sounds produced by the animal itself.

There are somewhat suitable depth distribution data for a few marine mammal species. Sample sizes are usually extremely small, nearly always fewer than 10 animals total and often only one or two animals. Depth distribution information often must be interpreted from other dive and/or preferred prey characteristics. Depth distributions for species for which no data are available are extrapolated from similar species.

Density is nearly always reported for an area, *e.g.*, animals/km². Analyses of survey results using Distance Sampling techniques include correction factors for animals at the surface but not seen as well as animals below the surface and not seen. Therefore, although the area (*e.g.*, km²) appears to represent only the surface of the water (two-dimensional), density actually implicitly includes animals anywhere within the water column under that surface area. Density assumes that animals are uniformly distributed within the prescribed area,

even though this is likely rarely true. Marine mammals are usually clumped in areas of greater importance (and often in groups), for example, areas of high productivity, lower predation, safe calving, *etc.* Density can occasionally be calculated for smaller areas that are used regularly by marine mammals, but more often than not there are insufficient data to calculate density for small areas. Therefore, assuming an even distribution within the prescribed area remains the norm.

Assuming that marine mammals are distributed evenly within the water column is not accurate. The ever-expanding database of marine mammal behavioral and physiological parameters obtained through tagging and other technologies has demonstrated that marine mammals use the water column in various ways, with some species capable of regular deep dives (<800 m) and others regularly diving to <200 m, regardless of the bottom depth. Assuming that all species are evenly distributed from surface to bottom is

almost never appropriate and can present a distorted view of marine mammal distribution in any region.

By combining marine mammal density with depth distribution information, a more accurate three-dimensional density estimate is possible. These 3-D estimates allow more accurate modeling of potential marine mammal exposures from specific noise sources. Density estimates are included in Table 4.

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Species	Signal Type	Frequency Range (kHz)	Frequency Near Max energy (kHz)	Source Level (dB re 1 μPa)	Duration / Other
Blue whale	moans, long duration songs	0.012 - .4	.012 - .025	188	up to 36 s, repeated every 1 - 2 min
	FM sweeps	0.858 + 0.148			< 5 s
	vocalizations	0.012 - .4	.012 - .025		
Fin whale	vocalizations	- / .015 - .028	- / -	159-184 / 185-192	
	moans	0.016 - 0.75	0.02	160-190	
	pulses	0.04 - 0.075 / 0.018 -	- / 0.02		
	ragged pulse	< 0.03			
	rumbles	- / 0.01 - 0.03	< 0.03 / -		
	moans, downsweeps	0.014 - 0.118	0.02	160-186	
	constant call	0.02 - 0.04			
	moans, tones, upsweeps	0.03 - 0.75		155-165	
	whistles, chirps	1.5 - 5	1.5 - 2.5		
	clicks	16 - 28			
	vocal sequence, ♂ only	0.015 - 0.03			
	FM sweeps	0.018 - .23		184 - 186	1 s
Humpback whale	social	.020 - 10 / 0.05 - 10	< 3 / 0.1 - 4		
	songs	0.03 - 8 / -	0.12 - 4 / -	144 - 186 / 151-173	
	shrieks		0.75 - 1.8	179-181	
	horn blasts		0.41 - 0.42	181-185	
	moans	0.02 - 1.8	0.035 - 0.36	175	
	grunts	0.025 - 1.9		190	
	pulse trains	0.025 - 1.25	0.025 - 0.080	179-181	
	slap	0.03 - 1.2		183-192	
	feeding calls	0.02 - 2	0.5	162-192	< 1 s
	simple vocalization	0.14 - 4	0.22 (mean)		
Sei whale	FM sweeps	1.5 - 3.5			7 to 20 sweeps lasting 4 ms
	growls, whooshes, tonal calls	0.433		156	.45 s
	growls and whooshes	0.241 - 0.625		152.4 - 159.6	
Gray whale	broadband signals	0.1 - 12			
	call	0.2 - 2.5	1 - 1.5		
	moans	0.02 - 1.2 / -	0.2 - 0.2 / 0.7 - 1.1	185 / -	
	modulated pulse	0.08 - 1.8	0.225 - 0.6		
Gray whale, Calf	FM sweeps	0.10 - 0.35	0.3		
	pulses	0.1 - 2	0.3 - 0.825		
	clicks	0.1 - 20	3.4 - 4		
Minke whale	sweeps, moans	0.06 - 0.14		151-175	
	down sweeps	0.06 - 0.13		165	
	moans, grunts	0.06 - 0.14	0.06 - 0.14	151-175	
	ratchet	0.85 - 6	0.85		
	thump trains	0.1 - 2	0.1 - 0.2		
	speed up pulse train	0.2 - 0.4			40 to 60 ms
	slow down pulse train	0.25 - 0.35			70 to 140 ms
	Star Wars vocalization	0.05 - 9.4		150-165	
	Breeding Boings (pulse then amp-mod. call)	1.3 - 1.4			2.5 s with slight frequency modulation
	vocalizations	0.06 - 12			

Table 5a. Summary of mysticete vocalization information compiled from The Biology of Marine Mammals (Reynolds and Rommel (eds), 1999) and the Navy's SOCAL, AFAST, HRC, and NWTRC EISs - see those documents for specific information.

Species	Signal Type	Frequency Range (kHz)	Frequency Near Max energy	Source Level (dB re 1 μPa)	Duration / Other
Sperm whale	clicks	0.1 - 30	2 - 4, 10 - 16	160 - 180	< 30 ms
	short clicks			236	< 1 μs, highly directional
	trumpets			172	
Sperm (Neonate)	clicks		0.5	140 - 162	< 2 to 12 ms, low directionality
S. Resident Killer Whale	whistles	1.5 - 18	6 - 12		
	clicks	0.1 - 35 / 0.25 - 0.5	12 - 25	180	
	screeam	2			
Bottlenose dolphin	pulsed calls	0.5 - 25	1 - 6	160	
	echolocation clicks			45 - 80	195 - 224
	echolocation clicks			22 - 49	173 - 202
	whistles	0.8 - 24	3.5 - 14.5	125-173	
	whistle	4 - 20			
Northern right whale dolphin	click	0.2 - 150	30 - 60		
	click		110 - 130	218 - 228	
	clicks and burst-pulses	110 - 130		218 - 228	
Pacific white-sided dolphin	clicks	0.2 - 16			
	clicks high repetition			170	
	echolocation clicks	23 - 41			
Risso's dolphin	whistles, tones	16-Jan	1.8, 3		
	whistles	.002 - .02	12-Apr		
	pulse trains for echolocation	- / -	50 - 80 / 60 - 80	170 / 180	
Common dolphin	whistles		3.5 - 4.5		
	rasp / pulse burst	0.1 - > 8	2 - 5		
	click				
	whistle / burst	4 - 22	65		< 1 sec to several s
	broadband clicks	6 - > 22			
	narrowband grunts	0.4 - 0.8			
	echolocation clicks	30 - 50, 80 - 100			up to 216
	echolocation clicks		50-65		up to 222
	whistles, chirps		0.5 - 18		< 40 - 70 μs
	Striped dolphin	whistles	4 - 16		
click		0.2 - 150	30 - 60	170	
clicks			23 - 67		
chips and barks		0.5 - 14			
Dall's porpoise	whistles	2 - 18		180	
	whistles	1 - 22.5	6.8 - 16.9	109-125	
	pulse bursts	wideband	5 - 60	108-115	
Harbor Porpoise	clicks	0.04 - 12 / -	120 - 160	120 - 148 / 165-175	50 to 1,500 μsec
	clicks		- / 135 - 149		
	clicks	2		100	
Short-finned pilot whale	click		110-150	135-177	
	pulse	100-160	110-150		
Dwarf sperm w.	whistles	0.5 - > 20	2 to 14	180	
	click		30 - 60	180	
Pygmy sperm whale	clicks	13-33			0.3 - 0.5 s
	narrowband pulses	60 - 200	120	175	119 μs, interclick intervals 40-70 ms
	echolocation clicks	60 - 200	120 - 130		
Baird's beaked whale	echolocation clicks	3 - 129			
	social	0.002 - 0.016			
Cuvier's beaked whale	echolocation clicks	20 - 40, 20 - 70		214	< 200 to 250 μs, depths > 200 m
	whistles	8 - 12			upsweep lasts 1 s
N. elephant seal	pulses	13 - 17			15 to 44 s
	communication	.100 - 1			
	clicks	8 - 150	12 - 40		
Pacific harbor seal	clicks	0.4 - 4	0.4 - 0.8		
	roar	< 0.1 - 0.4	< 0.1 - 0.25		
	growl, grunt, groan	0.7 - 4	0.7 - 2		
	tweak	< 8	< 3.5		
	whimpy	< 1 - 3			
California sea lion	clicks		0.5 - 4		
	clicks	< 1 - 4	< 1		
	buzzing				
Northern fur seal	clicks, bleats				
	Steller Sea Lion				

Table 5b. Summary of odontocete and pinniped vocalization information compiled from The Biology of Marine Mammals (Reynolds and Rommel (eds), 1999) and the Navy's SOCAL, AFAST, HRC, and NWTRC EISs - see those documents for specific information.

Brief Background on Sound

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document. A summary is included below.

Sound is a wave of pressure variations propagating through a medium (for the MFAS/HFAS considered in this proposed rule, the medium is marine water). Pressure variations are created by compressing and relaxing the medium. Sound measurements can be expressed in two forms: Intensity and pressure. Acoustic intensity is the average rate of energy transmitted through a unit area in a specified direction and is expressed in watts per square meter (W/m^2). Acoustic intensity is rarely measured directly, it is derived from ratios of pressures; the standard reference pressure for underwater sound is 1 microPascal (μPa); for airborne sound, the standard reference pressure is 20 μPa (Richardson *et al.*, 1995).

Acousticians have adopted a logarithmic scale for sound intensities, which is denoted in decibels (dB). Decibel measurements represent the ratio between a measured pressure value and a reference pressure value (in this case 1 μPa or, for airborne sound, 20 μPa). The logarithmic nature of the scale means that each 10 dB increase is a ten-fold increase in power (e.g., 20 dB is a 100-fold increase, 30 dB is a 1,000-fold increase). Humans perceive a 10-dB increase in noise as a doubling of loudness, or a 10 dB decrease in noise as a halving of loudness. The term “sound pressure level” implies a decibel measure and a reference pressure that is used as the denominator of the ratio. Throughout this document, NMFS uses 1 microPascal (denoted re: μPa) as a standard reference pressure unless noted otherwise.

It is important to note that decibels underwater and decibels in air are not the same and cannot be directly compared. To estimate a comparison between sound in air and underwater, because of the different densities of air and water and the different decibel standards (i.e., reference pressures) in water and air, a sound with the same intensity (i.e., power) in air and in water would be approximately 63 dB quieter in air. Thus a sound that is 160 dB loud underwater would have the same approximate effective intensity as a sound that is 97 dB loud in air.

Sound frequency is measured in cycles per second, or Hertz (abbreviated Hz), and is analogous to musical pitch; high-pitched sounds contain high frequencies and low-pitched sounds

contain low frequencies. Natural sounds in the ocean span a huge range of frequencies: From earthquake noise at 5 Hz to harbor porpoise clicks at 150,000 Hz (150 kHz). These sounds are so low or so high in pitch that humans cannot even hear them; acousticians call these infrasonic (typically below 20 Hz) and ultrasonic (typically above 20,000 Hz) sounds, respectively. A single sound may be made up of many different frequencies together. Sounds made up of only a small range of frequencies are called “narrowband”, and sounds with a broad range of frequencies are called “broadband”; explosives are an example of a broadband sound source and active tactical sonars are an example of a narrowband sound source.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential (AEP) techniques, anatomical modeling, and other data, Southall *et al.* (2007) designate “functional hearing groups” for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. Further, the frequency range in which each group’s hearing is estimated as being most sensitive is represented in the flat part of the M-weighting functions developed for each group. The functional groups and the associated frequencies are indicated below (though, again, animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- *Pinnipeds in Water*: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with

the greatest sensitivity between approximately 700 Hz and 20 kHz.

Because ears adapted to function underwater are physiologically different from human ears, comparisons using decibel measurements in air would still not be adequate to describe the effects of sound on a whale. When sound travels away from its source, its loudness decreases as the distance traveled (propagates) by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of a sound on a kilometer distant. Acousticians often refer to the loudness of a sound at its source (typically measured one meter from the source) as the source level and the loudness of sound elsewhere as the received level. For example, a humpback whale three kilometers from an argun that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound propagates (in this example, it is spherical spreading). As a result, it is important not to confuse source levels and received levels when discussing the loudness of sound in the ocean or its impacts on the marine environment.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound’s speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual MFAS/HFAS operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

Metrics Used in This Document

This section includes a brief explanation of the two sound measurements (sound pressure level (SPL) and sound exposure level (SEL)) frequently used in the discussions of acoustic effects in this document.

SPL

Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 Pa is the pressure resulting from a force of one newton exerted over an area of one square meter. SPL is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa , and the units for SPLs are dB re: 1 μPa .

SPL (in dB) = 20 log (pressure / reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square. SPL does not take the duration of a sound into account. SPL is the applicable metric used in the risk continuum, which is used to estimate behavioral harassment takes (see Level B Harassment Risk Function (Behavioral Harassment) Section).

SEL

SEL is an energy metric that integrates the squared instantaneous sound pressure over a stated time interval. The units for SEL are dB re: 1 $\mu Pa^2 \cdot s$.

SEL = SPL + 10log (duration in seconds)

As applied to MFAS/HFAS, the SEL includes both the SPL of a sonar ping and the total duration. Longer duration pings and/or pings with higher SPLs will have a higher SEL. If an animal is exposed to multiple pings, the SEL in each individual ping is summed to calculate the total SEL. The total SEL depends on the SPL, duration, and number of pings received. The thresholds that NMFS uses to indicate at what received level the onset of temporary threshold shift (TTS) and permanent threshold shift (PTS) in hearing are likely to occur are expressed in SEL.

Potential Effects of Specified Activities on Marine Mammals

The Navy has requested authorization for the take of marine mammals that may occur incidental to training activities in the NWTRC utilizing MFAS/HFAS or underwater detonations. In addition to MFAS/HFAS and underwater detonations, the Navy has analyzed other potential impacts to marine mammals from training activities in the NWTRC DEIS, including ship strike, aerial overflights,

ship noise and movement, and others, and, in consultation with NMFS as a cooperating agency for the NWTRC DEIS, has determined that take of marine mammals incidental to these non-acoustic components of the NWTRC is unlikely and, therefore, has not requested authorization for take of marine mammals that might occur incidental to these non-acoustic components. In this document, NMFS analyzes the potential effects on marine mammals from exposure to MFAS/HFAS and underwater detonations, but also includes some additional analysis of the potential impacts from vessel operation in the NWTRC.

For the purpose of MMPA authorizations, NMFS’ effects assessments serve four primary purposes: (1) To help identify the permissible methods of taking, meaning: the nature of the take (e.g., resulting from anthropogenic noise vs. from ship strike, etc.), the regulatory level of take (i.e., mortality vs. Level A or Level B harassment), and; the amount of take; (2) to inform the prescription of means of affecting the least practicable adverse impact on such species or stock and its habitat (i.e., mitigation); (3) to support the determination of whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); and (4) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities that would be affected in the NWTRC).

More specifically, for activities involving sonar or underwater detonations, NMFS’ analysis will identify the probability of lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), behavioral disturbance (that rises to the level of harassment), and social responses that would be classified as behavioral harassment or injury and/or would be likely to adversely affect the species or stock through effects on annual rates of recruitment or survival. In this section, we will focus qualitatively on the different ways that MFAS/HFAS and underwater explosive detonations may affect marine mammals (some of which NMFS would not classify as harassment). Then, in the Estimated Take of Marine Mammals Section, NMFS will relate the potential effects to

marine mammals from MFAS/HFAS and underwater detonation of explosives to the MMPA regulatory definitions of Level A and Level B Harassment and attempt to quantify those effects.

Exposure to MFAS/HFAS

In the subsections below, the following types of impacts are discussed in more detail: Direct physiological impacts, stress responses, acoustic masking and impaired communication, behavioral disturbance, and strandings. An additional useful graphic tool for better understanding the layered nature of potential marine mammal responses to anthropogenic sound is presented in NMFS’ January 14, 2009 Programmatic biological opinion on the U.S. Navy’s proposal to conduct training exercises in the Southern California Range Complex from January 2009 to January 2014 (available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>). This document presents a conceptual model of the potential responses of endangered and threatened species upon being exposed to MFAS/HFAS and the pathways by which those responses might affect the fitness of individual animals that have been exposed, and the resulting impact on the individual animal’s ability to reproduce or survive. Literature supporting the framework, with examples drawn from many taxa (both aquatic and terrestrial) was included in the “Application of this Approach” and “Response Analyses” sections of that document.

Direct Physiological Effects

Based on the literature, there are two basic ways that MFAS/HFAS might directly result in physical trauma or damage: Noise-induced loss of hearing sensitivity (more commonly-called “threshold shift”) and acoustically mediated bubble growth. Separately, an animal’s behavioral reaction to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the Stranding section.

Threshold Shift (Noise-Induced Loss of Hearing)

When animals exhibit reduced hearing sensitivity (i.e., sounds must be louder for an animal to recognize them) following exposure to a sufficiently intense sound, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is

recovery), occurs in specific frequency ranges (*i.e.*, an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced by only 6 dB or reduced by 30 dB). PTS is permanent (*i.e.*, there is no recovery), but also occurs in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TSs: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.*, 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. Human non-impulsive noise exposure guidelines are based on exposures of equal energy (the same SEL) producing equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH, 1998). Until recently, previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.*, 2007). Three newer studies, two by Mooney *et al.* (2009a, 2009b) on a single bottlenose dolphin either exposed to playbacks of Navy MFAS or octave-band noise (4–8 kHz) and one by Kastak *et al.* (2007) on a single California sea lion exposed to airborne octave-band noise (centered at 2.5 kHz), concluded that for all noise exposure situations the equal energy relationship may not be the best indicator to predict TTS levels. All three of these studies highlight the inherent complexity of TTS in marine mammals, as well as the importance of considering exposure duration when assessing impacts. With exposures of equal energy, quieter, longer duration exposures were found to induce greater levels of TTS than those of exposures that were louder and of shorter duration (more similar to MFAS). For intermittent sounds, less TTS will occur than from a continuous exposure with the same energy (some recovery will occur between intermittent exposures) (Kryter *et al.*, 1966; Ward, 1997). For example, one short but loud (higher

SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985) (although in the case of MFAS/HFAS, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS).

PTS is considered auditory injury (Southall *et al.*, 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS, however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.*, 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin and beluga (Finneran *et al.*, 2000, 2002b, 2005a; Schlundt *et al.*, 2000; Nachtigall *et al.*, 2003, 2004). For pinnipeds in water, data are limited to Kastak *et al.*'s measurement of TTS in one harbor seal, one elephant seal, and one California sea lion.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during

time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of development and aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost. There is no empirical evidence that exposure to MFAS/HFAS can cause PTS in any marine mammals; instead the probability of PTS has been inferred from studies of TTS (*see* Richardson *et al.*, 1995).

Acoustically Mediated Bubble Growth

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.*, 2001b). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of MFAS pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested: Stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long

enough period of time for bubbles to become of a problematic size.

Yet another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.*, 2003; Fernandez *et al.*, 2005). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Collectively, these hypotheses can be referred to as “hypotheses of acoustically mediated bubble growth.”

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003; Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (*i.e.*, rectified diffusion). More recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, Energy Levels (ELs) predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002b). Although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.*, 2003), there is no conclusive evidence of this. However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005) concluded that in vivo bubble formation, which may be exacerbated by deep, long-duration, repetitive dives may explain why beaked whales appear to be particularly vulnerable to MFAS/HFAS exposures. Further investigation is needed to further assess the potential validity of these hypotheses. More information regarding hypotheses that attempt to explain how behavioral responses to MFAS/HFAS can lead to strandings is included in the Behaviorally Mediated Bubble Growth Section, after the summary of strandings.

Acoustic Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and

learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than and of a similar frequency to, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus decreases also. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995b) argued that the maximum radius of influence of an industrial noise (including broadband low frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (*i.e.*, surf noise, prey noise, *etc.*; Richardson *et al.*, 1995).

The echolocation calls of toothed whales are subject to masking by high frequency sound. Human data indicate low-frequency sound can mask high-frequency sounds (*i.e.*, upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (*e.g.*, adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.*, 1980). A recent study by Nachtigall and Supin (2008) showed that false killer whales

adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals.

As mentioned previously, the functional hearing ranges of odontocetes, pinnipeds underwater, and mysticetes all encompass the frequencies of the MFAS/HFAS sources used in the Navy's MFAS/HFAS training exercises (although some mysticete's best hearing capacities are likely at frequencies somewhat lower than MFAS). Additionally, in almost all species, vocal repertoires span across the frequencies of these MFAS/HFAS sources used by the Navy. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. For hull-mounted MFAS/HFAS—which accounts for the largest part of the takes of marine mammals (because of the source strength and number of hours it's conducted), the pulse length and duty cycle of the MFAS/HFAS signal (~1 second pulse twice a minute) makes it less likely that masking will occur as a result.

Impaired Communication

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the “active space” of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.*, 2004; Lohr *et al.*, 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which is more important than simply detecting that a vocalization is occurring (Brenowitz, 1982; Brumm *et al.*, 2004; Dooling, 2004; Marten and Marler, 1977; Patricelli *et al.*, 2006). Most animals that vocalize have evolved with an ability to make adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability/distinguishability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.*, 2004; Patricelli *et al.*, 2006). Vocalizing animals can make one or more of the following adjustments to their vocalizations: Adjust the frequency structure; adjust the amplitude; adjust temporal structure; or adjust temporal delivery (*see* Biological Opinion).

Many animals will combine several of these strategies to compensate for high levels of background noise.

Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations, impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments remain unknown, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.*, 2006). For example, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezzerinac, 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

Stress Responses

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.*, 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune response.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical "fight or flight" response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with "stress." These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or

sympathetic nervous systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995) and altered metabolism (Elasser *et al.*, 2000), reduced immune competence (Blecha, 2000) and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.*, 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impairs those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called "distress" (sensu Seyle, 1950) or "allostatic loading" (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see,

Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as "distress" upon exposure to high frequency, mid-frequency and low-frequency sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.*, (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.*, (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.*, (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.*, goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress

responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways) (Southall *et al.*, 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.*, calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.*, 2007). Individuals (of different age, gender, reproductive status, *etc.*) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.*, proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Exposure of marine mammals to sound sources can result in (but is not limited to) no response or any of the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; avoidance; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.*, 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson (1995). A more recent review (Nowacek *et al.*, 2007) addresses studies conducted since

1995 and focuses on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. The following subsections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Estimates of the types of behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species, or extrapolated from closely related species when no information exists.

Alteration of Diving or Movement—Changes in dive behavior can vary widely. They may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive. Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.*, foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (*e.g.*, increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Nowacek *et al.*, (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, an action, they noted, that could lead to an increased likelihood of ship-strike. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise, highlighting the importance of the sound characteristics in producing a behavioral reaction. Conversely, Indo-Pacific humpback dolphins have been observed to dive for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating interpretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach and speed of approach, seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low frequency signals of the Acoustic Thermometry of Ocean Climate (ATOC) sound source

were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.*, 2003). They did, however, produce subtle effects that varied in direction and degree among the individual seals, illustrating the equivocal nature of behavioral effects and consequent difficulty in defining and predicting them.

Foraging—Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. Noise from seismic surveys was not found to impact the feeding behavior in western grey whales off the coast of Russia (Yazvenko *et al.*, 2007) and sperm whales engaged in foraging dives did not abandon dives when exposed to distant signatures of seismic airguns (Madsen *et al.*, 2006). Balaenopterid whales exposed to moderate low-frequency signals similar to the ATOC sound source demonstrated no variation in foraging activity (Croll *et al.*, 2001), whereas five out of six North Atlantic right whales exposed to an acoustic alarm interrupted their foraging dives (Nowacek *et al.*, 2004). Although the received sound pressure level at the animals was similar in the latter two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are likely contributing factors to the differential response. A determination of whether foraging disruptions incur fitness consequences will require information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Brownell (2004) reported the behavioral responses of western gray whales off the northeast coast of Sakhalin Island to sounds produced by seismic activities in that region. In 1997, the gray whales responded to seismic activities by changing their swimming speed and orientation, respiration rates, and distribution in waters around the seismic surveys. In 2001, seismic activities were conducted in a known feeding area of these whales and the whales left the feeding area and moved to areas farther south in the Sea of Okhotsk. They only returned to the feeding area several days after the seismic activities stopped. The potential fitness consequences of displacing these

whales, especially mother-calf pairs and "skinny whales," outside of their normal feeding area is not known; however, because gray whales, like other large whales, must gain enough energy during the summer foraging season to last them the entire year, sounds or other stimuli that cause them to abandon a foraging area for several days could disrupt their energetics and force them to make trade-offs like delaying their migration south, delaying reproduction, reducing growth, or migrating with reduced energy reserves.

Social relationships—Social interactions between mammals can be affected by noise via the disruption of communication signals or by the displacement of individuals. Disruption of social relationships therefore depends on the disruption of other behaviors (e.g., avoidance, masking, etc.). Sperm whales responded to military sonar, apparently from a submarine, by dispersing from social aggregations, moving away from the sound source, remaining relatively silent and becoming difficult to approach (Watkins *et al.*, 1985). Social disruptions must be considered, however, in context of the relationships that are affected. While some disruptions may not have deleterious effects, long-term disruptions of mother/calf pairs or interruption of mating behaviors have the potential to affect the growth and survival or reproductive effort/success of individuals, respectively.

Vocalizations (also see Masking section)—Vocal changes in response to anthropogenic noise can occur across the repertoire of sound production modes used by marine mammals, such as whistling, echolocation click production, calling, and singing. Changes may result in response to a need to compete with an increase in background noise or may reflect an increased vigilance or startle response. For example, in the presence of low-frequency active sonar, humpback whales have been observed to increase the length of their "songs" (Miller *et al.*, 2000; Fristrup *et al.*, 2003), possibly due to the overlap in frequencies between the whale song and the low-frequency active sonar. A similar compensatory effect for the presence of low-frequency vessel noise has been suggested for right whales; right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007). Killer whales off the northwestern coast of the United States have been observed to increase the duration of primary calls once a threshold in observing vessel density (e.g., whale watching) was

reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.*, 2004). In contrast, both sperm and pilot whales potentially ceased sound production during the Heard Island feasibility test (Bowles *et al.*, 1994), although it cannot be absolutely determined whether the inability to acoustically detect the animals was due to the cessation of sound production or the displacement of animals from the area.

Avoidance—Avoidance is the displacement of an individual from an area as a result of the presence of a sound. Richardson *et al.* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals. It is qualitatively different from the flight response, but also differs in the magnitude of the response (*i.e.*, directed movement, rate of travel, etc.). Oftentimes avoidance is temporary, and animals return to the area once the noise has ceased. Longer term displacement is possible, however, which can lead to changes in abundance or distribution patterns of the species in the affected region if they do not become acclimated to the presence of the sound (Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006). Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.*, 2001; Finneran *et al.*, 2003; Kastelein *et al.*, 2006a; Kastelein *et al.*, 2006b). Short term avoidance of seismic surveys, low-frequency emissions, and acoustic deterrents has also been noted in wild populations of odontocetes (Bowles *et al.*, 1994; Goold, 1996; 1998; Stone *et al.*, 2000; Morton and Symonds, 2002) and to some extent in mysticetes (Gailey *et al.*, 2007), while longer term or repetitive/chronic displacement for some dolphin groups and for manatees has been suggested to be due to the presence of chronic vessel noise (Haviland-Howell *et al.*, 2007; Miksis-Olds *et al.*, 2007).

Maybaum (1993) conducted sound playback experiments to assess the effects of mid-frequency active sonar on humpback whales in Hawaiian waters. Specifically, he exposed focal pods to sounds of a 3.3-kHz sonar pulse, a sonar frequency sweep from 3.1 to 3.6 kHz, and a control (blank) tape while monitoring the behavior, movement, and underwater vocalizations. The two types of sonar signals differed in their effects on the humpback whales, but both resulted in avoidance behavior. The whales responded to the pulse by increasing their distance from the sound source and responded to the frequency

sweep by increasing their swimming speeds and track linearity. In the Caribbean, sperm whales avoided exposure to mid-frequency submarine sonar pulses, in the range of 1,000 Hz to 10,000 Hz (IWC 2005).

Kvadsheim *et al.* (2007) conducted a controlled exposure experiment in which killer whales (*Orcinus orca*) that had been fitted with D-tags were exposed to mid-frequency active sonar (Source A: a 1.0 s upswEEP 209 dB @ 1–2 kHz every 10 seconds for 10 minutes; Source B: with a 1.0 s upswEEP 197 dB @ 6–7 kHz every 10 s for 10 min). When exposed to Source A, a tagged whale and the group it was traveling with did not appear to avoid the source. When exposed to Source B, the tagged whales along with other whales that had been carousel feeding, ceased feeding during the approach of the sonar and moved rapidly away from the source. When exposed to Source B, Kvadsheim and his co-workers reported that a tagged killer whale seemed to try to avoid further exposure to the sound field by immediately swimming away (horizontally) from the source of the sound; by engaging in a series of erratic and frequently deep dives that seem to take it below the sound field; or by swimming away while engaged in a series of erratic and frequently deep dives. Although the sample sizes in this study are too small to support statistical analysis, the behavioral responses of the orcas were consistent with the results of other studies.

In 2007, the first in the series of behavioral response studies conducted by NMFS and other scientists showed one beaked whale (*Mesoplodon densirostris*) responding to an MFAS playback. The BRS-07 Cruise report indicates that the playback began when the tagged beaked whale was vocalizing at depth (at the deepest part of a typical feeding dive), following a previous control with no sound exposure. The whale appeared to stop clicking significantly earlier than usual, when exposed to mid-frequency signals in the 130–140 dB (rms) range. After a few more minutes of the playback, when the received level reached a maximum of 140–150 dB, the whale ascended on the slow side of normal ascent rates with a longer than normal ascent, at which point the exposure was terminated. The BRS-07 Cruise report notes that the results are from a single experiment and that a greater sample size is needed before robust and definitive conclusions can be drawn (NMFS, 2008).

Flight Response—A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound

source. Flight responses have been speculated as being a component of marine mammal strandings associated with MFAS activities (Evans and England, 2001). If marine mammals respond to Navy vessels that are transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses should increase when they perceive that Navy vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990, Cooper, 1997, 1998). The probability of avoidance responses should also increase as received levels of active sonar increase (and the ship is, therefore, closer) and as ship speeds increase (that is, as approach speeds increase). For example, the probability of flight responses in Dall's sheep *Ovis dalli dalli* (Frid 2001a, 2001b), ringed seals *Phoca hispida* (Born *et al.*, 1999), Pacific brant (*Branta bernicli nigricans*) and Canada geese (*B. canadensis*) increased as a helicopter or fixed-wing aircraft approached groups of these animals more directly (Ward *et al.*, 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Breathing—Variations in respiration naturally vary with different behaviors and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Mean exhalation rates of gray whales at rest and while diving were found to be unaffected by seismic surveys conducted adjacent to the whale feeding grounds (Gailey *et al.*, 2007). Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.*, 2001; Kastelein *et al.*, 2006a) and emissions for underwater data transmission (Kastelein *et al.*, 2005). However, exposure of the same acoustic alarm to a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.*, 2006a), again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure.

Continued Pre-Disturbance Behavior, Habituation, or No Response

Under some circumstances, some of the individual marine mammals that are exposed to active sonar transmissions will continue their normal behavioral activities; in other circumstances, individual animals will become aware of the sonar transmissions at lower received levels and move to avoid additional exposure or exposures at higher received levels (Richardson *et al.*, 1995).

It is difficult to distinguish between animals that continue their pre-disturbance behavior without stress responses, animals that continue their behavior but experience stress responses (that is, animals that cope with disturbance), animals that habituate to disturbance (that is, they may have experienced low-level stress responses initially, but those responses abated over time), and animals that do not respond to the potential disturbance. Watkins (1986) reviewed data on the behavioral reactions of fin, humpback, right and minke whales that were exposed to continuous, broadband low-frequency shipping and industrial noise in Cape Cod Bay. He concluded that underwater sound was the primary cause of behavioral reactions in these species of whales and that the whales responded behaviorally to acoustic stimuli within their respective hearing ranges. Watkins also noted that whales showed the strongest behavioral reactions to sounds in the 15 Hz to 28 kHz range, although negative reactions (avoidance, interruptions in vocalizations, etc.) were generally associated with sounds that were either unexpected, too loud, suddenly louder or different, or perceived as being associated with a potential threat (such as an approaching ship on a collision course). In particular, whales seemed to react negatively when they were within 100 m of the source or when received levels increased suddenly in excess of 12 dB relative to ambient sounds. At other times, the whales ignored the source of the signal and all four species habituated to these sounds.

Nevertheless, Watkins concluded that whales ignored most sounds in the background of ambient noise, including the sounds from distant human activities even though these sounds may have had considerable energies at frequencies well within the whales' range of hearing. Further, he noted that of the whales observed, fin whales were the most sensitive of the four species, followed by humpback whales; right whales were the least likely to be disturbed and generally did not react to

low-amplitude engine noise. By the end of his period of study, Watkins (1986) concluded that fin and humpback whales have generally habituated to the continuous and broad-band noise of Cape Cod Bay while right whales did not appear to change their response. As mentioned above, animals that habituate to a particular disturbance may have experienced low-level stress responses initially, but those responses abated over time. In most cases, this likely means a lessened immediate potential effect from a disturbance; however, concern exists where the habituation occurs in a potentially more harmful situation, for example: animals may become more vulnerable to vessel strikes once they habituate to vessel traffic (Swingle *et al.*, 1993; Wiley *et al.*, 1995).

Aicken *et al.* (2005) monitored the behavioral responses of marine mammals to a new low-frequency active sonar system that was being developed for use by the British Navy. During those trials, fin whales, sperm whales, Sowerby's beaked whales, long-finned pilot whales (*Globicephala melas*), Atlantic white-sided dolphins, and common bottlenose dolphins were observed and their vocalizations were recorded. These monitoring studies detected no evidence of behavioral responses that the investigators could attribute to exposure to the low-frequency active sonar during these trials.

Behavioral Responses (Southall *et al.* (2007))

Southall *et al.* (2007) reports the results of the efforts of a panel of experts in acoustic research from behavioral, physiological, and physical disciplines that convened and reviewed the available literature on marine mammal hearing and physiological and behavioral responses to human-made sound with the goal of proposing exposure criteria for certain effects. This peer-reviewed compilation of literature is very valuable, though Southall *et al.* (2007) note that not all data are equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables—such data were reviewed and sometimes used for qualitative illustration but were not included in the quantitative analysis for the criteria recommendations. All of the studies considered, however, contain an estimate of the received sound level when the animal exhibited the indicated response.

In the Southall *et al.* (2007) publication, for the purposes of

analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. MFAS/HFAS is considered a non-pulse sound. Southall *et al.*, (2007) summarize the studies associated with low-frequency, mid-frequency, and high-frequency cetacean and pinniped responses to non-pulse sounds, based strictly on received level, in Appendix C of their article (incorporated by reference and summarized in the three paragraphs below).

The studies that address responses of low frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to MFAS/HFAS) including: vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These studies generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re: 1 μ Pa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, though, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts or sound sources, so it is not surprising that responses differ.

The studies that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: Pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), MFAS, and non-pulse bands and tones. Southall *et al.*, (2007) were unable to come to a clear conclusion

regarding the results of these studies. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: Pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.*, (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (~90–120 dB), at least for initial exposures. All recorded exposures above 140 dB induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.*, 2007). Rapid habituation was noted in some but not all studies. There is no data to indicate whether other high frequency cetaceans are as sensitive to anthropogenic sound as harbor porpoises are.

The studies that address the responses of pinnipeds in water to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: AHDs, ATOC, various non-pulse sounds used in underwater data communication; underwater drilling, and construction noise. Few studies exist with enough information to include them in the analysis. The limited data suggested that exposures to non-pulse sounds between 90 and 140 dB generally do not result in strong behavioral responses in pinnipeds in water, but no data exist at higher received levels.

In addition to summarizing the available data, the authors of Southall *et al.*, (2007) developed a severity scaling system with the intent of ultimately being able to assign some level of biological significance to a response. Following is a summary of their scoring system, a comprehensive list of the behaviors associated with each score may be found in the report:

- 0–3 (Minor and/or brief behaviors) includes, but is not limited to: No response; minor changes in speed or locomotion (but with no avoidance); individual alert behavior; minor cessation in vocal behavior; minor changes in response to trained behaviors (in laboratory);

- 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival) includes, but is not limited to: Moderate changes in speed, direction, or dive profile; brief shift in group distribution; prolonged cessation or modification of vocal behavior (duration > duration of sound), minor or moderate individual and/or group avoidance of sound; brief cessation of reproductive behavior; or refusal to initiate trained tasks (in laboratory);

- 7–9 (Behaviors considered likely to affect the aforementioned vital rates) includes, but is not limited to: Extensive or prolonged aggressive behavior; moderate, prolonged or significant separation of females and dependent offspring with disruption of acoustic reunion mechanisms; long-term avoidance of an area; outright panic, stampede, stranding; threatening or attacking sound source (in laboratory).

In Table 6 we have summarized the scores that Southall *et al.*, (2007) assigned to the papers that reported behavioral responses of low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds in water to non-pulse sounds. This table is included simply to summarize the findings of the studies and opportunistic observations (all of which were capable of estimating received level) that Southall *et al.*, (2007) compiled in the effort to develop acoustic criteria.

Response Score	Received RMS Sound Pressure Level (dB re: 1 μ Pa)											
	80 to < 90	90 to < 100	100 to < 110	110 to < 120	120 to < 130	130 to < 140	140 to < 150	150 to < 160	160 to < 170	170 to < 180	180 to < 190	190 to < 200
9												
8			M	M		M		M				M
7							L	L				M
6	H	L/H	L/PH	L/M/H	L/M/H	L	L/H	H	M/H	M		
5			H	H	M							
4				L/M	L/M/P	P	L					
3		M	L/M	L/M	M/P	P						
2			L	L/M	L	L	L					
1			M	M	M							
0	L/H/P	L/H/P	L/M/H	L/M/H/P	L/M/H/P	L	M				M	M

Table 6. Data compiled from three tables from Southall *et al.*, (2007) indicating when marine mammals (low-frequency cetaceans = L, mid-frequency cetaceans = M, high frequency cetaceans = H, and pinnipeds = P) were reported as having a behavioral response of the indicated severity to a non-pulse sound of the indicated received level. As discussed in the text, responses are highly variable and context specific.

Potential Effects of Behavioral Disturbance

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, *etc.*) of an animal. There is little quantitative marine mammal data relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals. Several authors have reported that disturbance stimuli cause animals to abandon nesting and foraging sites, Sutherland and Crockford, 1993), cause animals to increase their activity levels and suffer premature deaths or reduced reproductive success when their energy expenditures exceed their energy budgets (Daan *et al.*, 1996, Feare 1976, Giese 1996, Mullner *et al.*, 2004, Waunters *et al.*, 1997), or cause animals to experience higher predation rates when they adopt risk-prone foraging or migratory strategies (Frid and Dill, 2002). Each of these studies addressed the consequences that result when animals shift from one behavioral state (for example, resting or foraging) to another behavioral state (avoidance or escape behavior) because of human disturbance or disturbance stimuli.

One consequence of behavioral avoidance results from changing the energetics of marine mammals because of the energy required to avoid surface vessels or the sound field associated with active sonar (Frid and Dill, 2002). Most animals can avoid that energetic cost by swimming away at slow speeds or those speeds that are at or near the minimum cost of transport (Miksis-Olds, 2006), as has been demonstrated in Florida manatees (Hartman, 1979, Miksis-Olds, 2006).

Those costs increase, however, when animals shift from a resting state, which is designed to conserve an animal's

energy, to an active state that consumes energy the animal would have conserved had it not been disturbed. Marine mammals that have been disturbed by anthropogenic noise and vessel approaches are commonly reported to shift from resting behavioral states to active behavioral states, which would imply that they incur an energy cost. Morete *et al.*, (2007) reported that undisturbed humpback whale cows that were accompanied by their calves were frequently observed resting while their calves circled them (milling) and rolling interspersed with dives. When vessels approached, the amount of time cows and calves spent resting and milling, respectively declined significantly. These results are similar to those reported by Scheidat *et al.* (2004) for the humpback whales they observed off the coast of Ecuador.

Constantine and Brunton (2001) reported that bottlenose dolphins in the Bay of Islands, New Zealand only engaged in resting behavior 5% of the time when vessels were within 300 meters compared with 83% of the time when vessels were not present. Miksis-Olds (2006) and Miksis-Olds *et al.* (2005) reported that Florida manatees in Sarasota Bay, Florida, reduced the amount of time they spent milling and increased the amount of time they spent feeding when background noise levels increased. Although the acute costs of these changes in behavior are not likely to exceed an animal's ability to compensate, the chronic costs of these behavioral shifts are uncertain.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called "attentional capture" occurs when a stimulus (usually a stimulus that an

animal is not concentrating on or attending to) "captures" an animal's attention. This shift in attention can occur consciously or unconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a "watch and wait" posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or "vigilance" (Cowlshaw *et al.*, 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time: when animals focus their attention on specific environmental cues, they are not attending to other activities such as foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002). Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (for example, multiple surface vessels, which, of note, will not be utilized in the NWTRC), or when they co-occur with times that an animal perceives increased risk (for example, when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. For example, bighorn sheep and Dall's sheep dedicated more time to

being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.*, 1991).

Several authors have established that long-term and intense disturbance stimuli can cause population declines by reducing the body condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.*, 1996; Madsen, 1994; White, 1983). For example, Madsen (1994) reported that pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46-percent reproductive success rate compared with geese in disturbed habitat (being consistently scored off the fields on which they were foraging) which did not gain mass and has a 17% reproductive success rate. Similar reductions in reproductive success have been reported for mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.*, 1988), caribou disturbed by seismic exploration blasts (Bradshaw *et al.*, 1998), caribou disturbed by low-elevation military jet-fights (Luick *et al.*, 1996), and caribou disturbed by low-elevation jet flights (Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Allredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand). For example, a study of grizzly bears (*Ursus horribilis*) reported that bears disturbed by hikers reduced their energy intake by an average of 12 kcal/min (50.2 × 10³ kJ/min), and spent energy fleeing or acting aggressively toward hikers (White *et al.*, 1999). Alternately, Ridgway *et al.*, (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five day period did not cause any sleep deprivation or stress effects such as changes in cortisol or epinephrine levels.

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one

diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007).

Stranding and Mortality

When a live or dead marine mammal swims or floats onto shore and becomes "beached" or incapable of returning to sea, the event is termed a "stranding" (Geraci *et al.*, 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; National Marine Fisheries Service, 2007p). The legal definition for a stranding within the United States is that (A) "a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance." (16 U.S.C. 1421h).

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxins, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.*, 1976; Eaton, 1979; Odell *et al.*, 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chrousos, 2000; Creel, 2005; DeVries *et al.*, 2003; Fair and Becker, 2000; Foley *et al.*, 2001; Moberg, 2000; Relyea, 2005a; 2005b; Romero, 2004; Sih *et al.*, 2004).

Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships

between those stranding events and military active sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.*, 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events of Cuvier's beaked whales that had been reported and one mass stranding of four Baird's beaked whale (*Berardius bairdii*). The IWC concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been coincident with the use of MFAS, one of those seven had been associated with the use of tactical low-frequency sonar, and the remaining stranding event had been associated with the use of seismic airguns.

Most of the stranding events reviewed by the IWC involved beaked whales. A mass stranding of Cuvier's beaked whales in the eastern Mediterranean Sea occurred in 1996 (Franz, 1998) and mass stranding events involving Gervais' beaked whales, Blainville's beaked whales, and Cuvier's beaked whales occurred off the coast of the Canary Islands in the late 1980s (Simmonds and Lopez-Jurado, 1991). The stranding events that occurred in the Canary Islands and Kyparissiakos Gulf in the late 1990s and the Bahamas in 2000 have been the most intensively-studied mass stranding events and have been associated with naval exercises involving the use of MFAS.

Strandings Associated With MFAS

Over the past 12 years, there have been five stranding events coincident with military mid-frequency active sonar use in which exposure to sonar is believed by NMFS and the Navy to have been a contributing factor: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). Additionally, in 2004, during the RIMPAC exercises, between 150–200 usually pelagic melon-headed whales occupied the shallow waters of the Hanalei Bay, Kaua'i, Hawaii for over 28 hours. NMFS determined that the mid-frequency sonar was a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the Hanalei Bay stranding. A number of other stranding events coincident with the operation of MFAS including the death of beaked whales or other species (minke whales, dwarf sperm whales, pilot whales) have been reported; however, the majority have not been investigated to the degree necessary to determine the cause of the stranding.

Greece (1996)

Twelve Cuvier's beaked whales stranded atypically (in both time and space) along a 38.2-kilometer strand of the coast of the Kyparissiakos Gulf on May 12 and 13, 1996 (Frantzis, 1998). From May 11 through May 15, the NATO research vessel Alliance was conducting active sonar tests with signals of 600 Hz and 3 kHz and source levels of 228 and 226 dB re: 1 µPa, respectively (D'Amico and Verboom, 1998; D'Spain *et al.*, 2006). The timing and the location of the testing encompassed the time and location of the whale strandings (Frantzis, 1998).

Necropsies of eight of the animals were performed but were limited to basic external examination and sampling of stomach contents, blood, and skin. No ears or organs were collected, and no histological samples were preserved. No apparent abnormalities or wounds were found (Frantzis, 2004). Examination of photos of the animals, taken soon after their death, revealed that the eyes of at least four of the individuals were bleeding. Photos were taken soon after their death (Frantzis, 2004). Stomach contents contained the flesh of cephalopods, indicating that feeding had recently taken place (Frantzis, 1998).

All available information regarding the conditions associated with this stranding event were compiled, and many potential causes were examined including major pollution events, prominent tectonic activity, unusual physical or meteorological events, magnetic anomalies, epizootics, and conventional military activities (International Council for the Exploration of the Sea, 2005a). However, none of these potential causes coincided in time or space with the mass stranding, or could explain its characteristics (International Council for the Exploration of the Sea, 2005a). The robust condition of the animals, plus the recent stomach contents, is inconsistent with pathogenic causes (Frantzis, 2004). In addition, environmental causes can be ruled out as there were no unusual environmental circumstances or events before or during this time period and within the general proximity (Frantzis, 2004).

Because of the rarity of this mass stranding of Cuvier's beaked whales in the Kyparissiakos Gulf (first one in history), the probability for the two events (the military exercises and the strandings) to coincide in time and location, while being independent of each other, was thought to be extremely low (Frantzis, 1998). However, because full necropsies had not been conducted,

and no abnormalities were noted, the cause of the strandings could not be precisely determined (Cox *et al.*, 2006). A Bioacoustics Panel convened by NATO concluded that the evidence available did not allow them to accept or reject sonar exposures as a causal agent in these stranding events. Their official finding was "An acoustic link can neither be clearly established, nor eliminated as a direct or indirect cause for the May 1996 strandings." The analysis of this stranding event provided support for, but no clear evidence for, the cause-and-effect relationship of active sonar training activities and beaked whale strandings (Cox *et al.*, 2006).

Bahamas (2000)

NMFS and the Navy prepared a joint report addressing the multi-species stranding in the Bahamas in 2000, which took place within 24 hours of U.S. Navy ships using MFAS as they passed through the Northeast and Northwest Providence Channels on March 15–16, 2000. The ships, which operated both AN/SQS–53C and AN/SQS–56, moved through the channel while emitting MFAS pings approximately every 24 seconds. Of the 17 cetaceans that stranded over a 36-hr period (Cuvier's beaked whales, Blainville's beaked whales, Minke whales, and a spotted dolphin), seven animals died on the beach (5 Cuvier's beaked whales, 1 Blainville's beaked whale, and the spotted dolphin), while the other 10 were returned to the water alive (though their ultimate fate is unknown). As discussed in the Bahamas report (DOC/DON, 2001), there is no likely association between the minke whale and spotted dolphin strandings and the operation of MFAS.

Necropsies were performed on five of the stranded beaked whales. All five necropsied beaked whales were in good body condition, showing no signs of infection, disease, ship strike, blunt trauma, or fishery related injuries, and three still had food remains in their stomachs. Auditory structural damage was discovered in four of the whales, specifically bloody effusions or hemorrhaging around the ears. Bilateral intracochlear and unilateral temporal region subarachnoid hemorrhage, with blood clots in the lateral ventricles, were found in two of the whales. Three of the whales had small hemorrhages in their acoustic fats (located along the jaw and in the melon).

A comprehensive investigation was conducted and all possible causes of the stranding event were considered, whether they seemed likely at the outset or not. Based on the way in which the

strandings coincided with ongoing naval activity involving tactical MFAS use, in terms of both time and geography, the nature of the physiological effects experienced by the dead animals, and the absence of any other acoustic sources, the investigation team concluded that MFAS aboard U.S. Navy ships that were in use during the active sonar exercise in question were the most plausible source of this acoustic or impulse trauma to beaked whales. This sound source was active in a complex environment that included the presence of a surface duct, unusual and steep bathymetry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these active sonars. The investigation team concluded that the cause of this stranding event was the confluence of the Navy MFAS and these contributory factors working together, and further recommended that the Navy avoid operating MFAS in situations where these five factors would be likely to occur. This report does not conclude that all five of these factors must be present for a stranding to occur, nor that beaked whales are the only species that could potentially be affected by the confluence of the other factors. Based on this, NMFS believes that the operation of MFAS in situations where surface ducts exist, or in marine environments defined by steep bathymetry and/or constricted channels, may increase the likelihood of producing a sound field with the potential to cause cetaceans (especially beaked whales) to strand, and therefore suggests the need for increased vigilance while operating MFAS in these areas, especially when beaked whales (or potentially other deep divers) are likely present.

Madeira, Spain (2000)

From May 10–14, 2000, three Cuvier's beaked whales were found atypically stranded on two islands in the Madeira archipelago, Portugal (Cox *et al.*, 2006). A fourth animal was reported floating in the Madeiran waters by fishermen but did not come ashore (Woods Hole Oceanographic Institution, 2005). Joint NATO amphibious training peacekeeping exercises involving participants from 17 countries and 80 warships, took place in Portugal during May 2–15, 2000.

The bodies of the three stranded whales were examined post mortem (Woods Hole Oceanographic Institution, 2005), though only one of the stranded whales was fresh enough (24 hours after stranding) to be necropsied (Cox *et al.*,

2006). Results from the necropsy revealed evidence of hemorrhage and congestion in the right lung and both kidneys (Cox *et al.*, 2006). There was also evidence of intercochlear and intracranial hemorrhage similar to that which was observed in the whales that stranded in the Bahamas event (Cox *et al.*, 2006). There were no signs of blunt trauma, and no major fractures (Woods Hole Oceanographic Institution, 2005). The cranial sinuses and airways were found to be clear with little or no fluid deposition, which may indicate good preservation of tissues (Woods Hole Oceanographic Institution, 2005).

Several observations on the Madeira stranded beaked whales, such as the pattern of injury to the auditory system, are the same as those observed in the Bahamas strandings. Blood in and around the eyes, kidney lesions, pleural hemorrhages, and congestion in the lungs are particularly consistent with the pathologies from the whales stranded in the Bahamas, and are consistent with stress and pressure related trauma. The similarities in pathology and stranding patterns between these two events suggest that a similar pressure event may have precipitated or contributed to the strandings at both sites (Woods Hole Oceanographic Institution, 2005).

Even though no definitive causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): Exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 (1,000–6,000 m) fathoms occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships were operating around Madeira, though it is not known if MFAS was used, and the specifics of the sound sources used are unknown (Cox *et al.*, 2006, Freitas, 2004); exercises took place in an area surrounded by land masses separated by less than 35 nm (65 km) and at least 10 nm (19 km) in length, or in an embayment. Exercises involving multiple ships employing MFA near land may produce sound directed towards a channel or embayment that may cut off the lines of egress for marine mammals (Freitas, 2004).

Canary Islands, Spain (2002)

The southeastern area within the Canary Islands is well known for aggregations of beaked whales due to its ocean depths of greater than 547

fathoms (1,000 m) within a few hundred meters of the coastline (Fernandez *et al.*, 2005). On September 24, 2002, 14 beaked whales were found stranded on Fuerteventura and Lanzarote Islands in the Canary Islands (International Council for Exploration of the Sea, 2005a). Seven whales died, while the remaining seven live whales were returned to deeper waters (Fernandez *et al.*, 2005). Four beaked whales were found stranded dead over the next 3 days either on the coast or floating offshore. These strandings occurred within near proximity of an international naval exercise that utilized MFAS and involved numerous surface warships and several submarines. Strandings began about 4 hours after the onset of MFAS activity (International Council for Exploration of the Sea, 2005a; Fernandez *et al.*, 2005).

Eight Cuvier's beaked whales, one Blainville's beaked whale, and one Gervais' beaked whale were necropsied, six of them within 12 hours of stranding (Fernandez *et al.*, 2005). No pathogenic bacteria were isolated from the carcasses (Jepson *et al.*, 2003). The animals displayed severe vascular congestion and hemorrhage especially around the tissues in the jaw, ears, brain, and kidneys, displaying marked disseminated microvascular hemorrhages associated with widespread fat emboli (Jepson *et al.*, 2003; International Council for Exploration of the Sea, 2005a). Several organs contained intravascular bubbles, although definitive evidence of gas embolism *in vivo* is difficult to determine after death (Jepson *et al.*, 2003). The livers of the necropsied animals were the most consistently affected organ, which contained macroscopic gas-filled cavities and had variable degrees of fibrotic encapsulation. In some animals, cavity lesions had extensively replaced the normal tissue (Jepson *et al.*, 2003). Stomachs contained a large amount of fresh and undigested contents, suggesting a rapid onset of disease and death (Fernandez *et al.*, 2005). Head and neck lymph nodes were enlarged and congested, and parasites were found in the kidneys of all animals (Fernandez *et al.*, 2005).

The association of NATO MFAS use close in space and time to the beaked whale strandings, and the similarity between this stranding event and previous beaked whale mass strandings coincident with active sonar use, suggests that a similar scenario and causative mechanism of stranding may be shared between the events. Beaked whales stranded in this event demonstrated brain and auditory system

injuries, hemorrhages, and congestion in multiple organs, similar to the pathological findings of the Bahamas and Madeira strandings events. In addition, the necropsy results of the Canary Islands stranding event lead to the hypothesis that the presence of disseminated and widespread gas bubbles and fat emboli were indicative of nitrogen bubble formation, similar to what might be expected in decompression sickness (Jepson *et al.*, 2003; Fernández *et al.*, 2005).

Spain (2006)

The Spanish Cetacean Society reported an atypical mass stranding of four beaked whales that occurred January 26, 2006, on the southeast coast of Spain, near Mojacar (Gulf of Vera) in the Western Mediterranean Sea. According to the report, two of the whales were discovered the evening of January 26 and were found to be still alive. Two other whales were discovered during the day on January 27, but had already died. The fourth animal was found dead on the afternoon of January 27, a few kilometers north of the first three animals. From January 25–26, 2006, Standing North Atlantic Treaty Organization (NATO) Response Force Maritime Group Two (five of seven ships including one U.S. ship under NATO Operational Control) had conducted active sonar training against a Spanish submarine within 50 nm (93 km) of the stranding site.

Veterinary pathologists necropsied the two male and two female Cuvier's beaked whales. According to the pathologists, the most likely primary cause of this type of beaked whale mass stranding event was anthropogenic acoustic activities, most probably anti-submarine MFAS used during the military naval exercises. However, no positive acoustic link was established as a direct cause of the stranding. Even though no causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000–6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships (in this instance, five) were operating MFAS in the same area over extended periods of time (in this case, 20 hours) in close proximity; Exercises took place in an area surrounded by landmasses, or in an embayment. Exercises involving

multiple ships employing MFAS near land may have produced sound directed towards a channel or embayment that may have cut off the lines of egress for the affected marine mammals (Freitas, 2004).

Hanalei Bay (2004)

On July 3–4, 2004, approximately 150–200 melon-headed whales occupied the shallow waters of the Hanalei Bay, Kaua'i, Hawaii for over 28 hours. Attendees of a canoe blessing observed the animals entering the Bay in a single wave formation at 7 a.m. on July 3, 2004. The animals were observed moving back into the shore from the mouth of the Bay at 9 a.m. The usually pelagic animals milled in the shallow bay and were returned to deeper water with human assistance beginning at 9:30 a.m. on July 4, 2004, and were out of sight by 10:30 a.m.

Only one animal, a calf, was known to have died following this event. The animal was noted alive and alone in the Bay on the afternoon of July 4, 2004 and was found dead in the Bay the morning of July 5, 2004. A full necropsy, magnetic resonance imaging, and computerized tomography examination were performed on the calf to determine the manner and cause of death. The combination of imaging, necropsy and histological analyses found no evidence of infectious, internal traumatic, congenital, or toxic factors. Although cause of death could not be definitively determined, it is likely that maternal separation, poor nutritional condition, and dehydration contributed to the final demise of the animal. Although we do not know when the calf was separated from its mother, the movement into the Bay, the milling and re-grouping may have contributed to the separation or lack of nursing especially if the maternal bond was weak or this was a primiparous calf.

Environmental factors, abiotic and biotic, were analyzed for any anomalous occurrences that would have contributed to the animals entering and remaining in Hanalei Bay. The Bay's bathymetry is similar to many other sites within the Hawaiian Island chain and dissimilar to sites that have been associated with mass strandings in other parts of the United States. The weather conditions appeared to be normal for that time of year with no fronts or other significant features noted. There was no evidence of unusual distribution or occurrence of predator or prey species, or unusual harmful algal blooms. Weather patterns and bathymetry that have been associated with mass strandings elsewhere were not found to occur in this instance.

A separate event involving melon-headed whales and rough-toothed dolphins took place over the same period of time in the Northern Mariana Islands (Jefferson *et al.*, 2006), which is several thousand miles from Hawaii. Some 500–700 melon-headed whales came into Sasanahaya Bay on 4 July 2004 on the island of Rota and then left of their own accord after 5.5 hours; no known active sonar transmissions occurred in the vicinity of that event. Global reports of these types of events or sightings are of great interest to the scientific community and continuing efforts to enhance reporting in island nations will contribute to our increased understanding of animal behavior and potential causes of stranding events. Exactly what, if any, relationship this event has to the simultaneous events in Hawaii and whether they might be related to some common factor (*e.g.*, there was a full moon on July 2, 2004) is and will likely remain unknown. However, these two synchronous, nearshore events involving a rarely-sighted species are curious and may point to the range of potential contributing factors for which we lack detailed understanding and which the authors acknowledged might have played some role in the "confluence of events" in Hanalei Bay.

The Hanalei event was spatially and temporally correlated with RIMPAC. Official sonar training and tracking exercises in the Pacific Missile Range Facility (PMRF) warning area did not commence until approximately 8 a.m. on July 3 and were thus ruled out as a possible trigger for the initial movement into the Bay.

However, six naval surface vessels transiting to the operational area on July 2 intermittently transmitted active sonar (for approximately 9 hours total from 1:15 p.m. to 12:30 a.m.) as they approached from the south. The potential for these transmissions to have triggered the whales' movement into Hanalei Bay was investigated. Analyses with the information available indicated that animals to the south and east of Kaua'i could have detected active sonar transmissions on July 2, and reached Hanalei Bay on or before 7 a.m. on July 3, 2004. However, data limitations regarding the position of the whales prior to their arrival in the Bay, the magnitude of sonar exposure, behavioral responses of melon-headed whales to acoustic stimuli, and other possible relevant factors preclude a conclusive finding regarding the role of sonar in triggering this event. Propagation modeling suggest that transmissions from sonar use during the July 3 exercise in the PMRF warning area may

have been detectable at the mouth of the Bay. If the animals responded negatively to these signals, it may have contributed to their continued presence in the Bay. The U.S. Navy ceased all active sonar transmissions during exercises in this range on the afternoon of July 3, 2004. Subsequent to the cessation of sonar use, the animals were herded out of the Bay.

While causation of this stranding event may never be unequivocally determined, we consider the active sonar transmissions of July 2–3, 2004, a plausible, if not likely, contributing factor in what may have been a confluence of events. This conclusion is based on: (1) The evidently anomalous nature of the stranding; (2) its close spatiotemporal correlation with wide-scale, sustained use of sonar systems previously associated with stranding of deep-diving marine mammals; (3) the directed movement of two groups of transmitting vessels toward the southeast and southwest coast of Kauai; (4) the results of acoustic propagation modeling and an analysis of possible animal transit times to the Bay; and (5) the absence of any other compelling causative explanation. The initiation and persistence of this event may have resulted from an interaction of biological and physical factors. The biological factors may have included the presence of an apparently uncommon, deep-diving cetacean species (and possibly an offshore, non-resident group), social interactions among the animals before or after they entered the Bay, and/or unknown predator or prey conditions. The physical factors may have included the presence of nearby deep water, multiple vessels transiting in a directed manner while transmitting active sonar over a sustained period, the presence of surface sound ducting conditions, and/or intermittent and random human interactions while the animals were in the Bay.

Association Between Mass Stranding Events and Exposure to MFAS

Several authors have noted similarities between some of these stranding incidents: They occurred in islands or archipelagos with deep water nearby, several appeared to have been associated with acoustic waveguides like surface ducting, and the sound fields created by ships transmitting MFAS (Cox *et al.*, 2006, D'Spain *et al.*, 2006). Although Cuvier's beaked whales have been the most common species involved in these stranding events (81% of the total number of stranded animals), other beaked whales (including *Mesoplodon europaeus*, *M. densirostris*, and

Hyperoodon ampullatus) comprise 14% of the total. Other species, such as *Kogia breviceps*, have stranded in association with the operation of MFAS, but in much lower numbers and less consistently than beaked whales.

Based on the evidence available, however, we cannot determine whether (a) Cuvier's beaked whale is more prone to injury from high-intensity sound than other species, (b) their behavioral responses to sound makes them more likely to strand, or (c) they are more likely to be exposed to MFAS than other cetaceans (for reasons that remain unknown). Because the association between active sonar exposures and marine mammals mass stranding events is not consistent—some marine mammals strand without being exposed to active sonar and some sonar transmissions are not associated with marine mammal stranding events despite their co-occurrence—other risk factors or a grouping of risk factors probably contribute to these stranding events.

Behaviorally Mediated Responses to MFAS That May Lead to Stranding

Although the confluence of Navy MFAS with the other contributory factors noted in the report was identified as the cause of the 2000 Bahamas stranding event, the specific mechanisms that led to that stranding (or the others) are not understood, and there is uncertainty regarding the ordering of effects that led to the stranding. It is unclear whether beaked whales were directly injured by sound (acoustically mediated bubble growth, addressed above) prior to stranding or whether a behavioral response to sound occurred that ultimately caused the beaked whales to be injured and to strand.

Although causal relationships between beaked whale stranding events and active sonar remain unknown, several authors have hypothesized that stranding events involving these species in the Bahamas and Canary Islands may have been triggered when the whales changed their dive behavior in a startled response to exposure to active sonar or to further avoid exposure (Cox *et al.*, 2006; Rommel *et al.*, 2006). These authors proposed three mechanisms by which the behavioral responses of beaked whales upon being exposed to active sonar might result in a stranding event. These include: gas bubble formation caused by excessively fast surfacing; remaining at the surface too long when tissues are supersaturated with nitrogen; or diving prematurely when extended time at the surface is necessary to eliminate excess nitrogen.

More specifically, beaked whales that occur in deep waters that are in close proximity to shallow waters (for example, the “canyon areas” that are cited in the Bahamas stranding event; see D’Spain and D’Amico, 2006), may respond to active sonar by swimming into shallow waters to avoid further exposures and strand if they were not able to swim back to deeper waters. Second, beaked whales exposed to active sonar might alter their dive behavior. Changes in their dive behavior might cause them to remain at the surface or at depth for extended periods of time which could lead to hypoxia directly by increasing their oxygen demands or indirectly by increasing their energy expenditures (to remain at depth) and increase their oxygen demands as a result. If beaked whales are at depth when they detect a ping from an active sonar transmission and change their dive profile, this could lead to the formation of significant gas bubbles, which could damage multiple organs or interfere with normal physiological function (Cox *et al.*, 2006; Rommel *et al.*, 2006; Zimmer and Tyack, 2007). Baird *et al.*, (2005) found that slow ascent rates from deep dives and long periods of time spent within 50 m of the surface were typical for both Cuvier's and Blainville's beaked whales, the two species involved in mass strandings related to naval MFAS. These two behavioral mechanisms may be necessary to purge excessive dissolved nitrogen concentrated in their tissues during their frequent long dives (Baird *et al.*, 2005). Baird *et al.*, (2005) further suggests that abnormally rapid ascents or premature dives in response to high-intensity active sonar could indirectly result in physical harm to the beaked whales, through the mechanisms described above (gas bubble formation or non-elimination of excess nitrogen).

Because many species of marine mammals make repetitive and prolonged dives to great depths, it has long been assumed that marine mammals have evolved physiological mechanisms to protect against the effects of rapid and repeated decompressions. Although several investigators have identified physiological adaptations that may protect marine mammals against nitrogen gas supersaturation (alveolar collapse and elective circulation; Kooyman *et al.*, 1972; Ridgway and Howard, 1979). Ridgway and Howard (1979) reported that bottlenose dolphins (*Tursiops truncatus*) that were trained to dive repeatedly had muscle tissues that were substantially supersaturated with nitrogen gas. Houser *et al.* (2001) used

these data to model the accumulation of nitrogen gas within the muscle tissue of other marine mammal species and concluded that cetaceans that dive deep and have slow ascent or descent speeds would have tissues that are more supersaturated with nitrogen gas than other marine mammals. Based on these data, Cox *et al.*, (2006) hypothesized that a critical dive sequence might make beaked whales more prone to stranding in response to acoustic exposures. The sequence began with (1) very deep (to depths of up to 2 kilometers) and long (as long as 90 minutes) foraging dives with (2) relatively slow, controlled ascents, followed by (3) a series of “bounce” dives between 100 and 400 meters in depth (*also see* Zimmer and Tyack, 2007). They concluded that acoustic exposures that disrupted any part of this dive sequence (for example, causing beaked whales to spend more time at surface without the bounce dives that are necessary to recover from the deep dive) could produce excessive levels of nitrogen supersaturation in their tissues, leading to gas bubble and emboli formation that produces pathologies similar to decompression sickness.

Recently, Zimmer and Tyack (2007) modeled nitrogen tension and bubble growth in several tissue compartments for several hypothetical dive profiles and concluded that repetitive shallow dives (defined as a dive where depth does not exceed the depth of alveolar collapse, approximately 72 m for *Ziphius*), perhaps as a consequence of an extended avoidance reaction to active sonar sound, could pose a risk for decompression sickness and that this risk should increase with the duration of the response. Their models also suggested that unrealistically rapid ascent rates of ascent from normal dive behaviors are unlikely to result in supersaturation to the extent that bubble formation would be expected. Tyack *et al.*, (2006) suggested that emboli observed in animals exposed to MFAS (Jepson *et al.*, 2003; Fernandez *et al.*, 2005) could stem from a behavioral response that involves repeated dives shallower than the depth of lung collapse. Given that nitrogen gas accumulation is a passive process (*i.e.* nitrogen is metabolically inert), a bottlenose dolphin was trained to repetitively dive a profile predicted to elevate nitrogen saturation to the point that nitrogen bubble formation was predicted to occur. However, inspection of the vascular system of the dolphin via ultrasound did not demonstrate the formation of asymptomatic nitrogen gas bubbles (Houser *et al.*, 2007). Baird *et*

al., (2008), in a beaked whale tagging study off Hawaii, showed that deep dives are equally common during day or night, but “bounce dives” are typically a daytime behavior, possibly associated with visual predator avoidance (Baird *et al.*, 2008). This may indicate that “bounce dives” are associated with something other than behavioral regulation of dissolved nitrogen levels, which would be necessary day and night.

Despite the many theories involving bubble formation (both as a direct cause of injury (*see* Acoustically Mediated Bubble Growth Section) and an indirect cause of stranding (*See* Behaviorally Mediated Bubble Growth Section). Southall *et al.*, (2007) summarizes that there is either scientific disagreement or a lack of information regarding each of the following important points: (1) Received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral reactions (such as atypical diving behavior) that secondarily cause bubble formation and tissue damage; and (5) the extent the post mortem artifacts introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions.

Of note, no major ASW training exercises are proposed to be conducted in the NWTRC. The exercises utilizing MFAS will not utilize more than one surface vessel MFAS source at once. Additionally, while beaked whales may be present in the NWTRC where surface duct and steep bathymetry (in the form of sea mounts) characteristics exist, none of the training events will take place in a location having a constricted channel less than 35 miles wide or with limited egress similar to the Bahamas. Moreover, no sonar is proposed to be used in the Inshore area east of the mouth of the Strait of Juan de Fuca. Additionally, only approximately 110 hours of the highest power surface vessel MFAS use will be conducted annually (in short duration 1.5 hour exercises) in the NWTRC per year. Although the five environmental factors believed to have contributed to the Bahamas stranding (at least 3 surface vessel MFAS sources operating simultaneously or in conjunction with one another, beaked whale presence, surface ducts, steep bathymetry, and constricted channels with limited egress) will not be present during exercises in NWTRC, NMFS

recommends caution when either steep bathymetry, surface ducting conditions, or a constricted channel is present when mid-frequency active sonar is employed and cetaceans (especially beaked whales) are present.

Exposure to Underwater Detonation of Explosives

Some of the Navy's training exercises include the underwater detonation of explosives. For many of the exercises discussed, inert ordnance is used for a subset of the exercises. For exercises that involve “shooting” at a target that is above the surface of the water, underwater explosions only occur when the target is missed, which is the minority of the time (the Navy has historical hit/miss ratios and uses them in their exposure estimates). The underwater explosion from a weapon would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing related effects with or without behavioral responses, or exhibit temporary behavioral responses or tolerance from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels would result in worse impacts to an individual animal.

Injuries resulting from a shock wave take place at boundaries between tissues of different density. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.*, 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.*, 1973).

Because the ears are the most sensitive to pressure, they are the organs

most sensitive to injury (Ketten, 2000). Sound-related trauma associated with blast noise can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If an animal is able to hear a noise, at some level it can fatigue or damage its hearing by causing decreased sensitivity (Ketten, 1995) (*See* Noise-induced Threshold Shift Section above). Sound-related trauma can be lethal or sublethal. Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

There have been fewer studies addressing the behavioral effects of explosives on marine mammals than MFAS/HFAS. However, though the nature of the sound waves emitted from an explosion is different (in shape and rise time) from MFAS/HFAS, we still anticipate the same sorts of behavioral responses (*see* Exposure to MFAS/HFAS: Behavioral Disturbance Section) to result from repeated explosive detonations (a smaller range of likely less severe responses would be expected to occur as a result of exposure to a single explosive detonation).

Potential Effects of Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. Both scenarios are discussed below.

Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is large amount of vessel

traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (e.g., killer whales in Puget Sound; Foote *et al.*, 2004; Holt *et al.*, 2008). In cases where vessels actively approach marine mammals (e.g., whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.*, 2002; Constantine *et al.*, 2003), reduced blow interval (Ritcher *et al.*, 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.*, 2003; 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammals taxonomy groups, Richardson *et al.* (1995) provided the following assessment regarding cetacean reactions to vessel traffic:

Toothed whales: "In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic."

Baleen whales: "When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale."

It is important to recognize that behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal, and physical status of the animal. For example, studies have shown that beluga whales reacted differently when exposed to vessel noise and traffic. In some cases, nava beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km away,

and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.*, 1990). In other cases, beluga whales were more tolerant of vessels, but differentially responsive by reducing their calling rates, to certain vessels and operating characteristics (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were "modified by their previous experience and current activity; habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli." Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales (*Balaenoptera acutorostrata*) changed from frequent positive (such as approaching vessels) interest to generally uninterested reactions; finback whales (*B. physalus*) changed from mostly negative (such as avoidance) to uninterested reactions; right whales (*Eubalaena glacialis*) apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks (*Megaptera novaeangliae*) dramatically changed from mixed responses that were often negative to often strongly positive reactions. Watkins (1986) summarized that "whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had P [positive] reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways."

The Northwest Training Range Complex is well traveled by a variety of commercial and recreational vessels and a fair portion of the marine mammals in the area are expected to be habituated to vessel noise. Washington state handles seven percent of the country's exports and six percent of its imports. Cruise ships make daily use of the Seattle Port. A substantial volume of small boat traffic, primarily recreational, occurs

throughout Puget Sound, which has 244 marinas with 39,400 moorage slips and another 331 launch sites for smaller boats.

As described in the Description of the Specified Activity section, training exercises involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to 2 weeks. During training, speeds vary and depend on the specific type of activity, although 10–14 knots is considered the typical speed. Approximately 490 activities that involve Navy vessels occur within the Study Area during a typical year. Training activities are widely dispersed throughout the large OPAREA, which encompasses 122,468 nm² (420,054 km²). Consequently, the density of Navy ships within the Study Area at any given time is low.

Moreover, naval vessels transiting the study area or engaging in the training exercises will not actively or intentionally approach a marine mammal or change speed drastically. While in transit, naval vessels will be alert at all times, use extreme caution, and proceed at a "safe speed" so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions. When whales have been sighted in the area, Navy vessels will increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and would be dictated by environmental and other conditions (e.g., safety, weather).

Although the radiated sound from Navy vessels will be audible to marine mammals over a large distance, it is unlikely that animals will respond behaviorally (in a manner that NMFS would consider MMPA harassment) to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.*, 2004). In light of these facts, NMFS does not expect the Navy's vessel movements to result in Level B harassment.

Vessel Strike

Commercial and Navy ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's

propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (for example, the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.*, 2004). These species are primarily large, slow-moving whales. Smaller marine mammals (for example, bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRDC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 knots.

Jensen and Silber (2003) detailed 292 records of known or probable ship strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Of these cases, 39 (or 67%) resulted in serious injury or death (19 or 33% resulted in serious injury as determined by blood in the water, propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae, hemorrhaging, massive bruising or other injuries noted during necropsy and 20 to 35% resulted in death). Operating speeds of vessels that struck various species of large whales ranged from 2 to 51 knots. The majority (79%) of these strikes occurred at speeds of 13 knots or greater. The average speed that resulted in serious injury or death was 18.6 knots. Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45% to 75% as vessel speed increased from 10 to 14 knots, and exceeded 90% at 17 knots. Higher speeds during collisions result in greater

force of impact, but higher speeds also appear to increase the chance of severe injuries or death by pulling whales toward the vessel. Computer simulation modeling showed that hydrodynamic forces pulling whales toward the vessel hull increase with increasing speed (Clyne, 1999, Knowlton *et al.*, 1995).

The Jensen and Silber (2003) report notes that the database represents a minimum number of collisions, because the vast majority probably go undetected or unreported. In contrast, Navy vessels are likely to detect any strike that does occur, and they are required to report all ship strikes involving marine mammals. Overall, the percentages of Navy traffic relative to overall large shipping traffic are very small (on the order of 2%).

The ability of a ship to avoid a collision and to detect a collision depends on a variety of factors, including environmental conditions, ship design, size, and manning. The majority of ships participating in NWTRC training activities have a number of advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following:

- Navy ships have their bridges positioned forward, offering good visibility ahead of the bow.
- Crew size is much larger than that of merchant ships allowing for more potential observers on the bridge.
- Dedicated lookouts are posted during a training activity scanning the ocean for anything detectable in the water; anything detected is reported to the Officer of the Deck.
- Navy lookouts receive extensive training including Marine Species Awareness Training designed to provide marine species detection cues and information necessary to detect marine mammals.
- Navy ships are generally much more maneuverable than commercial merchant vessels.

The Navy has adopted mitigation measures to reduce the potential for collisions with surfaced marine mammals. For a thorough discussion of mitigation measures, please see the Mitigation section. Briefly, these measures include:

- At all times when vessels are underway, trained lookouts are used to detect all objects on the surface of the water, including marine mammals.
- Reasonable and prudent actions are implemented to avoid the close interaction of Navy assets and marine mammals.
- While in transit, naval vessels will be alert at all times, use extreme caution, and proceed at a "safe speed"

so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

Based on the implementation of Navy mitigation measures and the relatively low density of Navy ships in the Study Area, NMFS has concluded preliminarily that the probability of a ship strike is very low, especially for dolphins and porpoises, killer whales, social pelagic odontocetes and pinnipeds that are highly visible, and/or comparatively small and maneuverable. Though more probable, NMFS also believes that the likelihood of a Navy vessel striking a mysticete or sperm whale is low. The Navy did not request take from a ship strike and based on our preliminary determination, NMFS is not recommending that they modify their request at this time. However, NMFS is currently engaged in an internal Section 7 consultation under the ESA and the outcome of that consultation will further inform our final decision.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the "permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance." 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 the NWTRC application are considered military readiness activities.

NMFS reviewed the proposed NWTRC activities and the proposed NWTRC mitigation measures as described in the Navy's LOA application to determine if they would result in the least practicable adverse effect on marine mammals, which includes a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the effectiveness of the "military-readiness activity." NMFS determined that further discussion was necessary regarding the use of MFAS/

HFAS for training in the Inshore Area that contains the southern resident killer whale critical habitat.

To address the concerns above, the Navy clarified for NMFS (subsequent to their submittal of the LOA application) that no training utilizing MFAS/HFAS had occurred in the Inshore Area of NWTRC for the last six years, that it is not being conducted now, and that there are no plans to utilize MFAS/HFAS in the Inshore Area. This information has been factored into NMFS' effects analysis. Because MFAS/HFAS will not be used in this area, there is no reason to authorize take from these activities. However, the Navy indicated that should their plans change in the future they will request authorization under the MMPA. The Navy further explained that no explosive training occurs in the Inshore Area other than the annual detonation of four 2.5lb charges, which are not anticipated to result in the take of marine mammals. Included below are the mitigation measures the Navy proposed (see "Mitigation Measures Proposed in the Navy's LOA Application")

Mitigation Measures Proposed in the Navy's LOA Application

This section includes the protective measures proposed by the Navy and is taken directly from their application (with the exception of headings, which have been modified for increased clarity within the context of this proposed rule). In their proposed mitigation, the Navy has included measures to protect sea turtles—those measures are included here as part of the Navy's proposed action. Although measures to protect sea turtles are important, they are not required by the MMPA, and therefore, will not be codified through this regulation or required in any subsequent MMPA LOA. Measures to protect sea turtles will, however, be addressed in the Endangered Species Act section 7 consultation.

General Maritime Measures for All Training at Sea

Personnel Training (for All Training Types)

The use of shipboard lookouts is a critical component of all Navy protective measures. Lookout duties require that they report all objects sighted in the water to the officer of the deck (OOD) (e.g., trash, a periscope, marine mammals, sea turtles) and all disturbances (e.g., surface disturbance, discoloration) that may be indicative of a threat to the vessel and its crew. There are personnel serving as lookouts on station at all times (day and night) when

a ship or surfaced submarine is moving through the water.

- All commanding officers (COs), executive officers (XOs), lookouts, officers of the deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-submarine Warfare (ASW)/Mine Warfare (MIW) helicopter crews will complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge lookouts will complete both parts one and two of the MSAT; part two is optional for other personnel. This training addresses the lookout's role in environmental protection, laws governing the protection of marine species, Navy stewardship commitments and general observation information to aid in avoiding interactions with marine species.
- Navy lookouts will undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Education and Training Command [NAVEDTRA] 12968–D).
- Lookout training will include on-the-job instruction under the supervision of a qualified, experienced lookout. Following successful completion of this supervised training period, lookouts will complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). Personnel being trained as lookouts can be counted among those listed below as long as supervisors monitor their progress and performance.
- Lookouts will be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of protective measures if marine species are spotted.

Operating Procedures and Collision Avoidance (for All Training Types)

- Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order will be issued to further disseminate the personnel training requirement and general marine species protective measures.
- COs will make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.
- While underway, surface vessels will have at least two lookouts with binoculars; surfaced submarines will have at least one lookout with binoculars. Lookouts already posted for

safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts will watch for and report to the OOD the presence of marine mammals.

- On surface vessels equipped with a multi-function active sensor, pedestal mounted "Big Eye" (20x110) binoculars will be properly installed and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.
- Personnel on lookout will employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).
- After sunset and prior to sunrise, lookouts will employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).
- While in transit, naval vessels will be alert at all times, use extreme caution, and proceed at a "safe speed" so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.
- When whales have been sighted in the area, Navy vessels will increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and would be dictated by environmental and other conditions (e.g., safety, weather).
- Navy aircraft participating in exercises at sea will conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections will be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

Measures for MFAS Operations

Personnel Training (for MFAS Operations)

- All lookouts onboard platforms involved in ASW training events will review the NMFS-approved Marine Species Awareness Training material prior to use of mid-frequency active sonar.

- All COs, XOs, and officers standing watch on the bridge will have reviewed the Marine Species Awareness Training material prior to a training event employing the use of MFAS/HFAS.
- Navy lookouts will undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Educational Training [NAVEDTRA], 12968–D).
- Lookout training will include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts will complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). This does not forbid personnel being trained as lookouts from being counted as those listed in previous measures so long as supervisors monitor their progress and performance.
- Lookouts will be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

Lookout and Watchstander Responsibilities (for MFAS Operations)

- On the bridge of surface ships, there will always be at least three people on watch whose duties include observing the water surface around the vessel.
- All surface ships participating in ASW training events will, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as marine mammal lookouts.
- Personnel on lookout and officers on watch on the bridge will have at least one set of binoculars available for each person to aid in the detection of marine mammals.
- Personnel on lookout will be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine species that may need to be avoided as warranted.

Operating Procedures (for MFAS Operations)

- All personnel engaged in passive acoustic sonar operation (including

aircraft, surface ships, or submarines) will monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

- During MFAS operations, personnel will utilize all available sensor and optical systems (such as night vision goggles) to aid in the detection of marine mammals.
- Navy aircraft participating in exercises at sea will conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.
- Aircraft with deployed sonobuoys will use only the passive capability of sonobuoys when marine mammals are detected within 200 yds (183 m) of the sonobuoy.
- Marine mammal detections will be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.
- *Safety Zones*—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) within or closing to inside 1,000 yds (914 m) of the sonar dome (the bow), the ship or submarine will limit active transmission levels to at least 6 decibels (dB) below normal operating levels (a 6-dB reduction equals a 75-percent reduction in power).
- Ships and submarines will continue to limit maximum transmission levels by this 6-dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.
- Should a marine mammal be detected within or closing to inside 500 yds (457 m) of the sonar dome, active sonar transmissions will be limited to at least 10 dB below the equipment's normal operating level. (A 10-dB reduction equates to a 90-percent power reduction from normal operating levels.) Ships and submarines will continue to limit maximum ping levels by this 10-dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.
- Should the marine mammal be detected within or closing to inside 200

yd (183 m) of the sonar dome, active sonar transmissions will cease. Active sonar will not resume until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

■ Special conditions applicable for dolphin and porpoise only: If, after conducting an initial maneuver to avoid close quarters with dolphin or porpoise, the OOD concludes that dolphin or porpoise are deliberately closing to ride the vessel's bow wave, no further mitigation actions would be necessary while the dolphin or porpoise continue to exhibit bow wave riding behavior.

■ If the need for power-down should arise as detailed in "Safety Zones" above, the Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of what level above 235 dB active sonar was being operated).

- Prior to start up or restart of active sonar, operators will check that the Safety Zone radius around the sound source is clear of marine mammals.
- *Active sonar levels (generally)*—Navy will operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.
- Submarine sonar operators will review detection indicators of close- aboard marine mammals prior to the commencement of ASW training events involving MFAS.

Measures for Underwater Detonations Surface-to-Surface Gunnery (Non-Explosive Rounds)

- A 200-yd (183 m) radius buffer zone will be established around the intended target.
- From the intended firing position, trained lookouts will survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable. Due to the distance between the firing position and the buffer zone, lookouts are only expected to visually detect breaching whales, whale blows, and large pods of dolphins and porpoises.
- If applicable, target towing vessels will maintain a lookout. If a marine mammal is sighted in the vicinity of the exercise, the tow vessel will immediately notify the firing vessel in order to secure gunnery firing until the area is clear.
- The exercise will be conducted only when the buffer zone is visible and marine mammals are not detected

within the target area and the buffer zone.

Surface-to-Air Gunnery (Explosive and Non-Explosive Rounds)

- Vessels will orient the geometry of gunnery exercises in order to prevent debris from falling in the area of sighted marine mammals, algal mats, and floating kelp.
- Vessels will expedite the recovery of any parachute deploying aerial targets to reduce the potential for entanglement of marine mammals.
- Target towing aircraft shall maintain a lookout. If a marine mammal is sighted in the vicinity of the exercise, the tow aircraft will immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

Air-to-Surface At-Sea Bombing Exercises (Explosive and Non-Explosive)

- If surface vessels are involved, trained lookouts will survey for floating kelp, which may be inhabited by marine mammals. Ordnance shall not be targeted to impact within 1,000 yds (914 m) of known or observed floating kelp or marine mammals.
- A 1,000 yd (914 m) radius buffer zone will be established around the intended target.
- Aircraft will visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area will be made by flying at 1,500 ft (457 m) or lower, if safe to do so, and at the slowest safe speed. Release of ordnance through cloud cover is prohibited: Aircraft must be able to actually see ordnance impact areas. Survey aircraft should employ most effective search tactics and capabilities.
- The exercise will be conducted only if marine mammals are not visible within the buffer zone.

Air-to-Surface Missile Exercises (Explosive and Non-Explosive)

- Aircraft will visually survey the target area for marine mammals. Visual inspection of the target area will be made by flying at 1,500 (457 m) feet or lower, if safe to do so, and at slowest safe speed. Firing or range clearance aircraft must be able to actually see ordnance impact areas. Explosive ordnance shall not be targeted to impact within 1,800 yds (1646 m) of sighted marine mammals.

Underwater Detonations (Up to 2.5-lb Charges)

Exclusion Zones—All Mine Warfare and Mine Countermeasures Operations involving the use of explosive charges

must include exclusion zones for marine mammals to prevent physical and/or acoustic effects to those species. These exclusion zones shall extend in a 700-yard arc (640 yd) radius around the detonation site.

Pre-Exercise Surveys—For Demolition and Ship Mine Countermeasures Operations, pre-exercise surveys shall be conducted within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air, and personnel shall be alert to the presence of any marine mammal. Should such an animal be present within the survey area, the explosive event shall not be started until the animal voluntarily leaves the area. The Navy will ensure the area is clear of marine mammals for a full 30 minutes prior to initiating the explosive event. Personnel will record any marine mammal observations during the exercise as well as measures taken if species are detected within the exclusion zone.

Post-Exercise Surveys—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

Reporting—If there is evidence that a marine mammal may have been stranded, injured or killed by the action, Navy training activities will be suspended immediately and the situation reported immediately by the participating unit to the Officer in Charge of the Exercise (OCE), who will follow Navy procedures for reporting the incident to Commander, Pacific Fleet, Commander, Navy Region Southwest, Environmental Director, and the chain-of-command. The situation will also be reported to NMFS immediately or as soon as clearance procedures allow.

Sinking Exercise

The selection of sites suitable for SINKEXs involves a balance of operational suitability, requirements established under the Marine Protection, Research and Sanctuaries Act (MPRSA) permit granted to the Navy (40 CFR 229.2), and the identification of areas with a low likelihood of encountering ESA-listed species. To meet operational suitability criteria, the locations of SINKEXs must be within a reasonable distance of the target vessels' originating location. The locations should also be close to active military bases to allow participating assets access to shore facilities. For safety purposes, these locations should also be in areas that are not generally used by non-military air or watercraft. The MPRSA permit requires vessels to

be sunk in waters which are at least 6000 ft (1829 m) deep and at least 50 nm from land. In general, most listed species prefer areas with strong bathymetric gradients and oceanographic fronts for significant biological activity such as feeding and reproduction. Typical locations include the continental shelf and shelf-edge.

The Navy has developed range clearance procedures to maximize the probability of sighting any ships or marine mammal in the vicinity of an exercise, which are as follows:

- All weapons firing would be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

- Extensive range clearance activities would be conducted in the hours prior to commencement of the exercise, ensuring that no shipping is located within the hazard range of the longest-range weapon being fired for that event.

- An exclusion zone with a radius of 1.0 nm (1.9 km) would be established around each target. This exclusion zone is based on calculations using a 990-lb (450-kg) H6 net explosive weight high explosive source detonated 5 ft (1.5 m) below the surface of the water, which yields a distance of 0.85 nm (1.57 km) (cold season) and 0.89 nm (1.65 km) (warm season) beyond which the received level is below the 182 decibels (dB) re: 1 micropascal squared-seconds ($\mu\text{Pa}^2\text{-s}$) threshold established for the WINSTON S. CHURCHILL (DDG 81) shock trials (U.S. Navy, 2001). An additional buffer of 0.5 nm (0.9 km) would be added to account for errors, target drift, and animal movements.

Additionally, a safety zone, which would extend beyond the buffer zone by an additional 0.5 nm (0.9 km), would be surveyed. Together, the zones extend out 2 nm (3.7 km) from the target.

- A series of surveillance overflights shall be conducted prior to the event to ensure that no marine mammals are present in the exclusion zone. Survey protocol will be as follows:

- Overflights within the exclusion zone would be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy's Search and Rescue Tactical Aid, which provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.
- All visual surveillance activities would be conducted by Navy personnel

trained in visual surveillance. At least one member of the mitigation team would have completed the Navy's marine mammal training program for lookouts.

- In addition to the overflights, the exclusion zone would be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring would be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals (particularly sperm whales) in the vicinity of the exercise. The sonobuoys would be re-seeded as necessary throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE would be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

- On each day of the exercise, aerial surveillance of the exclusion and safety zones would commence 2 hours prior to the first firing.

- The results of all visual, aerial, and acoustic searches would be reported immediately to the OCE. No weapons launches or firing would commence until the OCE declares the safety and exclusion zones free of marine mammals and threatened and endangered species.

- If a marine mammal observed within the exclusion zone is diving, firing would be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes have elapsed, whichever occurs first. After 30 minutes, if the animal has not been re-sighted it would be assumed to have left the exclusion zone. The OCE would determine if the marine mammal is in danger of being adversely affected by commencement of the exercise.

- During breaks in the exercise of 30 minutes or more, the exclusion zone would again be surveyed for any marine mammal. If a marine mammal is sighted within the exclusion zone, the OCE would be notified, and the procedure described above would be followed.

- Upon sinking of the vessel, a final surveillance of the exclusion zone would be monitored for 2 hours, or until sunset, to verify that no marine mammals were harmed.

- Aerial surveillance would be conducted using helicopters or other aircraft based on necessity and availability. The Navy has several types of aircraft capable of performing this task; however, not all types are available for every exercise. For each exercise, the available asset best suited for

identifying objects on and near the surface of the ocean would be used. These aircraft would be capable of flying at the slow safe speeds necessary to enable viewing of marine vertebrates with unobstructed, or minimally obstructed, downward and outward visibility. The exclusion and safety zone surveys may be cancelled in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

- Every attempt would be made to conduct the exercise in sea states that are ideal for marine mammal sighting—Beaufort Sea State 3 or less. In the event of a sea state of 4 or above, survey efforts would be increased within the zones. This would be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.

- The exercise would not be conducted unless the exclusion zone could be adequately monitored visually. Should low cloud cover or surface visibility prevent adequate visual monitoring as described previously, the exercise would be delayed until conditions improved, and all of the above monitoring criteria could be met.

- In the unlikely event that any marine mammal is observed to be harmed in the area, a detailed description of the animal would be taken, the location noted, and if possible, photos taken. This information would be provided to NMFS via the Navy's regional environmental coordinator for purposes of identification (see the draft Stranding Plan for detail).

- An after action report detailing the exercise's time line, the time the surveys commenced and terminated, amount, and types of all ordnance expended, and the results of survey efforts for each event would be submitted to NMFS.

Explosive Source Sonobuoys Used in EER/IEER (AN/SSQ-110A)

- Crews will conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search should be conducted below 457 m (500 yd) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft operations, crews are allowed to conduct coordinated area clearances.

- Crews shall conduct a minimum of 30 minutes of visual and aural monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

- For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 914 m (1,000 yd) of observed marine mammal activity, deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 914 m (1,000 yd) of the intended post position, co-locate the explosive source sonobuoy (AN/SSQ-110A) (source) with the receiver.

- When operationally feasible, crews will conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of RF range of these sensors.

- *Aural Detection*—If the presence of marine mammals is detected aurally, then that should cue the aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

- *Visual Detection*—If marine mammals are visually detected within 914 m (1,000 yd) of the explosive source sonobuoy (AN/SSQ-110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 914 m (1,000 yd) safety buffer, whichever occurs first. Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 914 m (1,000 yd) safety buffer.

- Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the "Payload 1 Release" command followed by the "Payload 2 Release" command. Aircrews shall refrain from using the "Scuttle" command when two payloads remain at a given post. Aircrews will ensure that a 914 m (1,000 yd) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

- Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary (detonation occurs by timer approximately 6 hours after water entry) or tertiary (detonation occurs by salt water soluble plug approximately 12 hours after water entry) method.

- Aircrews shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ-110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.
- Mammal monitoring shall continue until out of own-aircraft sensor range.

Mitigation Conclusions

NMFS has carefully evaluated the Navy's proposed mitigation measures and considered a broad range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse 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.
- 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.

In some cases, additional mitigation measures are required beyond those that the applicant proposes. Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(a) Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

(b) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(c) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(d) A reduction in the intensity of exposures (either total number or

number at biologically important time or location) to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(e) Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(f) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

Based on our evaluation of the Navy's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined preliminarily that the Navy's proposed mitigation measures (especially when the Adaptive Management (see Adaptive Management below) component is taken into consideration) are adequate means of effecting the least practicable adverse impacts on marine mammals 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. Further detail is included below.

The proposed rule comment period will afford the public an opportunity to submit recommendations, views and/or concerns regarding this action and the proposed mitigation measures. While NMFS has determined preliminarily that the Navy's proposed mitigation measures will effect the least practicable adverse impact on the affected species or stocks and their habitat, NMFS will consider all public comments to help inform our final decision. Consequently, the proposed mitigation measures may be refined, modified, removed, or added to prior to the issuance of the final rule based on public comments received, and where appropriate, further analysis of any additional mitigation measures.

NMFS believes that the range clearance procedures and shutdown/safety zone/exclusion zone measures the Navy has proposed will enable the Navy to avoid injuring marine mammals and will enable them to minimize the numbers of marine mammals exposed to

levels associated with TTS for the following reasons:

MFAS/HFAS

The Navy's standard protective measures indicate that they will ensure powerdown of MFAS/HFAS by 6-dB when a marine mammal is detected within 1,000 yd (914 m), powerdown of 4 more dB (or 10-dB total) when a marine mammal is detected within 500 yd (457 m), and will cease MFAS/HFAS transmissions when a marine mammal is detected within 200 yd (183 m).

PTS/Injury—NMFS believes that the proposed mitigation measures will allow the Navy to avoid exposing marine mammals to received levels of MFAS/HFAS sound that would result in injury for the following reasons:

- The estimated distance from the most powerful source at which cetaceans and all pinnipeds except harbor seals would receive levels at or above the threshold for PTS/injury/Level A Harassment is approximately 10 m (10.9 yd). The PTS threshold for harbor seals is lower, and the associated distance in which a harbor seal would experience PTS is approximately 50 m.
- NMFS believes that the probability that a marine mammal would approach within the above distances of the sonar dome (to the sides or below) without being seen by the watchstanders (who would then activate a shutdown if the animal was within 200 yd (183 m)) is very low, especially considering that animals would likely avoid approaching a source transmitting at that level at that distance.

- The model predicted that one harbor seal would be exposed to levels associated with injury, however, the model does not consider the mitigation or likely avoidance behaviors and NMFS believes that injury is unlikely when those factors are considered.
- *TTS*—NMFS believes that the proposed mitigation measures will allow the Navy to minimize exposure of marine mammals to received levels of MFAS/HFAS sound associated with TTS for the following reasons:
 - The estimated maximum distance from the most powerful source at which cetaceans and all pinnipeds except harbor seals would receive levels at or above the threshold for TTS is approximately 140 m from the source in most operating environments (except for harbor seals for which the distance is approximately 400 m).
 - Based on the size of the animals, average group size, behavior, and average dive time, NMFS believes that the probability that Navy watchstanders will visually detect mysticetes or sperm whales, dolphins, social pelagic species

(pilot whales, melon-headed whales, etc.), and sea lions at some point within the 1,000 yd (914 km) safety zone before they are exposed to the TTS threshold levels is high, which means that the Navy would often be able to shutdown or powerdown to avoid exposing these species to sound levels associated with TTS.

- However, seals and more cryptic (animals that are difficult to detect and observe), deep-diving cetaceans (beaked whales and *Kogia* spp.) are less likely to be visually detected and could potentially be exposed to levels of MFAS/HFAS expected to cause TTS. Animals at depth in one location would not be expected to be continuously exposed to repeated sonar signals given the typical 5–10+ knot speed of Navy surface ships during ASW events. During a typical one-hour subsurface dive by a beaked whale, the ship will have moved over 5 to 10 nm from the original location. Additionally, the Navy's model does not predict TTS exposures of beaked whales or *Kogia*, although it does predict TTS exposure of 245 harbor seals.

mitigation exception for dolphins may sometimes result in dolphins being exposed to levels of MFAS/HFAS likely to result in TTS. However, there are combinations of factors that reduce the acoustic energy received by dolphins approaching ships to ride in bow waves. Dolphins riding a ship's bow wave are outside of the main beam of the MFAS vertical beam pattern. Source levels drop quickly outside of the main beam. Sidelobes of the radiate beam pattern that point to the surface are significantly lower in power. Together with spherical spreading losses, received levels in the ship's bow wave can be more than 42 dB less than typical source level (i.e., 235 dB – 42 dB = 193 dB SPL). Finally, bow wave riding dolphins are frequently in and out of a bubble layer generated by the breaking bow waves. This bubble layer is an excellent scatterer of acoustic energy and can further reduce received energy.

Underwater Explosives

The Navy utilizes exclusion zones (wherein explosive detonation will not begin/continue if animals are within the zone) for explosive exercises. Table 3 identifies the various explosives, the estimated distance at which animals will receive levels associated with take (see Acoustic Take Criteria Section), and the exclusion zone associated with the explosive types.

Mortality and Injury—NMFS believes that the mitigation measures will allow the Navy to avoid exposing marine mammals to underwater detonations that would result in injury or mortality for the following reasons:

- Surveillance for large charges (which includes aerial and passive acoustic detection methods, when available, to ensure clearance) begins two hours before the exercise and extends to 2 nm (3,704 m) from the source. Surveillance for all charges extends out 2–12 times the farthest distance from the source at which injury would be anticipated to occur (see Table 3).
- Animals would need to be less than 120–694 m (131–759 yd) (large explosives) or 21–112 m (23–123 yd) (smaller charges) from the source to be injured.
- Unlike for active sonar, an animal would need to be present at the exact moment of the explosion(s) (except for the short series of gunfire example in GUNEX) to be taken.
- The model predicted that 14 animals would be exposed to levels associated with injury, and 2 animals would be exposed to levels associated with death (though for the reasons explained above, NMFS does not believe they will be exposed to those levels).
- When the implementation of the exclusion zones (i.e., the fact that the Navy will not start a detonation or will not continue to detonate explosives if an animal is detected within the exclusion zone) is considered in combination with the factors described in the above bullets, NMFS believes that the Navy's mitigation will prevent injury and mortality to marine mammals from explosives.
- *TTS*—NMFS believes that the proposed mitigation measures will allow the Navy to minimize the exposure of marine mammals to underwater detonations that would result in TTS for the following reasons:
 - About 200 animals annually were predicted to be exposed to explosive levels that would result in TTS. For the reasons explained above, NMFS believes that most modeled TTS takes can be avoided, especially dolphins, mysticetes and sperm whales, and social pelagic species.
 - However, pinnipeds and more cryptic, deep-diving species (beaked whales and *Kogia* spp.) are less likely to be visually detected and could potentially be exposed to explosive levels expected to cause TTS. The model estimated that one beaked whale, zero *Kogia*, 44 northern fur seal, 29 northern elephant seal, 2 harbor seal, 1 California sea lion, and 3 Steller sea lions would be exposed to TTS levels.

additionally, for two of the exercise types (SINKEX and BOMBEX), the distance at which an animal would be expected to receive sound or pressure levels associated with TTS (182 dB SEL or 23 psi) is sometimes larger than the exclusion zone, which means that for those two exercise types, some individuals will likely be exposed to levels associated with TTS outside of the exclusion zone.

Research

The Navy provides a significant amount of funding and support to marine research. In the past five years the agency funded over \$100 million (\$26 million in FY08 alone) to universities, research institutions, Federal laboratories, private companies, and independent researchers around the world to study marine mammals. The U.S. Navy sponsors 70% of all U.S. research concerning the effects of human-generated sound on marine mammals and 50% of such research conducted worldwide. Major topics of Navy-supported research include the following:

- Better understanding of marine species distribution and important habitat areas.
- Developing methods to detect and monitor marine species before and during training.
- Understanding the effects of sound on marine mammals, sea turtles, fish, and birds.
- Developing tools to model and estimate potential effects of sound.

This research is directly applicable to Fleet training activities, particularly with respect to the investigations of the potential effects of underwater noise sources on marine mammals and other protected species. Proposed training activities employ active sonar and underwater explosives, which introduce sound into the marine environment.

The Marine Life Sciences Division of the Office of Naval Research currently coordinates six programs that examine the marine environment and are devoted solely to studying the effects of noise and/or the implementation of technology tools that will assist the Navy in studying and tracking marine mammals. The six programs are as follows:

- Environmental Consequences of Underwater Sound,
- Non-Auditory Biological Effects of Sound on Marine Mammals,
- Effects of Sound on the Marine Environment,
- Sensors and Models for Marine Environmental Monitoring,
- Effects of Sound on Hearing of Marine Animals, and

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- Environmental Consequences of Underwater Sound,
- Non-Auditory Biological Effects of Sound on Marine Mammals,
- Effects of Sound on the Marine Environment,
- Sensors and Models for Marine Environmental Monitoring,
- Effects of Sound on Hearing of Marine Animals, and

- Passive Acoustic Detection, Classification, and Tracking of Marine Mammals.

The Navy has also developed the technical reports referenced within this document, which include the Marine Resource Assessments and the Navy OPAREA Density Estimates (NODE) reports. Furthermore, research cruises by the National Marine Fisheries Service (NMFS) and by academic institutions have received funding from the U.S. Navy.

The Navy has sponsored several workshops to evaluate the current state of knowledge and potential for future acoustic monitoring of marine mammals. The workshops brought together acoustic experts and marine biologists from the Navy and other research organizations to present data and information on current acoustic monitoring research efforts and to evaluate the potential for incorporating similar technology and methods on instrumented ranges. However, acoustic detection, identification, localization, and tracking of individual animals still requires a significant amount of research effort to be considered a reliable method for marine mammal monitoring. The Navy supports research efforts on acoustic monitoring and will continue to investigate the feasibility of passive acoustics as a potential mitigation and monitoring tool.

Overall, the Navy will continue to fund ongoing marine mammal research, and is planning to coordinate long term monitoring/studies of marine mammals on various established ranges and operating areas. The Navy will continue to research and contribute to university/external research to improve the state of the science regarding marine species biology and acoustic effects. These efforts include mitigation and monitoring programs; data sharing with NMFS and via the literature for research and development efforts; and future research as described previously.

Memorandum of Agreement (MOA) for Navy Assistance With Stranding Investigations

The Navy and NMFS are currently developing a nationwide MOA (or other mechanism consistent with Federal fiscal law requirements (and all other applicable laws)), that will establish a framework whereby the Navy can (and NMFS will provide examples of how best to) assist NMFS with stranding investigations in certain circumstances.

Long-Term Prospective Study

Apart from this proposed rule, NMFS, with input and assistance from the Navy and several other agencies and entities,

will perform a longitudinal observational study of marine mammal strandings to systematically observe for and record the types of pathologies and diseases and investigate the relationship with potential causal factors (e.g., active sonar, seismic, weather). The study will not be a true "cohort" study, because we will be unable to quantify or estimate specific active sonar or other sound exposures for individual animals that strand. However, a cross-sectional or correlational analyses, a method of descriptive rather than analytical epidemiology, can be conducted to compare population characteristics, e.g., frequency of strandings and types of specific pathologies between general periods of various anthropogenic activities and non-activities within a prescribed geographic space. In the long-term study, we will more fully and consistently collect and analyze data on the demographics of strandings in specific locations and consider anthropogenic activities and physical, chemical, and biological environmental parameters. This approach in conjunction with true cohort studies (tagging animals, measuring received sounds, and evaluating behavior or injuries) in the presence of activities and non-activities will provide critical information needed to further define the impacts of MTEs and other anthropogenic and non-anthropogenic stressors. In coordination with the Navy and other Federal and non-Federal partners, the comparative study will be designed and conducted for specific sites during intervals of the presence of anthropogenic activities such as active sonar transmission or other sound exposures and absence to evaluate demographics of morbidity and mortality, lesions found, and cause of death or stranding. Additional data that will be collected and analyzed in an effort to control potential confounding factors include variables such as average sea temperature (or just season), meteorological or other environmental variables (e.g., seismic activity), fishing activities, etc. All efforts will be made to include appropriate controls (i.e., no active sonar or no seismic); environmental variables may complicate the interpretation of "control" measurements. The Navy and NMFS along with other partners are evaluating mechanisms for funding this study.

Monitoring

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth "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 LOAs 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.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(a) An increase in our understanding of how many marine mammals are likely to be exposed to levels of MFAS/HFAS (or explosives or other stimuli) that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.

(b) An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to MFAS/HFAS (at specific received levels), explosives, or other stimuli expected to result in take.

(c) An increase in our understanding of how anticipated takes of individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival).

(d) An increased knowledge of the affected species.

(e) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

(f) A better understanding and record of the manner in which the authorized entity complies with the incidental take authorization.

(g) An increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to better achieve the above goals.

Proposed Monitoring Plan for the NWTRC

The Navy has submitted a draft Monitoring Plan for the NWTRC which may be viewed at NMFS' Web site: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. NMFS and the Navy have worked together on the development of this plan in the months preceding the publication of this proposed rule; however, we are still refining the plan and anticipate that it will contain more details by the time NMFS issues the final rule.

Additionally, the plan may be modified or supplemented based on comments or new information received from the public during the public comment period. A summary of the primary components of the plan follows.

The draft Monitoring Plan for NWTRC has been designed as a collection of focused "studies" (described fully in the NWTRC draft Monitoring Plan) to gather data that will allow the Navy to address the following questions:

(a) Are marine mammals exposed to MFAS/HFAS, especially at levels associated with adverse effects (i.e., based on NMFS' criteria for behavioral harassment, TTS, or PTS)? If so, at what levels are they exposed?

(b) If marine mammals are exposed to MFAS/HFAS in the NWTRC Range Complex, do they redistribute geographically as a result of continued exposure? If so, how long does the redistribution last?

(c) If marine mammals are exposed to MFAS/HFAS, what are their behavioral responses to various levels?

(d) What are the behavioral responses of marine mammals and that are exposed to explosives at specific levels?

(e) Is the Navy's suite of mitigation measures for MFAS/HFAS (e.g., measures agreed to by the Navy through permitting) effective at preventing TTS, injury, and mortality of marine mammals?

Data gathered in these studies will be collected by qualified, professional marine mammal biologists that are experts in their field. They will use a combination of the following methods to collect data:

- Conducted vessel and aerial surveys.
- Passive acoustics.
- Marine mammal observers on Navy ships.
- Tagging (satellite and acoustic).

In the three proposed study designs (all of which cover multiple years), the above methods will be used separately or in combination to monitor marine mammals in different combinations before, during, and after training activities utilizing MFAS/HFAS.

This monitoring plan has been designed to gather data on all species of marine mammals that are observed in the NWTRC, however, where appropriate priority will be given to beaked whales, ESA-listed species, killer whales, and harbor porpoises. The Plan recognizes that deep-diving and cryptic species of marine mammals such as beaked whales have a low probability of detection (Barlow and Gisiner, 2006). Therefore, methods will be utilized to attempt to address this issue (e.g., passive acoustic monitoring).

In addition to the Monitoring Plan for NWTRC, by the end of 2009, the Navy will have completed an Integrated Comprehensive Monitoring Program (ICMP) Plan. The ICMP will provide the overarching structure and coordination

that will, over time, compile data from both range specific monitoring plans (such as AFAST, the Hawaii Range Complex, and the Southern California Range Complex) as well as Navy funded research and development (R&D) studies. The primary objectives of the ICMP are to:

- Monitor Navy training events, particularly those involving MFAS and underwater detonations, for compliance with the terms and conditions of ESA Section 7 consultations or MMPA authorizations;
- Collect data to support estimating the number of individuals exposed to sound levels above current acoustic thresholds;
- Assess the efficacy of the Navy's current marine species mitigation;
- Add to the knowledge base on potential behavioral and physiological effects to marine species from mid-frequency active sonar and underwater detonations; and,
- Assess the practicality and effectiveness of a number of mitigation tools and techniques (some not yet in use).

More information about the ICMP may be found in the draft Monitoring Plan for NWTRC.

Monitoring Workshop

The Navy, with guidance and support from NMFS, will convene a Monitoring Workshop, including marine mammal and acoustic experts as well as other interested parties, in 2011. The Monitoring Workshop participants will review the monitoring results from the previous two years of monitoring pursuant to the NWTRC rule as well as monitoring results from other Navy rules and LOAs (e.g., the Southern California Range Complex (SOCAL), Hawaii Range Complex (HRC), etc.). The Monitoring Workshop participants would provide their individual

recommendations to the Navy and NMFS on the monitoring plan(s) after also considering the current science (including Navy research and development) and working within the framework of available resources and feasibility of implementation. NMFS and the Navy would then analyze the input from the Monitoring Workshop participants and determine the best way forward from a national perspective. Subsequent to the Monitoring Workshop, modifications would be applied to monitoring plans as appropriate.

Adaptive Management

The final regulations governing the take of marine mammals incidental to Navy training exercises in the NWTRC

will contain an adaptive management component. Our understanding of the effects of MFAS/HFAS and explosives on marine mammals is still in its relative infancy, and yet the science in this field is evolving fairly quickly. These circumstances make the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations for activities that have been associated with marine mammal mortality in certain circumstances and locations (though not the NWTRC in the Navy's over 60 years of use of the area for testing and training). The use of adaptive management will allow NMFS to consider new data from different sources to determine (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added (or deleted) if new data suggests that such modifications are appropriate (or are not appropriate) for subsequent annual LOAs.

Following are some of the possible sources of applicable data:

- Results from the Navy's monitoring from the previous year (either from NWTRC or other locations).

- Findings of the Workshop that the Navy will convene in 2011 to analyze monitoring results to date, review current science, and recommend modifications, as appropriate to the monitoring protocols to increase monitoring effectiveness.

- Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP, which is discussed elsewhere in this document).

- Results from specific stranding investigations (either from NWTRC or other locations, and involving coincident MFAS/HFAS of explosives training or not involving coincident use).

- Results from the Long Term Prospective Study described above.

- Results from general marine mammal and sound research (funded by the Navy (described above) or otherwise).

- Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

Mitigation measures could be modified or added (or deleted) if new data suggests that such modifications would have (or do not have) a reasonable likelihood of accomplishing the goals of mitigation laid out in this proposed rule and if the measures are practicable. NMFS will also coordinate with the Navy to modify or

add to (or delete) the existing monitoring requirements if the new data suggest that the addition of (or deletion of) a particular measure would more effectively accomplish the goals of monitoring laid out in this proposed rule. The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider the data and issue annual LOAs. NMFS and the Navy will meet annually, prior to LOA issuance, to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate.

Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth “requirements pertaining to the monitoring and reporting of such taking”. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. Some of the reporting requirements are still in development and the final rule may contain additional details not contained in the proposed rule. Additionally, proposed reporting requirements may be modified, removed, or added based on information or comments received during the public comment period. Currently, there are several different reporting requirements pursuant to these proposed regulations:

General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS is notified immediately (see Communication Plan) or as soon as clearance procedures allow) if an injured, stranded, or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or during or shortly after MFAS, HFAS, or underwater explosive detonations, the Navy will report the same information as listed above as soon as operationally feasible and clearance procedures allow.

General Notification of a Ship Strike

In the event of a ship strike by any Navy vessel, at any time or place, the Navy shall do the following:

- Immediately report to NMFS the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead (or unknown).
- Report to NMFS as soon as operationally feasible the size and length of animal, an estimate of the injury status (ex., dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status.
- Report to NMFS the vessel length, speed, and heading as soon as feasible.
- Provide NMFS a photo or video, if equipment is available.

Event Communication Plan

The Navy shall develop a communication plan that will include all of the communication protocols (phone trees, etc.) and associated contact information required for NMFS and the Navy to carry out the necessary expeditious communication required in the event of a stranding or ship strike, including as described in the proposed notification measures above.

Annual NWTRC Report

The Navy will submit an Annual NWTRC Report on October 1 of every year (covering data gathered through August 1). This report shall contain the subsections and information indicated below.

ASW Summary

This section shall include the following information as summarized from non-major training exercises (unit-level exercises, such as TRACKEXs and MIW):

- (a) *Total Hours*—Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.))
- (b) *Cumulative Impacts*—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major training (*i.e.*, ULT) utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across NWTRC. The Navy shall include (in the NWTRC annual report) a brief annual progress update on the status of the development of an effective and unclassified method to report this information until an agreed-upon (with

NMFS) method has been developed and implemented.

Sinking Exercises (SINKEXs)

This section shall include the following information for each SINKEX completed that year:

- (a) *Exercise info*:
 - (i) Location.
 - (ii) Date and time exercise began and ended.
 - (iii) Total hours of observation by watchstanders before, during, and after exercise.
 - (iv) Total number and types of rounds expended/explosives detonated.
 - (v) Number and types of passive acoustic sources used in exercise.
 - (vi) Total hours of passive acoustic search time.
 - (vii) Number and types of vessels, aircraft, etc., participating in exercise.
 - (viii) Wave height in feet (high, low and average during exercise).
 - (ix) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

- (b) *Individual marine mammal observation during SINKEX (by Navy lookouts) info*:
 - (i) Location of sighting.
 - (ii) Species (if not possible—indication of whale/dolphin/pinniped).
 - (iii) Number of individuals.
 - (iv) Calves observed (y/n).
 - (v) Initial detection sensor.
 - (vi) Length of time observers maintained visual contact with marine mammal.
 - (vii) Wave height.
 - (viii) Visibility.
 - (ix) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.

- (x) Distance of marine mammal from actual detonations (or target spot if not yet detonated)—use four categories to define distance: (1) The modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (694 m for SINKEX in NWTRC); (2) the required exclusion zone (1 nm for SINKEX in NWTRC); (3) the required observation distance (if different than the exclusion zone (2 nm for SINKEX in NWTRC); and (4) greater than the required observed distance. For example, in this case, the observer would indicate if < m, from 694 m–1 nm, from 1 nm–2 nm, and > 2 nm.

- (xi) *Observed behavior*—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not

swimming etc.), including speed and direction.

(xii) *Resulting mitigation implementation*—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

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

Improved Extended Echo-Ranging System (IEER) Summary

This section shall include an annual summary of the following IEER information:

- (a) Total number of IEER events conducted in NWTRC.
- (b) Total expended/detonated rounds (buoys).
- (c) Total number of self-scuttled IEER rounds.

Explosives Summary

The Navy is in the process of improving the methods used to track explosive use to provide increased granularity. To the extent practicable, the Navy will provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy’s explosive tracking methods, including improvements from the previous year.

- (a) Total annual number of each type of explosive exercise (of those identified as part of the “specified activity” in this final rule) conducted in NWTRC.
- (b) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

NWTRC 5-Yr Comprehensive Report

The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which annual reports are required (Annual NWTRC Exercise Reports and NWTRC Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2013), covering activities that have occurred through June 1, 2013.

Comprehensive National ASW Report

By June, 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans for the Northwest Training Range Complex, the Southern

California Range Complex, the Atlantic Fleet Active Sonar Training, the Hawaii Range Complex, the Marianas Islands Range Complex, and the Gulf of Alaska.

Estimated Take of Marine Mammals

As mentioned previously, one of the main purposes of NMFS’ effects assessments is to identify the permissible methods of taking, meaning: The nature of the take (*e.g.*, resulting from anthropogenic noise vs. from ship strike, etc.); the regulatory level of take (*i.e.*, mortality vs. Level A or Level B harassment) and the amount of take. In the Potential Effects of Exposure of Marine Mammal to MFAS/HFAS and Underwater Detonations section, NMFS identified the lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), and behavioral responses that could potentially result from exposure to MFAS/HFAS or underwater explosive detonations. In this section, we will relate the potential effects to marine mammals from MFAS/HFAS and underwater detonation of explosives to the MMPA statutory definitions of Level A and Level B Harassment and attempt to quantify the effects that might occur from the specific training activities that the Navy is proposing in the NWTRC.

As mentioned previously, behavioral responses are context-dependent, complex, and influenced to varying degrees by a number of factors other than just received level. For example, an animal may respond differently to a sound emanating from a ship that is moving towards the animal than it would to an identical received level coming from a vessel that is moving away, or to a ship traveling at a different speed or at a different distance from the animal. At greater distances, though, the nature of vessel movements could also potentially not have any effect on the animal’s response to the sound. In any case, a full description of the suite of factors that elicited a behavioral response would sometimes include a mention of the vicinity, speed and movement of the vessel, or other factors. So, while sound sources and the received levels are the primary focus of the analysis and those that are laid out quantitatively in the regulatory text, it is with the understanding that other factors related to the training are sometimes contributing to the behavioral responses of marine mammals, although they cannot be quantified.

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Definition of Harassment

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines “harassment” as: (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].

Level B Harassment

Of the potential effects that were described in the Potential Effects of Exposure of Marine Mammal to MFAS/HFAS and Underwater Detonations Section, the following are the types of effects that fall into the Level B Harassment category:

Behavioral Harassment—Behavioral disturbance that rises to the level described in the definition above, when resulting from exposures to MFAS/HFAS or underwater detonations (or another stressor), is considered Level B Harassment. Louder sounds (when other factors are not considered) are generally expected to elicit a stronger response. Some of the lower level physiological stress responses discussed in the Potential Effects of Exposure of Marine Mammal to MFAS/HFAS and Underwater Detonations Section: Stress Section will also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When Level B Harassment is predicted based on estimated behavioral responses, those takes may have a stress-related physiological component as well.

In the effects section above, we described the Southall *et al.*, (2007) severity scaling system and listed some examples of the three broad categories of behaviors: (0–3: Minor and/or brief behaviors); 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival); 7–9 (Behaviors considered likely to affect the aforementioned vital rates). Generally speaking, MMPA Level B Harassment, as defined in this document, would include the behaviors described in the 7–9 category, and a subset, dependent on context and other considerations, of the behaviors described in the 4–6 categories.

Behavioral harassment would not typically include behaviors ranked 0–3 in Southall *et al.* (2007).

Acoustic Masking and Communication Impairment—The severity or importance of an acoustic masking event can vary based on the length of time that the masking occurs, the frequency of the masking signal (which determines which sounds that are masked, which may be of varying importance to the animal), and other factors. Some acoustic masking would be considered Level B Harassment, if it can disrupt natural behavioral patterns by interrupting or limiting the marine mammal's receipt or transmittal of important information or environmental cues.

TTS—As discussed previously, TTS can disrupt behavioral patterns by inhibiting an animal's ability to communicate with conspecifics and interpret other environmental cues important for predator avoidance and prey capture. However, depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication.

The following physiological mechanisms are thought to play a role in inducing auditory fatigue: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than PTS, they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicate that although PTS is a tissue

injury, TTS is not, because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to either MFAS/HFAS or underwater detonations) as Level B Harassment, not Level A Harassment (injury).

Level A Harassment

Of the potential effects that were described in the Potential Effects of Exposure of Marine Mammals to MFAS/HFAS and Underwater Detonations Section, following are the types of effects that fall into the Level A Harassment category:

PTS—PTS (resulting either from exposure to MFAS/HFAS or explosive detonations) is irreversible and considered an injury. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and result in changes in the chemical composition of the inner ear fluids. Although PTS is considered an injury, the effects of PTS on the fitness of an individual can vary based on the degree of TTS and the frequency band that it is in.

Tissue Damage due to Acoustically Mediated Bubble Growth—A few theories suggest ways in which gas bubbles become enlarged through exposure to intense sounds (MFAS/HFAS) to the point where tissue damage results. In rectified diffusion, exposure to a sound field would cause bubbles to increase in size. A short duration of active sonar pings (such as that which an animal exposed to MFAS would be most likely to encounter) would not likely be long enough to drive bubble growth to any substantial size. Alternately, bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. The degree of supersaturation and exposure levels observed to cause microbubble destabilization are unlikely to occur, either alone or in concert because of how close an animal would need to be to the sound source to be exposed to high enough levels, especially considering the likely avoidance of the sound source and the required mitigation. Still, possible tissue damage from either of these processes would be considered an injury.

Tissue Damage due to Behaviorally Mediated Bubble Growth—Several authors suggest mechanisms in which marine mammals could behaviorally

respond to exposure to MFAS/HFAS by altering their dive patterns in a manner (unusually rapid ascent, unusually long series of surface dives, *etc.*) that might result in unusual bubble formation or growth ultimately resulting in tissue damage (emboli, *etc.*). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. There is considerable disagreement among scientists as to the likelihood of this phenomenon (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Although it has been argued that the tissue effects observed from recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.*, 2003; Fernandez *et al.*, 2005), nitrogen bubble formation as the cause of the traumas has not been verified. If tissue damage does occur by this phenomenon, it would be considered an injury.

Physical Disruption of Tissues Resulting from Explosive Shock Wave—Physical damage of tissues resulting from a shock wave (from an explosive detonation) is classified as an injury. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000) and gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill 1978; Yelverton *et al.*, 1973). Nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Severe damage (from the shock wave) to the ears can include tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear.

Vessel Strike, Ordnance Strike, Entanglement—Although not anticipated (or authorized) to occur, vessel strike, ordnance strike, or entanglement in materials associated with the specified action are considered Level A Harassment or mortality.

Acoustic Take Criteria

For the purposes of an MMPA incidental take authorization, three types of take are identified: Level B Harassment; Level A Harassment; and mortality (or serious injury leading to mortality). The categories of marine mammal responses (physiological and behavioral) that fall into the two harassment categories were described in the previous section.

Because the physiological and behavioral responses of the majority of the marine mammals exposed to MFAS/HFAS and underwater detonations

cannot be detected or measured (not all responses visible external to animal, portion of exposed animals underwater (so not visible), many animals located many miles from observers and covering very large area, *etc.*) and because NMFS must authorize take prior to the impacts to marine mammals, a method is needed to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the proposed action. To this end, NMFS developed acoustic criteria that estimate at what received level (when exposed to MFAS/HFAS or explosive detonations) Level B Harassment, Level A Harassment, and mortality (for explosives) of marine mammals would occur. The acoustic criteria for MFAS/HFAS and Underwater Detonations (IEER) are discussed below.

MFAS/HFAS Acoustic Criteria

Because relatively few applicable data exist to support acoustic criteria specifically for HFAS and because such a small percentage of the active sonar pings that marine mammals will likely be exposed to incidental to this activity come from a HFAS source (the vast majority come from MFAS sources), NMFS will apply the criteria developed for the MFAS to the HFAS as well.

NMFS utilizes three acoustic criteria for MFAS/HFAS: PTS (injury)—Level A Harassment, TTS (Level B Harassment), and behavioral harassment (Level B Harassment). Because the TTS and PTS criteria are derived similarly and the PTS criteria was extrapolated from the TTS data, the TTS and PTS acoustic criteria will be presented first, before the behavioral criteria.

For more information regarding these criteria, please see the Navy's DEIS for NWTRC.

Level B Harassment Threshold (TTS)

As mentioned above, behavioral disturbance, acoustic masking, and TTS are all considered Level B Harassment. Marine mammals would usually be behaviorally disturbed at lower received levels than those at which they would likely sustain TTS, so the levels at which behavioral disturbance are likely to occur is considered the onset of Level B Harassment. The behavioral responses of marine mammals to sound are variable, context specific, and, therefore, difficult to quantify (*see Risk Function section, below*). Alternately, TTS is a physiological effect that has been studied and quantified in laboratory conditions. Because data exist to support an estimate of at what received levels marine mammals will incur TTS, NMFS uses an acoustic criteria to estimate the number of marine

mammals that might sustain TTS. TTS is a subset of Level B Harassment (along with sub-TTS behavioral harassment) and we are not specifically required to estimate those numbers; however, the more specifically we can estimate the affected marine mammal responses, the better the analysis.

A number of investigators have measured TTS in marine mammals. These studies measured hearing thresholds in trained marine mammals before and after exposure to intense sounds. The existing cetacean TTS data are summarized in the following bullets.

- Schlundt *et al.* (2007) reported the results of TTS experiments conducted with 5 bottlenose dolphins and 2 belugas exposed to 1-second tones. This paper also includes a reanalysis of preliminary TTS data released in a technical report by Ridgway *et al.* (1997). At frequencies of 3, 10, and 20 kHz, sound pressure levels (SPLs) necessary to induce measurable amounts (6 dB or more) of TTS were between 192 and 201 dB re 1 μ Pa (EL = 192 to 201 dB re 1 μ Pa²-s). The mean exposure SPL and EL for onset-TTS were 195 dB re 1 μ Pa and 195 dB re 1 μ Pa²-s, respectively.

- Finneran *et al.* (2001, 2003, 2005) described TTS experiments conducted with bottlenose dolphins exposed to 3-kHz tones with durations of 1, 2, 4, and 8 seconds. Small amounts of TTS (3 to 6 dB) were observed in one dolphin after exposure to ELs between 190 and 204 dB re 1 μ Pa²-s. These results were consistent with the data of Schlundt *et al.* (2000) and showed that the Schlundt *et al.* (2000) data were not significantly affected by the masking sound used.

These results also confirmed that, for tones with different durations, the amount of TTS is best correlated with the exposure EL rather than the exposure SPL.

- Nachtigall *et al.* (2003) measured TTS in a bottlenose dolphin exposed to octave-band sound centered at 7.5 kHz. Nachtigall *et al.* (2003a) reported TTSs of about 11 dB measured 10 to 15 minutes after exposure to 30 to 50 minutes of sound with SPL 179 dB re 1 μ Pa (EL about 213 dB re μ Pa²-s). No TTS was observed after exposure to the same sound at 165 and 171 dB re 1 μ Pa. Nachtigall *et al.* (2004) reported TTSs of around 4 to 8 dB 5 minutes after exposure to 30 to 50 minutes of sound with SPL 160 dB re 1 μ Pa (EL about 193 to 195 dB re 1 μ Pa²-s). The difference in results was attributed to faster post-exposure threshold measurement—TTS may have recovered before being detected by Nachtigall *et al.* (2003). These studies showed that, for long-duration exposures, lower sound

pressures are required to induce TTS than are required for short-duration tones.

- Finneran *et al.* (2000, 2002) conducted TTS experiments with dolphins and belugas exposed to impulsive sounds similar to those produced by distant underwater explosions and seismic waterguns. These studies showed that, for very short-duration impulsive sounds, higher sound pressures were required to induce TTS than for longer-duration tones.
- Finneran *et al.* (2007) conducted TTS experiments with bottlenose dolphins exposed to intense 20 kHz fatiguing tone. Behavioral and auditory evoked potentials (using sinusoidal amplitude modulated tones creating auditory steady state response [AASRR]) were used to measure TTS. The fatiguing tone was either 16 (mean = 193 re μ Pa, SD = 0.8) or 64 seconds (185–186 re μ Pa) in duration. TTS ranged from 19–33dB from behavioral measurements and 40–45dB from ASSR measurements.

- Kastak *et al.* (1999a, 2005) conducted TTS experiments with three species of pinnipeds, California sea lion, northern elephant seal and a Pacific harbor seal, exposed to continuous underwater sounds at levels of 80 and 95 dB sensation level at 2.5 and 3.5 kHz for up to 50 minutes. Mean TTS shifts of up to 12.2 dB occurred with the harbor seals showing the largest shift of 28.1 dB. Increasing the sound duration had a greater effect on TTS than increasing the sound level from 80 to 95 dB.

Some of the more important data obtained from these studies are onset-TTS levels (exposure levels sufficient to cause a just-measurable amount of TTS) often defined as 6 dB of TTS (for example, Schlundt *et al.*, 2000) and the fact that energy metrics (sound exposure levels (SEL), which include a duration component) better predict when an animal will sustain TTS than pressure (SPL) alone. NMFS' TTS criteria (which indicate the received level at which onset TTS (>6dB) is induced) for MFAS/HFAS are as follows:

- *Cetaceans*—195 dB re 1 μ Pa²-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low-or high-frequency cetaceans (Southall *et al.*, (2007)).
- *Harbor Seals (and closely related species)*—183 dB re 1 μ Pa²-s.
- *Northern Elephant Seals (and closely related species)*—204 dB re 1 μ Pa²-s.
- *California Sea Lions (and closely related species)*—206 dB re 1 μ Pa²-s.

A detailed description of how TTS criteria were derived from the results of the above studies may be found in Chapter 3 of Southall *et al.*, (2007), as well as the Navy's NWTRC LOA application. Because they are both otariids, the California sea lion criterion is used to estimate take of northern fur seals for this authorization.

Level A Harassment Threshold (PTS)

For acoustic effects, because the tissues of the ear appear to be the most susceptible to the physiological effects of sound, and because threshold shifts tend to occur at lower exposures than other more serious auditory effects, NMFS has determined that PTS is the best indicator for the smallest degree of injury that can be measured. Therefore, the acoustic exposure associated with onset-PTS is used to define the lower limit of the Level A harassment.

PTS data do not currently exist for marine mammals and are unlikely to be obtained due to ethical concerns. However, PTS levels for these animals may be estimated using TTS data from marine mammals and relationships between TTS and PTS that have been discovered through study of terrestrial mammals. NMFS uses the following acoustic criteria for injury:

- Cetaceans—215 dB re 1 $\mu\text{Pa}^2\text{-s}$ (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low-or high-frequency cetaceans (Southall *et al.*, (2007)).
- Harbor Seals (and closely related species)—203 dB re 1 $\mu\text{Pa}^2\text{-s}$.
- Northern Elephant Seals (and closely related species)—224 dB re 1 $\mu\text{Pa}^2\text{-s}$.
- California Sea Lions (and closely related species)—226 dB re 1 $\mu\text{Pa}^2\text{-s}$.

These criteria are based on a 20 dB increase in SEL over that required for onset-TTS. Extrapolations from terrestrial mammal data indicate that TTS occurs at 40 dB or more of TS, and that TS growth occurs at a rate of approximately 1.6 dB TS per dB increase in EL. There is a 34-dB TS difference between onset-TTS (6 dB) and onset-PTS (40 dB). Therefore, an animal would require approximately 20dB of additional exposure (34 dB divided by 1.6 dB) above onset-TTS to reach PTS. A detailed description of how TTS criteria were derived from the results of the above studies may be found in Chapter 3 of Southall *et al.* (2007), as well as the Navy's NWTRC LOA application. Southall *et al.* (2007) recommend a precautionary dual criteria for TTS (230 dB re 1 μPa (SPL peak pressure) in addition to 215 dB re 1 $\mu\text{Pa}^2\text{-s}$ (SEL)) to account for the potentially damaging transients

embedded within non-pulse exposures. However, in the case of MFAS/HFAS, the distance at which an animal would receive 215 dB (SEL) is farther from the source (*i.e.*, more conservative) than the distance at which they would receive 230 dB (SPL peak pressure) and therefore, it is not necessary to consider 230 dB peak.

We note here that behaviorally mediated injuries (such as those that have been hypothesized as the cause of some beaked whale strandings) could potentially occur in response to received levels lower than those believed to directly result in tissue damage. As mentioned previously, data to support a quantitative estimate of these potential effects (for which the exact mechanism is not known and in which factors other than received level may play a significant role) do not exist. However, based on the number of years (more than 40) and number of hours of MFAS per year that the U.S. (and other countries) has operated compared to the reported (and verified) cases of associated marine mammal strandings, NMFS believes that the probability of these types of injuries is very low (especially in the NWTRC, in which no major exercises using multiple surface vessel sources will occur and in which the surface vessel sonar use is less than 110 hours annually).

Level B Harassment Risk Function (Behavioral Harassment)

In 2006, NMFS issued the first MMPA authorization to allow the take of marine mammals incidental to MFAS (to the Navy for the Rim of the Pacific Exercises (RIMPAC)). For that authorization, NMFS used 173 dB SEL as the criterion for the onset of behavioral harassment (Level B Harassment). This type of single number criterion is referred to as a step function, in which (in this example) all animals estimated to be exposed to received levels above 173 dB SEL would be predicted to be taken by Level B Harassment and all animals exposed to less than 173 dB SEL would not be taken by Level B Harassment. As mentioned previously, marine mammal behavioral responses to sound are highly variable and context specific (affected by differences in acoustic conditions; differences between species and populations; differences in gender, age, reproductive status, or social behavior; or the prior experience of the individuals), which does not support the use of a step function to estimate behavioral harassment.

Unlike step functions, acoustic risk continuum functions (which are also called "exposure-response functions,"

"dose-response functions," or "stress-response functions" in other risk assessment contexts) allow for probability of a response that NMFS would classify as harassment to occur over a range of possible received levels (instead of one number) and assume that the probability of a response depends first on the "dose" (in this case, the received level of sound) and that the probability of a response increases as the "dose" increases (see Figure 1a). In January 2009, NMFS issued 3 final rules governing the incidental take of marine mammals (Navy's Hawaii Range Complex, Southern California Range Complex, and Atlantic Fleet Active Sonar Training) that used a risk continuum to estimate the percentage of marine mammals exposed to various levels of MFAS that would respond in a manner NMFS considers harassment. The Navy and NMFS have previously used acoustic risk functions to estimate the probable responses of marine mammals to acoustic exposures for other training and research programs. Examples of previous application include the Navy FEISs on the SURTASS LFA sonar (U.S. Department of the Navy, 2001c); the North Pacific Acoustic Laboratory experiments conducted off the Island of Kauai (Office of Naval Research, 2001), and the Supplemental EIS for SURTASS LFA sonar (U.S. Department of the Navy, 2007d). As discussed in the Effects section, factors other than received level (such as distance from or bearing to the sound source) can affect the way that marine mammals respond; however, data to support a quantitative analysis of those (and other factors) do not currently exist. NMFS will continue to modify these criteria as new data that meet NMFS standards of quality become available and can be appropriately and effectively incorporated.

The particular acoustic risk functions developed by NMFS and the Navy (see Figures 1a and 1b) estimate the probability of behavioral responses to MFAS/HFAS (interpreted as the percentage of the exposed population) that NMFS would classify as harassment for the purposes of the MMPA given exposure to specific received levels of MFAS/HFAS. The mathematical function (below) underlying this curve is a cumulative probability distribution adapted from a solution in Feller (1968) and was also used in predicting risk for the Navy's SURTASS LFA MMPA authorization as well.

$$R = \frac{1 - \left(\frac{L-B}{K}\right)^{-A}}{1 - \left(\frac{L-B}{K}\right)^{-2.4}}$$

Where:

R = Risk (0–1.0)

L = Received level (dB re: 1 μPa)

B = Basement received level = 120 dB re: 1 μPa

K = Received level increment above B where 50-percent risk = 45 dB re: 1 μPa

A = Risk transition sharpness parameter = 10 (odontocetes and pinnipeds) or 8 (mysticetes)

In order to use this function to estimate the percentage of an exposed population that would respond in a manner that NMFS classifies as Level B Harassment, based on a given received level, the values for B, K and A need to be identified.

B Parameter (Basement)—The B parameter is the estimated received level below which the probability of disruption of natural behavioral patterns, such as migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered approaches zero for the MFAS/HFAS risk assessment. At this received level, the curve would predict that the percentage of the exposed population that would be taken by Level B Harassment approaches zero. For MFAS/HFAS, NMFS has determined that B = 120 dB. This level is based on a broad overview of the levels at which many species have been reported responding to a variety of sound sources.

K Parameter (representing the 50 percent Risk Point)—The K parameter is based on the received level that corresponds to 50% risk, or the received level at which we believe 50% of the animals exposed to the designated received level will respond in a manner that NMFS classifies as Level B Harassment. The K parameter (K = 45 dB) is based on three data sets in which marine mammals exposed to mid-frequency sound sources were reported to respond in a manner that NMFS would classify as Level B Harassment. There is widespread consensus that marine mammal responses to MFA sound signals need to be better defined using controlled exposure experiments (Cox *et al.*, 2006; Southall *et al.*, 2007). The Navy is contributing to an ongoing 3-Phase behavioral response study in the Bahamas that is expected to provide some initial information on beaked whales, the species identified as the most sensitive to MFAS. NMFS is leading this international effort with

scientists from various academic institutions and research organizations to conduct studies on how marine mammals respond to underwater sound exposures. The results from Phase 1 of this study are discussed in the Potential Effects of Specified Activities on Marine Mammals section and the results from Phase 2 are expected to be available in the fall of 2009. Phase 3 will be conducted in the Mediterranean Sea in summer 2009. Additionally, the Navy recently tagged whales in conjunction with the 2008 RIMPAC exercises; however, analysis of these data is not yet complete. Until additional appropriate data are available, however, NMFS and the Navy have determined that the following three data sets are most applicable for direct use in establishing the K parameter for the MFAS/HFAS risk function. These data sets, summarized below, represent the only known data that specifically relate altered behavioral responses (that NMFS would consider Level B Harassment) to exposure—at specific received levels—to MFAS and sources within or having components within the range of MFAS (1–10 kHz).

Even though these data are considered the most representative of the proposed specified activities, and therefore the most appropriate on which to base the K parameter (which basically determines the midpoint) of the risk function, these data have limitations, which are discussed in Appendix D of the Navy's DEIS for NWTRC.

1. Controlled Laboratory Experiments with Odontocetes (SSC Data set)—Most of the observations of the behavioral responses of toothed whales resulted from a series of controlled experiments on bottlenose dolphins and beluga whales conducted by researchers at SSC's facility in San Diego, California (Finneran *et al.*, 2001, 2003, 2005; Finneran and Schlundt, 2004; Schlundt *et al.*, 2000). In experimental trials (designed to measure TTS) with marine mammals trained to perform tasks when prompted, scientists evaluated whether the marine mammals still performed these tasks when exposed to mid-frequency tones. Altered behavior during experimental trials usually involved refusal of animals to return to the site of the sound stimulus, but also included attempts to avoid an exposure in progress, aggressive behavior, or refusal to further participate in tests.

Finneran and Schlundt (2004) examined behavioral observations recorded by the trainers or test coordinators during the Schlundt *et al.*, (2000) and Finneran *et al.*, (2001, 2003, 2005) experiments. These included observations from 193 exposure sessions

(fatiguing stimulus level > 141 dB re 1 μPa) conducted by Schlundt *et al.*, (2000) and 21 exposure sessions conducted by Finneran *et al.*, (2001, 2003, 2005). The TTS experiments that supported Finneran and Schlundt (2004) are further explained below:

- Schlundt *et al.*, (2000) provided a detailed summary of the behavioral responses of trained marine mammals during TTS tests conducted at SSC San Diego with 1-sec tones and exposure frequencies of 0.4 kHz, 3 kHz, 10 kHz, 20 kHz and 75 kHz. Schlundt *et al.*, (2000) reported eight individual TTS experiments. The experiments were conducted in San Diego Bay. Because of the variable ambient noise in the bay, low-level broadband masking noise was used to keep hearing thresholds consistent despite fluctuations in the ambient noise. Schlundt *et al.*, (2000) reported that "behavioral alterations," or deviations from the behaviors the animals being tested had been trained to exhibit, occurred as the animals were exposed to increasing fatiguing stimulus levels.

- Finneran *et al.*, (2001, 2003, 2005) conducted 2 separate TTS experiments using 1-sec tones at 3 kHz. The test methods were similar to that of Schlundt *et al.*, (2000) except the tests were conducted in a pool with very low ambient noise level (below 50 dB re 1 $\mu\text{Pa}^2/\text{hertz}$ [Hz]), and no masking noise was used. In the first, fatiguing sound levels were increased from 160 to 201 dB SPL. In the second experiment, fatiguing sound levels between 180 and 200 dB SPL were randomly presented.

Bottlenose dolphins exposed to 1-second (sec) intense tones exhibited short-term changes in behavior above received sound levels of 178 to 193 dB re 1 μPa (rms), and beluga whales did so at received levels of 180 to 196 dB and above.

2. Mysticete Field Study (Nowacek *et al.*, 2004)—The only available and applicable data relating mysticete responses to exposure to mid-frequency sound sources is from Nowacek *et al.*, (2004). Nowacek *et al.*, (2004) documented observations of the behavioral response of North Atlantic right whales exposed to alert stimuli containing mid-frequency components in the Bay of Fundy. Investigators used archival digital acoustic recording tags (DTAG) to record the behavior (by measuring pitch, roll, heading, and depth) of right whales in the presence of an alert signal, and to calibrate received sound levels. The alert signal was 18 minutes of exposure consisting of three 2-minute signals played sequentially three times over. The three signals had a 60% duty cycle and

consisted of: (1) Alternating 1-sec pure tones at 500 Hz and 850 Hz; (2) a 2-sec logarithmic down-sweep from 4,500 Hz to 500 Hz; and (3) a pair of low (1,500 Hz)-high (2,000 Hz) sine wave tones amplitude modulated at 120 Hz and each 1-sec long. The purposes of the alert signal were (a) to pique the mammalian auditory system with disharmonic signals that cover the whales' estimated hearing range; (b) to maximize the signal to noise ratio (obtain the largest difference between background noise) and (c) to provide localization cues for the whale. The maximum source level used was 173 dB SPL.

Nowacek *et al.* (2004) reported that five out of six whales exposed to the alert signal with maximum received levels ranging from 133 to 148 dB re 1 μ Pa significantly altered their regular behavior and did so in identical fashion. Each of these five whales: (i) Abandoned their current foraging dive prematurely as evidenced by curtailing their 'bottom time'; (ii) executed a shallow-angled, high power (*i.e.*, significantly increased fluke stroke rate) ascent; (iii) remained at or near the surface for the duration of the exposure, an abnormally long surface interval; and (iv) spent significantly more time at subsurface depths (1–10 m) compared with normal surfacing periods when whales normally stay within 1 m (1.1 yd) of the surface.

3. *Odontocete Field Data (Haro Strait—USS SHOUP)*—In May 2003, killer whales (*Orcinus orca*) were observed exhibiting behavioral responses generally described as avoidance behavior while the U.S. Ship (USS) SHOUP was engaged in MFAS in the Haro Strait in the vicinity of Puget Sound, Washington. Those observations have been documented in three reports developed by Navy and NMFS (NMFS, 2005; Fromm, 2004a, 2004b; DON, 2003). Although these observations were made in an uncontrolled environment, the sound field that may have been associated with the active sonar operations was estimated using standard

acoustic propagation models that were verified (for some but not all signals) based on calibrated *in situ* measurements from an independent researcher who recorded the sounds during the event. Behavioral observations were reported for the group of whales during the event by an experienced marine mammal biologist who happened to be on the water studying them at the time. The observations associated with the USS SHOUP provide the only data set available of the behavioral responses of wild, non-captive animal upon actual exposure to AN/SQS-53 sonar.

U.S. Department of Commerce (National Marine Fisheries, 2005a); U.S. Department of the Navy (2004b); and Fromm (2004a, 2004b) documented reconstruction of sound fields produced by USS SHOUP associated with the behavioral response of killer whales observed in Haro Strait. Observations from this reconstruction included an approximate closest approach time which was correlated to a reconstructed estimate of received level. Observations from this reconstruction included an estimate of 169.3 dB SPL which represents the mean level at a point of closest approach within a 500 m wide area in which the animals were exposed. Within that area, the estimated received levels varied from approximately 150 to 180 dB SPL.

Calculation of K Parameter—NMFS and the Navy used the mean of the following values to define the midpoint of the function: (1) The mean of the lowest received levels (185.3 dB) at which individuals responded with altered behavior to 3 kHz tones in the SSC data set; (2) the estimated mean received level value of 169.3 dB produced by the reconstruction of the USS SHOUP incident in which killer whales exposed to MFAS (range modeled possible received levels: 150 to 180 dB); and (3) the mean of the 5 maximum received levels at which Nowacek *et al.* (2004) observed significantly altered responses of right whales to the alert stimuli than to the

control (no input signal) is 139.2 dB SPL. The arithmetic mean of these three mean values is 165 dB SPL. The value of K is the difference between the value of B (120 dB SPL) and the 50% value of 165 dB SPL; therefore, K = 45.

A Parameter (Steepness)—NMFS determined that a steepness parameter (A) = 10 is appropriate for odontocetes (except harbor porpoises) and pinnipeds and A = 8 is appropriate for mysticetes.

The use of a steepness parameter of A = 10 for odontocetes for the MFAS/HFAS risk function was based on the use of the same value for the SURTASS LFA risk continuum, which was supported by a sensitivity analysis of the parameter presented in Appendix D of the SURTASS/LFA FEIS (U.S. Department of the Navy, 2001c). As concluded in the SURTASS FEIS/EIS, the value of A = 10 produces a curve that has a more gradual transition than the curves developed by the analyses of migratory gray whale studies (Malme *et al.*, 1984; Buck and Tyack, 2000; and SURTASS LFA Sonar EIS, Subchapters 1.4.3, 4.2.4.3 and Appendix D, and National Marine Fisheries Service, 2008).

NMFS determined that a lower steepness parameter (A = 8), resulting in a shallower curve, was appropriate for use with mysticetes and MFAS/HFAS. The Nowacek *et al.* (2004) data set contains the only data illustrating mysticete behavioral responses to a sound source that encompasses frequencies in the mid-frequency sound spectrum. A shallower curve (achieved by using A = 8) better reflects the risk of behavioral response at the relatively low received levels at which behavioral responses of right whales were reported in the Nowacek *et al.* (2004) data. Compared to the odontocete curve, this adjustment results in an increase in the proportion of the exposed population of mysticetes being classified as behaviorally harassed at lower RLs, such as those reported in and supported by the only data set currently available.

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Risk Function for Odontocetes and Pinnipeds

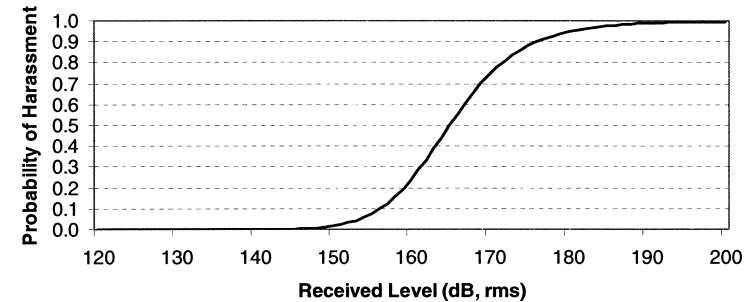


Figure 1a. Risk function for odontocetes and pinnipeds. B=120 dB, K=45 dB, A=10

Risk Function for Mysticetes

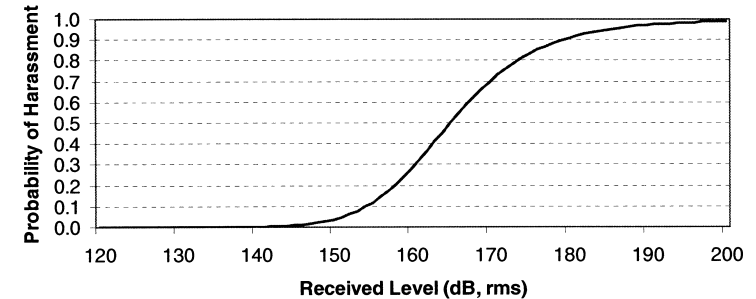


Figure 1b. Risk function for mysticetes. B=120 dB, K=45 dB, A=8.

Basic Application of the Risk Function—The risk function is used to estimate the percentage of an exposed population that is likely to exhibit behaviors that would qualify as harassment (as that term is defined by the MMPA applicable to military readiness activities, such as the Navy's testing and training with MFAS) at a given received level of sound. For

example, at 165 dB SPL (dB re: 1 μ Pa rms), the risk (or probability) of harassment is defined according to this function as 50%, and Navy/NMFS applies that by estimating that 50% of the individuals exposed at that received level are likely to respond by exhibiting behavior that NMFS would classify as behavioral harassment. The risk

function is not applied to individual animals, only to exposed populations.

The data primarily used to produce the risk function (the K parameter) were compiled from four species that had been exposed to sound sources in a variety of different circumstances. As a result, the risk function represents a general relationship between acoustic exposures and behavioral responses that

is then applied to specific circumstances. That is, the risk function represents a relationship that is deemed to be generally true, based on the limited, best-available science, but may not be true in specific circumstances. In particular, the risk function, as currently derived, treats the received level as the only variable that is relevant to a marine mammal's behavioral response. However, we know that many other variables—the marine mammal's gender, age, and prior experience; the activity it is engaged in during an exposure event, its distance from a sound source, the number of sound sources, and whether the sound sources are approaching or moving away from the animal—can be critically important in determining whether and how a marine mammal will respond to a sound source (Southall *et al.*, 2007). The data that are currently available do not allow for incorporation of these other variables in the current risk functions; however, the risk function represents the best use of the data that are available. Additionally, although these other factors cannot be taken into consideration quantitatively in the risk function, NMFS considers these other variables qualitatively in our analysis, when applicable data are available.

As more specific and applicable data become available for MFAS/HFAS sources, NMFS can use these data to modify the outputs generated by the risk function to make them more realistic. Ultimately, data may exist to justify the

use of additional, alternate, or multivariate functions. For example, as mentioned previously, the distance from the sound source and whether it is perceived as approaching or moving away can affect the way an animal responds to a sound (Wartzok *et al.*, 2003). In the NWTRC example, animals exposed to received levels between 120 and 140 dB may be 28–70 nm (51–130 km) from a sound source depending on seasonal variations; those distances could influence whether those animals perceive the sound source as a potential threat, and their behavioral responses to that threat. Though there are data showing response of certain marine mammal species to mid-frequency sound sources at that received level, NMFS does not currently have any data that describe the response of marine mammals to mid-frequency sounds at that distance, much less data that compare responses to similar sound levels at varying distances (much less for MFAS/HFAS). However, if applicable data meeting NMFS standards were to become available, NMFS would re-evaluate the risk function and to incorporate any additional variables into the "take" estimates.

Harbor Porpoise Behavioral Harassment Criteria

The information currently available regarding these inshore species that inhabit shallow and coastal waters suggests a very low threshold level of

response for both captive and wild animals. Threshold levels at which both captive (*e.g.* Kastelein *et al.*, 2000; Kastelein *et al.*, 2005; Kastelein *et al.*, 2006, Kastelein *et al.*, 2008) and wild harbor porpoises (*e.g.* Johnston, 2002) responded to sound (*e.g.* acoustic harassment devices (ADHs), acoustic deterrent devices (ADDs), or other non-pulsed sound sources) is very low (*e.g.* ~120 dB SPL), although the biological significance of the disturbance is uncertain. Therefore, a step function threshold of 120 dB SPL was used to estimate take of harbor porpoises instead of the risk functions used for other species (*i.e.*, we assume for the purpose of estimating take that all harbor porpoises exposed to 120 dB or higher MFAS/HFAS will be taken by Level B behavioral harassment).

Explosive Detonation Criteria

The criteria for mortality, Level A Harassment, and Level B Harassment resulting from explosive detonations were initially developed for the Navy's Seawolf and Churchill ship-shock trials and have not changed since other MMPA authorizations issued for explosive detonations. The criteria, which are applied to cetaceans and pinnipeds, are summarized in Table 7. Additional information regarding the derivation of these criteria is available in the Navy's DEIS for the NWTRC, the LOA application, and in the Navy's CHURCHILL FEIS (U.S. Department of the Navy, 2001c).

Type of Effect	Criteria	Metric	Threshold	MMPA
Mortality	Onset of Extensive Lung Injury	Goertner modified positive impulse	indexed to 30.5 psi-msec (assumes 100 percent small animal at 26.9 lbs)	Mortality
Injurious Physiological	50% Tympanic Membrane Rupture	Energy flux density	1.17 in-lb/in ² (about 205 dB re 1 microPa ² -sec)	Level A Harassment
Injurious Physiological	Onset Slight Lung Injury	Goertner modified positive impulse	indexed to 13 psi-msec (assumes 100 percent small animal at 26.9 lbs)	Level A Harassment
Non-injurious Physiological	TTS	Greatest energy flux density level in any 1/3-octave band (> 100 Hz for toothed whales and > 10 Hz for baleen whales) - for total energy over all exposures	182 dB re 1 microPa ² -sec	Level B Harassment
Non-injurious Physiological	TTS	Peak pressure over all exposures	23 psi	Level B Harassment
Non-injurious Behavioral	Multiple Explosions Without TTS	Greatest energy flux density level in any 1/3-octave (> 100 Hz for toothed whales and > 10 Hz for baleen whales) - for total energy over all exposures (multiple explosions only)	177 dB re 1 microPa ² -sec	Level B Harassment

Table 7. Summary of Explosive Criteria

Estimates of Potential Marine Mammal Exposure

Estimating the take that will result from the proposed activities entails the following three general steps: (1) Propagation model estimates animals exposed to sources at different levels; (2) further modeling determines number of exposures to levels indicated in criteria above (*i.e.*, number of takes); and (3) post-modeling corrections refine estimates to make them more accurate. More information regarding the models used, the assumptions used in the models, and the process of estimating take is available in Appendix D of the Navy's DEIS for NWTRC.

(1) In order to quantify the types of take described in previous sections that are predicted to result from the Navy's specified activities, the Navy first uses a sound propagation model that predicts the number of animals that will be exposed to a range of levels of pressure and energy (of the metrics used in the criteria) from MFAS/HFAS and explosive detonations based on several important pieces of information, including:

- Characteristics of the sound sources.

- Active sonar source characteristics include: Source level (with horizontal and vertical directivity corrections), source depth, center frequency, source directivity (horizontal/vertical beam width and horizontal/vertical steer direction), and ping spacing.
- Explosive source characteristics include: The weight of an explosive, the type of explosive, the detonation depth, number of successive explosions.
- Transmission loss (in 16 representative environmental provinces in two seasons) based on: Water depth; sound speed variability throughout the water column (warm season exhibits a weak surface duct, cold season exhibits a relatively strong surface duct); bottom geo-acoustic properties (bathymetry); and wind speed.
- The estimated density of each marine mammal species in the NWTRC (*see* Table 4), horizontally distributed uniformly and vertically distributed according to dive profiles based on field data.

(2) Next, the criteria discussed in the previous section are applied to the estimated exposures to predict the number of exposures that exceed the criteria, *i.e.*, the number of takes by

Level B Harassment, Level A Harassment, and mortality.

(3) During the development of the EIS for NWTRC, NMFS and the Navy determined that the output of the model could be made more realistic by applying post-modeling corrections to account for the following:

- Acoustic footprints for active sonar sources must account for land masses (by subtracting them out).
- Acoustic footprints for active sonar sources should not be added independently; rather, the degree to which the footprints from multiple ships participating in the same exercise would typically overlap needs to be taken into consideration.
- Acoustic modeling should account for the maximum number of individuals of a species that could potentially be exposed to active sonar within the course of 1 day or a discreet continuous sonar event if less than 24 hours.

Last, the Navy's specified activities have been described based on best estimates of the number of MFAS/HFAS hours that the Navy will conduct. The exact number of hours may vary from year to year but will not exceed the 5-year total indicated in Table 8 (by multiplying the yearly estimate by 5)

more than 10%. NMFS estimates that a 10-percent increase in active sonar hours would result in approximately a 10-percent increase in the number of takes, and we have considered this possibility in our analysis.

The Navy's model provides a systematic and repeatable way of estimating the number of animals that

will be taken by Level A and Level B Harassment. The model is based on the sound propagation characteristics of the sound sources, physical characteristics of the surrounding environment, and a uniform density of marine mammals. As mentioned in the previous sections, many other factors will likely affect how and the degree to which marine

mammals are impacted both at the individual and species level by the Navy's activity (such as social ecology of the animals, long term exposures in one area, etc.); however, in the absence of quantitative data, NMFS has, and will continue, to evaluate that sort of information qualitatively.

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Species	Modeled Sonar Exposures to Indicated Thresholds			Modeled Explosive Exposures to Indicated Thresholds			NMFS Proposed Annual Take Authorization		
	Level B Exposures		Level A Exposures	Level B Exposures		Level A Exposures	Level B Harassment	Level A Harassment	Mortality
	Risk Function	TTS	TTS	Sub-TTS	TTS	Mortality			
ESA-listed / MMPA depleted Species									
Blue whale	17	0	0	1	1	0	19	1	0
Fin whale	123	2	0	12	7	0	144	1	0
Humpback whale	15	0	0	0	0	0	15	0	0
Killer Whale	14	0	0	0	0	0	14	0	0
Sei whale	1	0	0	0	0	0	1	0	0
Sperm whale	102	2	0	13	10	0	127	1	0
Steller Sea Lion	114	0	0	3	3	0	120	1	0
Mysticetes									
Grey whale	4	0	0	0	0	0	4	0	0
Mink whale	9	0	0	0	0	0	9	0	0
Odontocetes									
Baird's beaked whale	12	0	0	1	0	0	13	0	0
Bottlenose dolphin	0	0	0	0	0	0	0	0	0
Cuvier's beaked whale	12	0	0	1	1	0	14	0	0
Dall's porpoise	4,485	147	0	62	58	0	4,752	3	0
Dwarf / Pygmy sperm whale	3	0	0	1	0	0	4	0	0
Harbor porpoise	119,215	45	0	9	5	0	119,274	1	0
Mesoplodon spp.	14	0	0	1	0	0	15	0	0
Northern right whale dolphin	705	18	0	11	7	0	741	1	0
Pacific white-sided dolphin	537	23	0	8	3	0	571	0	0
Risso's dolphin	85	2	0	9	4	0	100	0	0
Short beaked common dolphin	1,142	42	0	49	23	0	1,256	2	0
Short-finned pilot whale	2	0	0	0	0	0	2	0	0
Striped dolphin	38	1	0	0	1	0	40	0	0
Pinnipeds									
Northern elephant seal	296	0	0	53	29	0	378	2	0
Pacific harbor seal	394	290	1	2	0	0	566	1	0
California sea lion	283	0	0	2	1	0	286	0	0
Northern fur seal	1,296	1	0	24	44	0	1,365	1	0
Total	128,583	528	1	262	197	12	128,570	13	0

Table 8. Annual Navy estimated and NMFS proposed authorized take of marine mammals.

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Mortality

Evidence from five beaked whale strandings, all of which have taken

place outside the NWTRC Range Complex, and have occurred over approximately a decade, suggests that the exposure of beaked whales to MFAS in the presence of certain conditions

(e.g., multiple units using active sonar, steep bathymetry, constricted channels, strong surface ducts, etc.) may result in strandings, potentially leading to mortality. Although these physical

factors believed to have contributed to the likelihood of beaked whale strandings are not present, in their aggregate, in the NWTRC, scientific uncertainty exists regarding what other factors, or combination of factors, may contribute to beaked whale strandings. However, because none of the MFAS/HFAS ASW exercises conducted in the NWTRC are major exercises employing multiple surface vessels, the exercises last 1.5 hours or less, and only 65 exercises are planned (for a total of about 100 hours of surface vessel sonar operation), NMFS and the Navy believe it is highly unlikely that marine mammals would respond to these exercises in a manner that would result in a stranding. Therefore, no authorization for mortality has been requested or proposed.

Effects on Marine Mammal Habitat

The Navy's proposed training exercises could potentially affect marine mammal habitat through the introduction of pressure, sound, and expendable materials into the water column, which in turn could impact prey species of marine mammals, or cause bottom disturbance or changes in water quality. Each of these components was considered in the NWTRC DEIS and was determined by the Navy to have no effect on marine mammal habitat. Based on the information below and the supporting information included in the Navy's DEIS, NMFS has preliminarily determined that the NWTRC training activities will not have significant or long term impacts on marine mammal habitat. Unless the sound source or explosive detonation is stationary and/or continuous over a long duration in one area, the effects of the introduction of sound into the environment are generally considered to have a less severe impact on marine mammal habitat than the physical alteration of the habitat. Marine mammals may be temporarily displaced from areas where Navy training is occurring, but the area will likely be utilized again after the activities have ceased. A summary of the conclusions are included in subsequent sections.

Critical Habitat

Critical Habitat has been designated for 2 species in the NWTRC, southern resident killer whales (in the inshore area) and Steller sea lions (3 haulouts near the southern end of the offshore area). No sonar training is planned for the inshore area and explosive use will be limited to 4 detonations of small 2.5-lb charges annually. The Navy plans to abide by the 3000-ft air and water stand-off distances associated with the Steller

sea lion critical habitat. Effects to designated critical habitat will be fully analyzed in the Navy's ESA Section 7 consultation for the NWTRC.

Effects on Food Resources

Fish

The Navy's DEIS includes a detailed discussion of the effects of active sonar on marine fish. In summary, studies have indicated that acoustic communication and orientation of fish may be restricted by anthropogenic sound in their environment. However, the vast majority of fish species studied to date are hearing generalists and cannot hear sounds above 500 to 1,500 Hz (0.5 to 1.5 kHz) (depending upon the species). Therefore, these fish species are not likely to be affected behaviorally from higher frequency sounds such as MFAS/HFAS. Moreover, even those marine species that may hear above 1.5 kHz, such as a few sciaenids and the clupeids (and relatives), have relatively poor hearing above 1.5 kHz as compared to their hearing sensitivity at lower frequencies, so it is likely that the fish will only actually hear the sounds if the fish and source were fairly close to one another. Finally, since the vast majority of sounds that are of biological relevance to fish are below 1 kHz (*e.g.*, Zelic *et al.*, 1999; Ladich and Popper, 2004), even if a fish detects a mid- or high-frequency sound, these sounds will not likely mask detection of lower frequency biologically relevant sounds. Thus, based on the available information, a reasonable conclusion is that there will be few, and more likely no, impacts on the behavior of fish from active sonar.

Though mortality has been shown to occur in one species, a hearing specialist, as a result of exposure to non-impulsive sources, the available evidence does not suggest that exposures such as those anticipated from MFAS/HFAS would result in significant fish mortality on a population level. The mortality that was observed was considered insignificant in light of natural daily mortality rates. Experiments have shown that exposure to loud sound can result in significant threshold shifts in certain fish that are classified as hearing specialists (but not those classified as hearing generalists). Threshold shifts are temporary, and considering the best available data, no data exist that demonstrate any long-term negative effects on marine fish from underwater sound associated with active sonar activities. Further, while fish may respond behaviorally to mid-frequency sources, this behavioral

modification is only expected to be brief and not biologically significant.

There are currently no well-established thresholds for estimating effects to fish from explosives other than mortality models. Fish that are located in the water column, in proximity to the source of detonation could be injured, killed, or disturbed by the impulsive sound and possibly temporarily leave the area. Continental Shelf Inc. (2004) summarized a few studies conducted to determine effects associated with removal of offshore structures (*e.g.*, oil rigs) in the Gulf of Mexico. Their findings revealed that at very close range, underwater explosions are lethal to most fish species regardless of size, shape, or internal anatomy. For most situations, cause of death in fishes has been massive organ and tissue damage and internal bleeding. At longer range, species with gas-filled swimbladders (*e.g.*, snapper, cod, and striped bass) are more susceptible than those without swimbladders (*e.g.*, flounders, eels). Studies also suggest that larger fishes are generally less susceptible to death or injury than small fishes. Moreover, elongated forms that are round in cross section are less at risk than deep-bodied forms; and orientation of fish relative to the shock wave may affect the extent of injury. Open water pelagic fish (*e.g.*, mackerel) also seem to be less affected than reef fishes. The results of most studies are dependent upon specific biological, environmental, explosive, and data recording factors.

The huge variations in the fish population, including numbers, species, sizes, and orientation and range from the detonation point, make it very difficult to accurately predict mortalities at any specific site of detonation. As mentioned previously, though, only 4 small detonations are planned for the inshore area and the exercises involving larger detonations are conducted far offshore. Most fish species experience a large number of natural mortalities, especially during early life-stages, and any small level of mortality caused by the NWTRC training exercises involving explosives will likely be insignificant to the population as a whole.

Invertebrates

Very little is known about sound detection and use of sound by invertebrates (*see* Budelmann 1992a, b, Popper *et al.*, 2001 for reviews). The limited data shows that some crabs are able to detect sound, and there has been the suggestion that some other groups of invertebrates are also able to detect sounds. In addition, cephalopods (octopus and squid) and decapods (lobster, shrimp, and crab) are thought

to sense low-frequency sound (Budelmann, 1992b). Packard *et al.* (1990) reported sensitivity to sound vibrations between 1–100 Hz for three species of cephalopods. McCauley *et al.* (2000) found evidence that squid exposed to seismic airguns show a behavioral response including inking. However, these were caged animals, and it is not clear how unconfined animals may have responded to the same signal and at the same distances used. In another study, Wilson *et al.* (2007) played back echolocation clicks of killer whales to two groups of squid (*Loligo pealeii*) in a tank. The investigators observed no apparent behavioral effects or any acoustic debilitation from playback of signals up to 199 to 226 dB re 1 μ Pa. It should be noted, however, that the lack of behavioral response by the squid may have been because the animals were in a tank rather than being in the wild. In another report on squid, Guerra *et al.* (2004) claimed that dead giant squid turned up around the time of seismic airgun operations off of Spain. The authors suggested, based on analysis of carcasses, that the damage to the squid was unusual when compared to other dead squid found at other times. However, the report presents conclusions based on a correlation to the time of finding of the carcasses and seismic testing, but the evidence in support of an effect of airgun activity was totally circumstantial. Moreover, the data presented showing damage to tissue is highly questionable since there was no way to differentiate between damage due to some external cause (*e.g.*, the seismic airgun) and normal tissue degradation that takes place after death, or due to poor fixation and preparation of tissue. To date, this work has not been published in peer reviewed literature, and detailed images of the reportedly damaged tissue are also not available.

In summary, baleen whales feed on the aggregations of krill and small schooling fish, while toothed whales feed on epipelagic, mesopelagic, and bathypelagic fish and squid. As summarized above and in the NWTRC EIS/OEIS in more detail, potential impacts to marine mammal food resources within the NWTRC is negligible given both lack of hearing sensitivity to mid-frequency sonar, the very geographic and spatially limited scope of most Navy at sea activities including underwater detonations, and the high biological productivity of these resources. No short or long term effects to marine mammal food resources from Navy activities are anticipated within the NWTRC.

Military Expendable Material

Marine mammals are subject to entanglement in expended materials, particularly anything incorporating loops or rings, hooks and lines, or sharp objects. Most documented cases of entanglements occur when whales encounter the vertical lines of fixed fishing gear. This section summarizes the potential effects of expended materials on marine mammals. Detailed discussion of military expendable material is contained within the NWTRC EIS.

The Navy endeavors to recover expended training materials. Notwithstanding, it is not possible to recover all training materials, and some may be encountered by marine mammals in the waters of the NWTRC. Debris related to military activities that is not recovered generally sinks; the amount that might remain on or near the sea surface is low, and the density of such expendable materials in the NWTRC would be very low. Types of training materials that might be encountered include: Parachutes of various types (*e.g.*, those employed by personnel or on targets, flares, or sonobuoys); torpedo guidance wires, torpedo "flex hoses;" cable assemblies used to facilitate target recovery; sonobuoys; and EMATT. Although sunken debris might be of increased concern for bottom-feeding marine mammals, like the gray whale, again, the low density is such that it is very unlikely that animals would interact with any of these materials.

Entanglement in military expendable material was not cited as a source of injury or mortality for any marine mammals recorded in a large marine mammal and sea turtle stranding database for California waters, an area with much higher density of marine mammals. Therefore as discussed in the NWTRC EIS, expendable material is highly unlikely to directly affect marine mammal species or potential habitat within the NWTRC.

NMFS Office of Habitat Conservation is working with the Navy to better identify the potential risks of expended materials from the Navy activities as they relate to Essential Fish Habitat. These effects are indirectly related to marine mammal habitat, but based on the extent of the likely effects described in the Navy's DEIS, NMFS' Office of Protected Resources has preliminarily determined that they will not result in significant impacts to marine mammal habitat. The outcome of this consultation will further inform the marine mammal habitat analysis in the final rule.

Water Quality

The NWTRC EIS/OEIS analyzed the potential effects to water quality Expendable Mobile ASW Training Target (EMATT) batteries. In addition, sonobuoys were not analyzed since, once scuttled, their electrodes are largely exhausted during use and residual constituent dissolution occurs more slowly than the releases from activated seawater batteries. As such, only the potential effects of batteries and explosions on marine water quality in and surrounding the sonobuoy training area were completed. It was determined that there would be no significant effect to water quality from seawater batteries, lithium batteries, and thermal batteries associated with scuttled sonobuoys.

EMATTs use lithium sulfur dioxide batteries. The constituents in the battery react to form soluble hydrogen gas and lithium dithionite. The hydrogen gas eventually enters the atmosphere and the lithium hydroxide dissociates, forming lithium ions and hydroxide ions. The hydroxide is neutralized by the hydronium formed from hydrolysis of the acidic sulfur dioxide, ultimately forming water. Sulfur dioxide, a gas that is highly soluble in water, is the major reactive component in the battery. The sulfur oxide ionizes in the water, forming bisulfite (HSO₃) that is easily oxidized to sulfate in the slightly alkaline environment of the ocean. Sulfur is present as sulfate in large quantities (*i.e.*, 885 milligrams per liter [mg/L]) in the ocean. Thus, it was determined that there would be no significant effect to water quality from lithium sulfur batteries associated with scuttled EMATTs.

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be "taken" by the specified activities (*i.e.*, takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a "negligible impact" on the affected species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects (for example: Pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46-

percent reproductive success compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and has a 17-percent reproductive success). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, *etc.*), the context of any responses (critical reproductive time or location, migration, *etc.*), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat. Generally speaking, and especially with other factors being equal, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels.

The Navy's specified activities have been described based on best estimates

of the number of MFAS/HFAS hours that the Navy will conduct. The exact number of hours (or torpedoes, or pings, whatever unit the source is estimated in) may vary from year to year, but will not exceed the 5-year total indicated in Table 8 (by multiplying the yearly estimate by 5) by more than 10 percent. NMFS estimates that a 10-percent increase in active sonar hours (torpedoes, pings, *etc.*) would result in approximately a 10-percent increase in the number of takes, and we have considered this possibility and the effect of the additional active sonar use in our analysis.

Taking the above into account, considering the sections discussed below, and dependent upon the implementation of the proposed mitigation measures, NMFS has preliminarily determined that Navy training exercises utilizing MFAS/HFAS and underwater detonations will have a negligible impact on the marine mammal species and stocks present in the NWTRC Range Complex.

Behavioral Harassment

As discussed in the Potential Effects of Exposure of Marine Mammals to MFAS/HFAS and illustrated in the conceptual framework, marine mammals can respond to MFAS/HFAS in many different ways, a subset of which qualify as harassment (*see*

Behavioral Harassment Section). One thing that the take estimates do not take into account is the fact that most marine mammals will likely avoid strong sound sources to one extent or another. Although an animal that avoids the sound source will likely still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, *etc.*) in other cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response. For MFAS/HFAS, the Navy provided information (Table 9) estimating what percentage of the total takes that will occur within the 10-dB bins (without considering mitigation or avoidance) that are within the received levels considered in the risk continuum and for TTS and PTS. This table applies specifically to AN/SQS-53C hull-mounted active sonar (the most powerful source), with less powerful sources the percentages would increase slightly in the lower received levels and correspondingly decrease in the higher received levels. As mentioned above, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to adversely affect the health of the animal.

Received Level (SPL)	Distance At Which Levels Occur in NWTRC	Percent of Total Harassment Takes Estimated to Occur at Indicated Level
Below 140 dB	51 km - 130 km	< 1%
140 < Level < 150 dB	25 km - 51 km	2%
150 < Level < 160 dB	10 km - 25 km	18%
160 < Level < 170 dB	3 km - 10 km	43%
170 < Level < 180 dB	560 m - 3 km	28%
180 < Level	0 m - 560 m	< 9%

Table 9. Approximate percent of estimated takes that occur in the indicated 10-dB bins for AN/SQS-53 (the most powerful source). For smaller sources, a higher % of the takes occur at lower levels, and a lower % at higher levels.

Because of the comparatively small amount of MFAS/HFAS sonar training the Navy has only been conducting offshore in the NWTRC, the fact that they have not been monitoring pursuant to those activities to date, and because of the overall data gap regarding the effects MFAS/HFAS has on marine mammals, not a lot is known regarding how marine mammals in the NWTRC will respond to MFAS/HFAS (with the exception of the SHOUP incident

mentioned previously—but since then no sonar training has been conducted in the Inshore area). Twelve monitoring reports from the Southern California Range Complex for major training exercises indicate that watchstanders have observed no instances of obvious behavioral disturbance in the more than 704 marine mammal sightings of 7,435 animals (9,000+ hours of effort, though only 4 of the 12 reports reported the total number of hours of observation).

One cannot conclude from these results that marine mammals were not harassed from MFAS/HFAS, as a portion of animals within the area of concern were not seen (especially those more cryptic, deep-diving species, such as beaked whales or *Kogia* spp.) and some of the non-biologist watchstanders might not be well-qualified to characterize behaviors. However, one can say that the animals that were observed did not respond in any of the obviously more

severe ways, such as panic, aggression, or anti-predator response.

In addition to the monitoring that will be required pursuant to these regulations and any corresponding LOAs, which is specifically designed to help us better understand how marine mammals respond to sound, the Navy and NMFS have developed, funded, and begun conducting a controlled exposure experiment with beaked whales in the Bahamas. Separately, the Navy and NMFS conducted an opportunistic tagging experiment with beaked whales in the area of the 2008 Rim of the Pacific training exercises in the HRC.

Diel Cycle

As noted previously, many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007).

In the previous section, we discussed the fact that potential behavioral responses to MFAS/HFAS that fall into the category of harassment could range in severity. By definition, the takes by behavioral harassment involve the disturbance of a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns (such as migration, surfacing, nursing, breeding, feeding, or sheltering) to a point where such behavioral patterns are abandoned or significantly altered. These reactions would, however, be more of a concern if they were expected to last over 24 hours or be repeated in subsequent days. As mentioned previously, 65 ASW exercises with a duration of 1.5 hours are planned annually for the NWTRC. Additionally, vessels with hull-mounted active sonar are typically moving at speeds of 10–12 knots, which would make it unlikely that the same animal could remain in the immediate vicinity of the ship for the entire duration of the exercise. Animals are not expected to be exposed to MFAS/HFAS at levels or for a duration likely to result in a substantive response that would then be carried on for more than one day or on successive days. With the exception of SINKEXs, the planned explosive exercises are also of a short duration (1–

6 hours). Although explosive exercises may sometimes be conducted in the same general areas repeatedly, because of their short duration and the fact that they are in the open ocean and animals can easily move away makes it similarly unlikely that animals would be exposed for long, continuous amounts of time. Although SINKEXs may last for up to 48 hours, only 2 are planned annually, they are stationary and conducted in deep, open water (where fewer marine mammals would typically be expected to be randomly encountered), and they have a rigorous monitoring and shutdown protocol, all of which make it unlikely that individuals would be exposed to the exercise for extended periods or in consecutive days.

TTS

NMFS and the Navy have estimated that some individuals of some species of marine mammals may sustain some level of TTS from MFAS/HFAS. As mentioned previously, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Table 8 indicates the estimated number of animals that might sustain TTS from exposure to MFAS/HFAS. The TTS sustained by an animal is primarily classified by three characteristics:

- **Frequency**—Available data (of mid-frequency hearing specialists exposed to mid to high frequency sounds—Southall *et al.*, 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above). The more MF powerful sources used (the two hull-mounted MFAS sources and the DICASS sonobuoys) have center frequencies between 3.5 and 8 kHz and the other unidentified MF sources are, by definition, less than 10 kHz, which suggests that TTS induced by any of these MF sources would be in a frequency band somewhere between approximately 2 and 20 kHz. There are fewer hours of HF source use and the sounds would attenuate more quickly, plus they have lower source levels, but if an animal were to incur TTS from these sources, it would cover a higher frequency range (sources are between 20 and 100 kHz, which means that TTS could range up to 200 kHz, however, HF systems are typically used less frequently and for shorter time periods than surface ship and aircraft MF systems, so TTS from these sources is even less likely). TTS from explosives would be broadband. Tables 5a and 5b

summarize the vocalization data for each species.

- **Degree of the shift (*i.e.*, how many dB is the sensitivity of the hearing reduced by)**—generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS (> 6 dB) is 195 dB (SEL), which might be received at distances of up to 140 m from the most powerful MFAS source, the AN/SQS-53 (the maximum ranges to TTS from other sources would be less, as modeled for NWTRC). An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the watchstanders and the nominal speed of an active sonar vessel (10–12 knots). Of all TTS studies, some using exposures of almost an hour in duration or up to 217 SEL, most of the TTS induced was 15 dB or less, though Finneran *et al.*, (2007) induced 43 dB of TTS with a 64-sec exposure to a 20 kHz source (MFAS emits a 1-s ping 2 times/minute).

- **Duration of TTS (Recovery time)**—See above. Of all TTS laboratory studies, some using exposures of almost an hour in duration or up to 217 SEL, almost all recovered within 1 day (or less, often in minutes), though in one study (Finneran *et al.*, (2007)), recovery took 4 days.

Based on the range of degree and duration of TTS reportedly induced by exposures to non-pulse sounds of energy higher than that to which free-swimming marine mammals in the field are likely to be exposed during MFAS/HFAS training exercises in NWTRC, it is unlikely that marine mammals would ever sustain a TTS from MFAS that alters their sensitivity by more than 20 dB for more than a few days (and the majority would be far less severe because of short duration of the exercises, the speed of a typical vessel, and the fact that only 1 MFAS source is in use at once). Also, for the same reasons discussed in the Diel Cycle section, and because of the short distance within which animals would need to approach the sound source, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that their recovery is impeded. Additionally (*see* Tables 5a and 5b), though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalization types, the frequency range of TTS from MFAS (the source from which TTS would more likely be

sustained because the higher source level and slower attenuation make it more likely that an animal would be exposed to a higher level) would not usually span the entire frequency range of one vocalization type, much less span all types of vocalizations. If impaired, marine mammals would typically be aware of their impairment and implement behaviors to compensate for it (see Communication Impairment Section), though these compensations may incur energetic costs.

Acoustic Masking or Communication Impairment

Table 5 is also informative regarding the nature of the masking or communication impairment that could potentially occur from MFAS (again, center frequencies are 3.5 and 7.5 kHz for the two types of hull-mounted active sonar). However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. Standard MFAS pings last on average one second and occur about once every 24–30 seconds for hull-mounted sources. For the sources for which we know the pulse length, most are significantly shorter than hull-mounted active sonar, on the order of several microseconds to 10s of microseconds. For hull-mounted active sonar, though some of the vocalizations that marine mammals make are less than one second long, there is only a 1 in 24 chance that they would occur exactly when the ping was received, and when vocalizations are longer than one second, only parts of them are masked. Alternately, when the pulses are only several microseconds long, the majority of most animals' vocalizations would not be masked. Masking effects from MFAS/HFAS are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of MFAS, which overlaps with some marine mammal vocalizations, however, it would likely not mask the entirety of any particular vocalization or communication series because the pulse length, frequency, and duty cycle of the MFAS/HFAS signal does not perfectly mimic the characteristics of any marine mammal's vocalizations.

PTS, Injury, or Mortality

The Navy's model estimated that one Pacific harbor seal would be exposed to levels of MFAS/HFAS that would result in PTS. This estimate does not take into consideration either the mitigation measures, the likely avoidance behaviors of some of the animals

exposed, the distance from the sonar dome of a surface vessel within which an animal would have to be exposed to incur PTS (10 m), and the nominal speed of a surface vessel engaged in ASW exercises. NMFS believes that many marine mammals would deliberately avoid exposing themselves to the received levels of active sonar necessary to induce injury by moving away from or at least modifying their path to avoid a close approach. Additionally, in the unlikely event that an animal approaches the sonar vessel at a close distance, NMFS believes that the mitigation measures (*i.e.*, shutdown/powerdown zones for MFAS/HFAS) would typically ensure that animals would not be exposed to injurious levels of sound. As discussed previously, the Navy utilizes both aerial (when available) and passive acoustic monitoring (during all ASW exercises) in addition to watchstanders on vessels to detect marine mammals for mitigation implementation and indicated that they are capable of effectively monitoring a 1,000-meter (1,093-yd) safety zone at night using night vision goggles, infrared cameras, and passive acoustic monitoring.

If a marine mammal is able to approach a surface vessel within the distance necessary to incur PTS, the likely speed of the vessel (nominal 10–12 knots) would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of PTS. As mentioned previously and in relation to TTS, the likely consequences to the health of an individual that incurs PTS can range from mild to more serious dependent upon the degree of PTS and the frequency band it is in, and many animals are able to compensate for the shift, although it may include energetic costs. While NMFS believes it is very unlikely that a harbor seal will incur PTS from exposure to MFAS/HFAS, seals may be difficult to detect at times and the Navy has requested authorization to take one by Level A Harassment and therefore, NMFS has considered this possibility in our analysis.

The Navy's model estimated that 14 total animals would be exposed to explosive detonations at levels that could result in injury (1 fin whale, 1 blue whale, 1 sperm whale, 3 Dall's porpoise, 1 harbor porpoise, 1 northern right whale dolphin, 2 short-beaked common dolphins, 2 northern elephant seals, 1 northern fur seal, and 1 Steller sea lion), and that 0 would be exposed to levels that would result in death—however, those estimates do not consider mitigation measures. Because

of the surveillance conducted prior to and during the exercises, the associated exclusion zones (see table 3 and the Mitigation section), and the distance within which the animal would have to be from the explosion, NMFS does not think it likely that any animals (especially these species, which are either large individuals or large gregarious groups) will be exposed to levels of sound or pressure from explosives that will result in injury. However, an authorization for Level A take of these individuals allows the Navy to remain in compliance in the unlikely event that animals go undetected and enter an area with injurious energy or pressure levels, and therefore NMFS has considered this possibility in our analysis. Injury incurred at these levels could (based on the data the thresholds are derived from) take the form of PTS (discussed above), tympanic membrane rupture, or slight lung injury.

As discussed previously, marine mammals could potentially respond to MFAS at a received level lower than the injury threshold in a manner that indirectly results in the animals stranding. The exact mechanisms of this potential response, behavioral or physiological, are not known. The naval exercises that have been associated with strandings in the past have typically had three or more vessels operating simultaneously, or in conjunction with one another, whereas the ASW exercises in the NWTRC only utilize one surface vessel sonar source at a time. Also, past sonar-associated strandings have involved constricted channels, semi-enclosed areas, and/or steep bathymetry—the sorts of features present in the Inshore area of the NWTRC; however, no ASW exercises will be conducted in the Inshore area. Last, even if the physical features that may contribute to a stranding (not all of which are known) were present in the NWTRC, it is unlikely that they would co-occur in time and space given the nature of the exercises, *e.g.*, low number and short duration of the planned exercises and no multi-vessel ASW exercises over an extended period of time.

60 Years of Navy Training Exercises Using MFAS/HFAS in the NWTRC Range Complex

The Navy has been conducting MFAS/HFAS training exercises in the NWTRC Range Complex for over 60 years. Although monitoring specifically in conjunction with training exercises to determine the effects of active sonar and explosives on marine mammals has not been conducted by the Navy in the past

in the NWTRC and the symptoms indicative of potential acoustic trauma were not as well recognized prior to the mid-nineties, people have been collecting stranding data in the NWTRC Range Complex for approximately 30 years. Though not all dead or injured animals are expected to end up on the shore (some may be eaten or float out to sea), one might expect that if marine mammals were being harmed by the Navy training exercises with any regularity, more evidence would have been detected over the 30-yr period.

Species-Specific Analysis

In the discussions below, the “acoustic analysis” refers to the Navy's analysis, which includes the use of several models and other applicable calculations as described in the Estimates of Potential Marine Mammal Exposure section. The numbers predicted by the “acoustic analysis” are based on a uniform and stationary distribution of marine mammals and do not take into consideration the implementation of mitigation measures or potential avoidance behaviors of marine mammals, and therefore, are likely overestimates of potential exposures to the indicated thresholds (PTS, TTS, behavioral harassments).

Blue Whale (MMPA Depleted/ESA-Listed)

Acoustic analysis predicts that 19 exposures of blue whales to MFAS/HFAS or explosive detonations at sound or pressure levels likely to result in Level B harassment will occur. This estimate represents the total number of takes and not necessarily the number of individuals taken, as a single individual may be taken multiple times over the course of a year. These Level B takes are anticipated to be primarily in the form of behavioral disturbance as described in the Definition of Harassment: Level B Harassment section, although one TTS take is estimated from explosive exposure and proposed to be authorized. It is unlikely that any blue whales will incur TTS because of: (1) The distance within which they would have to approach the explosive source; and (2) the likelihood that Navy monitors would, during pre- or during exercises monitoring, detect these large animals prior to an approach within this distance and require a delay of the exercise. Navy lookouts will likely detect a group of blue whales given their large size, average group size (2–3), and pronounced vertical blow.

Additionally, the Navy's acoustic analysis predicted that 1 blue whale would be exposed to injurious levels of energy or pressure from exposure to

explosive detonations. Because of the lengthy pre-monitoring, the size of the animal, and the pronounced blow, NMFS anticipates that the Navy watchstanders would likely detect blue whales in most instances and implement the mitigation to avoid exposure at injurious levels. Although NMFS does not anticipate Level A take of this species to occur, the Navy has requested Level A take authorization for this species to ensure MMPA compliance and NMFS will analyze the possibility of these effects. NMFS is currently engaged in an internal Section 7 consultation under the ESA and the outcome of that consultation will further inform our final decision.

Blue whales in the NWTRC belong to the Eastern North Pacific stock, which may be increasing in number. The best population estimate for this stock is 1,866. Blue whales are known to feed in the southern part of the NWTRC in the summer. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. The blue whale's large size and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects either during their selected feeding times or otherwise. The NWTRC activities are not expected to occur in an area/time of specific importance for reproduction, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of blue whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Fin Whale (MMPA Depleted/ESA-Listed)

Acoustic analysis indicates that up to 122 exposures of fin whales to sound levels likely to result in Level B harassment (2 from TTS) may result from MFAS/HFAS. This estimate represents the total number of takes and not necessarily the number of individuals taken, as a single individual may be taken multiple times over the course of a year. These Level B takes are anticipated to be primarily in the form of behavioral harassment as described in the Definition of Harassment: Level B Harassment section. Although 2 of the modeled Level B Harassment takes were predicted to be in the form of TTS from MFAS/HFAS, NMFS believes it is unlikely that any fin whales will incur TTS because of the distance within

which they would have to approach the MFAS source (approximately 140 m for the most powerful source for TTS), the fact that many animals will likely avoid active sonar sources to some degree, and the likelihood that Navy monitors would detect these animals prior to an approach within this distance and implement active sonar powerdown or shutdown. Navy lookouts will likely detect a group of fin whales because of their large size, mean group size (3), and pronounced blow.

Acoustic analysis also predicted that 19 Level B Harassment takes from explosives would occur (12 sub-TTS, 7 TTS). For the same reasons listed above, NMFS anticipates that the Navy watchstanders would likely detect these species and implement the mitigation to avoid exposure. However, the range to TTS for a few of the larger explosives is larger than the associated exclusion zones for BOMBEX or SINKEX (see Table 3), and therefore NMFS anticipates that TTS takes of a few whales might result from explosive detonations.

Additionally, the Navy's acoustic analysis predicted that 1 fin whale would be exposed to injurious levels of energy or pressure. Because of the lengthy pre-monitoring, the size of the animal, and the pronounced blow, NMFS anticipates that the Navy watchstanders would likely detect fin whales in most instances and implement the mitigation to avoid exposure at injurious levels. Although NMFS does not anticipate Level A take of this species to occur, the Navy has requested Level A take authorization for this species to ensure MMPA compliance and NMFS will analyze the possibility of these effects. NMFS is currently engaged in an internal Section 7 consultation under the ESA and the outcome of that consultation will further inform our final decision.

Fin whales in the NWTRC belong to the California/Oregon/Washington stock. The best population estimate for this stock is 3454, which may be increasing. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. The NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of fin whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified

activities will have a negligible impact on this stock.

Sei Whale (MMPA Depleted/ESA-Listed)

Acoustic analysis predicts that 1 sei whale will be behaviorally harassed by exposure to MFAS/HFAS. Sei whales in the NWTRC belong to the Eastern North Pacific stock. The best population estimate for this stock is 43, which may be increasing. The sei whales' large size and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects. No areas of specific importance for reproduction or feeding of sei whales have been identified in the NWTRC. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. The NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of sei whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Humpback Whale (MMPA Depleted/ESA-Listed)

Acoustic analysis predicts that 13 humpback whales will be behaviorally harassed by exposure to MFAS/HFAS. No humpback whales are expected to be taken as a result of exposure to explosive detonations. Humpback whales in the NWTRC belong to the Eastern North Pacific stock. The best population estimate for this stock is 1396, which is increasing. The humpback whales' large size, gregarious nature, and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects. No areas of specific importance for reproduction or feeding of humpbacks have been identified in the NWTRC. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. The NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of humpback whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-

specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Gray Whale

Acoustic analysis predicts that 4 gray whales will be behaviorally harassed by exposure to MFAS/HFAS. No gray whales are expected to be taken as a result of exposure to explosive detonations. Gray whales in the NWTRC belong to the Eastern North Pacific stock, which is increasing in number. The best population estimate for this stock is 18178. The gray whales' large size and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects. There is a well-defined north-south migratory path through the NWTRC and a known aggregation of gray whales (Pacific Coast Feeding Aggregation (PCFA)) that feeds along the Pacific coast between southeastern Alaska and southern California throughout the summer and fall. Relative to the population size, however, this activity is anticipated to result only in a very limited number of level B harassment takes and, consequently, the activities are not expected to adversely impact rates of recruitment or survival of gray whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Minke Whale

Acoustic analysis predicts that 9 minke whales will be behaviorally harassed by exposure to MFAS/HFAS. No minke whales are expected to be taken as a result of exposure to explosive detonations. Minke whales in the NWTRC belong to the California/Oregon/Washington stock. The best population estimate for this stock is 898. The whales' size and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects. Minke whales appear to establish home ranges in the Inshore Area and have been documented feeding in several areas within the Inshore Areas, however, no activities expected to result in the take of marine mammals will occur in the Inshore Area, so these behaviors should not be negatively impacted in that area. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment

takes. The NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of minke whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Sperm Whale (MMPA Depleted/ESA-Listed)

Acoustic analysis predicts that up to 101 exposures of sperm whales to MFAS/HFAS at energy levels likely to result in Level B harassment may occur. This estimate represents the total number of Level B takes and not necessarily the number of individuals taken, as a single individual may be taken multiple times over the course of a year. These Level B takes are anticipated to primarily be in the form of behavioral disturbance as described in the Definition of Harassment: Level B Harassment section. Two of the modeled Level B Harassment takes were predicted to be in the form of TTS.

As indicated in Table 5, some (but not all) sperm whale vocalizations might overlap with the MFAS/HFAS TTS frequency range (2–20 kHz), which could potentially temporarily decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFAS/HFAS. No sperm whales are predicted to be exposed to MFAS/HFAS sound levels associated with PTS or injury.

Acoustic analysis also predicted that 23 sperm whales would be exposed to sound or pressure from explosives at levels expected to result in Level B Harassment (10 from TTS). Additionally, the Navy's acoustic analysis predicted that 1 whale would be exposed to injurious levels of energy or pressure. Because of the lengthy pre-monitoring and the size of the animal, NMFS anticipates that the Navy watchstanders would likely detect sperm whales in most instances and implement the mitigation measures to avoid exposure at injurious levels. Although NMFS does not anticipate sperm whales to experience Level A Harassment, the Navy has requested Level A take authorization for this species to ensure MMPA compliance in the unlikely event that an animal is

exposed to injurious pressures from an explosive detonation and NMFS has analyzed the possibility of these effects. NMFS is currently engaged in an internal Section 7 consultation under the ESA and the outcome of that consultation will further inform our final decision. No areas of specific importance for reproduction or feeding of sperm whales have been identified in the NWTRC.

Relative to the population size, this activity is anticipated to result only in a limited number of Level B harassment takes. Additionally, the NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of sperm whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Killer Whale (Southern Resident Is MMPA Depleted/ESA-Listed)

Due to the difficulty in determining particular stocks of killer whales in the wild, all stocks of killer whales were combined for modeling exposures, and therefore the modeled takes could be applied to any combination of the three stocks. When observed offshore, the determination of a particular whale to either a transient, offshore, or a resident is often difficult. For this reason, all killer whales are considered to be part of the southern resident stock for analysis of effect. The southern resident stock of killer whales is depleted under the MMPA and listed under the ESA.

Acoustic analysis predicts that 13 killer whales will be behaviorally harassed by exposure to MFAS/HFAS. The best population estimate for the southern resident killer whale stock is 89. There was an increase in the overall population from 2002–2007, however the population declined in 2008 with 85 southern resident killer whales counted. Two additional whales have been reported missing since the 2008 census count. The whale's size and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects. As mentioned previously, there is designated critical habitat for southern resident killer whales in the Inshore Area; however, no sonar exercises and 4 very small detonations (2.5-lb), which are not expected to result in the take of marine

mammals, are planned to occur in the Inshore area annually. Southern resident killer whales spend the majority of their time in the Inshore Area from May/June through October/November, although they do make multi-day trips to the outer coast. Alternately, all of the Navy's sonar use is in the Offshore Area, occurring uniformly throughout the year.

Of note, the vocalizations of killer whales fall directly into the frequency range in which TTS would be incurred from the MFAS sources used in NWTRC for ASW exercises, so it is fortunate that the Navy is conducting limited ASW exercises in the NWTRC and that killer whales are predominantly situated in the Inshore area when ASW exercises are being conducted. Killer whales produce a wide-variety of clicks and whistles, but most social sounds are pulsed, with frequencies ranging from 0.5 to 25 kHz (dominant frequency range: 1 to 6 kHz) (Thomson and Richardson, 1995). Echolocation clicks indicate source levels ranging from 195 to 224 dB re 1 µPa-m peak-to-peak, dominant frequencies ranging from 20 to 60 kHz, and durations of about 0.1 sec (Au *et al.*, 2004). Source levels associated with social sounds have been calculated to range from 131 to 168 dB re 1 µPa-m and vary with vocalization type (Veirs, 2004).

Southern resident killer whales are very vocal, making calls during all types of behavioral states. Acoustic studies of resident killer whales in the Pacific Northwest have found that there are dialects in their highly stereotyped, repetitive discrete calls, which are group-specific and shared by all group members (Ford, 1991, 2002b). These dialects likely are used to maintain group identity and cohesion, and may serve as indicators of relatedness that help prevent inbreeding between closely related whales (Ford, 1991, 2002b). Dialects have been documented in northern Norway (Ford, 2002a) and southern Alaska killer whales populations (Yurk *et al.*, 2002) and likely occur in other regions.

Both behavioral and auditory brainstem response techniques indicate killer whales can hear a frequency range of 1 to 100 kHz and are most sensitive at 20 kHz. This is one the lowest maximum-sensitivity frequencies known among toothed whales (Szymanski *et al.*, 1999).

Population estimates for the Offshore and Transient killer whale stocks are 422 and 346, respectively. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. The NWTRC activities are not expected to

occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of killer whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on these stocks.

Pygmy and Dwarf Sperm Whale

Acoustic analysis predicts that 4 pygmy or dwarf sperm whales will be behaviorally harassed by exposure to MFAS/HFAS or explosives. Dwarf and pygmy sperm whales in the NWTRC belong to the California/Oregon/Washington stocks. There are no population estimates for these stocks, however, this activity is anticipated to result only in a very limited number of level B harassment takes. The NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of pygmy and dwarf sperm whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on this stock.

Beaked Whales

Acoustic analysis predicts that 12 Baird's beaked whales, 14 Cuvier's beaked whales, and 14 Mesoplodont sp. will be taken by Level B harassment by exposure to MFAS/HFAS or explosives (1, 2, and 1 take each from explosives, relatively). Beaked whales in the NWTRC belong to the California/Oregon/Washington stocks. Census data and life history are too limited to suggest a population trend for individual species of Mesoplodont whales. Until better methods are developed for distinguishing the different mesoplodont species from one another, the management unit is defined to include all mesoplodont populations. The best population estimate for these stocks is 313, 2171, and 1024, respectively. Although no areas of specific importance for reproduction or feeding of beaked whales have been identified in the NWTRC, beaked whales are generally found in deep waters over the continental slope, oceanic seamounts, and areas with submarine escarpments (very seldom

over the continental shelf). Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of beaked whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on these stocks.

Short-Finned Pilot Whale

Acoustic analysis predicts that 2 pilot whales will be behaviorally harassed by exposure to MFAS/HFAS or explosives. Pilot whales are rare in the NWTRC and belong to the California/Oregon/Washington stocks. The best population estimate for these stocks is 245. Relative to the population size, this activity is anticipated to result only in a limited number of level B harassment takes. The NWTRC activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of short-finned pilot whales. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on these stocks.

Dolphins and Porpoises

The acoustic analysis predicts that the following numbers of Level B behavioral harassments of the associated species will occur: 4725 Dall's Porpoises, 119162 harbor porpoises, 1256 short-beaked common dolphin, 1256 short-beaked common dolphin, 734 northern right whale dolphin, 555 Pacific white-sided dolphin, and 40 striped dolphin. This estimate represents the total number of exposures and not necessarily the number of individuals exposed, as a single individual may be exposed multiple times over the course of a year. No bottlenose dolphins are expected to be taken based on the Navy's acoustic analysis.

Although a portion (147 Dall's Porpoises, 45 harbor porpoises, 42 short-beaked common dolphin, 18 northern right whale dolphin, 23 Pacific white-sided dolphin, and 1 striped dolphin) of the modeled Level B Harassment takes for all of these species is predicted to be in the form of TTS

from MFAS, NMFS believes it is unlikely that all of the individuals estimated will incur TTS because of the distance within which they would have to approach the active sonar source (approximately 140 m for the most powerful source), the fact that many animals will likely avoid active sonar sources to some degree, and the likelihood that Navy monitors would detect these animals prior to an approach within this distance and implement active sonar powerdown or shutdown. Navy lookouts will likely detect a group of dolphins given their relatively short dives, gregarious behavior, and large average group size. However, the Navy's proposed mitigation has a provision that allows the Navy to continue operation of MFAS if the animals are clearly bow-riding even after the Navy has initially maneuvered to try and avoid closing with the animals. Since these animals sometimes bow-ride they could potentially be exposed to levels associated with TTS as they approach or depart from bow-riding. As mentioned above and indicated in Table 5, some dolphin vocalizations might overlap with the MFAS/HFAS TTS frequency range (2–20 kHz), which could potentially temporarily decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFAS/HFAS.

Acoustic analysis also predicted that 58 Dall's Porpoises, 5 harbor porpoises, 23 short-beaked common dolphin, 7 northern right whale dolphin, 3 Pacific white-sided dolphin, and 1 striped dolphin would be exposed to sound or pressure from explosives at levels expected to result in TTS. For the same reasons noted above, NMFS anticipates that the Navy watchstanders would likely detect these species and implement the mitigation to avoid exposure. However, the range to TTS for a few of the larger explosives is larger than the associated exclusion zones for BOMBEX, MISSILEX, or SINKEX (see Table 3), and therefore NMFS anticipates that TTS might not be entirely avoided during those exercises.

Acoustic analysis also predicted that 3 Dall's porpoise, a harbor porpoise, 2 short-beaked dolphin, and one northern right whale dolphin might be exposed to sound or pressure from explosive detonations that would result in PTS or injury. For the same reasons listed above (group size, dive and social behavior), NMFS anticipates that the Navy watchstanders would detect these species and implement the mitigation

measures to avoid exposure. In the case of all explosive exercises, the exclusion zones are 2–12 times larger than the estimated distance at which an animal would be exposed to injurious sounds or pressure waves.

No areas of specific importance for reproduction or feeding for dolphins have been identified in the NWTRC. Table 4 shows the estimated abundance of the affected stocks of dolphins and porpoise.

Of note, the number of harbor porpoises behaviorally harassed by exposure to MFAS/HFAS is higher than the other species (and, in fact, suggests that every member of the stock could potentially be taken by Level B harassment multiple times) because of the low Level B Harassment threshold, which essentially makes the ensounded area of effects significantly larger than for the other species. However, the fact that the threshold is a step function and not a curve (and assuming uniform density) means that the vast majority of the takes occur in the very lowest levels that exceed the threshold (approximately 80% of the takes are from exposures to 120 dB to 126 dB, and then approximately 80% of those takes are in the 126 dB to 132 dB range, etc.), which means that the anticipated effects are not expected to be severe.

Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on these stocks.

Pinnipeds

The Navy's acoustic analysis predicts that the following numbers of Level B harassments (from exposure to MFAS/HFAS or explosives) of the associated species will occur: 120 Steller sea lion, 1,365 Northern fur seal, 286 California sea lion, 378 northern elephant seals, and 586 Pacific harbor seal. This estimate represents the total number of exposures and not necessarily the number of individuals exposed, as a single individual may be exposed multiple times over the course of a year.

The model further predicted that of those Level B harassments listed above, 290 Pacific harbor seals and 1 northern fur seal, of the modeled Level B Harassment takes for all of these species were predicted to be in the form of TTS from MFAS exposure. NMFS believes it unlikely that northern fur seals, for which the TTS threshold is 206 dB SEL, will incur TTS because of the distance within which they would have to approach the MFAS source (approximately 37 m for the most

powerful source), the fact that many animals will likely avoid active sonar sources to some degree, and the likelihood that Navy monitors would detect these pinnipeds (because of the relatively short duration of their dives and their tendency to rest near the surface) prior to an approach within this distance and implement active sonar powerdown or shutdown. For harbor seals, more animals will be exposed to levels associated with TTS because of the lower threshold (183 SEL) that can be heard approximately 1,400 m from the highest powered AN/SQS–53C source. As mentioned above and indicated in Table 5, some pinniped vocalizations might overlap with the MFAS/HFAS TTS frequency range (2–20 kHz), which could potentially temporarily decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals.

However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFAS/HFAS.

The acoustic analysis also predicted that 1 Pacific harbor seal would be exposed to MFAS/HFAS sound levels that would result in Level A Harassment (PTS—injury). However, because of the distance within which they would have to approach the MFAS source (approximately 50 m for the most powerful source) and the fact that animals will likely avoid active sonar sources to some degree, NMFS does not believe that any animals will incur PTS or be otherwise injured by MFAS/HFAS. However, the Navy has requested authorization for one Level A take for Pacific harbor seals, so NMFS is considering it in our analysis.

Acoustic analysis also predicted that of the total level B harassment takes listed in the first paragraph, 44 Northern fur seals, 1 California sea lion, and 29 northern elephant seals would be exposed to sound or pressure from explosives at levels expected to result in TTS. For the same reasons listed above, NMFS anticipates that the Navy watchstanders would likely detect the majority of the individual northern elephant seals, northern fur seals, and California sea lions and implement the mitigation measures to avoid exposure. However, the range to TTS for a few of the larger explosives is larger than the associated exclusion zones for BOMBEX, MISSILEX, or SINKEX (see Table 3), therefore NMFS anticipates that some TTS might not be avoided during those exercises. Acoustic analysis also predicted that 2 northern elephant seals and 1 northern fur seal might be exposed to levels of sound or pressure from explosives that would

result in PTS or other injury. NMFS anticipates that the Navy watchstanders would likely detect these species and implement the mitigation measures to avoid exposure. In the case of all explosive exercises, the exclusion zones are 2–12 times larger than the estimated distance at which an animal would be exposed to injurious sounds or pressure waves. However, an authorization for Level A take of these individuals allows the Navy to remain in compliance in the unlikely event that animals go undetected and enter an area with injurious energy or pressure levels, and therefore NMFS considers it in our analysis.

Steller sea lions are MMPA depleted and ESA-listed with a decreasing population and they have designated critical habitat within the NWTRC. A small number, compared to the population estimate, are predicted to be taken by behavioral disturbance, and one potentially by injury, although NMFS does not anticipate this. Of note, the critical habitat (3 haulouts) has limitations for air approach distances and by sea approach distances and the Navy abides by these restrictions.

Generally speaking, pinniped stocks in the NWTRC are thought to be stable or increasing. Based on the general information contained in the Negligible Impact Analysis section and this stock-specific summary of the effects of the takes, NMFS has preliminarily determined that the Navy's specified activities will have a negligible impact on these stocks.

Preliminary Determination

Negligible Impact

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the total taking from Navy training exercises utilizing MFAS/HFAS and underwater explosives in the NWTRC will have a negligible impact on the affected species or stocks. NMFS has proposed regulations for these exercises that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Subsistence Harvest of Marine Mammals

NMFS has preliminarily determined that the issuance of 5-year regulations and subsequent LOAs for Navy training exercises in the NWTRC would not have

an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use for any Alaska Natives or Tribal member in the Northwest (e.g., Oregon, Washington, and northern California). Specifically, the Navy's exercises would not affect any Alaskan Native because the activities will be limited to waters off the coast of Washington, Oregon, and northern California, areas outside of traditional Alaskan Native hunting grounds. Moreover, there are no cooperative agreements in force under the MMPA or Whaling Convention Act that would allow for the subsistence harvest of marine mammals in waters off the Northwest coast. Consequently, this action would not result in an unmitigable adverse impact on the availability of the affected species or stocks for taking for subsistence uses in the Northwest.

As noted above, NMFS will consider all comments, suggestions and/or concerns submitted by the public during the proposed rulemaking comment period to help inform our final decision, particularly with respect to our negligible impact determination and the proposed mitigation and monitoring measures.

ESA

There are seven marine mammal species and one sea turtle species that are listed as endangered under the ESA with confirmed or possible occurrence in the study area: Humpback whale, sei whale, fin whale, blue whale, sperm whale, southern resident killer whale, Steller sea lion, and the leatherback sea turtle. The Navy has begun consultation with NMFS pursuant to section 7 of the ESA, and NMFS will also consult internally on the issuance of an LOA under section 101(a)(5)(A) of the MMPA for NWTRC activities. Consultation will be concluded prior to a determination on the issuance of the final rule and an LOA.

NEPA

NMFS has participated as a cooperating agency on the Navy's Draft Environmental Impact Statement (DEIS) for the NWTRC, which was published on December 29, 2008. The Navy's DEIS is posted on NMFS' Web site: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. NMFS intends to adopt the Navy's Final EIS (FEIS), if adequate and appropriate. Currently, we believe that the adoption of the Navy's FEIS will allow NMFS to meet its responsibilities under NEPA for the issuance of an LOA for NWTRC. If the Navy's FEIS is deemed not to be adequate, NMFS would supplement the

existing analysis to ensure that we comply with NEPA prior to the issuance of the final rule or LOA.

Classification

This action does not contain any collection of information requirements for purposes of the Paperwork Reduction Act.

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed

rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act (RFA). Any requirements imposed pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy. NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

Dated: July 2, 2009.

James Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 218 continues to read as follows:

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

2. Subpart M is added to part 218 to read as follows:

Subpart M—Taking and Importing Marine Mammals; U.S. Navy's Northwest Training Range Complex (NWTRC)

- Sec.
218.110 Specified activity and specified geographical area.
218.111 [Reserved]
218.112 Permissible methods of taking.
218.113 Prohibitions.
218.114 Mitigation.
218.115 Requirements for monitoring and reporting.
218.116 Applications for Letters of Authorization.
218.117 Letters of Authorization.
218.118 Renewal of Letters of Authorization and adaptive management.
218.119 Modifications to Letters of Authorization.

Subpart M—Taking and Importing Marine Mammals; U.S. Navy's Northwest Training Range Complex (NWTRC)

§ 218.110 Specified activity and specified geographical area.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the Offshore area of the Northwest Training Range Complex (NWTRC) (as depicted in Figure ES-1 in the Navy's Draft Environmental Impact Statement for NWTRC), which is bounded by 48°30' N. lat.; 130°00' W. long.; 40°00' N. lat.; and on the east by 124°00' W. long or by the shoreline where the shoreline extends west of 124°00' W. long (excluding the Strait of Juan de Fuca (east of 124°40' W. long), which is not included in the Offshore area).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

- (1) The use of the following mid-frequency active sonar (MFAS) sources, high frequency active sonar (HFAS) sources for U.S. Navy anti-submarine warfare (ASW) and mine warfare (MIW) training, in the amounts and in the locations indicated below ($\pm 10\%$):
(i) AN/SQS-53 (hull-mounted active sonar)—up to 215 hours over the course of 5 years (an average of 43 hours per year);

(ii) AN/SQS-56 (hull-mounted active sonar)—up to 330 hours over the course of 5 years (an average of 65 hours per year);

(iii) SSQ-62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 4430 sonobuoys over the course of 5 years (an average of 886 sonobuoys per year)

(iv) MK-48 (heavyweight torpedoes)—up to 10 torpedoes over the course of 5 years (an average of 2 torpedoes per year);

(v) AN/BQS-15 (mine detection and submarine navigational sonar)—up to 210 hours over the course of 5 years (an average of 42 hours per year);

(vi) AN/SSQ-125 (AEER)—up to 745 buoys deployed over the course of 5 years (total combined with the AN/SSQ-110A (IEER)) (an average of 149 per year);

(vii) Range Pingers—up to 900 hours over the course of 5 years (an average of 180 hours per year); and

(viii) PUTR Uplink—up to 750 hours over the course of 5 years (an average of 150 hours per year).

(2) The detonation of the underwater explosives indicated in this paragraph (c)(2)(i) conducted as part of the training events indicated in this paragraph (c)(2)(ii):

(i) Underwater Explosives

- (A) 5" Naval Gunfire (9.5 lbs);
(B) 76 mm rounds (1.6 lbs);
(C) Maverick (78.5 lbs);
(D) Harpoon (448 lbs);
(E) MK-82 (238 lbs);
(F) MK-48 (851 lbs);
(G) Demolition Charges (2.5 lbs);
(H) AN/SSQ-110A (IEER explosive sonobuoy—5 lbs);
(I) HARM;
(J) Hellfire;
(K) SLAM; and
(L) GBU 10, 12, and 16.

(ii) Training Events

(A) Surface-to-surface Gunnery Exercises (S-S GUNEX)—up to 1700 exercises over the course of 5 years (an average of 340 per year).

(B) Bombing Exercises (BOMBEX)—up to 150 exercises over the course of 5 years (an average of 30 per year).

(C) Sinking Exercises (SINKEX)—up to 10 exercises over the course of 5 years (an average of 2 per year).

(D) Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) Systems—up to 60 exercises (total combined with the AN/SSQ-125A (AEER)) over the course of 5 years (an average of 12 per year).

§ 218.111 [Reserved]

§ 218.112 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.117 of this chapter, the Holder of

the Letter of Authorization (hereinafter "Navy") may incidentally, but not intentionally, take marine mammals within the area described in § 218.110(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 218.110(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.110(c) is limited to the following species, by the indicated method of take and the indicated number of times (estimated based on the authorized amounts of sound source operation):

(1) Level B Harassment ($\pm 10\%$ of the Take Estimate Indicated Below)

(i) Mysticetes

(A) Humpback whale (*Megaptera novaeangliae*)—75 (an average of 15 annually);

(B) Fin whale (*Balaenoptera physalus*)—720 (an average of 144 annually);

(C) Blue whale (*Balaenoptera musculus*)—95 (an average of 19 annually);

(D) Sei whale (*Balaenoptera borealis*)—5 (an average of 1 annually);

(E) Minke whale (*Balaenoptera acutorostrata*)—45 (an average of 9 annually); and

(F) Gray whale (*Eschrichtius robustus*)—20 (an average of 4 annually).

(ii) Odontocetes

(A) Sperm whales (*Physeter macrocephalus*)—635 (an average of 127 annually);

(B) Killer whale (*Orcinus orca*)—70 (an average of 14 annually);

(C) Pygmy or dwarf sperm whales (*Kogia brevicaeps* or *Kogia sima*)—20 (an average of 94 annually);

(D) Mesoplodont beaked whales—75 (an average of 15 annually);

(E) Cuvier's beaked whale (*Ziphius cavirostris*)—70 (an average of 14 annually);

(F) Baird's beaked whale (*Berardius bairdii*)—65 (an average of 13 annually);

(G) Short-finned pilot whale (*Globicephala macrorhynchus*)—10 (an average of 2 annually);

(H) Striped dolphin (*Stenella coeruleoalba*)—400 (an average of 40 annually);

(I) Short-beaked common dolphin (*Globicephala macrorhynchus*)—6280 (an average of 1256 annually);

(J) Risso's dolphin (*Grampus griseus*)—500 (an average of 100 annually);

(K) Northern right whale dolphin (*Lissodelphis borealis*)—3705 (an average of 741 annually);

(L) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)—2855 (an average of 571 annually);

(M) Dall's porpoise (*Phocoenoides dalli*)—23780 (an average of 4752 annually); and

(N) Harbor Porpoise (*Phocoena phocoena*)—596370 (an average of 119274 annually).

(ii) Pinnipeds

(A) Northern elephant seal (*Mirounga angustirostris*)—1890 (an average of 378 annually);

(B) Pacific harbor seal (*Phoca vitulina*)—2930 (an average of 586 annually);

(C) California sea lion (*Zalophus californianus*)—1430 (an average of 286 annually);

(D) Northern fur seal (*Callorhinus ursinus*)—6825 (an average of 1365 annually); and

(E) Steller sea lion (*Eumetopias jubatus*)—600 (an average of 120 annually).

(2) Level A Harassment

(i) Fin whale—5 (an average of 1 annually);

(ii) Blue Whale—5 (an average of 1 annually);

(iii) Sperm whale—5 (an average of 1 annually);

(iv) Dall's Porpoise—15 (an average of 3 annually);

(v) Harbor Porpoise—5 (an average of 1 annually);

(vi) Northern right whale dolphin—5 (an average of 1 annually);

(vii) Short-beaked common dolphin—10 (an average of 2 annually);

(viii) Northern elephant seal—10 (an average of 2 annually);

(ix) Pacific harbor seal—5 (an average of 1 annually); and

(x) Northern fur seal—5 (an average of 1 annually).

§ 218.113 Prohibitions.

No person in connection with the activities described in § 218.110 may:

(a) Take any marine mammal not specified in § 218.112(c);

(b) Take any marine mammal specified in § 218.112(c) other than by incidental take as specified in §§ 218.112(c)(1) and (c)(2);

(c) Take a marine mammal specified in § 218.112(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 218.117 of this chapter.

§ 218.114 Mitigation.

(a) When conducting training and utilizing the sound sources or explosives identified in § 218.110(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 218.117 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) Navy's General Maritime Measures for All Training at Sea

(i) Personnel Training (for All Training Types)

(A) All commanding officers (COs), executive officers (XOs), lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-submarine Warfare (ASW)/Mine Warfare (MIW) helicopter crews shall complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel. (B) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Education and Training Command [NAVEDTRA] 12968-D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced lookout. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). Personnel being trained as lookouts can be counted among required lookouts as long as supervisors monitor their progress and performance.

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

(ii) Operating Procedures and Collision Avoidance

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel

training requirement and general marine species protective measures.

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

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

(D) On surface vessels equipped with a multi-function active sensor, pedestal mounted "Big Eye" (20x110) binoculars shall be properly installed and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

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

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

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

(H) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

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

a closing of the distance to the detected marine mammal.

(2) Navy's Measures for MFAS Operations

(i) Personnel Training (for MFAS Operations)

(A) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training material prior to use of mid-frequency active sonar.

(B) All COs, XOs, and officers standing watch on the bridge shall have reviewed the Marine Species Awareness Training material prior to a training event employing the use of mid-frequency active sonar.

(C) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Educational Training [NAVEDTRA], 12968-D).

(D) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). This does not forbid personnel being trained as lookouts from being counted as those listed in previous measures so long as supervisors monitor their progress and performance.

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

(ii) Lookout and Watchstander Responsibilities

(A) On the bridge of surface ships, there shall always be at least three people on watch whose duties include observing the water surface around the vessel.

(B) All surface ships participating in ASW training events shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as marine mammal lookouts.

(C) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

(D) Personnel on lookout shall be responsible for reporting all objects or

anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine species that may need to be avoided as warranted. Personnel on lookout and officers on watch on the bridge will have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(iii) Operating Procedures (for MFAS Operations)

(A) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(B) During mid-frequency active sonar operations, personnel shall utilize all available sensor and optical systems (such as night vision goggles) to aid in the detection of marine mammals.

(C) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(D) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yds (183 m) of the sonobuoy.

(E) Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(F) *Safety Zones*—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) within or closing to inside 1,000 yds (914 m) of the sonar dome (the bow), the ship or submarine shall limit active transmission levels to at least 6 decibels (dB) below normal operating levels.

(1) Ships and submarines shall continue to limit maximum transmission levels by this 6-dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(2) Should a marine mammal be detected within or closing to inside 500 yds (457 m) of the sonar dome, active sonar transmissions shall be limited to at least 10 dB below the equipment's normal operating level. Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(3) Should the marine mammal be detected within or closing to inside 200 yds (183 m) of the sonar dome, active sonar transmissions shall cease. Sonar shall not resume until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(4) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the OOD concludes that dolphins or porpoises are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(5) If the need for power-down should arise as detailed in "Safety Zones" above, the Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of what level above 235 dB active sonar was being operated).

(G) Prior to start up or restart of active sonar, operators will check that the Safety Zone radius around the sound source is clear of marine mammals.

(H) *Active sonar levels (generally)*—Navy shall operate active sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(3) Navy's Measures for Underwater Detonations

(i) Surface-to-Surface Gunnery (Non-Explosive Rounds)

(A) A 200-yd (183 m) radius buffer zone shall be established around the intended target.

(B) From the intended firing position, trained lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable.

(C) If applicable, target towing vessels shall maintain a lookout. If a marine mammal is sighted in the vicinity of the

exercise, the tow vessel shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(D) The exercise shall be conducted only when the buffer zone is visible and marine mammals are not detected within the target area and the buffer zone.

(ii) Surface-to-Air Gunnery (Explosive and Non-Explosive Rounds)

(A) Vessels shall orient the geometry of gunnery exercises in order to prevent debris from falling in the area of sighted marine mammals.

(B) Vessels will expedite the recovery of any parachute deploying aerial targets to reduce the potential for entanglement of marine mammals.

(C) Target towing aircraft shall maintain a lookout. If a marine mammal is sighted in the vicinity of the exercise, the tow aircraft shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(iii) Air-to-Surface At-Sea Bombing Exercises (Explosive and Non-Explosive)

(A) If surface vessels are involved, trained lookouts shall survey for floating kelp and marine mammals. Ordnance shall not be targeted to impact within 1,000 yds (914 m) of known or observed floating kelp or marine mammals.

(B) A 1,000 yd (914-m) radius buffer zone shall be established around the intended target.

(C) Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area shall be made by flying at 1,500 ft (457 m) or lower, if safe to do so, and at the slowest safe speed. Release of ordnance through cloud cover is prohibited; aircraft must be able to actually see ordnance impact areas. Survey aircraft should employ most effective search tactics and capabilities.

(D) The exercise will be conducted only if marine mammals are not visible within the buffer zone.

(iv) Air-to-Surface Missile Exercises (Explosive and Non-Explosive)

(A) Ordnance shall not be targeted to impact within 1,800 yds (1646 m) of observed floating kelp.

(B) Aircraft shall visually survey the target area for marine mammals. Visual inspection of the target area shall be made by flying at 1,500 (457 m) feet or lower, if safe to do so, and at slowest safe speed. Firing or range clearance aircraft must be able to actually see ordnance impact areas. Explosive ordnance shall not be targeted to impact

within 1,800 yds (1646 m) of sighted marine mammals.

(v) Demolitions, Mine Warfare, and Mine Countermeasures (Up to a 2.5-lb Charge)

(A) *Exclusion Zones*—All Mine Warfare and Mine Countermeasures Operations involving the use of explosive charges must include exclusion zones for marine mammals to prevent physical and/or acoustic effects to those species. These exclusion zones shall extend in a 700-yard arc radius around the detonation site.

(B) *Pre-Exercise Surveys*—For Demolition and Ship Mine Countermeasures Operations, pre-exercise surveys shall be conducted within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air, and personnel shall be alert to the presence of any marine mammal. Should such an animal be present within the survey area, the explosive event shall not be started until the animal voluntarily leaves the area. The Navy will ensure the area is clear of marine mammals for a full 30 minutes prior to initiating the explosive event. Personnel will record any marine mammal observations during the exercise as well as measures taken if species are detected within the exclusion zone.

(C) *Post-Exercise Surveys*—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

(D) *Reporting*—If there is evidence that a marine mammal may have been stranded, injured or killed by the action, Navy training activities shall be immediately suspended and the situation immediately reported by the participating unit to the Officer in Charge of the Exercise (OCE), who will follow Navy procedures for reporting the incident to the Commander, Pacific Fleet, Commander, Navy Region Northwest, Environmental Director, and the chain of command. The situation shall also be reported to NMFS (see Stranding Plan for details).

(vi) Sink Exercise

(A) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(B) An exclusion zone with a radius of 1.0 nm (1.9 km) would be established around each target. This exclusion zone is based on calculations using a 990-lb (450-kg) H6 net explosive weight high explosive source detonated 5 ft (1.5 m) below the surface of the water, which

yields a distance of 0.85 nm (1.57 km) (cold season) and 0.89 nm (1.65 km) (warm season) beyond which the received level is below the 182 decibels (dB) re: 1 micropascal squared-seconds ($\mu\text{Pa}^2\text{-s}$) threshold established for the WINSTON S. CHURCHILL (DDG 81) shock trials (U.S. Navy, 2001). An additional buffer of 0.5 nm (0.9 km) would be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which would extend beyond the buffer zone by an additional 0.5 nm (0.9 km), would be surveyed. Together, the zones extend out 2 nm (3.7 km) from the target.

(C) A series of surveillance overflights shall be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol shall be as follows:

(1) Overflights within the exclusion zone shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy's Search and Rescue Tactical Aid, which provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.

(2) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team would have completed the Navy's marine mammal training program for lookouts.

(3) In addition to the overflights, the exclusion zone shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring would be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals (particularly sperm whales) in the vicinity of the exercise. The sonobuoys shall be re-seeded as necessary throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE would be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

(4) On each day of the exercise, aerial surveillance of the exclusion and safety zones shall commence 2 hours prior to the first firing.

(5) The results of all visual, aerial, and acoustic searches shall be reported

immediately to the OCE. No weapons launches or firing may commence until the OCE declares the safety and exclusion zones free of marine mammals.

(6) If a marine mammal observed within the exclusion zone is diving, firing would be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes have elapsed. After 30 minutes, if the animal has not been re-sighted it would be assumed to have left the exclusion zone. The OCE would determine if the listed species is in danger of being adversely affected by commencement of the exercise.

(7) During breaks in the exercise of 30 minutes or more, the exclusion zone shall again be surveyed for any marine mammal. If marine mammals are sighted within the exclusion zone, the OCE shall be notified, and the procedure described above would be followed.

(8) Upon sinking of the vessel, a final surveillance of the exclusion zone shall be monitored for 2 hours, or until sunset, to verify that no marine mammals were harmed.

(D) Aerial surveillance shall be conducted using helicopters or other aircraft based on necessity and availability. The Navy has several types of aircraft capable of performing this task; however, not all types are available for every exercise. For each exercise, the available asset best suited for identifying objects on and near the surface of the ocean would be used. These aircraft would be capable of flying at the slow safe speeds necessary to enable viewing of marine vertebrates with unobstructed, or minimally obstructed, downward and outward visibility. The exclusion and safety zone surveys may be cancelled in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

(E) Every attempt would be made to conduct the exercise in sea states that are ideal for marine mammal sighting, Beaufort Sea State 3 or less. In the event of a 4 or above, survey efforts shall be increased within the zones. This shall be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.

(F) The exercise shall not be conducted unless the exclusion zone could be adequately monitored visually.

(G) In the event that any marine mammals are observed to be harmed in the area, a detailed description of the animal shall be taken, the location noted, and if possible, photos taken.

This information shall be provided to

NMFS via the Navy's regional environmental coordinator for purposes of identification (see the Stranding Plan for detail).

(H) An after action report detailing the exercise's time line, the time the surveys commenced and terminated, amount, and types of all ordnance expended, and the results of survey efforts for each event shall be submitted to NMFS.

(vii) Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER)

(A) Crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search shall be conducted at an altitude below 457 m (500 yd) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft operations, crews are allowed to conduct coordinated area clearances.

(B) Crews shall conduct a minimum of 30 minutes of visual and aural monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(C) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 914 m (1,000 yd) of observed marine mammal activity, the Navy shall deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 914 m (1,000 yd) of the intended post position, the Navy shall co-locate the explosive source sonobuoy (AN/SSQ-110A) (source) with the receiver.

(D) When operationally feasible, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of RF range of these sensors.

(E) *Aural Detection*—If the presence of marine mammals is detected aurally, then that shall cue the Navy aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

(F) *Visual Detection*—If marine mammals are visually detected within 914 m (1,000 yd) of the explosive source sonobuoy (AN/SSQ-110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 914 m (1,000 yd) safety buffer. Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 914 m (1,000 yd) safety buffer.

(G) Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the "Payload 1 Release" command followed by the "Payload 2 Release" command. Aircrews shall refrain from using the "Scuttle" command when two payloads remain at a given post. Aircrews will ensure that a 914 m (1,000 yd) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(H) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(I) The Navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ-110A) that can not be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(J) Mammal monitoring shall continue until out of own-aircraft sensor range.

(viii) Memorandum of Agreement (MOA)

The Navy and NMFS shall develop an MOA, and other mechanism consistent with Federal fiscal law requirements (and all other applicable laws), that allows the Navy to assist NMFS with the Phase 1 and 2 Investigations of USEs through the provision of in-kind services, such as (but not limited to) the use of plane/boat/truck for transport of personnel involved in the stranding response or investigation or animals, use of Navy property for necropsies or burial, or assistance with aerial surveys to discern the extent of a USE. The Navy may assist NMFS with the Investigations by providing one or more of the in-kind services outlined in the MOA, when available and logistically feasible and when the assistance does not negatively affect Fleet operational commitments.

(b) [Reserved]

§218.115 Requirements for monitoring and reporting.

(a) The Navy is required to cooperate with the NMFS, and any other Federal, State or local agency monitoring the impacts of the activity on marine mammals.

(b) *General Notification of Injured or Dead Marine Mammals*—Navy personnel shall ensure that NMFS is

notified immediately (*see* Communication Plan) or as soon as clearance procedures allow) if an injured, stranded, or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). In the event that an injured, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or during or shortly after, MFAS, HFAS, or underwater explosive detonations, the Navy will report the same information as listed above as soon as operationally feasible and clearance procedures allow.

(c) *General Notification of Ship Strike*—In the event of a ship strike by any Navy vessel, at any time or place, the Navy shall do the following:

(1) Immediately report to NMFS the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead (or unknown)

(2) Report to NMFS as soon as operationally feasible the size and length of animal, an estimate of the injury status (ex., dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status.

(3) Report to NMFS the vessel length, speed, and heading as soon as feasible.

(4) Provide NMFS a photo or video, if equipment is available

(d) *Event Communication Plan*—The Navy shall develop a communication plan that will include all of the communication protocols (phone trees, etc.) and associated contact information required for NMFS and the Navy to carry out the necessary expeditious communication required in the event of a stranding or ship strike, including as described in the proposed notification measures above.

(e) The Navy must conduct all monitoring and/or research required under the Letter of Authorization including abiding by the NWTRC Monitoring Plan (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>)

(f) *Report on Monitoring required in paragraph (c) of this section*—The Navy shall submit a report annually on September 1 describing the implementation and results (through June 1 of the same year) of the monitoring required in paragraph (c) of

this section. Navy will standardize data collection methods across ranges to allow for comparison in different geographic locations.

(g) *Annual NWTRC Report*—The Navy will submit an Annual NWTRC Report on October 1 of every year (covering data gathered through August 1). This report shall contain the subsections and information indicated below.

(1) *ASW Summary*—This section shall include the following information as summarized from non-major training exercises (unit-level exercises, such as TRACKEXs and MIW):

(i) *Total Hours*—Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.))

(ii) *Cumulative Impacts*—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major training (*i.e.*, ULT) utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across NWTRC. The Navy shall include (in the NWTRC annual report) a brief annual progress update on the status of the development of an effective and unclassified method to report this information until an agreed-upon (with NMFS) method has been developed and implemented.

(h) *Sinking Exercises (SINKEXs)*—This section shall include the following information for each SINKEX completed that year:

(1) Exercise Info;

(i) Location;

(ii) Date and time exercise began and ended;

(iii) Total number and types of rounds expended/explosives detonated;

(iv) Number and types of passive acoustic sources used in exercise;

(v) Total hours of passive acoustic search time;

(vi) Number and types of vessels, aircraft, etc., participating in exercise;

(vii) Wave height in feet (high, low and average during exercise); and

(ix) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted

(2) Individual Marine Mammal Observation during SINKEX (by Navy Lookouts) Information

(i) Location of sighting;

(ii) Species (if not possible—indication of whale/dolphin/pinniped);

(iii) Number of individuals;
 (iv) Calves observed (y/n);
 (v) Initial detection sensor;
 (vi) Length of time observers maintained visual contact with marine mammal;
 (vii) Wave height;
 (viii) Visibility;
 (ix) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;
 (x) Distance of marine mammal from actual detonations (or target spot if not yet detonated)—use four categories to define distance:
 (A) The modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (TBD m for SINKEK in NWTRC);
 (B) The required exclusion zone (1 nm for SINKEK in NWTRC);
 (C) The required observation distance (if different than the exclusion zone (2 nm for SINKEK in NWTRC); and
 (D) Greater than the required observed distance. For example, in this case, the observer would indicate if < TBD m, from 738 m – 1 nm, from 1 nm – 2 nm, and > 2 nm.
 (xi) *Observed behavior*—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming *etc.*), including speed and direction.
 (xii) *Resulting mitigation implementation*—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.
 (xiii) If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection.
 (i) Improved Extended Echo-Ranging System (IEER) Summary
 (1) Total number of IEER events conducted in NWTRC;
 (2) Total expended/detonated rounds (buoys); and
 (3) Total number of self-scuttled IEER rounds.
 (f) *Explosives Summary*—The Navy is in the process of improving the methods used to track explosive use to provide increased granularity. To the extent practicable, the Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.
 (1) Total annual number of each type of explosive exercise (of those identified

as part of the “specified activity” in this final rule) conducted in NWTRC; and
 (2) Total annual expended/detonated rounds (missiles, bombs, *etc.*) for each explosive type.
 (k) *NWTRC 5-Yr Comprehensive Report*—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which annual reports are required (Annual NWTRC Exercise Reports and NWTRC Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2013), covering activities that have occurred through June 1, 2013.
 (l) *Comprehensive National ASW Report*—By June, 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans for the Northwest Training Range Complex, the Southern California Range Complex, the Atlantic Fleet Active Sonar Training, the Hawaii Range Complex, the Marianas Islands Range Complex, and the Gulf of Alaska.
§ 218.116 Applications for Letters of Authorization.
 To incidentally take marine mammals pursuant to these regulations, the U.S. Citizen (as defined by § 216.103) conducting the activity identified in § 218.110(c) (*i.e.*, the Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 218.117 or a renewal under § 218.118.
§ 218.117 Letters of Authorization.
 (a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 218.118.
 (b) Each Letter of Authorization shall set forth:
 (1) Permissible methods of incidental taking;
 (2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.*, mitigation); and
 (3) Requirements for mitigation, monitoring and reporting.
 (c) Issuance and renewal of the Letter of Authorization shall be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.118 Renewal of Letters of Authorization and adaptive management.
 (a) A Letter of Authorization issued under § 216.106 and § 218.177 of this chapter or the activity identified in § 218.170(c) will be renewed annually upon:
 (1) Notification to NMFS that the activity described in the application submitted under § 218.246 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;
 (2) Receipt of the monitoring reports and notifications within the indicated timeframes required under § 218.115(b through j); and
 (3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 218.114 and the Letter of Authorization issued under §§ 216.106 and 218.117 of this chapter, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.
 (b) *Adaptive Management*—Based on new information, NMFS may modify or augment the existing mitigation measures if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable. Similarly, NMFS may coordinate with the Navy to modify or augment the existing monitoring requirements if the new data suggest that the addition of a particular measure would likely fill in a specifically important data gap. The following are some possible sources of new and applicable data:
 (1) Results from the Navy's monitoring from the previous year (either from the NWTRC or other locations);
 (2) Results from specific stranding investigations (either from the NWTRC Range Complex or other locations, and involving coincident MFAS/HFAS training or not involving coincident use) or NMFS' long term prospective stranding investigation discussed in the preamble to this proposed rule;
 (3) Results from general marine mammal and sound research (funded by the Navy or otherwise);
 (4) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.
 (c) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 218.118 of this chapter indicates that a substantial modification to the described work, mitigation or

monitoring undertaken during the upcoming season will occur, or if NMFS utilizes the adaptive management mechanism addressed in paragraph (b) of this section to modify or augment the mitigation or monitoring measures, the NMFS shall provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization would be restricted to:
 (1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and
 (2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(d) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.
§ 218.119 Modifications to Letters of Authorization.
 (a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 218.117 of this chapter and subject to the provisions of this subpart, shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.118, without

modification (except for the period of validity), is not considered a substantive modification.
 (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 § 218.110(b), a Letter of Authorization issued pursuant to §§ 216.106 and 218.117 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.
 [FR Doc. E9–16301 Filed 7–10–09; 8:45 am]
BILLING CODE 3510–22–P



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350-2000

IN REPLY REFER TO

5090
Ser N456M/8U158135
21 April 2008

Mr. P. Michael Payne
Division Chief
Permits, Conservation, and Education Division
National Marine Fisheries Service (NMFS)
National Oceanic and Atmospheric Administration
B-SSMC3, Room 13821
1315 East-West Highway
Silver Springs, MD 20910

Dear Mr. Payne:

The Commander, U.S. Pacific Fleet (CFP) is preparing an Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) to assess the potential environmental impacts associated with sustainable range usage and enhancements within the Navy's Northwest Training Range Complex (NWTRC). Specifically, the proposed action is to support and conduct current and emerging training and Research, Development, Test, and Evaluation (RDT&E) activities in the NWTRC and upgrade and modernize range complex capabilities to enhance and sustain navy training and testing. A collection of actions will be evaluated within the EIS/OEIS.

The No Action Alternative is the continuation of training activities and major range events in the NWTRC. Two action alternatives are proposed to accomplish the Proposed Action. Alternative 1 consists of an increase in the number of training activities from levels described in the No Action Alternative, along with force structure changes associated with the introduction of new weapon systems, vessels, and aircraft into the Fleet. Alternative 2 consists of all elements of Alternative 1 with an increase in the number of training activities and implementation of range enhancements.

The purpose of the proposed action is to:

- Achieve and maintain Fleet readiness using the NWTRC to support and conduct current, emerging, and future training activities and research, development, test, and evaluation (RDT&E) operations (primarily Unmanned Aerial Vehicles);
- Expand Warfare Missions supported by the NWTRC, consistent with the requirements of the Fleet Readiness Training Plan (FRTTP) and other transformation initiatives; and
- Upgrade/modernize existing range capabilities to enhance and sustain Navy training and RDT&E operations.

More specific descriptions of the alternatives are included enclosure (1).

Conduct of these activities will likely result in acoustic exposure of marine mammals listed under the Marine Mammal Protection Act (MMPA) from Mid-Frequency Active Sonar (MFA) and impulsive sources, and likely requires a Letter of Authorization (LOA). As such, the Navy will be submitting an LOA request to your office in the coming months for these activities. It is expected that species for which an LOA is sought will include species listed under the Endangered Species Act.

As applicant for a Letter of Authorization, the Navy requests your office initiate early consultation procedures with the Endangered Species Division, in accordance with Section 7(a)(3) of the Endangered Species Act and its implementing regulation at 50 CFR §402.11. In accordance with these regulations, the attached preliminary Draft Description of the Proposed Action and Alternatives for the NWTRC EIS/OEIS serves as the Navy's definitive proposal outlining the action (enclosure (1)). As previously stated, the effects of the proposed action for purposes of the MMPA permit will be from exposure to acoustic energy from MFA sonar and impulsive sources. The level of magnitude of these effects is still being modeled, and will be included in the Navy's request for an LOA.

Title 10, Section 5062 of the United States Code requires the Navy to be "organized, trained, and equipped primarily for prompt and sustained combat incident to operations at sea." The current and emerging training and RDT&E activities in the NWTRC and proposed enhancements of the NWTRC capabilities as proposed will be used to meet this legal requirement. Thus, in accordance with 50 CFR §402.11(b), this letter serves as the Navy's statement that it intends to implement the proposal



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350-2000

IN REPLY REFER TO

5090
Ser N456K/8U158345
14 November 2008

Ms. Angela Somma
Division Chief Endangered Species Division
Office of Protected Resources
National Oceanic and Atmospheric Administration
National Marine Fisheries Service (NMFS)
B-SSMC3 Room 13821
1315 East-West Highway
Silver Springs, MD 20910-3282

Dear Ms. Somma:

The Commander, U.S. Pacific Fleet (CPF) is preparing an Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) to assess the potential environmental impacts associated with sustainable range usage and enhancements within the Navy's Northwest Training Range Complex (NWTRC). Specifically, the proposed action is to support and conduct current and emerging training and Research, Development, Test, and Evaluation (RDT&E) activities in the NWTRC and upgrade and modernize range complex capabilities to enhance and sustain navy training and testing. Through our cooperating agency agreement, the Navy and National Marine Fisheries Service (NMFS) are working together to develop these DEISs/OEISs prior to release for public comment.

In a letter dated April 21, 2008, the Navy requested the NMFS' permit division initiate early consultation in anticipation of submitting a Marine Mammal Protection Act request for rulemaking and Letters of Authorization. In accordance with 50 CFR §401.12(f), the Navy is submitting its Biological Evaluation (BE) [Enclosure (1)] and is requesting formal consultation pursuant to Section 7(a)(2).

This BE assesses the potential effects of the proposed actions on species protected under the Endangered Species Act (ESA) that potentially occur within the NWTRC.

In accordance with 50 CFR §401.14(c) the attached BE includes:
(1) a description of the proposed action; (2) descriptions of the specific areas where the proposed action will occur (also called Study Area); (3) descriptions of the listed species and critical habitat that may be affected by the actions; (4) the potential effects on listed and proposed species or critical habitat; (5)

should an MMPA Letter of Authorization be obtained from your office.

We appreciate your continued support in helping us to meet our Section 7 responsibilities. My point of contact for this matter is Ms. Elizabeth Phelps, 703-6047-5420 or Elizabeth.Phelps@navy.mil, or Commander, U.S. Pacific Fleet's point of contact is Mr. Chip Johnson, 619-767-1567 or Chip.Johnson@navy.mil.

Sincerely,

Ronald Tickle
Head, Operational Environmental
Readiness and Planning Branch
Environmental Readiness Division
(OPNAV N45)

Enclosure:

(1) DRAFT - Northwest Training Range Complex EIS/OEIS
Description of Proposed Action and Alternatives (dated June 2007)

Copy to:

OPNAV N43
Commander, U.S. Fleet Forces Command (N73, N77)
Commander, U.S. Pacific Fleet (N01CE, N7)
Commander, Naval Installations Command (N45)
Commander, Navy Region Northwest (N40)
Commander, Navy Region Southwest (N40)
Commander, Naval Facilities Engineering Command, Northwest (N45)
Commander, Naval Facilities Engineering Command, Southwest (N45)

an analysis of cumulative effects; and (6) measures proposed by the Navy to mitigate potential effects of the proposed action. Please direct your attention to those species and critical habitats under the jurisdiction of NMFS.

Additional technical information regarding the process by which the Navy determined the listed species distribution in these geographic areas is detailed in Enclosure 2. These reports are in a draft stage, and would benefit from your staff's input, should any technical errors be identified. We are providing this report as additional relevant technical information for purposes of consultation under the ESA.

My staff point of contact for this matter is Dr. Kelly Brock who can be reached at 703-604-5420 or via email at Kelly.brock@navy.mil; Commander, U.S. Pacific Fleet's point of contact for this matter is Mr. Chip Johnson, who can be reached at (619)-767-1567 or via email at Chip.johnson@navy.mil.

Sincerely,



Ronald E. Tickle
Head, Operational Environmental
Readiness and Planning Branch
Environmental Readiness Division
(OPNAV N45)

Enclosures:

- (1) Biological Evaluation for Northwest Training Range Complex.
- (2) Marine Resources Assessment Update for the Pacific Northwest Operating Area (Draft Report September 2006 - CD Copy)

Copy to (w/o enclosures):

DASN (E)
OPNAV N43
Commander, U.S. Fleet Forces Command (N73, N77)
Commander, U.S. Pacific Fleet (N01CE, N7)
Commander, Naval Installations Command (N45)
Commander, Navy Region Northwest (N40)
Commander, Navy Region Southwest (N40)
Commander, Naval Facilities Engineering Command, Northwest (N45)
Commander, Naval Facilities Engineering Command, Southwest (N45)

National Marine Fisheries Service

Northwest Regional Office
Attn: Mr. Bob Lohn
7600 Sand Point Way NE
Seattle, WA 98115



DEPARTMENT OF THE NAVY
COMMANDER
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
5090
Ser N01CE/1347
19 Dec 08

Mr. Bob Lohn, Regional Administrator
National Oceanic and Atmospheric Administration
National Marine Fisheries Service (NMFS)
7600 Sand Point Way NE
Seattle, WA 98115

Dear Mr. Lohn:

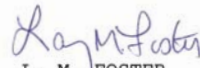
Subj: NORTHWEST TRAINING RANGE COMPLEX BIOLOGICAL EVALUATION
AND ESSENTIAL FISH HABITAT ASSESSMENT

In accordance with 50 CFR §402.12, the Navy requested formal consultation pursuant to Section 7(a)(2) of the Endangered Species Act with Headquarters, National Marine Fisheries Service (enclosure (1)) and with the U. S. Fish & Wildlife Service, Western Washington Fish and Wildlife Office. The Commander, U.S. Pacific Fleet is forwarding copies of the Biological Evaluation (BE) for your information (enclosure (2)). The BE assesses possible impacts to both U.S. Fish and Wildlife Service and National Marine Fisheries Service listed species that potentially occur within the Northwest Training Range Complex environmental impact statement (EIS) study area.

In accordance with the Magnuson-Stevens Fisheries Conservation and Management Act of 1976 the assessment of essential fish habitat (enclosure (3)). The assessment concludes that, based on the limited extent, duration, and magnitude of potential impacts from Northwest Training Range Complex EIS training activities, there would not be adverse effects on essential fish habitat.

If you need additional information or have questions, please feel free to contact Mrs. Kimberly Kler (360) 396-0927, email: kimberly.kler@navy.mil.

Sincerely,


L. M. FOSTER
By direction

Subj: NORTHWEST TRAINING RANGE COMPLEX BIOLOGICAL EVALUATION
AND ESSENTIAL FISH HABITAT ASSESSMENT

Enclosures: 1. Chief of Naval Operations Letter Serial 5090
N456K/8U158345 of November 14 2008 from Mr. Ron
Tickle to Ms. Somma (NMFS)
2. Northwest Training Range Complex Extension
Biological Evaluation of October 2008 (including 2
CDs)
3. Northwest Training Range Complex Essential Fish
Habitat Assessment of November 2008

Copy to (w/o enclosures):
Western Washington Fish and Wildlife Office
(Mr. John Grettenberger)
Chief of Naval Operations, Washington D.C. (Kelly Brock, N45)
Commander, U.S. Fleet Forces Command (Gary Edwards, N45)
Commander, Navy Region Northwest, Silverdale, WA (Renee
Wallis, N40)
Naval Facilities Engineering Command, Silverdale, WA (Dan Hayes,
N45)
Naval Air Station Whidbey Island, Oak Harbor, WA (John Mosher,
N45)



DEPARTMENT OF THE NAVY

COMMANDER
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
5090
Ser N01CE/1348
19 Dec 08

Mr. Ken S. Berg, Manager
Western Washington Fish and Wildlife Office
U.S. Fish and Wildlife Service
510 Desmond Drive SE, Suite 102
Lacey, WA 98503

Dear Mr. Berg:

Subj: NORTHWEST TRAINING RANGE COMPLEX BIOLOGICAL EVALUATION

In accordance with 50 CFR §402.12, the Commander, U.S. Pacific Fleet has prepared a Biological Evaluation (BE) and is requesting formal consultation pursuant to Section 7(a)(2). The BE assesses the potential effects of the proposed action to both U.S. Fish and Wildlife Service and National Marine Fisheries Service listed species that potentially occur within the Northwest Training Range Complex environmental impact statement (EIS) study area.

The Navy understands your staffing constraints, but to meet our mission requirements we request that formal consultation be concluded by July 15, 2009. Your response by this date will support of our EIS project schedule and planned publication of the final EIS in the Federal Register on August 28, 2009.

If you need additional information or have questions, please feel free to contact Mrs. Kimberly Kler (360) 396-0927, email: kimberly.kler@navy.mil.

Sincerely,

L. M. FOSTER
By direction

Subj: NORTHWEST TRAINING RANGE COMPLEX BIOLOGICAL EVALUATION

Enclosure: 1. Northwest Training Range Complex Extension
Biological Evaluation (October 2008)

Copy to (w/o enclosure):

Western Washington Fish and Wildlife Office (Mr. John
Grettenberger)
Chief of Naval Operations, Washington D.C. (Kelly Brock, N45)
Commander, U.S. Fleet Forces Command (Gary Edwards, N45)
Commander, Navy Region Northwest, Silverdale, WA (Renee
Wallis, N40)
Naval Facilities Engineering Command, Silverdale, WA (Dan Hayes,
N45)
Naval Air Station Whidbey Island, Oak Harbor, WA (John Mosher,
N45)

Wauer, Brian D

From: Hart, George A CIV Navy Region NW, N40 [george.hart1@navy.mil]
Sent: Thursday, August 12, 2010 11:41 AM
To: Kler, Kimberly H CIV NAVFAC NW, EV1
Subject: FW: Biological_Evaluation_Amendment_10-25-09
Signed By: george.hart1@navy.mil

-----Original Message-----

From: Hart, George A CIV CNRNW, N40BA
Sent: Thursday, October 29, 2009 6:43 AM
To: Kevin_Shelley@fws.gov
Cc: Hart, George A CIV CNRNW, N40BA
Subject: RE: Biological_Evaluation_Amendment_10-25-09

Good morning Kevin: Thanks for letting me know you received the document. I will send the marbled murrelet survey protocol as an addendum to the NWTRC BE today. We did received the information on the delivery date for the Keyport BO but nothing was said about the NWTRC BO. That BO is the one I had questions on. Thanks.

George

George A. Hart
NRNW N40BA, Biologist
Navy Region Northwest
1101 Tautog Circle
Silverdale, Wa. 98315
Phone 360-315-5103
Fax 360-315-5095

There is no expedient to which a man will not go to avoid the labor of thinking.
Thomas A. Edison
US inventor (1847 - 1931)

-----Original Message-----

From: Kevin_Shelley@fws.gov [mailto:Kevin_Shelley@fws.gov]
Sent: Wednesday, October 28, 2009 16:57
To: Hart, George A CIV CNRNW, N40BA
Cc: Hart, George A CIV CNRNW, N40BA
Subject: Re: Biological_Evaluation_Amendment_10-25-09

...just to confirm I received the subject doc. I believe John was going to speak with Ms. Wallace regarding a BiOp delivery date. ks

Kevin Shelley
Senior Fish and Wildlife Biologist

U.S. Fish and Wildlife Service, WA Fish and Wildlife Office Complex Division of Consultation and Technical Assistance 510 Desmond Dr. SE, Ste. 102
Lacey, WA 98503 ph. 360-753-9440

"Hart, George A
CIV CNRNW, N40BA"
<george.hart1@navy.mil>

10/27/2009 09:07
AM

<Kevin_Shelley@fws.gov>

To

cc

"Hart, George A CIV CNRNW, N40BA"
<george.hart1@navy.mil>

Subject
Biological_Evaluation_Amendment_10-25-09

Kevin,

Haven't heard from you in a while. Did you ever get a schedule for the NWTRC BO? As you can see I have attached the amendment to the BE for the terrestrial species within the Okanagan MOA. If you have any further questions please let me know. They were suppose to have went yesterday but my mail box was apparently full and it didn't send.

George

George A. Hart
NRNW N40BA, Biologist
Navy Region Northwest
1101 Tautog Circle
Silverdale, Wa. 98315
Phone 360-315-5103
Fax 360-315-5095

There is no expedient to which a man will not go to avoid the labor of thinking.
Thomas A. Edison
US inventor (1847 - 1931)
[attachment "Biological_Evaluation_Amendment_10-25-09.doc" deleted by Kevin Shelley/WWO/R1/FWS/DOI]

Wauer, Brian D

From: Wauer, Brian D [Brian.Wauer@ManTech.com]
Sent: Monday, January 25, 2010 3:16 PM
To: Mosher, John G CIV COMPACFLT N01CE1JM; Kler, Kimberly H CIV NAVFAC NW, EV1
Cc: Sodano, Gerald T CIV NAS Whidbey Island, N32; Bryant, Jacklyn
Subject: Revised BE Amendment

From our phone call last week, here is a more recent BE Amendment, with the new figures that were discussed in the phone call:

1. Added "Darrington OPAREA" label where appropriate.
2. Created new figure with the following:
 - a. Depiction of roads to include at a minimum, Highway 97
 - b. Depiction of towns to include at a minimum, the town of Twisp
 - c. Added A/B/C labels where appropriate to the Okanogan and Roosevelt MOAs.

I think that completes all of my actions related to the FWS consultation from last week's call.

As an aside, Jerry Sodano and I have come up with a more accurate calculation of EA-6B / EA-18G flights that are between 500' and 1,500' within the MOAs:

Okanogan MOA:
Between 500' and 1,500' – 363 annual flights
Greater than 1,500' – 363 annual flights

Roosevelt MOA:
Between 500' and 1,500' – 190 annual flights
Greater than 1,500' – 190 annual flights

- Brian

Brian Wauer
Director | ManTech SRS
440 Stevens Avenue Suite 200
Solana Beach, CA 92075
brian.wauer@mantech.com
Phone: (858) 345-1947
Cell: (619) 952-0301

**AMENDMENT TO THE BIOLOGICAL EVALUATION FOR THE
NORTHWEST TRAINING RANGE COMPLEX EIS/OEIS
OCTOBER 2009**

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NWTRC EIS/OEIS: AMENDMENT TO THE BIOLOGICAL EVALUATION

This amendment to the Biological Evaluation addresses several species of federally listed terrestrial animal life within the Northwest Training Range Complex (NWTRC) that may be affected by the Proposed Action detailed in the Northwest Training Range EIS/OEIS.

THREATENED AND ENDANGERED SPECIES AND CRITICAL HABITAT

Five of the species listed under the federal Endangered Species Act that have the potential to occur within the NWTRC’s military operation areas (MOAs) are addresses in this BE Amendment: – the northern spotted owl, grizzly bear, Canada lynx, gray wolf, and woodland caribou. Additional information for each species is provided below.

The **northern spotted owl** is a medium-sized, dark brown owl with a barred tail, white spots on the head and breast, and dark brown eyes surrounded by prominent facial disks. Males and females have similar plumage, but females typically weigh 10 to 20 percent more than males. The spotted owl is a relatively long-lived bird; produces few, but large young; invests significantly in parental care; experiences later or delayed maturity; and exhibits high adult survivorship. Spotted owls do not typically reach sexual maturity until after two years of age and when they pair, they are monogamous. Adult females lay an average of two eggs per clutch with a range of 1 to 4 eggs. Spotted owl pairs do not typically nest every year, nor are nesting pairs successful every year. Spotted owls are mostly nocturnal, but they may forage opportunistically during the day.

The distribution of the northern subspecies (there are also California and Mexican subspecies with distributions outside the study area) of the northern spotted owl includes southwestern British Columbia, western Washington and Oregon, and northwestern California. Northern spotted owls generally inhabit older forested habitats because they contain the structural characteristics required for nesting, roosting, and foraging. Specifically, northern spotted owls require a multi-layered, multi-species canopy with moderate to high canopy closure. Critical habitat areas within the NWTRC for the northern spotted owl are located in and adjacent to the southwest corner of the Okanogan MOA (shown in Figure 1).

The northern spotted owl was listed in 1990 as threatened throughout its range primarily due to loss and adverse modification of suitable habitat as a result of timber harvesting, habitat changes that are exacerbated by catastrophic events such as fire, volcanic eruption, disease, and wind storms. At the time of listing, small and isolated populations vulnerable to extinction, predation and competition were also identified as threats. Since listing of the northern spotted owl, recent reviews have more specifically identified competition with the barred owl (*Strix varia*), and fire in the relatively dry East Cascades and Klamath provinces of California and Oregon as greater threats than previously considered. New potential threats of unknown magnitude to the subspecies include West Nile virus and the sudden oak death tree disease.

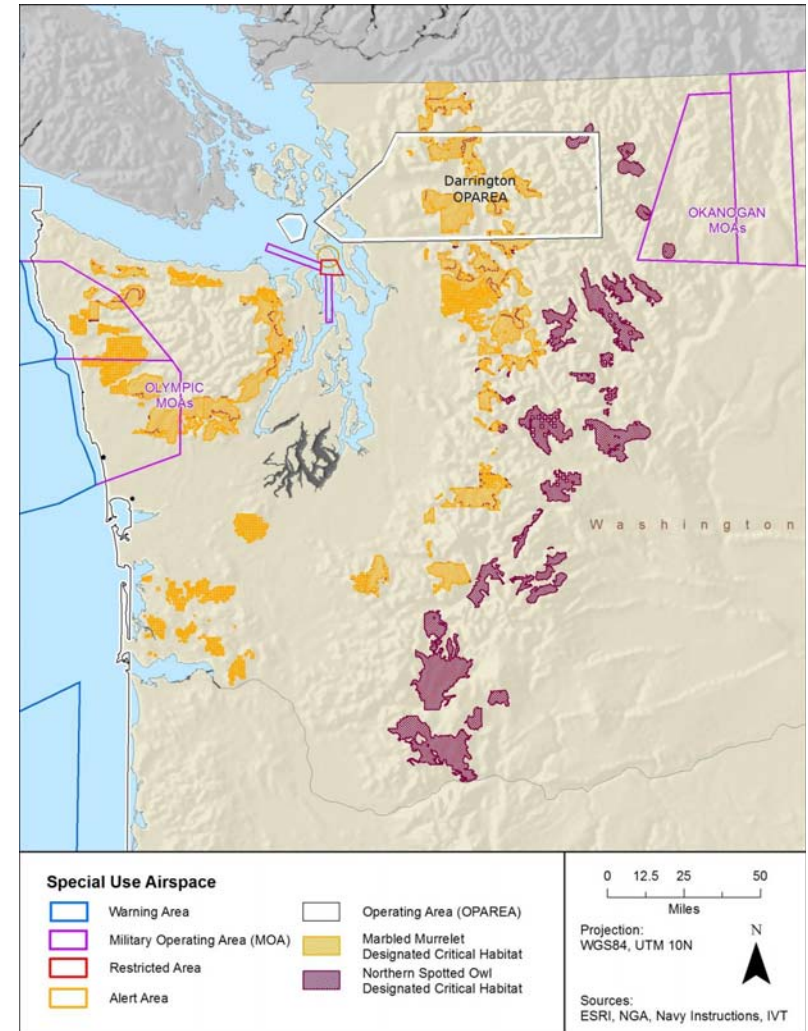


Figure 1: Northern Spotted Owl Critical Habitat within the NWTRC Study Area

The **grizzly bear** (*Ursus arctos ssp. horribilis*) is federally listed as threatened. Grizzly bears historically occupied territory extending from central Mexico to the Arctic Ocean and from the Pacific Ocean east to the Mississippi River. Their current range includes Alaska, western and northern Canada, and the northern Rocky Mountains in the U.S. Grizzly bear recovery area in the NWTRC includes 9,500 mi² (24,600 square kilometers [km²]) of the North Cascade Mountains in north-central Washington, and 2,200 mi² (5,700 km²) of the Selkirk Mountains area of northern Idaho and northeast Washington. The North Cascade area contains less than 20 bears while the Selkirk Mountains area contains between 40 and 50 bears. See Figure 2 for a map of grizzly bear recovery area within the NWTRC.

Grizzly bears can be found in any of the habitats within their ranges, although they tend to prefer early seral communities. Range size spans tens to hundreds of square miles and differs between sexes; a male's territory may encompass that of two or three females. Habitat use is influenced by season, gender, and age. Grizzly bears may live to be 25 years old and they are generalist omnivores, eating a variety of roots, shoots, and fruits, but also fish, insects (moths), and ungulates. Home range size often depends on habitat quality and food availability, and appropriate denning habitat is important for survival (USFWS 2009a). Dens are most common on steep slopes above 6,500 ft (2,000 m) (Servheen and Klaver). Bears hibernate between 3 and 5 months during the winter. Food needs are especially important when emerging from hibernation in the spring and when preparing for hibernation in the fall. Mating occurs in early summer, followed by implantation in November or December. Otherwise, grizzly bears are solitary creatures, preferring isolation from humans and each other. The grizzly bear's affinity for isolation is especially true for females with cubs, which tend to select rugged habitat (MNRC 2005). Dens are most common on steep slopes above 6,500 ft (2,000 m) (Servheen and Klaver). Threats to the grizzly bear include incomplete habitat protection (e.g., motorized vehicle access), small population size, and population fragmentation leading to genetic isolation (USFWS 2009a).

The **Canada lynx** (*Lynx canadensis*) is federally listed as threatened. Lynx in the U.S. are at the southern margins of more dense populations in Canada and Alaska. They are found in 14 states with boreal forests. Within the NWTRC, two areas above 4,000 ft (1,220 m) have been designated as lynx critical habitat: 1) approximately 1,836 mi² (4,755 km²) in the northern Cascade Mountains in north-central Washington; and 2) approximately 10,102 mi² (26,163 km²) in northeastern Idaho and northwestern Montana (USFWS 2005, 2009b; Figure 3). Additional habitat on state lands in Washington are managed under the state's Lynx Habitat Management Plan (WDNR 2006). They are commonly found in large spruce-fir forests at higher elevations with cold winters and substantial snowfalls. Dense understory is important, both for prey habitat and for den sites. Lynx are highly mobile, with individual home ranges between 12 to 83 mi² (31 to 216 km²), depending on age, gender, season, lynx density, and prey base. They are a highly specialized predator of snowshoe hares, thus their population dynamics, survival, and reproduction are closely tied to snowshoe hare availability. Lynx typically enter natal dens and emerge with offspring from May to July. Timber management (e.g., pre-commercial thinning), recreation, and related activities are the primary threats to lynx on federal lands in the West. Connections between subpopulations of lynx, especially those in Canada, are important in maintaining populations in the U.S. (USFWS 2005, 2009b).

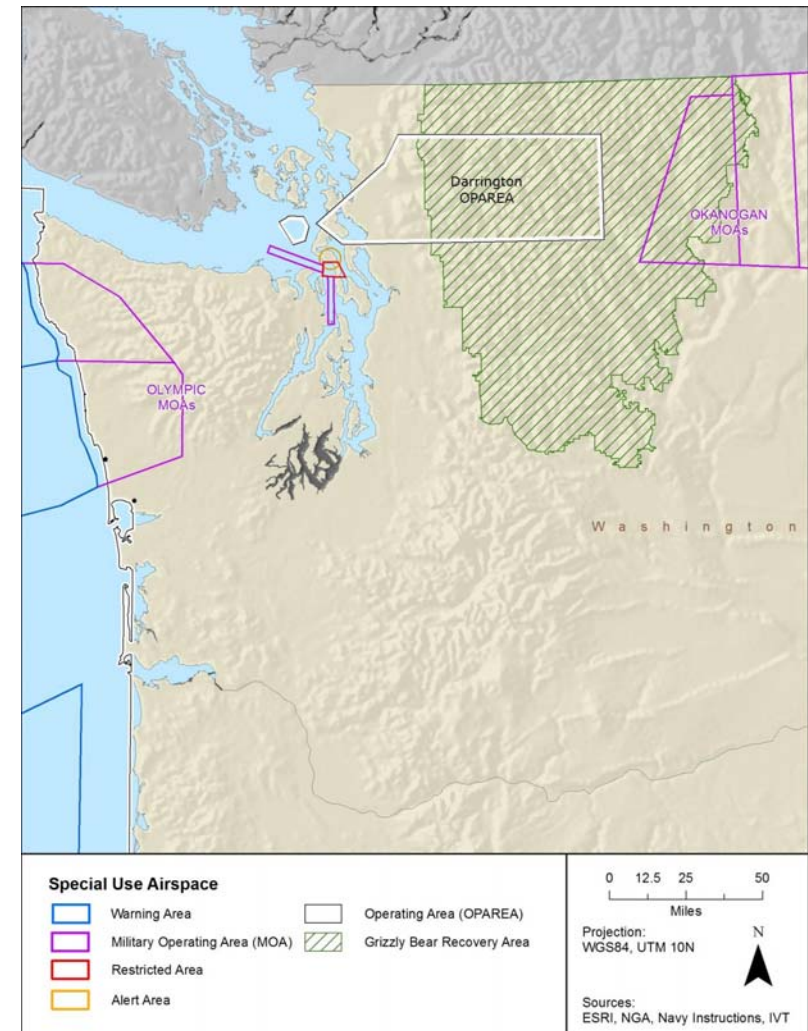


Figure 2: Grizzly Bear Recovery Area in the NWTRC Study Area

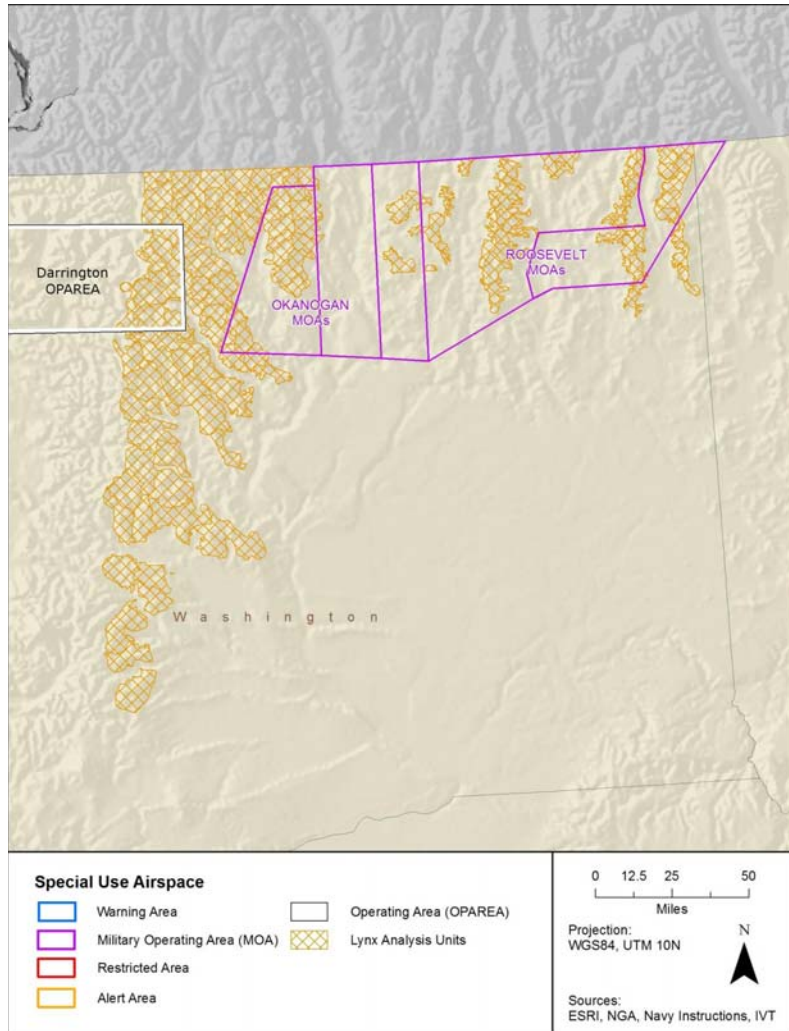


Figure 3: Lynx Critical Habitat in the NWTRC Study Area

Within the NWTRC, the **gray wolf** (*Canis lupus*) is federally listed as endangered, specifically populations west of U.S. 97 which bisects Okanogan MOA segment A from north to south. See Figure 4 for a map of this area within the NWTRC. One wolf pack, referred to as the Lookout Pack, has a home range in the vicinity of Twisp, Washington (about 125 miles north of Yakima; in the northwest corner of the Okanogan MOA segment A). No critical habitat has been designated with the NWTRC.

Wolves travel in packs that consist of a breeding pair, their offspring, and other non-breeding adults. Wolves can live 13 years. The Lookout Pack has about 6 or 7 members (Wiles, pers. comm. 2009). Reproduction normally begins after age 3 and occurs between April and October. On the average, five pups are born in early spring and are cared for by the entire pack. For the first six weeks, pups are reared in dens that are often used year after year. Mother and offspring may move between natal and other dens; natal dens are abandoned about 1.5 months after birth. Pack territories depend on the available prey and seasonal prey movements, and wolf may travel up to 30 miles in a day. Within the NWTRC, wolf territories range from 200 to 500 square miles in size (Bangs, pers. comm. 2009). Within their territories, wolves use a variety of habitats differently. Diet is composed largely of ungulates, such as elk, caribou, and deer, especially the young. Other animals are also taken (e.g., rabbits, squirrels, and grouse). Wolf populations were originally impacted by hunting and eradication programs. Development, habitat loss, hunting, and other predator control efforts continue to affect the specie's recovery. Except where otherwise indicated, information for this section was drawn from USFWS (1987), Cluff et al. (2002), Alfredeen (2006), NatureServe (2009), and USFWS (2009).

The **woodland caribou** (*Rangifer tarandus ssp. caribou*) is federally listed as endangered. No critical habitat has been designated to date, but a recovery area has been designated that encompasses 2,200 mi² (5,700 km²), 53 percent in the U.S. and the remainder in British Columbia, Canada. In the past, woodland caribou were widely distributed throughout the northern U.S. from Washington to Maine. In the NWTRC, woodland caribou have the potential to occur in northern Idaho and northeastern Washington. This is known as the South Selkirk subpopulation and consists of less than 50 individuals. Their population appears to be increasing about 7 percent each year. Woodland caribou primarily occupy old growth cedar/hemlock and spruce/fir forests above 4,000 ft (1,220 m) with high snow falls. The recovery area is characterized by long, steep sided drainages. Seasonal movements based on elevation are common, but woodland caribou do not engage in mass migrations noted for tundra caribou. They feed on shrubs during most of the year, and almost exclusively on arboreal lichen during the winter. Threats to woodland caribou include habitat loss and fragmentation, over-hunting, and predation. Forest-dwelling woodland caribou occur at low density and therefore require large areas with specific habitats for foraging, calving, and avoiding predators (Thomas and Gray 2002, USFWS 1994, 2008, 2009c).

ENVIRONMENTAL CONSEQUENCES

Study Area

The analysis presented for the natural resources in the terrestrial environment is focused on those areas where activities and training will occur that would affect terrestrial resources – specifically military aircraft training overflights within the Okanogan MOA segments B and C, and Roosevelt MOA segment B.

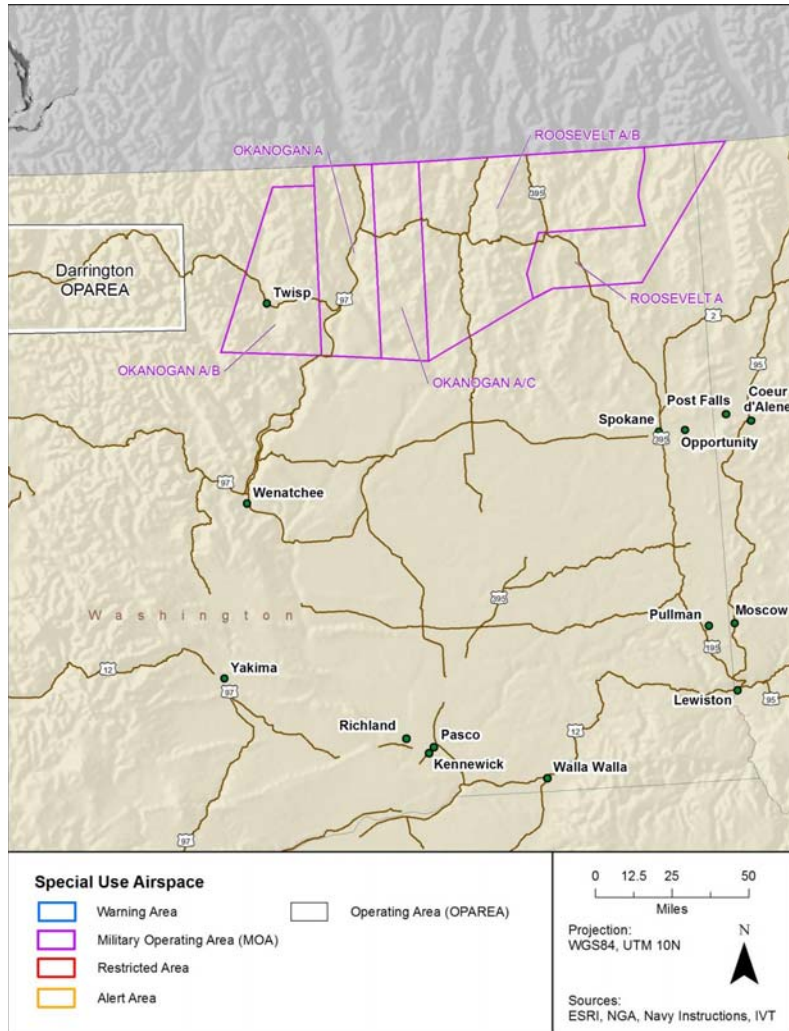


Figure 4: Okanogan and Roosevelt MOAs

Approach to Analysis

The U.S. Fish and Wildlife Service has expressed concern regarding potential impacts to listed species from overflight noise in excess of 92 dB. Because the five threatened and endangered species addressed in this amendment are found in the NWTRC occur in the Okanogan and Roosevelt MOAs, this analysis is focused on location of air operations relative to the listed species and anticipated overflight noise levels. The location of species and their habitats were provided to the Navy by the U.S. Fish and Wildlife Service.

Aircraft Operations

- Fixed-wing aircraft are used in training activities within the Okanogan and Roosevelt MOAs (there is no helicopter use in these MOAs).
- Three terms are used when referring to aircraft operations – sortie, event, and overflight. A sortie is defined as a single operation by one aircraft, i.e., one takeoff and one final landing. This most often occurs in a “range” or “military operating area” (MOA). An event could be one of several that occur in one aircraft sortie. For example, in one aircraft sortie, a single aircraft could conduct an ACM event and an EC event. “Overflight” is often used in wildlife literature and refers to the passing of an aircraft over or near an individual or group of animals. Because a sortie refers to a single flight of an aircraft, depending on the route taken during that sortie, an aircraft may overfly wildlife once, several times, or not at all. Sorties may also involve the aircraft flying at a variety of elevations, often thousands of feet, but occasionally down to 300 ft AGL (91 m).

The Okanogan MOA is located in north-central Washington near the Canadian border; A is the central segment, B is the western segment, and C is the eastern segment. The Roosevelt MOA is located in northeastern Washington and Idaho near the Canadian border; A is the western segment, and B is the eastern segment. The total area of the Okanogan MOA is 4,339 nm² (5,746 mi² [14,882 km²]), while the total area of the Roosevelt MOA is 5,319 nm² (7,044 mi² [18,244 km²]). Within these MOAs, aircraft would fly at a variety of elevations and speeds. Low-flying aircraft occur in Okanogan segments B (west) and C (east) and Roosevelt MOA segment B (east). “Low-flying” or “low-altitude flight” is defined as aircraft flying below 3,000 ft (910 m). Training activities include:

- Air combat maneuvers (ACM) that would involve EA-6B, F-16, and FA-18 aircraft in exercises that typically last 1.0 to 1.5 hours and occur mostly above 5,000 ft (1,525 m). Please see Section 2.4.1.1 of the EIS/OEIS for more details.
- HARM missile exercises (HARMEX; non-firing) would involve EA-6B aircraft in exercises that typically lasts one to two hours and occurs mostly above 10,000 ft (3,050 m). Please see Section 2.4.1.2 of the EIS/OEIS for more details.

ACM include basic flight maneuvers where aircraft engage in offensive and defensive maneuvering against each other. In Okanogan MOA segments B and C and Roosevelt MOA segment B, the lower limit flight altitude is 300 ft (91 m). The majority of flights involve EA-6B aircraft, but FA-18 and F-16 aircraft are also used at much lower frequency. The average time for this exercise is about one hour, with typically two aircraft participating in the exercise.

Most of the low-altitude training activity occurs in the southeast corner of Okanogan MOA C over the Columbia River. Few low altitude flights are conducted in Okanogan MOA B because

of the presence of two civilian airports (Methow Valley State Airport, Twisp Municipal Airport) and the proximity of the Methow Valley floor (State Route 20; Twisp River) to the MOA boundaries. In Roosevelt MOA B, most of the low-altitude training activity occurs in the I-395 and State Route 25 corridors north of Kettle Falls over the Kettle and Columbia Rivers.

Although aircraft are allowed a flight floor of 300 ft AGL, pilots seldom go below 500 ft AGL (152 m). During daylight hours in Okanogan and Roosevelt MOAs, if the ceiling is below 3,000 ft AGL (i.e., clouds below 3,000 ft [914 m]) or the visibility is less than 5 nautical miles (9 km), the aircraft are not allowed to fly below 1,500 ft (457 m) AGL. All night-time flights occur above 5,000 ft AGL (1,524 m). Based on prior activity, about 20 percent of annual events conducted in Okanogan and Roosevelt MOAs occur below 3,000 ft AGL. Exercises last about an hour, and an average of 7.5 minutes per event is spent flying below 3,000 ft AGL. This portion of each event occurs almost exclusively in wide valleys at altitudes no lower than 500 ft AGL. The terrain forming the sides of the valley is usually a few miles on either side of the flight path.

Table 1 summarizes the aircraft types and flight frequency for Okanogan and Roosevelt MOAs proposed under the proposed action (Preferred Alternative). These estimates include events in all MOA segments and assume no conditions limiting activity below 3,000 ft AGL (e.g., weather, cloud cover). In other words, the estimates likely over-state the number of events below 3,000 ft AGL in Okanogan MOA segments B and C and Roosevelt MOA segment B.

Table 1: Summary of Aircraft Types and Events in Selected MOAs – Proposed Action

Aircraft Type	Okanogan MOA		Roosevelt MOA	
	Estimated Events	20% below 3,000 ft AGL	Estimated Events	20% below 3,000 ft AGL
EA-6B	2,584	517	1,267	253
EA-18G	355	71	43	9
FA-18	43	9	66	13
P-3	4	1	0	0
Total	2,985	597	1,376	275

Aircraft Noise

Noise data for both the EA-6B and FA-18 in Table 2 represent three scenarios: descending from 3000 ft AGL to 500 ft AGL, in cruise mode at 500 ft AGL, and climb power mode from 500 ft AGL back up to and beyond 3000 ft AGL. Computerized aircraft single event noise modeling used a program called "SELCalc2" (AFCEE 2009; Melaas, U.S. Navy, pers. comm. 2009). Figures in Table 2 represent average peak sound level (L_{max}) with four nautical miles lateral separation using single event U.S. Air Force noise model SELCalc2. The model does not take into consideration terrain or vegetation cover. In the case of terrain, a receptor (wildlife) above the project sound level would experience less sound; intervening vegetation attenuates noise somewhat (Aylor 1977).

Table 2: Calculated Sound Level for Selected Aircraft at a Distance of 4 nm

Aircraft Type	Descending to 3,000 ft AGL (dba)	Cruising at 500 ft AGL (dba)	Climbing from 3,000 ft AGL (dba)
EA-6B	61.4	41.6	54.9
FA-18	39.3	29.9	62.6

The greatest peak sound level (L_{max}) from aircraft activities in the MOAs would result from an EA-6B climbing at 100 percent power. If a receptor were directly beneath the aircraft, the distance to 92 dB would be approximately 3,500 ft (1,067 m) (Melaas, U.S. Navy, pers. comm. 2009). Thus, for wildlife to be exposed to a 92 dB sound from Navy aircraft training activities, they would be located directly in the noise cone beneath a low-flying aircraft. The potential for special-status species in the Okanogan and Roosevelt MOAs to encounter this condition is quite low, and is explained for each listed species, below.

Overview of Overflight Impacts on Wildlife

Numerous studies have documented that wild animals respond to human-made noise, including low-altitude aircraft overflights (Larkin 1996, NPS 1994). The manner in which animals respond to overflights depends on several factors including life-history characteristics of the species, characteristics of the noise source, loudness, how suddenly the sound occurs ("onset rate"), distance from the noise source, the presence or absence of associated visual stimuli, and previous exposure to the sound. A primary concern is that low-altitude overflights may cause physiological or behavioral responses that reduce the animals' fitness or ability to survive. Researchers have documented a range of behavioral responses to overflights, ranging from indifference to extreme panic. Behavioral responses could interfere with raising young, habitat use, and physiological energy budgets. Most studies have focused on ungulates and birds, while little or no research has been conducted on carnivorous mammals, small mammals, reptiles, and amphibians (NPS 1994). While difficult to measure in the field, some behavioral responses are likely accompanied by physiological responses, such as increased heart rate, or stress. Chronic stress can compromise the general health of animals, but stress is not necessarily indicative of negative consequences to individuals or to populations (Larkin 1996, NPS 1994, Bowles *et al.* 1990 in Larkin 1996). Unless repeatedly exposed to loud noises or simultaneously exposed to synergistic stressors, it is possible that individuals would return to homeostasis almost immediately after exposure and the individual's overall metabolism and energy budgets would not be affected. Studies have also shown that animals can become habituated to noise following frequent exposure and cease to respond behaviorally to the noise (Larkin 1996, NPS 1994).

Fixed-wing aircraft overflights would result in short-term, localized increases in noise levels within the Study Area. Biological receptors on the ground and directly under the flight track could be exposed to aircraft noise, with decreasing intensity from the flight track centerline. As aircraft in flight gain altitude, the received noise level drops, often becoming indistinguishable from the background noise. The duration of exposure to fixed-wing aircraft noise would be very brief (seconds) as an aircraft passes overhead. Exposures would be infrequent based on the low number of events and the short duration of the exercises (about one hour).

Wildlife exposed to low-altitude aircraft overflights in Okanogan and Roosevelt MOAs could exhibit short-term behavioral or physiological responses, but not to the extent where the general health of individuals or populations would be compromised. Aircraft overflights are not expected to result in chronic stress based on the short duration and infrequency of exposure. These conclusions are based on the following: 1) wildlife within the MOAs are likely habituated to aircraft overflights; 2) the overall lack of concentration of flights at a given altitude, area, and power setting; 3) the relatively small number of low level overflights and the relatively brief amount of time that aircraft would be at lower altitudes (an estimated 7.5 minutes total per event); and 4) at lower altitudes, aircraft speeds and power settings would be in the lower range, producing less noise.

In general, potential impacts from aircraft overflights may arise from the loudness of a sound, sound at a particular frequency, or the visual image of the aircraft or its shadow. Adverse reactions may include a short-term startle response and short- or longer-term running. These reactions increase energy expenditure and may reduce survival or reproductive success. Terrain can aggravate these impacts. For instance, steep terrain may cause the animal to expend more energy, while steep or complex terrain may cause injury. On the other hand, valleys and dense overstory may moderate impacts because the view of the aircraft is obscured. Time of year and time of day can also alter potential impacts. For instance, deep snow may cause the animal to expend more energy when running, while a startle response and running during birthing season may cause injury to offspring (e.g., caribou). Animals may be less reactive during reproductive periods (e.g., spotted owl) or less reactive outside reproductive seasons (e.g., caribou). Adverse reactions may also include change in animal behavior, such as cessation of nursing, feeding, or resting, or leaving preferred or required habitat (e.g., den site). Studies indicate that the type of disturbance and its proximity influence an animal's response. For instance, helicopters and chain saws may be more disturbing to wildlife than fixed-wing aircraft (Gladwin et al. 1988, Delaney et al. 1997). The combination of visual image plus noise often elicits a greater response than noise alone. Last, reactions may be lessened because of prior experience (Manci 1988, NPS 1994, ORNL 2000, Radle 2007). It should be noted that "one species may be more or less affected than another, different noises have correspondingly different effects, and even individuals within the same species may have dissimilar responses depending on any number of physiological and location differences" (Radle 2007). In summary, whether an animal is affected by aircraft noise depends on a variety of characteristics associated with the animal and the aircraft (NPS 1994).

EFFECTS ON THREATENED AND ENDANGERED SPECIES AND CRITICAL HABITAT

The proposed action includes aircraft flying at a variety of elevations and speeds in and near northern spotted owl habitat within Okanogan MOA segment C. Northern spotted owls may be affected by overflight noise and potential aircraft strike, although their critical habitat would not be adversely modified or destroyed.

Northern Spotted Owl

Table 3 summarizes the aircraft types and flight frequency for Okanogan MOAs under the proposed action. These estimates include events in all MOA segments and assume no conditions limiting activity below 3,000 ft AGL (e.g., weather, cloud cover). In other words, the estimates

likely over-state the number of events below 3,000 ft AGL in Okanogan MOA segments B and C.

Table 3: Summary of Aircraft Types and Events in Okanogan MOAs – Proposed Action

Aircraft Type	Estimated Events	20% below 3,000 ft AGL
EA-6B	2,584	517
EA-18G	355	71
FA-18	43	9
P-3	4	1
Total	2,985	597

Citing research by Delaney et al. (1999), the U.S. Fish and Wildlife Service has expressed concern regarding exposure of this species to aircraft noise in excess of 92 dB. The following discussion summarized the findings of Delaney and relates the research to actions in the Okanogan MOA.

According to Delaney et al. (1999), several studies of the impact of different types of human disturbance on raptors, few studies have addressed such impacts on owls and there is "no published research available on the possible effect of noise on spotted owls." The study conducted by these authors specifically examined the impact of helicopters on Mexican spotted owls (*Strix occidentalis lucida*). Note: no studies were located that concerned aircraft noise on the northern spotted owl (*Strix occidentalis caurina*).

Owls were presented with helicopters flying under three scenarios: 1) an elevation of 100 feet vertical (15 m); 2) an elevation of 200 feet vertical (60 m); and 3) an elevation of 200 feet (30 m) vertical and 200 feet (30 m) lateral. All flights were above the tree canopy and occurred during nesting and non-nesting seasons.

Outside of nesting season, a received noise level of 104 dB or above caused owls to flush. During nesting season, similar responses were obtained at a received noise level of 102 dB or above. No responses were recorded below these levels. Helicopters approaching within 100 feet (30m) vertical elevation elicited responses 50 percent of the time. Helicopters approaching within 200 feet (60m) vertical elevation elicited responses 19 percent of the time. Helicopters approaching within 350 feet (105m) vertical elevation elicited responses 14 percent of the time. No responses were elicited when the helicopter was beyond 350 feet (105m) vertical elevation. The authors indicated that "short duration, single pass, single aircraft overflights had little effect on spotted owls." (Helicopters are not flown in the Okanogan and Roosevelt MOAs.)

The authors noted that these distance-response thresholds were similar to those found in other studies of raptor species exposed to aircraft overflights. The authors reported that, of all the flushes that occurred during nesting season, none were elicited during incubation or nesting phases; they also noted several other studies that reported the reluctance of raptors to leave active nests. Circling, hovering, and landing were not included in the experiments of Delaney et al. (1999). Owls in the study also appeared to habituate to helicopter noise.

A more recent study examined the impact of fixed-winged military aircraft on the Mexican spotted owl (Johnson and Reynolds 2002). Behavioral responses of day-roosting owls were

recorded in response to low-altitude jet (F-16) overflights at 1,500 feet (460m) in Colorado. Each trial consisted of three sequential overflights of each owl, each overflight at greater speed and sound level – “enroute cruise” (about 300 knots), “2nd power setting” (about 425 knots), and “higher-power setting” (about 520 knots). At “enroute cruise” sound duration was 15.5 seconds at 78 dBA; for the “2nd power setting,” the duration was 19.0 second at 92 dBA; and for the “higher-power setting,” the duration was 22.5 second at 95 dBA. Results were as follows:

- During the “enroute cruise,” one (14.3 percent) owl showed no response, four (57.1 percent) showed low responses (slow head turn), and two (28.6 percent) showed intermediate responses (sudden head turn toward origin of the sound).
- For the “2nd power setting,” two (28.6 percent) owls showed no response, three (42.8 percent) owls showed low response, and two (28.6 percent) showed intermediate response.
- For the “higher power setting,” two (28.6 percent) showed no response, two (28.6 percent) showed low response, and three (42.8 percent) owls showed intermediate response.

None of the owls showed high response (flush) during any of the fly-by periods. The authors indicated that “owl responses to low altitude F-16 overflights did not exceed, and were often less than, responses to naturally occurring events” (e.g., thunder).

Although the Mexican spotted owl ranges across the arid southwest, it is a *Strix occidentalis* subspecies closely related to the northern spotted owl. Similar to the northern subspecies, the Mexican subspecies also inhabits forested mountains and canyonlands, with greatest owl densities found in unlogged coniferous forests with dense canopies (greater than 80 percent cover) (Ganey and Balda 1989). For these reasons, responses of the northern spotted owl to aircraft disturbance are assumed to be similar to those displayed by the Mexican spotted owl.

Navy training overflights in the Okanogan MOA would likely generate short-term behavioral or physiological reactions, but the general health of individual northern spotted owls would not be compromised. There would be no population- or community-level effects. A relatively small portion of overall spotted owl habitat is located in the southwest corner of Okanogan MOA segment C, many miles to the west (Figure 1). There is no potential for northern spotted owls to be exposed to 92 dB of noise associated with Navy training flights; based on a lateral separation of four nautical miles (7 km), the loudest sound would be 62.6 dBA, far below the 92 dB level of concern for this species (Table 2). However, lower levels of aircraft noise may be heard by this species.

Few aircraft strikes to birds are expected to occur in the NWTRC Study Area (see section 3.10 Birds in the EIS/OEIS). From a Navy-wide perspective, the numbers of bird mortalities that occur annually would not affect the northern spotted owl population.

Navy underwater detonation activities are not conducted in critical habitat areas of the northern spotted owl. In addition, weapons are not fired in the range of the northern spotted owl; as such, ordnance use, weapons firing, and expended materials would have no effect on the northern spotted owl or its critical habitat.

These conditions would result in a *may affect, not likely to adversely affect*, finding under Section 7 of the ESA. Because on-the-ground activities would not be involved, there would be no adverse impacts to designated critical habitat.

Grizzly Bear

The National Park Service compiled several studies of the reaction of grizzly bears to aircraft (NPS 1994). Based on these studies, a run response was prompted by helicopters as low as 200 to 500 ft (60-150 m) and as high as 3,200 ft (975 m), and by fixed-wing aircraft at greater than 1,000 ft (305 m). No studies were reported that involved military jet aircraft. Studies reviewed indicate that adverse impacts that might occur would likely be greater if they occurred toward end of the denning season or during the first few weeks after emergence, i.e., March through May (Linnell et al. 2000; Haroldson et al. 2002; Podruzny et al. 2002; NPS 2009).

Approximately 3,000 events would take place each year over grizzly bear habitat in the NWTRC (i.e., Okanogan MOA) (Table 3). The resulting overflights range widely in location and altitude, and cover a geographic area of several thousand square miles. Thus, grizzly bears in the MOAs are exposed to distant, chronic, and intermittent aircraft noise of varying length and decibel level. However, the number of low-level flights (below 3,000 ft AGL) that would be capable of generating decibel levels in excess of 92 dB is limited to less than 600 events per year. These flights generally take place over river valleys as opposed to over mountainous terrain. Flying at levels below 500 ft AGL totals 20 to 30 hours per year, in 3 to 5 minute increments.

In the MOAs with flight paths down to 300 ft AGL in grizzly bear habitat (i.e., Okanogan segment B), aircraft would be well below important bear denning and rearing habitat (i.e., steep, rugged habitat above 6,500 ft). Areas most commonly used for low-altitude flights are about 30 nautical miles (56 km) laterally from high-quality grizzly bear habitat. Based on the modeled peak aircraft noise of 62.6 dBA at 4 nm (7 km) distance (Table 2), grizzly bears using spring forage habitats would be exposed to noise levels far below the 92 dB level of concern. The aircraft would be heard approaching and would not present a sudden onset disturbance. The duration of noise exposure, given the rate of travel of Navy jets, would be expected to be of less than one minute.

It is anticipated that aircraft overflight noise under the proposed action may affect the grizzly bear. Short-term behavioral or physiological reactions could be expected, such as looking up for the source of the noise. The general health of individuals would not be compromised. There would be no population or community-level effects. In addition to the studies and observations cited above, these conclusions are based on the following: grizzly bears in the Study Area are likely to be habituated to aircraft overflights, given the frequency of Navy training activities and the presence of two nearby airports; spring foraging areas are not approached during Navy training activities; and grizzly bears could be exposed to less than 63 dB of peak sound several times per year.

These conditions would result in a *may affect, not likely to adversely affect* finding under Section 7 of the ESA. Because on-the-ground activities would not be involved, there would be no adverse impacts to the grizzly bear recovery area habitat.

Canada Lynx

Specific studies involving lynx reaction to aircraft could not be located; sources consulted included Gladwin et al. (1988a, b), Mancini et al. (1988), NPS (1994), Larkin (1996), ORNL (2000), AMEC (2005), and Radle (2007). Mancini et al. (1988) noted that, of the studies they reviewed, almost all of the animals exhibited a startle response to aircraft noise. Studies reviewed indicate that adverse impacts that might occur would likely be greater if they occurred toward end of the denning season or during the first few weeks after emergence, such as when the mother is moving offspring between natal and maternal den sites (Saunders 1961; Koehler 1990; Koehler et al. 1994; Mowat and Slough 1998; USFS 1999; and Ruggiero et al. 1999).

Just over 4,300 would take place each year over lynx habitat in the NWTRC (i.e., Okanogan and Roosevelt MOAs) (Table 1). The resulting overflights range widely in location and altitude, and cover a geographic area of several thousand square miles. Because lynx habitat is scattered across much of the overflight area, Canada lynx in the MOAs are exposed to distant, chronic, intermittent aircraft noise of varying length and decibel level. However, the number of low-level flights (below 3,000 ft AGL) that would be capable of generating decibel levels in excess of 92 dB is limited to less than 875 events per year. These flights generally take place over river valleys as opposed to over mountainous terrain.

As described in the "Affected Environment" section, Canada lynx habitat in the MOAs occurs at elevations above 4,000 feet (1,220 m), in large spruce-fir forests. Low-altitude training activities generally occur above river valleys and avoid mountainous terrain. Thus, aircraft would be well below denning areas throughout the year. Areas most commonly used for low-altitude flights are estimated to occur approximately 4 nm (7 km) from appropriate lynx habitat. As presented in Table 2, the peak Navy aircraft sound exposure for the lynx would be 62.6 dBA. The aircraft would be heard approaching and would not present a sudden onset disturbance. The duration of noise exposure, given the rate of travel of Navy jets, would be expected to be of less than one minute.

It is anticipated that aircraft overflight noise under the proposed action may affect the Canada lynx. Short-term behavioral or physiological reactions could be expected, but the general health of individuals would not be compromised. There would be no population- or community-level effects. In addition to the studies and observations cited above, these conclusions are based on the following: Canada lynx in the Study Area have become habituated to aircraft overflights given the frequency of Navy training activities and the presence of two nearby airports; denning habitats are not used during Navy training activities; and Canada lynx could be exposed to approximately 63 dB of peak sound several times per year.

These conditions would result in a *may affect, not likely to adversely affect* finding under Section 7 of the ESA. Because on-the-ground activities would not be involved, there would be no adverse impacts to Canada lynx designated critical habitat.

Gray Wolf

Few studies were located that dealt specifically with the impact of aircraft noise on wolves. Mancini et al. (1988) noted that wolves exhibit a startle or run response to aircraft, but that the noise impact on carnivorous mammals "has been virtually ignored." Klein (1973), as reported in Larkin (1999), noted that "wolves appeared least disturbed by low-flying aircraft of any of the

large mammals observed. Currently, aircraft are common in the [arctic] study areas, and wolves have apparently rapidly adapted to the discontinuance of the threat from this source. Other studies speculated on the possible impacts on wolves of caribou as a prey source when caribou are adversely affected by aircraft noise (e.g., running, especially by cow-calf pairs). Studies indicate that mother and offspring move between natal and other dens, and that natal dens abandoned at about 1.5 months after birth, i.e., July-August (Cluff et al. 2002; Alfredeen 2006; NatureServe 2009). Presumably adverse impacts that might occur would likely be greater if they occurred during these periods.

The Lookout Pack is located west of I-97 in Okanogan MOA segment B. Overflights as low as 300 ft AGL are allowed in Okanogan B, but few flights at that altitude occur because of the presence of two civilian airports (Methow Valley State Airport, Twisp Municipal Airport) and the proximity of the Methow Valley floor (State Route 20; Twisp River) to the MOA boundaries.

Okanogan C is more commonly used for low-altitude flights; it is over 30 nm (56 km) from the Lookout Pack home range. Thus, aircraft would be some distance from known wolf home range. As presented in Table 2, the peak Navy aircraft sound exposure for the lynx would be well below the 62.6 dBA anticipated at 4 nm (7 km) distance. If Navy aircraft were audible to gray wolves, the noise would be distant, the aircraft would be heard approaching, and would not present a sudden onset disturbance.

It is anticipated that aircraft overflight noise under the proposed action may affect the gray wolf. Short-term behavioral or physiological reactions could be expected, but the general health of individuals would not be compromised. There would be no population or community-level effects. In addition to the studies and observations cited above, these conclusions are based on the following: gray wolves are reported to habituate to aircraft noise, and given the history and frequency of Navy aircraft training in the Study Area, this is anticipated to occur; the wolf home range areas are not used during low-altitude training activities as training below 3,000 ft AGL takes place 30 nm (56 km) from their home range; and, noise levels from aircraft overflights in the home range would be well below the 63 dB anticipated at 4 nm (7 km) from the source.

These conditions would result in a *may affect, not likely to adversely affect* finding under Section 7 of the ESA. Because on-the-ground activities would not be involved, there would be no adverse impacts to the Lookout Pack home range.

Woodland Caribou

Most of the literature on the behavior of caribou in response to aircraft involved barren-ground caribou (e.g., NPS 1994). Harrington and Veitch (1991, 1992) studied the impact on woodland caribou of low level overflights of military aircraft near Goose Bay, Labrador, Canada. In 1986 and 1987, the locations of radio-collared caribou were coordinated with aircraft flight paths. In 1988, the design was changed so that the flights were not directed (i.e., neither toward or away from collared caribou) to obtain a "normal" distribution of exposure to low-level flying. Aircraft included F-4, RF-4, F-16, F-18, and Tornado. Flights within 100 ft (30 m) of the ground were permitted; speeds were typically 480 to 515 miles per hour (775 to 825 km per hour). The maximum recorded noise level was 131 dB for a direct overpass at 100 ft (30 m). The low-level training season extended from mid-April through October, and flight frequency ranged from fewer than 10 events per month in some areas to 250 events per month in others. The authors

noted that the number of low-level training flights increased from 1,500 in 1981 to over 6,000 in 1988, and that training was projected to reach a maximum of 18,000 per year in 1996 (1991). The 1991 study described one area as “heavily glaciated hills with only low boulders and alpine tundra gave little protective cover,” while the other was a “relatively flat valley.” The authors also noted that the topography and the boundaries of the low-level flying terrain constrained the distribution of the training.

The authors noted that the usual response of woodland caribou to jet overflights was a startle reflex, followed by bolting and running. In 1991, the authors reported that high overpasses [330 ft (100 m)] or wide overpasses [over 250 ft (75 m)] caused detectable responses 38 percent of the time, while direct overflights [99 ft (30 m) above ground or within 165 ft (50 m) of the animals] resulted in overt responses 88 percent of the time. One or more aircraft were involved in each pass. The authors also noted that the caribou “began slowing almost immediately” and that the average time from beginning to end of movement was nine seconds. If the animals had been feeding, standing or walking prior to the overpass, they resumed similar behavior within the next minute. Maximum distance traveled during the startle-run response was 50 to 65 ft (15 to 20 m). In 1991, the authors reported that caribou responded more strongly to helicopter overflights than to jets, although the rate of approach, the sequence of jet vs. helicopter, and the prior experience of the caribou with either aircraft all differed. The 1992 study indicated increased caribou calf mortality correlated with aircraft overflights.

Circumstances in the Okanogan and Roosevelt MOAs would compare to the conditions described by Harrington and Veitch (1991, 1992) in that the aircraft noise and speed levels would be similar. Conditions that would differ include the following.

- The terrain in the Canadian study was open and tundra-like, lacking the sound attenuation characteristics of the mountainous and heavily wooded Study Area.
- Aircraft in the study flew lower, more frequently, and were concentrated in a smaller geographic area than the Okanogan and Roosevelt MOAs.
- Flights were directed specifically at known caribou locations and populations; the Study Area has sparse and dispersed populations of caribou.

Under the proposed action, woodland caribou would not likely be exposed to the decibel level or close-proximity disturbance documented in the Harrington and Veitch study. The dispersed nature of overflights, large area available for training activities, and varied nature of training methods would not produce concentrated effects on the woodland caribou population in the PACNW OPAREA. However, exposure to low levels of chronic aircraft noise from Navy activities and two regional airports may contribute to noise habituation of this species.

Based on these comparisons, impacts would generate short-term behavioral or physiological reactions, but the general health of individuals would not be compromised. There would be no population- or community-level effects. These conditions would result in a *may affect, not likely to adversely affect* finding under Section 7 of the ESA. Because on-the-ground activities would not be involved, there would be no adverse impacts to woodland caribou habitat.

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Wauer, Brian D

From: Mosher, John G CIV COMPACFLT N01CE1JM [john.g.mosher@navy.mil]
Sent: Monday, February 08, 2010 11:36 AM
To: Kevin_Shelley@fws.gov
Cc: Hart, George A CIV Navy Region NW, N40; Kler, Kimberly H CIV NAVFAC NW, EV1; John_Grettenberger@fws.gov; Marc_Whisler@fws.gov
Subject: RE: NWTRC EIS Consultation
Attachments: NWTRC Response to FWS BE Amendment Comments - 05 Feb 10.docx
Signed By: john.g.mosher@navy.mil

Kevin - I understand you are still involved in the Keyport EIS consultation, but wanted to get you the attached responses to some of your previous comments on the NWTRC EIS BE amendment. Quite a bit of Navy discussion when into these subjects and how the information should be incorporated into the BE. I feel we hit your key questions here, but suspect these responses may generate some more questions on your part. I cut your comments out of your original e-mail, our responses and some additional info is in red font.

I would like to propose a meeting to go over the issues as soon as is mutually convenient, and I'll follow up with phone call to see how things look for you. Thanks.

John Mosher
US Pacific Fleet
Northwest Environmental Planner
360-257-3234

-----Original Message-----

From: Kevin_Shelley@fws.gov [mailto:Kevin_Shelley@fws.gov]
Sent: Tuesday, November 24, 2009 12:34
To: Mosher, John G CIV COMPACFLT N01CE1JM
Cc: Hart, George A CIV CNRNW, N40BA; Kler, Kimberly H CIV NAVFAC NW, EV1; John_Grettenberger@fws.gov; Marc_Whisler@fws.gov
Subject: Re: NWTRC EIS Consultation

As you indicated John, the Navy Keyport consultation is occupying all of my time for the "moment," but I expect my supporting role as the staff POC and technical lead in that consultation should diminish significantly by mid December. Until then, I will have significant constraints on my time and I don't expect to devote much to the NWTRC consultation. However, after mid December, the NWTRC is my top priority. Unlike the Keyport Consultation, I am the project lead for NWTRC, so it will receive my full attention as such.

In regards to your second question, I want to confirm that the USFWS has issued a response letter (attached) on Nov. 18, officially initiating formal consultation. That's not to say we are just starting consultation, but it simply establishes the start date (Nov. 18), as required by the regulations implementing Sec. 7 of ESA. At this moment, I am not able to give you an expected date of completion. It is my desire to do so the moment I can due to the critical nature of the Navy's mission. I cannot overstate the sense of urgency with which the USFWS is approaching the NWTRC consultation.

Your offer to help me work through the many facets of the Navy's training will help me to efficiently and effectively do my job. In particular, your close involvement, along with George and the other members of your team, may also prove critical to efficiently exploring any fine-tuning of the training ops to reduce the magnitude of some of the more critical stressors.

Regardless of the status or importance of the Keyport consultation, I will look over the Navy's response to my questions once they arrive. Perhaps this would be a good opportunity to get acquainted and have at least a quick discussion on the additional information - again, this can occur even if it arrives before mid Dec.

Hopefully this addresses your informational needs to advise the Navy leaders. Feel free to give me a call if you think I can be of any additional help.

(See attached file: 2009_F_0104_Acceptance Ltr.pdf)

Kevin Shelley
Senior Fish and Wildlife Biologist

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Kimberly H CIV NAVFAC NW, EV1"
<kimberly.kler@navy.mil>
Subject
NWTRC EIS Consultation

Kevin - I realize you are quite busy right now with the Navy Keyport EIS consultation, but just wanted to touch bases on a couple of points. I'm the Pacific Fleet Project Manager for the NWTRC EIS, and am working closely with George Hart and others for the USFWS consultation piece.

We are working to address the questions you sent on our amendments to the BE and should have you responses shortly. I would also like to second George's offer to meet with you whenever is good to go over remaining issues and questions.

I would like to confirm it, but as I understand, you are prioritizing your workload to address the Keyport consultation first, before working on the NWTRC EIS consultation and BO. Do you have any estimation on when you expect to get to the NWTRC EIS? I am asking, as I need to be able to answer to the Navy organization about some of our scheduled dates. Specifically, I am scheduled to brief Navy leaders on 8 December, and we have planned to submit the Final EIS to EPA for release in the Federal Register on 11 December. I certainly do not believe we will have completed our consultation with USFWS by then, but would like to indicate where we stand. This may of course dictate changes to our schedule.

I know you received the address to the Environmental Officer for Pacific Fleet (my boss), and just wanted to confirm that USFWS intends to submit a letter discussing the consultation for the NWTRC EIS. Are there any specific issues that I can assist with regarding this letter and is the letter something we can expect soon?

I'm happy to discuss this with you on the phone if that is convenient.

Thank you.

Respectfully,

John Mosher
US Pacific Fleet
Northwest Environmental Planner
360-257-3234

Questions and comments received from Kevin Shelley, USFWS (black font) and Navy responses (red font) for NWTRC EIS BE Amendment:

I have been reviewing the Navy's BE amendments for the subject action you recently transmitted to me. I have two questions of a more general nature that I would like a response to before I begin my more thorough analysis.

There are several references to the "no action" alternative in the text discussing the frequency and location of the acoustic stressors associated with sorties in the Okanogan and Roosevelt MOAs. Why is the "no action" alternative evaluated in the discussion of the species effects section? Since the "no action" alt is addressed in the effects section of the amendment, it follows that Table 1 in the amendment reflects the number of sorties in the "no action."

The Biological Evaluation is required to address the action selected for implementation by the proponent (the Preferred Alternative). Thus, the impacts described in the BE are those expected under the increased level of training activities described as the Preferred Alternative. The tables referring to current conditions (No Action Alternative) are provided to convey an understanding of the changes anticipated by the Navy.

References to the No Action Alternative included in the text were pulled directly from language in the Preliminary Final EIS, and have subsequently been removed from this amendment to the BE.

It seems to me that, at a minimum, the amendment should address the increases under the preferred alternative; at best it should address all three alternatives, as in the October 2008 BE. For example, the number of sorties for ACM exercises in Alt. 1 are 1,353 and under the preferred, 2,000 are proposed (Table 2-8 of the DEIS). How do these numbers relate to Table 1 in the amendment?

Total training events from Table 1 add up to 4,361 (2,985 + 1,376). Please note that we are changing the word sorties to events throughout this BE amendment, as the term sorties was used incorrectly (i.e. several training events can take place during one sortie or aircraft flight).

It is important to note that Table 2-8 of the DEIS includes more than just ACM events that are flown in Okanogan and Roosevelt MOAs; it also includes HARM Exercises under STRIKE WARFARE (STW). When you add these, you arrive at 5,000 (2,000 ACM + 3,000 HARM), but that is 639 more than the 4,361 from Table 1 in the amendment. These 639 are events that are flown in the Olympic MOA. Both ACM and HARM missions are depicted in the DEIS to occur in the Offshore and Inshore Areas. For aircraft events, these refer to all three MOAs and can also include the Darrington OPAREA, though in the case of ACM and HARM, no missions are flown in Darrington.

To Summarize:

From Table 1:

Okanogan events 2,985
Roosevelt events 1,376
 Total Okanogan and Roosevelt events 4,361

From Table 2-8 of the DEIS:

ACM events 2,000
HARM events 3,000
 Total events 5,000
Olympic MOA - 639
 Total Okanogan and Roosevelt events 4,361

So, the 2,985 Okanogan events (Table 1) plus the 1,376 Roosevelt events (Table 1) plus the 639 Olympic events (not specifically depicted on any table) = the 5,000 total events shown on Table 2-8 of the DEIS.

As you can see, this creates confusion for me as I set up my exposure analyses and confusion on my end can translate into delaying the issue date for the BiOp. Please clarify.

2. Sound Exposure Levels: I can't find the rationale in the text that explains scientific/biological basis behind reporting the sound levels for the various "platforms" at a 4nm distance.

The sound levels at 4 nm lateral distance reflects the anticipated lateral separation between the low altitude flight noise source (i.e., aircraft flying at 500 ft AGL in a river valley) and the receptor location such as lynx critical habitat. Within the MOAs, lynx critical habitat is located above the 4,000-foot topographic contour which in most cases is 5 nm or more from the centerline of the Columbia River valley in Okanogan MOA segment A/C and the Kettle/Columbia River valleys in Roosevelt MOA segment A/B. The training tactics that the aircraft fly for this type of training is to follow the river valley bottoms. The 4-nm lateral distance allows for as much as 1 nm lateral maneuvering toward either side of the valley centerline. An additional margin of standoff is provided by the vertical distance of 2,000 feet that the aircraft is flying below the lynx habitat.

These data appear to be essentially meaningless, biologically, when biological receptors (animals) [sic] will be at much shorter distances (reasonable worst case is nesting owls less than 300 meters from source when nesting in the forest canopy). I requested the source levels of the aircraft, but that was not provided for some reason. Again, I request source levels or levels at 300 m from source. Either works for me.

The above information is essential for the Service to complete the analysis for the BiOp. I can either use data from the Navy or the Service can use the best available data from other sources that we have access to for our analysis.

The sound levels at 300 m (1000 ft) are provided in the table below.

Only a small piece of spotted owl critical habitat is located in the southwest corner of Okanogan MOA segment A/B. This habitat area is approximately 40 nm west of the nearest commonly used terrain for low-level aircraft training (again, this is because of the tactic to follow river valley bottoms). Additionally, the location and terrain of this critical habitat limits the usefulness of this area for aircraft maneuvers. Specifically MOA boundaries are designated in order to limit interference with non-military aviation. Under most circumstances, military aircraft are not allowed beyond those boundaries while training. Therefore, because the area of segment A/B with spotted owl habitat is located in the corner of the MOA, potential aircraft maneuvers are limited, a situation not considered practical for combat training purposes. In terms of terrain, because of the peaks and ridgelines in the areas, the lowest level to which an aircraft would descend during ACM training would be approximately 10,500 ft MSL, some 1,500 feet above the 9,000-foot peaks and ridgelines. From this perspective, other areas in the MOAs, farther east are better suited to ACM training. Should HARMEX training be conducted in the southeast corner of segment A/B, it would occur at approximately 15,000 ft MSL.

The following tables will be added to the BE amendment.

Table (#?). Predicted Sound Exposure Levels (dBA SEL) for EA-6B and EA-18G at 500 ft AGL and 4 nm Lateral Distance from Receptor*

EA-6B	Descent (80% rpm)	Low Cruise (97% rpm)	Climb (100% rpm)
	74.2	51.1	63.9
EA-18G	Descent at 75% rpm	Low Cruise at 83% rpm	Climb at 96% rpm
	45.7	41.7	71.4

*SEL in dBA at 59° F, 50% relative humidity, barometric pressure = 29.92" Hg, 450 knots true air speed (KTAS), NOISEMAP 6/7 database, level-versus-distance output, normal noise propagation algorithm.

Note: "Descent" is from 3,000 ft AGL to 500 ft AGL; "Low Cruise" is at 500 ft AGL; and "Climb" is from 500 ft AGL to 3,000 ft AGL.

Table (#?). Predicted Sound Exposure Levels (dBA SEL) for EA-6B and EA-18G*

	Vertical Distance (AGL) to Receptor			
	1,000 ft	3,500 ft	5,000 ft	7,500 ft
EA-6B Cruise (97% rpm)	108.1	96.6	92.7	87.8
EA-6B Climb (100% rpm)	110.8	98.5	94.2	88.7

EA-18G Cruise (83% rpm)	102.5	89.5	85.1	79.5
EA-18G Climb (96% rpm)	114.1	102.4	98.4	93.5

*SEL in dBA at 59° F, 50% relative humidity, barometric pressure = 29.92" Hg, 450 knots true air speed (KTAS), NOISEMAP 6/7 database, level-versus-distance output, normal noise propagation algorithm.

Note: 3,500 ft AGL is for owl critical habitat at 7,000 ft MSL; 5,000 ft AGL is for owl critical habitat at 5,500 ft MSL; and 7,500 ft AGL is for owl critical habitat at 3,000 ft MSL.

In addition, please provide any information you have on the SELCalc2 model computations: model purpose and outputs, inputs, parameters, assumptions, sensitivity analysis, author, etc.). I assume from the (AFCEE 2009) citation, this is an Air Force product. Was the model run for the Navy by Air Force personnel? Who ran the model and who has the outputs? I'd like to see the write-up of the results of the model run(s). The amendment provided no supporting information on the applicability of the model for the purposes we have here in this exposure analysis. In the absence of this information, the Service has no compelling reason to accept it.

Tables (#? and #?) provide estimates of sound exposure levels from various aircraft at various altitudes during various maneuvers. The acoustical data provided in the tables represent the output of the SELCalc2 aircraft noise analysis model (AFCEE 2009) conducted by Rich Melaas, Navy Region Northwest Regional Program Director for Range Management/Naval Air Station Whidbey Island Range Air Installations Compatible Use Zones (RAICUZ) (Melaas, U.S. Navy, pers. comm. 2009). The data reflect decibels in the type of format and using the noise descriptor as selected by the modeler.

The purpose of the SELCalc2 aircraft noise level prediction model is to predict point sound levels for various types of DOD aircraft. Output can be SEL, SENEL, L_{max} , EPNL, L_{eq} , DNL, and L_{DNR} in either tabular or graph form with or without the one-third octave band data. Inputs are aircraft type, power type and configuration, power in %N2 or as appropriate per type aircraft, airspeed in knots true, air temperature, relative humidity, number of day-time operations, number of night-time operations, type of noise descriptor to display data for, vertical distance above receptor, lateral distance from receptor, lateral attenuation model to be used, soft or hard topography, type of output desired, and noise propagation algorithm to be used. The output type is set by the user as a single or cumulative number, table, graph of SEL vs. distance, and as Omega10 one-third octave band decibel data. Assumptions used for PFEIS dBA SEL calculations are as stated under each table.

The SELCalc2 model is approved for use by the Federal Interagency Committee on Aviation Noise (FICAN). Members of FICAN include the Department of Defense, the Department of the Interior, the Department

of Transportation, the Department of Housing and Urban Development, the National Aeronautics and Space Administration, and the U.S. Environmental Protection Agency (www.fican.org). The model can be used to determine SEL values for receptors at a point relative to the aircraft noise source based on standard noise modeling input data and variables.

Wauer, Brian D

From: Mosher, John G CIV COMPACFLT N01CE1JM [john.g.mosher@navy.mil]
Sent: Friday, March 12, 2010 11:39 AM
To: Kevin_Shelley@fws.gov; john_grettenberger@fws.gov; carolyn_scafidi@fws.gov; jeff_krupka@fws.gov
Cc: Kler, Kimberly H CIV NAVFAC NW, EV1; Hart, George A CIV Navy Region NW, N40; Melaas, Richard L CIV NAS WHIDBEY ISLAND WA; Sodano, Gerald T CIV NAS Whidbey Island, N32; 'Wauer, Brian D'
Subject: RE: NWTRC EIS Consultation Info
Attachments: Aircraft Transit Routes to MOAs.doc; NASWI Runway Map.ppt
Signed By: john.g.mosher@navy.mil

All - Here's the description of the procedures and routes used to get to the MOAs and a map showing the orientation of the NAS Whidbey Island runways.

-John M.

-----Original Message-----

From: Mosher, John G CIV COMPACFLT N01CE1JM
Sent: Friday, March 12, 2010 11:25
To: 'Kevin_Shelley@fws.gov'; 'john_grettenberger@fws.gov'; 'carolyn_scafidi@fws.gov'; 'jeff_krupka@fws.gov'
Cc: Kler, Kimberly H CIV NAVFAC NW, EV1; Hart, George A CIV Navy Region NW, N40; Melaas, Richard L CIV NAS WHIDBEY ISLAND WA; Sodano, Gerald T CIV NAS Whidbey Island, N32; 'Wauer, Brian D'
Subject: NWTRC EIS Consultation Info
Importance: High

All - Following up on our discussion from Monday, attached is a description of the aircraft training conducted in the NWTRC MOAs as well as the scanned aviation sectional chart indicating the locations of the low level training (description refers to the chart). I also sent the hard copy of the actual chart with markings to you Kevin in the regular mail yesterday, so that should be arriving soon.

In a separate e-mail I will also send the description of the routes used to get to the MOAs by the aircraft.

There is a fair amount of info in these write ups and maps for you to digest, but I feel it will greatly help us move forward in the consultation.

We discussed 3 pm on Monday, March 15th for our next phone meeting. Hopefully you will have a chance to look at these some before then, so we can cover any questions that may come up. As a reminder I'll be out of the office next week, so Kimberly will lead the discussion on the Navy side, and if any additional questions come up later next week, please include Kimberly so we can get you a timely response (in my absence).

John Mosher
US Pacific Fleet
Northwest Program Manager
360-257-3234

Navy Aircraft Transit Routes to & from NWTRC MOAs

Navy aircraft proceeding to and from Naval Air Station (NAS) Whidbey Island to the Military Operating Areas (MOA) in the Northwest Training Range Complex (NWTRC) follow national airspace and Federal Aviation Administration (FAA) regulations and directional authority. These areas are not controlled or scheduled by the Navy. As national airspace, this airspace is utilized by all types of aircraft, including private, commercial and military. There are no specifically designated transit lines; however, in transiting in the general geographic direction of the MOAs from NAS Whidbey Island, Navy aircraft follow the directional and altitude parameters described below.

NAS Whidbey Island has four runways and possible directions of departure and arrival of aircraft. The runways are designated 07, 14, 25, and 32. These numbers represent the magnetic compass bearing heading that aircraft take off on or return on. Runway 07 has take off and return of aircraft heading in a direction of 070 degrees magnetic, 14 is 140 degrees, 25 is 250 degrees and 32 is 320 degrees (see runways map).

When taking off on each of these four compass directions and proceeding to the MOAs, aircraft proceed on these heading to a distance of 20 nautical miles from the runway at a minimum climb rate of 450 feet per mile. So at 4 miles out, aircraft are at a minimum altitude of 1,800 feet and at 5 miles they are at 2,250 feet. As this is a minimum required climb rate, it is noteworthy that on average Navy aircraft climb at a substantially greater rate than 450 feet per mile and are generally at a higher altitude than this minimum. Aircraft then continue to climb to 9,000 feet to achieve this minimum altitude before reaching 20 miles out. At this distance and altitude aircraft will then turn to a general heading toward the specific MOA for the scheduled training or as directed by FAA air traffic controllers.

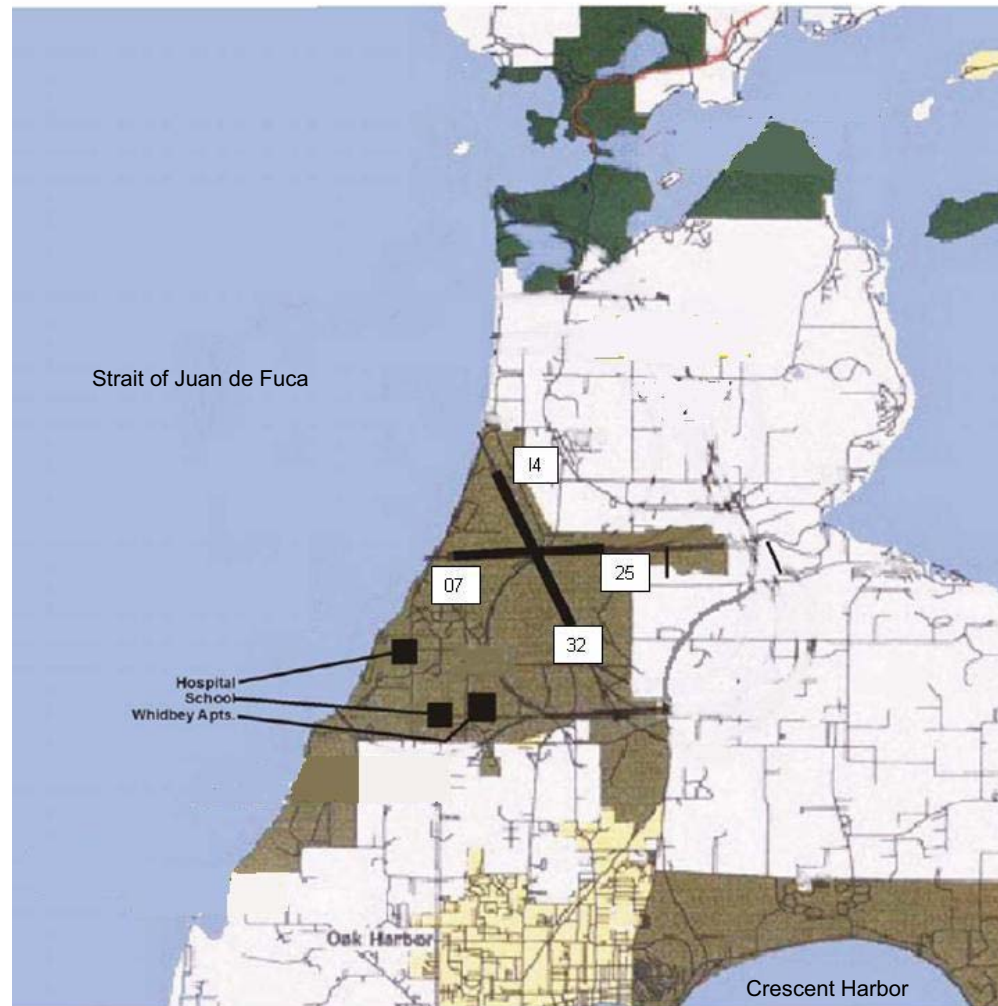
OKANOGAN and ROOSEVELT MOA ROUTE:

Heading east-northeast, the majority of aircraft en route to the Okanogan and Roosevelt MOAs will continue to climb to 23,000 feet; however some aircraft occasionally get permission from the FAA to proceed at 15,000 feet. Aircraft will enter the MOAs via the Okanogan MOA at these altitudes (15,000 feet or above), then can proceed to the designated altitudes of the MOA and the specific training events scheduled.

Returning from the Okanogan and Roosevelt MOAs, aircraft will return via the Okanogan MOA A southern boundary 55 nautical miles north of Ephrata, WA, then turn west-southwest and proceed to 34 miles west of NAS Whidbey Island with the majority of aircraft returning at 22,000 feet; however aircraft occasionally get permission from FAA to return back at 16,000 feet. They will normally begin decent at about 32 miles out and cross 5 miles at 1,500 feet and 4 miles at 1,200 feet on the headings of the four runways

NOTE: The Crescent Harbor coastline is approximately 4-5 miles off the departure end of runway 14.

NAS Whidbey Island Runways



OLYMPIC MOA ROUTE:

Heading west-southwest, aircraft en route to the Olympic MOAs will continue to climb to 23,000 feet and proceed to the MOAs, entering at this altitude.

Returning from the Olympic MOAs, aircraft will exit to the east at 23,000 feet and proceed to 30 miles southwest of NAS Whidbey Island at 14,000 feet, then fly 34 miles west of NAS Whidbey Island at 14,000 feet and normally start decent into the air station no later than 24 miles out to cross 5 miles at 1,500 feet and 4 miles at 1,200 feet on the headings of the four runways.

Wauer, Brian D

From: Mosher, John G CIV COMPACFLT N01CE1JM [john.g.mosher@navy.mil]
Sent: Friday, March 26, 2010 4:24 PM
To: Kevin_Shelley@fws.gov; john_grettenberger@fws.gov; carolyn_scafidi@fws.gov; jeff_krupka@fws.gov
Cc: Kler, Kimberly H CIV NAVFAC NW, EV1; Hart, George A CIV Navy Region NW, N40; Melaas, Richard L CIV NAS Whidbey Is, N3RM; Sodano, Gerald T CIV NAS Whidbey Is, N32; 'Wauer, Brian D'
Subject: NWTRC EIS Info on Low Level Flights

Kevin & all - During last Monday's (22 April) meeting you requested a break down for the number of low level training event distribution over the three river valleys that are used for the training.

Total Okanogan and Roosevelt MOA use is 860 training events annually on average.

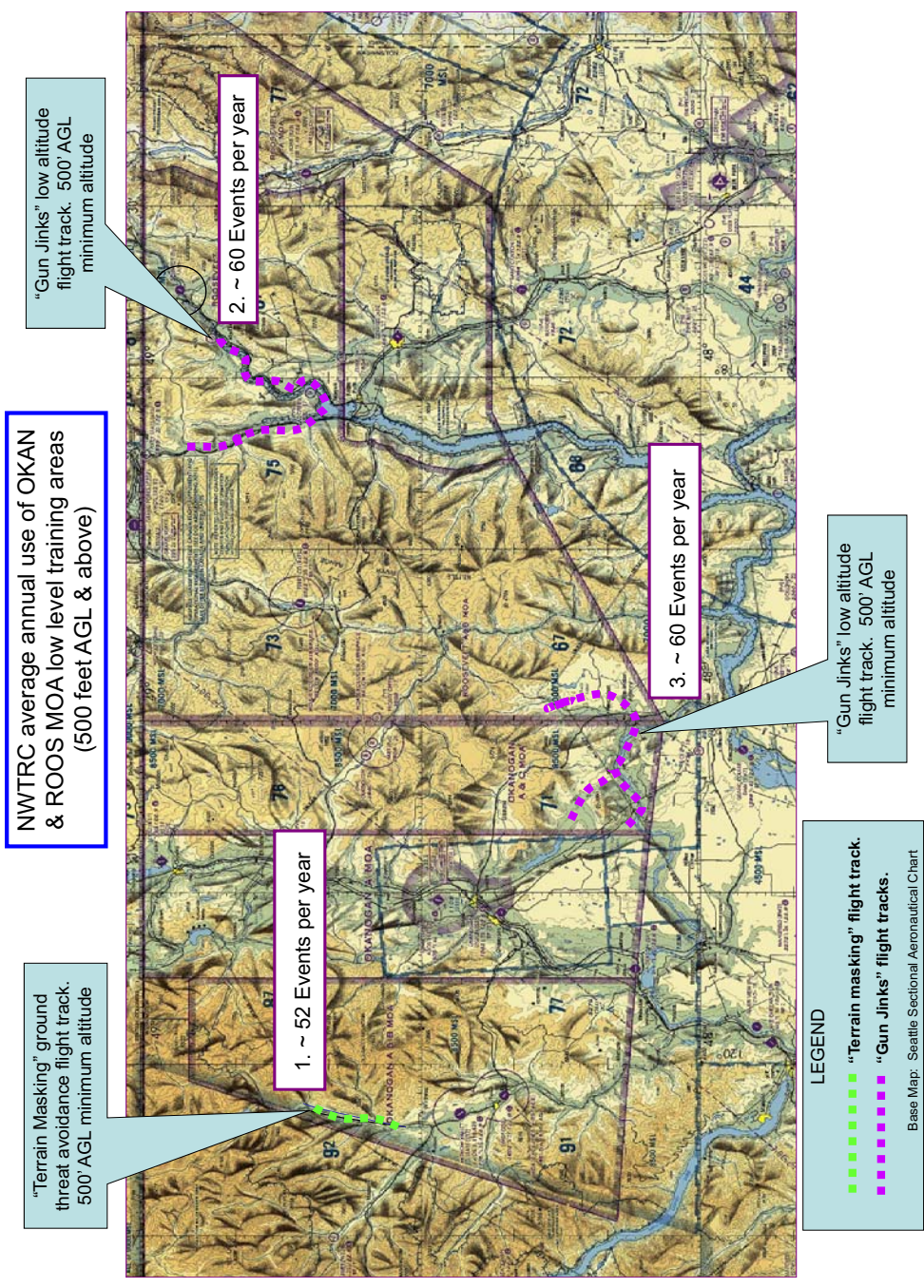
Total of low level flights (500 ft or above) that take place in Okanogan and Roosevelt MOAs is 20% of the 860 or 172 low level events annually in the 3 river valleys identified (see attached sectional chart). The approximate breakdown of the 3 areas are as follows:

Area 1 (Chewuch River Valley) is flown approximately 30% of the 172 events or 52 events per year.

Area 2 (Columbia River Valley) is flown approximately 35% of the 172 events or 60 events per year.

Area 3 (Kettle River/Columbia River wedge) is flown approximately 35% of the 172 events or 60 events per year.

John Mosher
US Pacific Fleet
Northwest Program Manager
360-257-3234



Wauer, Brian D

From: moshers@comcast.net
Sent: Friday, April 16, 2010 1:52 PM
To: Shelley, Kevin; Grettenberger, John
Cc: Mosher, John G CIV COMPACFLT N01CE1JM; Kler, Kimberly H CIV NAVFAC NW, EV1; jere.deirsing@navy.mil
Subject: NWTRC Mitigations for EOD Training

Kevin & John - I am sending this from my home e-mail address, as I am out of the office today.

I received the last of the necessary approvals from our Navy chain of command late yesterday to respond to you that we are in agreement with the two mitigations we discussed during our 5 April meeting. Specifically we agree to not conduct EOD underwater demolition training at the Naval Magazine Indian Island site (1 event per year was included in the draft EIS and BE). Instead that training event will be conducted at the Hood Canal training site, so there will now be up to a total of two events per year in Hood Canal. The other mitigation that we agree to is that EOD will utilize charge sizes of 1.5 lbs or less at the Hood Canal site (EIS/BE identified 2.5 lbs or less may be used). This will still allow the EOD Detachment at Bangor to meet their specific training requirements.

If in the future the need to again train at the Naval Magazine Indian Island site is identified, then the Navy will initiate consultation for those specific requirements.

As I mentioned, I am going to be out of the office next week, so if there are any questions with this please contact Kimberly Kler at 360-396-0927.

John Mosher
US Pacific Fleet
Northwest Program Manager
360-257-3234

Wauer, Brian D

From: Mosher, John G CIV COMPACFLT N01CE1JM [john.g.mosher@navy.mil]
Sent: Friday, June 04, 2010 9:22 AM
To: Kevin_Shelley@fws.gov; john_grettenberger@fws.gov; Marc_Whisler@fws.gov; carolyn_scafidi@fws.gov
Cc: Kler, Kimberly H CIV NAVFAC NW, EV1; Hart, George A CIV Navy Region NW, N40
Subject: Training with IEER Sonobuoys in NWTRC
Signed By: john.g.mosher@navy.mil

Importance: High

Kevin & all - We got our answer back late yesterday on the training use of IEER sonobuoys in the NWTRC, and as discussed on Monday, it was confirmed that the Navy does not train with IEERs inside of 12 nautical miles from shore. This practice has been in place for many years and is simply a factor of where in-water conditions are desirable to support IEER training in the NWTRC. The Navy does not consider this a training mitigation or specific geographic restriction, but please consider this statement as the Navy's commitment that IEER sonobuoy training will not occur closer than 12 nm in the NWTRC.

Though it is not foreseen for the future, if training requirements necessitate a change to this practice, the Navy will contact FWS and consult as necessary.

Please let me know if you have questions with this. I will be in meetings this morning and will be traveling back to WA later today, but will follow up with a call today and we can further discuss this during our Monday meeting as well.

John Mosher
US Pacific Fleet
Northwest Environmental Program Manager
360-257-3234



DEPARTMENT OF THE NAVY

COMMANDER
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
5090
Ser N01CE1/1183
19 Oct 09

Loree Randall
Federal Consistency Coordinator
Shorelands & Environmental Assistance Program
Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Dear Ms. Randall:

Enclosure 1, a Coastal Consistency Determination, was prepared in compliance with Section 307 of the Coastal Zone Management Act (CZMA), which states that federal actions must be consistent to the maximum extent practicable with the enforceable policies of approved state coastal management programs.

The Northwest Training Range Complex (NWTRC) consists of numerous training areas in the Pacific Northwest, including airspace, sea space, subsurface space, and land areas. The Range Complex includes ranges that extend westward in the Pacific Ocean (to 250 nautical miles [nm] beyond the coast of Washington, Oregon, and Northern California) and east to Idaho. Portions of the Range Complex are located in or, in the case of airspace, over the following Washington coastal counties: Clallam, Grays Harbor, Island, Jefferson, Kitsap, Pacific, Skagit, and Whatcom (Enclosure 1, Table 1 and Enclosure 2, Figures 1, 2, and 3).

A detailed description of the Proposed Action is attached as Enclosure 2. The Proposed Action does not involve extensive changes to the NWTRC facilities, operations, or training capacities, nor does it involve an expansion of the existing NWTRC area. Rather, the Proposed Action would result in selectively focused but critical enhancements and increases in training that are necessary if the Navy is to maintain a state of military readiness commensurate with the national defense mission. The Proposed Action does not include any land-based or at-sea construction, modifications to existing infrastructure of the NWTRC, or changes in the geographic extent of the NWTRC's existing training areas.

5090
Ser N01CE1/1183
19 Oct 09

As summarized in Enclosure 1, the Navy reviewed the Washington Coastal Zone Management Program to determine which enforceable policies are applicable to the Proposed Action and conducted an effects test to determine whether activities included in the Proposed Action would have reasonably foreseeable direct and/or indirect effects on a coastal use or resource. As identified in Enclosure 1, some of the enforceable policies are applicable to the Proposed Action and some elements of the action could have reasonably foreseeable coastal effects. Accordingly, this Coastal Consistency Determination has been prepared.

Chapter 3 of the EIS/OEIS identifies and analyzes potential adverse effects of the Proposed Action. Chapter 5 of the EIS/OEIS describes mitigation measures that the Navy implements to avoid and minimize impacts. Based on this analysis and implementation of mitigation measures, the Navy has determined that the Proposed Action would not result in significant impacts to Washington's coastal resources. Pursuant to the CZMA and based on the effects analysis conducted during the development of the EIS/OEIS, the Navy has determined that the Proposed Action for the NWTRC is consistent to the maximum extent practicable with the applicable enforceable policies of the Washington Coastal Zone Management Program and the associated counties' Shoreline Management Master Programs.

CONSISTENCY OF THE PROPOSED ACTION WITH ENFORCEABLE POLICIES OF THE WASHINGTON COASTAL ZONE MANAGEMENT PROGRAM

Enforceable Policy	Applicability/Consistency
Shoreline Management Act	Not Applicable
State Environmental Policy Act	Not Applicable
Ocean Resources Management Act	Consistent
Clean Water Act	Not Applicable
Clean Air Act	Not Applicable
Energy Facility Site Evaluation	Not Applicable
Council Law	

5090
Ser N01CE1/1183
19 Oct 09

If you have questions concerning this Coastal Zone Consistency Determination, please feel free to contact Mr. John Mosher at 360-257-3234, e-mail: john.g.mosher@navy.mil, or Ms. Kimberly Kler at 360-396-0927, e-mail: Kimberly.kler@navy.mil.

Sincerely,



D. A. McNAIR
Captain, U.S. Navy
Deputy Fleet Engineer
By direction

- Enclosures: 1. Coastal Zone Consistency Determination
2. Proposed Project Description

**ENCLOSURE 1: COASTAL ZONE CONSISTENCY DETERMINATION FOR
FEDERAL ACTIVITIES, DEPARTMENT OF THE NAVY, NORTHWEST TRAINING
RANGE COMPLEX, SEPTEMBER 2009**

Project Description: The Navy's Northwest Training Range Complex (NWTRC) consists of numerous training areas in the Pacific Northwest, including airspace, sea space, subsurface space, and land areas. The range complex includes ranges that extend westward in the Pacific Ocean (to 250 nautical miles [nm] beyond the coast of Washington, Oregon, and Northern California) and east to Idaho. Portions of the range complex are located in or, in the case of airspace, over the following Washington coastal counties: Clallam, Grays Harbor, Island, Jefferson, Kitsap, Pacific, Skagit, and Whatcom. A detailed description of the Proposed Action is attached as Enclosure 2.

This action under Coastal Zone Management Act (CZMA) §307(c)(1) is for activities which will take place within Washington's coastal zone, or which will affect a land use, water use or natural resource of the coastal zone. *(The coastal zone includes Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum and Whatcom counties.)*

The action complies with the following enforceable policies of the Coastal Zone Management Program (CZMP):

1. Shoreline Management Act (SMA):

- Is outside of SMA jurisdiction (X)
Is under current SMA application () SMA# _____ Date Issued _____
Has a valid Shoreline Permit ()
Has received an SMA Exemption ()

2. State Water Quality Requirements:

- Does not require water quality permits (X)
Is under current water quality application ()
Has received a short-term modification of water quality standards () Mod# _____ Date Issued _____
Has received a 401 Certification () 401# _____ Date Issued _____

3. State Air Quality Requirements:

- Does not require air quality permits (X)
Is under current application for air permit ()
Has received an air permit from the local air authority () Air Permit # _____ Date Issued _____

4. State Environmental Policy Act:

- Is SEPA exempt (X)
SEPA checklist submitted ()
NEPA decision has been adopted by local government to satisfy SEPA ()
SEPA decision issued () SEPA# _____ Date Issued _____

5. Energy Facility Site Evaluation

Council:

Does not involve an energy project (X)

6. Ocean Resource Management Act:

Use demands do not conflict or pose unacceptable environmental or social risk (X)

Therefore, I certify that this action is consistent to the maximum extent practicable with the enforceable policies of Washington's approved coastal zone management program.

(Signature) Ray M. Foster Date 10/19/09

ENCLOSURE 1: COASTAL ZONE CONSISTENCY DETERMINATION FOR FEDERAL ACTIVITIES, DEPARTMENT OF THE NAVY, NORTHWEST TRAINING RANGE COMPLEX, SEPTEMBER 2009

Table 1 describes the relationship of NWTRC training areas to Washington's coastal zone. Figures 1, 2, and 3 of Enclosure 2 show locations of the training areas.

The Navy reviewed the Washington Coastal Zone Management Program enforceable policies to determine their applicability to the Proposed Action. The findings of this review are summarized as follows:

- **Shoreline Management Act (SMA) (Chapter 90.58 Revised Code of Washington [RCW])**- The SMA is not applicable to the Proposed Action because: (1) it does not involve construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; and (2) it would not interfere with the normal public use of the surface of waters overlying lands subject to the SMA at any stage of water level.
- **State Environmental Policy Act (SEPA) (Chapter 43.21C RCW)** - While the SEPA process is not applicable to federal actions, the Navy has prepared a Draft EIS/OEIS for the Proposed Action, including activities within or affecting the coastal zone, in accordance with NEPA and Executive Order 12114. The Navy's Draft EIS/OEIS is functionally equivalent to a SEPA EIS and it has been submitted to Ecology as a supporting document for this Consistency Determination.
- **Ocean Resources Management Act (ORMA) (Chapter 43.143 RCW)** - Navy training is considered an ocean use involving renewable resources. Therefore, some of the provisions of the ORMA are applicable to some elements of the Proposed Action. Specifically, 13 of the 25 General Ocean Use Guidelines (WAC 173-26-360 (7)) are applicable to portions of the Proposed Action that take place in the Pacific Ocean.
- **Clean Water Act/Washington Water Pollution Control Act (Chapter 90.48 RCW)** - Discharge permits are not required for the Proposed Action. Therefore, this enforceable policy, as it relates to Federal Consistency with the WCZMP, is not applicable to the Proposed Action.
- **Clean Air Act/Washington Clean Air Act (Chapter 70.94 RCW)** - Air emissions permits are not required for the Proposed Action. Therefore, this enforceable policy, as it relates to Federal Consistency with the WCZMP, is not applicable to the Proposed Action.
- **Energy Facility Site Evaluation Council Law (Chapter 80.50 RCW)** - This enforceable policy is a state-local permitting system for large thermal energy facilities, oil refineries which process petroleum transported over marine waters, and petroleum and natural gas pipelines. Consequently, it is not applicable to the Proposed Action.

The Navy conducted an effects test to determine whether activities included in the Proposed Action would have reasonably foreseeable direct and/or indirect effects on a coastal use or resource. As summarized in Table 2, reasonably foreseeable coastal effects could result from some of the proposed activities; therefore, this Coastal Consistency Determination has been prepared.

TABLE 1: RELTIONSHIP OF NORTHWEST TRAINING RANGE COMPLEX TRAINING AREAS TO WASHINGTON'S COASTAL ZONE

Training area	Coastal Zone Relationship	Coastal Counties	Comments
Offshore Areas			
Pacific Northwest Ocean Surface/Subsurface Operating Area (OPAREA)	Outside and inside	Clallam, Jefferson, Grays Harbor, Pacific	Most of the OPAREA is outside the coastal zone. Only those portions of the OPAREA from the Washington coast to 3 nm offshore are inside the coastal zone.
Warning Area 237 (W-237 [A – H, and JJ])	Outside		W-237 is Special Use Airspace (SUA) located over the Pacific Ocean greater than 3 nm off the Washington coast.
W-570	Outside		W-570 is SUA located over the Pacific Ocean greater than 3 nm off the Oregon coast.
W-93 (A/B)	Outside		W-93 is SUA located over the Pacific Ocean greater than 3 nm off the Oregon and northern California coasts.
Inshore Areas			
Chinook Military Operating Area (MOA) (A/B)	Over	Island and Jefferson	Chinook MOA is SUA over the Strait of Juan de Fuca and Admiralty Inlet.
Admiralty Bay Range (Restricted Area 6701 [R-6701] and Navy 7)	Over and Inside	Island	R-6701 is a Restricted Area over Admiralty Bay and Navy 7 is the surface and subsurface Restricted Area that lies under R-6701.
Okanogan MOA (A/B/C)	Outside		SUA over north-central Washington.
Olympic MOA (A/B)	Over	Clallam, Jefferson	SUA over Clallam and Jefferson Counties.
Roosevelt MOA (A/B)	Outside		SUA over north-central Washington.
Darrington OPAREA	Over	Whatcom, Skagit	Airspace over Whatcom and Skagit Counties.
Outlying Landing Field (OLF) Coupeville, including Alert Area 680 (A-680)	Contiguous	Island	OLF Coupeville is federally owned land excluded from the coastal zone. A-680 is Alert Area airspace centered on OLF Coupeville.
Seaplane Base Survival Area	Contiguous	Island	The Seaplane Base Survival Area is federally owned land excluded from the coastal zone located at Navy Seaplane Base/Crescent Harbor, NAS Whidbey Island.
Navy 3	Inside	Island	Surface and subsurface restricted area off the west coast of northern Whidbey Island.
Explosive Ordnance Disposal (EOD)/Naval Special Warfare Ranges			
Seaplane Base Demolition Training Range (DTR)	Contiguous	Island	Seaplane Base is federally owned land excluded from the coastal zone.
Crescent Harbor Underwater EOD Range	Inside	Island	Water range located in Crescent Harbor
OLF Coupeville	Contiguous	Island	OLF Coupeville is federally owned land excluded from the coastal zone.
Bangor EOD DTR	Contiguous	Kitsap	Bangor DTR is federally owned land excluded from the coastal zone located on NAVBASE Kitsap-Bangor.
Floral Point Underwater EOD Range	Inside	Kitsap	Floral Point Underwater EOD Range, located in Hood Canal, near NBK-Bangor, is active but seldom used.
Naval Magazine Indian Island Underwater EOD Range	Inside	Jefferson	Indian Island Underwater EOD Range, located adjacent to Indian Island, is active but seldom used.

TABLE 2: SUMMARY OF NAVY EFFECTS TEST TO IDENTIFY ELEMENTS OF THE PROPOSED ACTION WITH REASONABLY FORESEEABLE COASTAL EFFECTS

Naval Warfare Area	Activity	Areas	Reasonably Foreseeable Coastal Effects
Anti-Air Warfare	Air Combat Maneuvers	Okanogan, Olympic, and Roosevelt MOAs/ATCAs, Darrington OPAREA	No. Okanogan and Roosevelt are well outside the coastal zone and no coastal effects would occur. Olympic and Darrington are over the coastal zone, but the lower flight altitude is 6,000 and 10,000 feet MSL, respectively. Therefore, coastal effects are not reasonably foreseeable.
	Air-to-Air Missile Exercise	W-237	No. These exercises would take place outside the coastal zone, more than 12 nm offshore, and well above 3,000 ft. Explosions associated with live missiles would occur above 3,000 ft; therefore, coastal resources would not be exposed to impacts from explosions. The probability of an inert missile or shrapnel from a live missile directly striking a seabird or marine life is extremely low. Therefore, coastal effects are not reasonably foreseeable.
Anti-Surface Warfare	Surface-to-Air Gunnery Exercise	W-237, PACNW OPAREA	No. These exercises would take place outside the coastal zone more than 12 nm offshore. The probability of an inert round directly striking a seabird or marine life is extremely low. Therefore, coastal effects are not reasonably foreseeable.
	Surface-to-Air Missile Exercise	W-237, PACNW OPAREA	No. These exercises would take place outside the coastal zone and more than 12 nm offshore. Explosions associated with live missiles would occur in the air at relatively high altitudes; therefore, coastal resources would not be exposed to impacts from explosions. The probability of an inert missile or shrapnel from a live missile directly striking a seabird or marine life is extremely low. Therefore, coastal effects are not reasonably foreseeable.
	Surface-to-Surface Gunnery Exercise	W-237, PACNW OPAREA	No. These exercises would take place outside the coastal zone, more than 12 nm offshore, and use inert rounds. The probability of an inert round directly striking a seabird or marine life is extremely low. Therefore, coastal effects are not reasonably foreseeable.
	Air-to-Surface Bombing Exercise	W-237, PACNW OPAREA	Yes. These exercises would take place outside the coastal zone and more than 12 nm offshore. However, potential exists for seabirds and marine mammals to be exposed to explosive impacts; therefore, coastal effects could be reasonably foreseeable.
Anti-Submarine Warfare	Sink Exercise	W-237, PACNW OPAREA	Yes. These exercises would take place outside the coastal zone and more than 12 nm offshore. However, potential exists for seabirds and marine mammals to be exposed to explosive impacts; therefore, coastal effects could be reasonably foreseeable.
	Antisubmarine Warfare Tracking Exercise - MPA	W-237, PACNW OPAREA	Yes. This activity may occur inside or outside the coastal zone and may include the use of active sonobuoys, which introduce sound in the water and are not recoverable after use.
Anti-Submarine Warfare	Antisubmarine Warfare Tracking	W-237, PACNW OPAREA	No. These training events have historically been conducted a minimum of 50 nm from shore. Therefore, it is not reasonably foreseeable that coastal marine life would be

Navy Warfare Area	Activity	Areas	Reasonably Foreseeable Coastal Effects
	Exercise - Extended Echo Ranging		exposed to harmful sound from sonobuoys.
	Antisubmarine Warfare Tracking Exercise - Surface Ship	PACNW OPAREA	In the PACNW OPAREA, locally based surface ships do not routinely conduct ASW Tracking exercises. However, mid-frequency active (MFA) sonar is used occasionally (one to one and a half hours) during ship transits through the OPAREA. All surface ship MFA sonar use is documented in this training activity description. Historically, as well as projected for the future, this use of sonar takes place greater than 50 nm from shore. Therefore, it is not reasonably foreseeable that coastal marine life would be exposed to harmful sound from MFA.
	Antisubmarine Warfare Tracking Exercise - Submarine	W-237, PACNW OPAREA	No. These exercises occur outside the coastal zone and more than 3 nm offshore. Only passive sonar sensors are used and no torpedoes are fired during this exercise. Therefore, coastal effects are not reasonably foreseeable.
Electronic Combat	Electronic Combat Exercises	W-237A, Darrington OPAREA	No. These exercises involve aircraft overflights and vessel movements, but ordnance is not used. W-237A is outside the coastal zone. Darrington is over the coastal zone, but the lower flight altitude is 10,000 feet MSL. Therefore, coastal effects are not reasonably foreseeable.
Mine Warfare	Mine Countermeasures	Crescent Harbor, Indian Island	Yes. These exercises involve underwater detonation of explosives in restricted areas inside the coastal zone. Habitat, fish, other marine life, and birds could be affected by the underwater detonations. Therefore, coastal effects are reasonably foreseeable.
	Land Demolitions	Bangor DTR, Seaplane Base DTR	Yes. These exercises involve land detonation of explosives on federally owned lands excluded from the coastal zone. However, mobile species such as terrestrial wildlife and birds could be affected by the land detonations. Therefore, coastal effects are reasonably foreseeable.
Naval Special Warfare	Insertion/Extraction	Seaplane Base, OLF Coupeville, Crescent Harbor	Yes. These exercises occur on/over federally owned lands excluded from the coastal zone and on/over open waters inside the coastal zone. Mobile species such as terrestrial wildlife and birds could be disturbed by low-altitude helicopter overflights, parachute insertion, and foot traffic during these exercises. Therefore, coastal effects are reasonably foreseeable.
	NSW Training	Indian Island	Yes. These exercises occur on federally owned lands excluded from the coastal zone and in open waters inside the coastal zone. Mobile species such as terrestrial wildlife and birds could be disturbed by foot traffic (over-the-beach training and special reconnaissance) during these exercises. Use of the SEAL Delivery Vehicle in nearshore waters could also affect marine/estuarine species. Therefore, coastal effects are reasonably foreseeable.
Strike Warfare	HARM Exercise (Non-firing)	Okanogan, Olympic, and Roosevelt MOAs/AT CAAs, W-237	No. These exercises may occur over the coastal zone, but participating aircraft fly above 10,000 ft and the exercise is a non-firing event. Therefore, coastal effects are not reasonably foreseeable.
Support Operations	Intelligence, Surveillance, and	W-237, PACNW OPAREA	Yes. These exercises may occur in airspace over the coastal zone, but the lower flight altitude is typically above 3,000 ft. This activity may include the use of passive (listening)

Navy Warfare Area	Activity	Areas	Reasonably Foreseeable Coastal Effects
	Reconnaissance		sonobuoys, which are not recoverable after use.
	Unmanned Aerial System RDT&E and Training	R-6701 (Admiralty Bay), PACNW OPAREA, W-237	No. Unmanned aerial systems are typically flown above 3,000 ft. Some activities may occur in SUA over the coastal zone, but coastal effects are not reasonably foreseeable based on flight altitudes.



DEPARTMENT OF THE NAVY

COMMANDER
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
5090
Ser N01CE1/1206
29 Oct 09

Mr. Jay Charland
Coastal State-Federal Relations Coordinator
Oregon Coastal Management Program
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Dear Mr. Charland:

Enclosed, please find the Department of the Navy's Negative Determination under the Coastal Zone Management Act (CZMA) of 1972 as amended (16 United States Code 1456), as implemented by the provisions of 15 Code of Federal Regulations Section 930.35, from the Oregon Department of Land Conservation and Development (DLCD) as required by Oregon Administrative Code 660, Division 35, Section 20. The Navy is proposing to conduct selected training exercises in portions of the Northwest Training Range Complex (NWTRC) off the Oregon coast, outside the Oregon Coastal Zone. This training is necessary to achieve and maintain Fleet readiness, as articulated in the Draft Environmental Impact Statement/Overseas Environmental Impact Statement (DEIS/OEIS) for the NWTRC. A copy of the DEIS/OEIS was previously provided to the DLCD in December of 2008.

Pursuant to Section 307(c)(1) of the federal CZMA, the Navy has determined that the Proposed Action would have no reasonably foreseeable effects to Oregon's coastal uses or resources. The basis for this "Negative Determination" are detailed in enclosure (1).

The Navy points of contact for this information are Ms. Kimberly Kler at 360-396-0927, e-mail: kimberly.kler@navy.mil, or Mr. John Mosher at 360-257-3234, e-mail john.g.mosher@navy.mil.

Sincerely,

D. A. McNAIR
Captain, U.S. Navy
Deputy Fleet Engineer
By direction

Enclosure: (1) Negative Determination for Oregon

**Northwest Training Range Complex
Coastal Zone Management Act
Negative Determination for Oregon
October 2009**

Background and Location of Proposed Activities

The United States Department of the Navy (Navy) is proposing to conduct selected training exercises in portions of the Northwest Training Range Complex (NWTRC) off the Oregon coast to achieve and maintain Fleet readiness. The NWTRC consists of numerous individual training areas in the Pacific Northwest. The range complex includes ranges that extend westward in the Pacific Ocean (to 250 nautical miles [nm] beyond the coast of Washington, Oregon, and Northern California) and east to Idaho (Figure 1).

This document, prepared pursuant to the requirements of the Coastal Zone Management Act (CZMA) (16 U.S.C. § 1452, et seq), provides information supporting the Navy's Negative Determination for the Proposed Action. This Negative Determination is submitted to the Oregon Department of Land Conservation and Development (DLCD) in accordance with the CZMA Federal Consistency Regulations (15 CFR Part 930) and the Oregon Coastal Management Program (OCMP). This Negative Determination addresses activities that would take place in portions of the NWTRC located off the Oregon coast.

The CZMA establishes National policy to protect resources in the coastal zone and requires coastal states to develop coastal management programs. The CZMA requires that each federal agency activity within or outside the coastal zone, that affects any land or water use or natural resource of the coastal zone, be carried out in a manner that is consistent to the maximum extent practicable with the enforceable policies of approved state management programs. Federal agencies are required to submit a Coastal Consistency Determination to coastal states when their activities would have reasonably foreseeable effects on coastal uses or resources. A Negative Determination may be submitted pursuant to 15 CFR § 930.35 if the federal agency's effects test indicates that coastal effects are not reasonably foreseeable.

As defined by the OCMP, Oregon's coastal zone extends from the Washington border on the north to the California border on the south; seaward to the extent of state jurisdiction as recognized by federal law (the Territorial Sea, extending 3 nm offshore); and inland to the crest of the coastal mountain range. The three exceptions occur where the basins of the Columbia, Umpqua, and Rogue Rivers lie predominantly inland of the crest of the coastal mountains. In these cases the coastal zone boundary crosses these rivers at Bradwood, Scottsburg, and Agness, respectively.

As shown in Figure 1, most of the NWTRC training areas are located off the coast of Washington, in Washington, or in Special Use Airspace over Washington, and most of the activities conducted under the Proposed Action would occur in those areas. Training areas located off the Oregon coast include a portion of the Pacific Northwest Operating Area (PACNW OPAREA); the southernmost portions of Warning Areas 237G and 237J (W-237G and W0237J); W-570; W-93A, and the northernmost portion of W-93B. A relatively small portion of the PACNW OPAREA, located in the Pacific Ocean from 0 to 3 nm off the Oregon coast, is the only NWTRC training area located in the Oregon coastal zone. However, all training activities would take place more than 12 nm off the Oregon coast and well outside of the Oregon coastal zone.

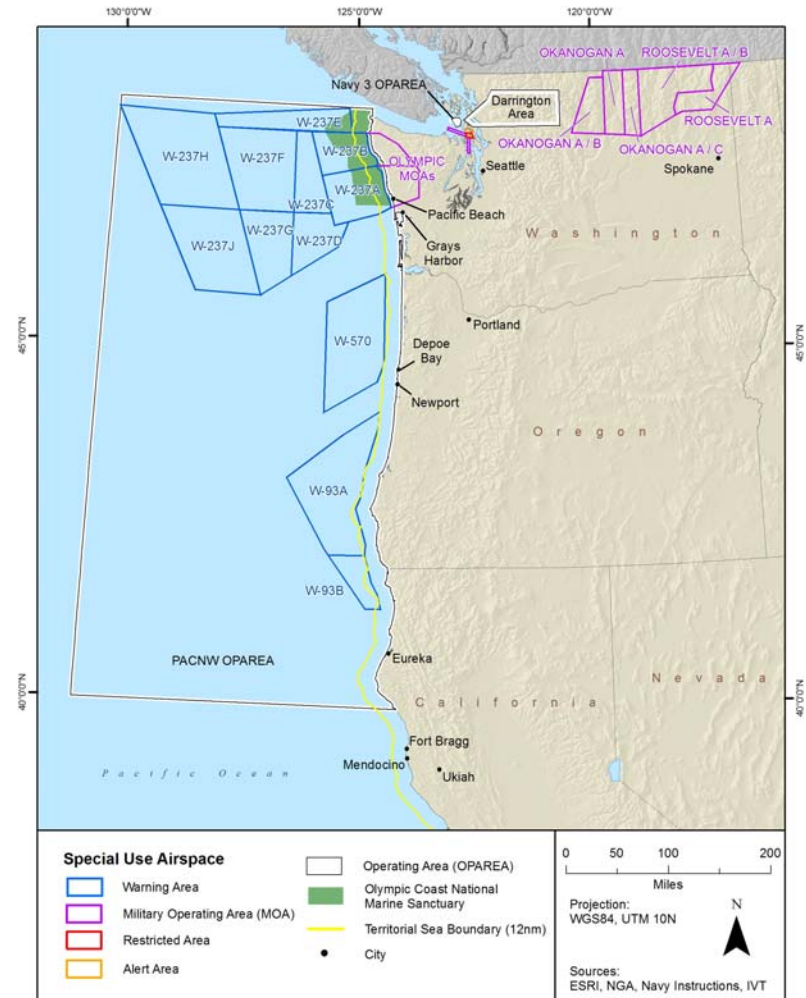


Figure 1: Location of NWTRC Training Areas

The Navy prepared a Draft Environmental Impact Statement/Overseas Environmental Impact Statement (DEIS/OEIS) for the Proposed Action within the NWTRC in accordance with the National Environmental Policy Act (NEPA) and Executive Order 12114 - *Environmental Effects Abroad of Major Federal Actions*. The DEIS/OEIS includes comprehensive descriptions of the Proposed Action and resources that could be affected by the action; a detailed analysis of the potential environmental consequences of the Proposed Action; and mitigation measures applicable to the Proposed Action. The DEIS/OEIS was submitted to DLCD in a letter dated December 29, 2008. A majority of the proposed activities addressed by the DEIS/OEIS take place in Washington or off the Washington coast. As such, many of the activities described in the DEIS/OEIS are not applicable to this Negative Determination. The following section presents a description of the Proposed Action for portions of the NWTRC located off the Oregon coast.

Description of Proposed Action for Portions of the Northwest Training Range Complex Located off the Oregon Coast

Overview

The Navy is proposing to conduct selected training exercises in portions of the NWTRC located off the Oregon coast. All training activities would take place more than 12 nm off the Oregon coast and well outside of the Oregon coastal zone. Specifically, training would take place in portions of the PACNW OPAREA located more than 12 nm off the Oregon coast; the southernmost portions of W-237G and W-237J; W-570; W-93A; and the northernmost portion of W-93B (Figure 1). The Proposed Action does not include any land-based or at-sea construction, modifications to existing infrastructure of the NWTRC, or changes in the geographic extent of the NWTRC's existing training areas, including those portions of the NWTRC located off the Oregon coast.

The type and amount of Navy training that takes place off the Oregon coast in the NWTRC is very limited. For example, the Navy uses W-570 about 32 hours per year and W-93A/B about 16 hours per year. Naval vessels homeported in Washington transit through portions of the PACNW OPAREA more than 12 nm off the Oregon coast, but these transits normally occur about 50 nm off the Oregon coast. It is estimated that less than 1% of the Navy's training time in the NWTRC is spent off the Oregon coast. Table 1 provides a summary of Navy training activities that may occur in the NWTRC off the Oregon coast and descriptions of these activities are provided below. It should be noted that the activities listed in Table 1 do not occur exclusively off the Oregon coast. As noted above, most of these events occur off the Washington coast.

Anti-Surface Warfare (ASUW) Training

Anti-Surface Warfare (ASUW) addresses combat (or interdiction) activities by air, surface, or submarine forces against hostile surface ships and boats.

Surface-to-Surface Gunnery Exercise (GUNEX): Surface gunnery exercises take place in the open ocean to provide gunnery practice for Navy ship crews. Exercises can involve a variety of surface targets that are either stationary or maneuverable. Gun systems employed against surface targets include the 5-inch, 76mm, 57mm, .50 caliber and the 7.62mm. A GUNEX lasts approximately one to two hours, depending on target services and weather conditions.

GUNEX events in the NWTRC normally take place off the Washington coast. However, naval vessels homeported in Washington may conduct this exercise in the PACNW OPAREA off the coast of Oregon while transiting to and from the Southern California Range Complex. These transits normally occur approximately 50 nm off the Oregon coast. Any GUNEX events taking place off the Oregon coast would be more than 12 nm from shore.

Table 1: Summary of Navy Training Activities that May Occur In the Northwest Training Range Complex off the Oregon Coast

Range Activity	Platform	System or Ordnance	Location
ANTI-SURFACE WARFARE (ASUW)			
Surface-to-Surface (S-S) Gunnery Exercise	CVN	20mm CIWS, 7.62mm, .50 cal	Portions of the PACNW OPAREA located more than 12 nm off the Oregon coast. Normally about 50 nm off the Oregon coast.
	DDG	57/54 BLP, 20mm, 7.62mm, .50 cal	
	FFG	76mm, 20mm, 7.62mm, .50 cal	
	AOE	20mm, 7.62mm, .50 cal	
Air-to-Surface (A-S) Bombing Exercise	P-3C	MK-82 (live), BDU-45 (inert)	Portions of the PACNW OPAREA located more than 12 nm off the Oregon coast.
	P-8	MK-82 (live), BDU-45 (inert)	
	P-3	MK-82, AGM-65 Maverick	
	FA-18	MK-82, MK-83, MK-84, SLAM-ER	
	EA-6B	AGM-88C HARM	
	EA-18G	AGM-88C HARM	
	SH-60	AGM-114 HELLFIRE	
	DDG	57/54	
	FFG	76mm	
	SSN	MK-48 ADCAP	
ANTI-SUBMARINE WARFARE (ASW)			
Anti-Submarine Warfare (ASW) Tracking Exercise - MPA	P-3C	Targets: SSN, MK-39 EMATT Sonobuoys: SSQ-53 DIFAR (passive) SSQ-62 DICASS (active) SSQ-77 VLAD, SSQ-36 BT	Portions of the PACNW OPAREA located more than 12 nm off the Oregon coast.
	P-8 MMA		
	P-8 MMA		
ASW Tracking Exercise - Surface Ship	DDG	SQS-53C MFA sonar	Portions of the PACNW OPAREA located more than 12 nm off the Oregon coast. Normally about 50 nm off the Oregon coast.
	FFG	SQS-56 MFA sonar	
ASW Tracking Exercise - Submarine	SSBN	BQQ-5 (passive only)	Portions of the PACNW OPAREA located more than 3 nm off the Oregon coast.
	SSGN	BQQ-5 (passive only)	
	P-3		
	EP-3		
	CVN		
	DDG		
	FFG		
	AOE		
SSGN			
SSBN			
SUPPORT ACTIVITIES			
Intelligence, Surveillance, and Reconnaissance (ISR)	P-3, EP-3, EA-6B, EA-18G	None	Greater than 12 nm off the Oregon coast in W-570 and W-93A/B.

Air-to-Surface Bombing Exercises (BOMBEX A-S): During Air-to-Surface Bombing Exercises (BOMBEX A-S), Maritime Patrol Aircraft (MPA) and other fixed-wing aircraft deliver bombs against simulated surface maritime targets, typically a smoke float. MPA is a term used to describe both the P-3C Orion aircraft and the P-8 Poseidon. The P-8, also referred to as the Multi-mission Maritime Aircraft (MMA), will begin to replace the P-3 by 2013.

MPA use bombs to attack surfaced submarines and surface craft that would not present a major threat to the MPA itself. A single MPA approaches the target at a low altitude. In most training exercises, it drops inert training ordnance, such as the Bomb Dummy Unit (BDU-45) on a MK-58 smoke float used as the target. Historically, ordnance has been released throughout W-237 (primarily off the Washington coast), just south of W-237 (more than 100 nm off the Oregon coast), and in international waters in accordance with international laws, rules, and regulations.

The Proposed Action for the entire NWTRC includes dropping 110 inert bombs and 34 explosive bombs per year. A very small percentage of the total ordnance (approximately 4 bombs per year) would be dropped off the Oregon coast because BOMBEX rarely occurs there. Any BOMBEX A-S events taking place off the Oregon coast would be more than 12 nm from shore. Each BOMBEX A-S can take up to 4 hours to complete.

Anti-Submarine Warfare (ASW) Training

Tracking Exercise (TRACKEX) for ASW trains aircraft, ship, and submarine crews in tactics, techniques, and procedures for search, detection, localization, and tracking of submarines with the goal of determining a firing solution that could be used to launch a torpedo and destroy the submarine. A typical unit-level exercise involves one ASW unit (aircraft, ship, or submarine) versus one target, usually a MK-30 Mobile ASW target, a MK-39 Expendable Mobile ASW Training Target (EMATT), or a live submarine. The target may be non-evading while operating on a specified track or fully evasive. Participating units use active and passive sensors, including hull-mounted sonar, towed arrays, variable depth sonar, and sonobuoys for tracking. If the exercise continues into the firing of a practice torpedo it is termed a Torpedo Exercise (TORPEX). The ASW TORPEX usually starts as a TRACKEX to achieve the firing solution.

ASW TRACKEX Maritime Patrol Aircraft (MPA): During these activities, a typical scenario would involve a single MPA dropping sonobuoys, from an altitude below 3,000 ft, and sometimes as low as 400 ft, into specific patterns designed for both the anticipated threat submarine and the specific water conditions. These patterns vary in size and coverage area based on anticipated threat and water conditions. Typically, passive sonobuoys will be used first, so the threat submarine is not alerted. Active sonobuoys will be used as required either to locate extremely quiet submarines, or to further localize and track submarines previously detected by passive sonobuoys. A TRACKEX-MPA usually takes two to four hours. No torpedoes are fired during this training activity. Any TRACKEX-MPA events taking place off the Oregon coast would be more than 12 nm from shore.

ASW TRACKEX (Surface Ship): In the PACNW OPAREA, locally based surface ships do not routinely conduct ASW Tracking exercises. However, mid-frequency active (MFA) sonar is used occasionally (one to one and a half hours) during ship transits through the OPAREA. All surface ship MFA sonar use is documented in this training activity description. Historically, as well as projected for the future, this use of sonar takes place greater than 50 nm from shore. All surface ship MFA sonar use off the Oregon coast would be more than 12 nm from shore and would likely be more than 50 nm from shore.

ASW TRACKEX (Submarine): ASW TRACKEX is a primary training exercise for Bangor-based submarines. Training is conducted at the intermediate level and occurs in the PACNW OPAREA. These activities involve P-3 aircraft approximately 30% of the time. Training events in which P-3s are used

typically last 8 to 12 hours. During these activities submarines use passive sonar sensors to search, detect, classify, localize and track the threat submarine with the goal of developing a firing solution that could be used to launch a torpedo and destroy the threat submarine. However, no torpedoes are fired during this training activity. Any TRACKEX-Submarine events taking place off the Oregon coast would be more than 3 nm from shore. As noted above, only passive sensors are used. MFA sonar is not used during this exercise.

Support Activities

Intelligence, Surveillance, and Reconnaissance (ISR): Intelligence refers to the information and knowledge obtained through observation, investigation, analysis, or understanding. Surveillance and reconnaissance refer to the means by which the information is observed. Surveillance is the systematic observation of a targeted area or group, usually over an extended time, while reconnaissance is a specific mission performed to obtain specific data about a target.

Off the Oregon coast, ISR training may be conducted by MPA in W-570 and W-93A/B (greater than 12 nm from shore). Activities typically last six hours and involve a crew of 11 personnel. P-3 aircrews use a variety of intelligence gathering and surveillance methods, including visual, infrared, electronic, and radar. EP-3 and EA-6B crews conduct ISR training as well, but to a lesser extent than P-3C crews. Basically, these exercises involve aircraft overflights and use of on-board systems by the crew. Ordnance or other expended materials such as chaff, flares, or sonobuoys are not used during ISR off the Oregon coast.

Enforceable Policies and Consistency Review

This section provides an overview of the enforceable policies of the OCOMP and the findings of the Navy's Consistency Review. The purpose of the Consistency Review was to determine the applicability of the enforceable policies to the Proposed Action.

The CZMA requires that each federal agency activity within or outside the coastal zone, that affects any land or water use or natural resource of the coastal zone, be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. The term "consistent to the maximum extent possible" means fully consistent with the enforceable policies of the management programs unless full consistency is prohibited by existing law applicable to the federal agency. The term "enforceable policy" means state policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a state exerts control over private and public land and water uses and natural resources in the coastal zone, and which are incorporated in the federally approved state coastal program.

The enforceable policies of the OCOMP include three components:

- **The 19 Statewide Planning Goals** - These are Oregon's standards for comprehensive land use planning. The goals set requirements on how land use decisions are to be made by local governments and state agencies. Goal 19 – Ocean Resources is applicable to the Proposed Action and is discussed in more detail below. The remaining planning goals address land-based development, agricultural lands, forest lands, estuarine resources, coastal shorelands, beaches and dunes, and other planning topics that are not applicable to the Proposed Action.
- **City and County Comprehensive Land Use Plans** - In Oregon, state and local governments share the job of land use planning. Cities and counties prepare and adopt plans and implement ordinances that meet the statewide planning goals and that are coordinated with relevant programs of Oregon state agencies. The Proposed Action does not include land-based activities

or construction. Therefore, city and county land use plans are not applicable to the Proposed Action.

- **State Agencies and Natural Resource Laws** - The Oregon Legislature has adopted statutes in response to threats on coastal and statewide resources from uncontrolled development. These statutes include the Oregon Beach Bill, administered by the Oregon Parks and Recreation Department, and the Removal/Fill Law, administered by the Oregon Division of State Lands. The Proposed Action does not include any activities that are regulated under the Beach Bill or the Removal/Fill Law.

Statewide Planning Goal 19 – Ocean Resources is "to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations." To carry out this goal, all actions by local, state, and federal agencies that are likely to affect the ocean resources and uses of Oregon's Territorial Sea shall be developed and conducted to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social values and benefits and to give higher priority to the protection of renewable marine resources (i.e., living marine organisms) than to the development of non-renewable ocean resources.

Prior to taking an action that is likely to affect ocean resources or uses of Oregon's Territorial Sea, state and federal agencies shall assess the reasonably foreseeable adverse effects of the action as required in the Oregon Territorial Sea Plan. State and federal agencies shall carry out actions that are reasonably likely to affect ocean resources and uses of the Oregon territorial sea in such a manner as to:

- Maintain and, where appropriate, restore the long-term benefits derived from renewable marine resources.
- Protect renewable marine resources (i.e., living marine organisms) from adverse effects of development of nonrenewable resources, uses of the ocean floor, or other actions.
- Protect the biological diversity of marine life and the functional integrity of the marine ecosystem.
- Protect important marine habitat, including estuarine habitat, which are areas and associated biologic communities that are: (1) important to the biological viability of commercially or recreationally caught species or that support important food or prey species for commercially or recreationally caught species; (2) needed to assure the survival of threatened or endangered species; (3) ecologically significant to maintaining ecosystem structure, biological productivity, and biological diversity; (4) essential to the life-history or behaviors of marine organisms; (5) especially vulnerable because of size, composition, or location in relation to chemical or other pollutants, noise, physical disturbance, alteration, or harvest; or (6) unique or of limited range within the state.
- Protect areas important to fisheries, which are: (1) areas of high catch (e.g., high total pounds landed and high value of landed catch); (2) areas where highly valued fish are caught even if in low abundance or by few fishers; (3) areas that are important on a seasonal basis; (4) areas important to commercial or recreational fishing activities, including those of individual ports or particular fleets; or (5) habitat areas that support food or prey species important to commercially and recreationally caught fish and shellfish species.
- Agencies, through programs, approvals, and other actions, shall: (1) protect and encourage the beneficial uses of ocean resources (such as navigation, food production, recreation, aesthetic

enjoyment, and uses of the seafloor, provided that such activities do not adversely affect the protected resources listed above); avoid, to the extent possible, adverse effects on or operational conflicts with other ocean uses and activities; and (2) comply with applicable requirements of the Oregon Territorial Sea Plan.

Effects Test

As summarized in Table 3, the Navy conducted an effects test to determine if activities included in the Proposed Action would have reasonably foreseeable direct and/or indirect effects on a coastal use or resource. The effects test was used to determine the need to prepare a Consistency Determination or a Negative Determination in accordance with CZMA and OCMP. The Navy's effects test considered the following and relied upon the detailed analyses provided in the NWTRC DEIS/OEIS:

- The spatial relationship of the proposed activities and training areas to Oregon's coastal zone.
- The definitions of coastal uses and resources.
- Relevant enforceable policies of the OCMP.
- The nature of the training operations included in the Proposed Action and their potential to adversely affect coastal uses and resources.

Conclusion

Based on the information in Table 3, the Navy has determined that the Proposed Action does not require a Consistency Determination because the activities would not have reasonably foreseeable direct or indirect effects on a coastal use or resource. Accordingly, this Negative Determination has been prepared.

TABLE 3: SUMMARY OF NAVY EFFECTS TEST TO IDENTIFY ELEMENTS OF THE PROPOSED ACTION WITH REASONABLY FORESEEABLE COASTAL EFFECTS

Navy Warfare Area	Activity	Areas	Reasonably Foreseeable Coastal Effects
Anti-Surface Warfare	Surface-to-Surface Gunnery Exercise	Portions of the PACNW OPAREA located more than 12 nm off the Oregon coast. Normally about 50 nm off the Oregon coast.	No. GUNEX events in the NWTRC normally take place off the Washington coast. However, naval vessels homeported in Washington may conduct this exercise in the PACNW OPAREA off the coast of Oregon while transiting to and from the Southern Oregon Range Complex. These transits normally occur approximately 50 nm off the Oregon coast. Any GUNEX events taking place off the Oregon coast would be more than 12 nm from shore. No impacts to marine life or wildlife that normally occurs in the coastal zone are expected based on the distance of the activity from the coastal zone. Therefore, coastal effects are not reasonably foreseeable.
	Air-to-Surface Bombing Exercise	Portions of the PACNW OPAREA located more than 12 nm off the Oregon coast.	No. These exercises would take place outside the coastal zone and more than 12 nm offshore. Historically, ordnance has been released throughout W-237 (primarily off Washington), just south of W-237 (more than 100 nm off Oregon), and in international waters in accordance with international laws, rules, and regulations. It is anticipated that no more than one BOMBEX event (dropping three inert and one explosive bomb) would occur off the Oregon coast per year. No impacts to marine life or wildlife that normally occurs in the coastal zone are expected based on the distance of the activity from the coastal zone. Therefore, coastal effects are not reasonably foreseeable.
Anti-Submarine Warfare	Antisubmarine Warfare Tracking Exercise - MPA	Portions of the PACNW OPAREA located more than 12 nm off the Oregon coast.	No. These exercises would take place outside the coastal zone and more than 12 nm offshore. Passive or active sonobuoys used during these exercises are not recoverable, would sink in deep waters well outside the coastal zone, and are not expected to drift into the coastal zone. No impacts to marine life or wildlife that normally occurs in the coastal zone are expected based on the distance of the activity from the coastal zone. Therefore, coastal effects are not reasonably foreseeable.
	Antisubmarine Warfare Tracking Exercise - Surface Ship	Portions of the PACNW OPAREA located more than 12 nm off the Oregon coast. Normally about 50 nm off the Oregon coast.	No. In the PACNW OPAREA, locally based surface ships do not routinely conduct ASW Tracking exercises. However, mid-frequency active (MFA) sonar is used occasionally (less than one hour) during ship transits through portions of the PACNW OPAREA off the Oregon coast. Historically, as well as projected for the future, this use of sonar takes place greater than 50 nm from shore. All surface ship MFA sonar use off the Oregon coast would be more than 12 nm from shore and would likely be more than 50 nm from shore. No impacts to marine life that normally occurs in the coastal zone are expected based on the distance of the activity from the coastal zone. Therefore, coastal effects are not reasonably foreseeable.
	Antisubmarine Warfare Tracking Exercise - Submarine	Portions of the PACNW OPAREA located more than 3 nm off the Oregon coast.	No. These exercises occur outside the coastal zone and more than 3 nm offshore. Only passive sonar sensors are used and no torpedoes are fired during this exercise. Therefore, coastal effects are not reasonably foreseeable.

TABLE 3: SUMMARY OF NAVY EFFECTS TEST TO IDENTIFY ELEMENTS OF THE PROPOSED ACTION WITH REASONABLY FORESEEABLE COASTAL EFFECTS (CONTINUED)

Navy Warfare Area	Activity	Areas	Reasonably Foreseeable Coastal Effects
Support Operations	Intelligence, Surveillance, and Reconnaissance	Greater than 12 nm off the Oregon coast in W-570 and W-93A/B.	No. These exercises consist of fixed-wing aircraft overflights in W-570 and W-93A/B, which is outside the coastal zone and more than 12 nm from shore. No ordnance or other military materials, including chaff or flares, would be expended during these exercises. Therefore, coastal effects are not reasonably foreseeable.



Oregon

Theodore R. Kulongoski, Governor

Ocean and Coastal Management Program

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540
Phone (503) 373-0050
FAX (503) 378-6033
www.oregon.gov/LCD/OCMP

November 3, 2009

Captain D.A. McNair, US Navy
Deputy Fleet Engineer
United States Pacific Fleet
250 Makalapa Drive
Pearl Harbor, HI 96860-3131

Re: Negative Determination for Northwest Training Range Complex

Dear Captain McNair:

The Department of Land Conservation and Development (DLCD) has reviewed the above referenced Negative Determination, prepared pursuant to 15 CFR 930.35, against the enforceable policies of the Oregon Coastal Management Program (OCMP). According to the Negative Determination, the Navy's training activities off the coast of Oregon will occur 12 nautical miles (nm) or farther from the coast, and therefore 9 nm or more from Oregon's coastal zone. Given this physical separation, and the description of training activities contemplated for waters near Oregon, the DLCD accepts the Navy's Negative Determination.

The DLCD requests that the Navy inform us if the location or nature of the training activities off Oregon changes in the future. Certain training activities, specifically Surface-to-Surface Gunnery (GUNEX), Air-to-Surface Bombing (BOMBEX), and non-submarine Anti-Submarine Warfare Exercises could, if conducted in or nearer to the coastal zone, impact resources and uses of the coastal zone.

If you have any questions or comments regarding this coastal zone management decision, the consistency review process, or the Oregon Coastal Management Program, please contact me at 503-373-0050 ext. 253 or by e-mail at: jay.charland@state.or.us

Sincerely,

Jay Charland
Coastal State-Federal Relations Coordinator

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DEPARTMENT OF THE NAVY

COMMANDER
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
5090
Ser N01CE1/1205
29 Oct 09

Mr. Mark Delaplaine
Federal Consistency Manager
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Mr. Delaplaine:

Enclosed, please find the Department of the Navy's Negative Determination under the Coastal Zone Management Act (CZMA) of 1972 as amended (16 United States Code 1456), as implemented by the provisions of 15 Code of Federal Regulations Section 930.35. The Navy is proposing to conduct selected training activities in portions of the Northwest Training Range Complex (NWTRC) off the northern California coast, outside the California Coastal Zone. This training is necessary to achieve and maintain Fleet readiness, as articulated in the Draft Environmental Impact Statement/Overseas Environmental Impact Statement (DEIS/OEIS) for the NWTRC. A copy of the DEIS/OEIS was previously provided to the California Coastal Commission in December of 2008.

Pursuant to Section 307(c)(1) of the federal CZMA, the Navy has determined that the Proposed Action would have no reasonably foreseeable effects to California's coastal uses or resources. The bases for this "Negative Determination" are detailed in Enclosure (1).

The Navy points of contact for this information are Ms. Kathryn Ostapuk at 619-532-2748, email:kathryn.ostapukat@navy.mil, or Ms. Kimberly Kler at 360-396-0927, e-mail: kimberly.kler@navy.mil.

Sincerely,

D. A. McNair
Captain, U.S. Navy
Deputy Fleet Engineer
By direction

Enclosure: 1. Negative Determination for California

**Northwest Training Range Complex
Coastal Zone Management Act
Negative Determination for California
October 2009**

Background and Location of Proposed Activities

The United States Department of the Navy (Navy) is proposing to conduct selected training exercises in portions of the Northwest Training Range Complex (NWTRC) off the California coast to achieve and maintain Fleet readiness. The NWTRC consists of numerous individual training areas in the Pacific Northwest. The range complex includes ranges that extend westward in the Pacific Ocean (to 250 nautical miles [nm] beyond the coast of Washington, Oregon, and Northern California) and east to Idaho (Figure 1).

This document, prepared pursuant to the requirements of the Coastal Zone Management Act (CZMA) (16 U.S.C. § 1452, et seq.), provides information supporting the Navy's Negative Determination for the Proposed Action. This Negative Determination is submitted to the California Coastal Commission (CCC) in accordance with the CZMA Federal Consistency Regulations (15 CFR § 930, et. seq.), the California Coastal Management Program (CCMP), and the California Coastal Act (California Public Resources Code § 3000, et. seq.). This Negative Determination addresses activities that would take place in portions of the NWTRC located off the California coast.

The CZMA establishes National policy to protect resources in the coastal zone and requires coastal states to develop coastal management programs. The CZMA requires that each federal agency activity within or outside the coastal zone, that affects any land or water use or natural resource of the coastal zone, be carried out in a manner that is consistent to the maximum extent practicable with the enforceable policies of approved state management programs. Federal agencies are required to submit a Coastal Consistency Determination to coastal states when their activities would have reasonably foreseeable effects on coastal uses or resources. A Negative Determination may be submitted pursuant to 15 CFR § 930.35 if the federal agency's effects test indicates that coastal effects are not reasonably foreseeable.

The general description of the description of the California coastal zone can be found in Section 30103 of the California Public Resource Code. Site specific revisions to the coastal zone boundaries can be found at Sections 30150- 30174 of the California Public Resources Code. The California coastal zone generally extends 1,000 yards inland from the mean high tide line. In some estuarine habitat and recreational areas, it extends inland to the first major ridgeline or 5 miles from the mean high tide line, whichever is less. In developed urban areas, the boundary is generally less than 1,000 yards from the mean high tide line. The coastal zone of California extends seaward to the 3 nm territorial sea.

As shown in Figure 1, most of the NWTRC training areas are located off the coast of Washington, in Washington, or in Special Use Airspace over Washington, and most of the activities conducted under the Proposed Action would occur in those areas. Training areas located off the California coast include a portion of the Pacific Northwest Operating Area (PACNW OPAREA) and a portion of Warning Area 93B (W-93B). A relatively small portion of the PACNW OPAREA, located in the Pacific Ocean from 0 to 3 nm off the Northern California coast, is the only NWTRC training area located in the California coastal zone. However, all training activities would take place more than 12 nm off the California coast and well outside of the California coastal zone.

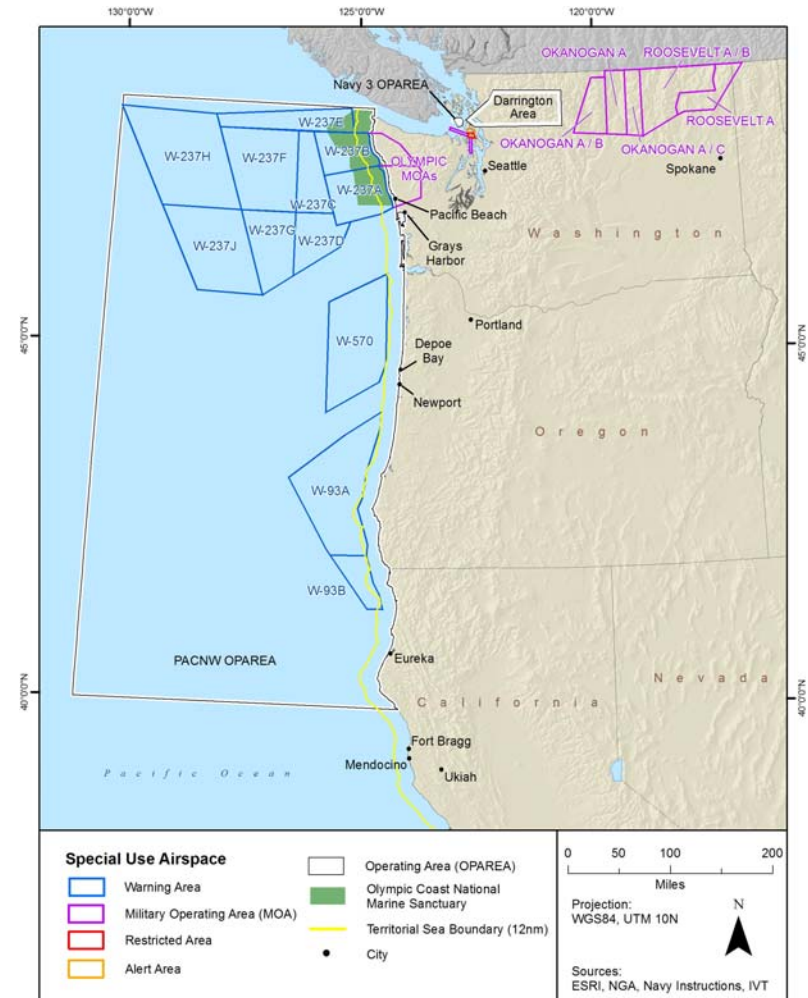


Figure 1: Location of NWTRC Training Areas

The Navy prepared a Draft Environmental Impact Statement/Overseas Environmental Impact Statement (DEIS/OEIS) for the Proposed Action within the NWTRC in accordance with the National Environmental Policy Act (NEPA) and Executive Order 12114 - *Environmental Effects Abroad of Major Federal Actions*. The DEIS/OEIS includes comprehensive descriptions of the Proposed Action and resources that could be affected by the action; a detailed analysis of the potential environmental consequences of the Proposed Action; and mitigation measures applicable to the Proposed Action. The DEIS/OEIS was submitted to CCC in a letter dated December 29, 2008. A majority of the proposed activities addressed by the DEIS/OEIS take place in Washington or off the Washington coast. As such, many of the activities described in the DEIS/OEIS are not applicable to this Negative Determination. The following section presents a description of the Proposed Action for portions of the NWTRC located off the California coast.

Description of Proposed Action for Portions of the Northwest Training Range Complex Located off the California Coast

Overview

The Navy is proposing to conduct selected training exercises in portions of the NWTRC located off the California coast. All training activities would take place more than 12 nm off the California coast and well outside of the California coastal zone. Specifically, training would take place in portions of the PACNW OPAREA located more than 12 nm off the California coast and in W-93B (Figure 1). The Proposed Action does not include any land-based or at-sea construction, modifications to existing infrastructure of the NWTRC, or changes in the geographic extent of the NWTRC's existing training areas, including those portions of the NWTRC located off the California coast.

The type and amount of Navy training that takes place off the California coast in the NWTRC is very limited. For example, the Navy uses W-93B about 16 hours per year. Naval vessels homeported in Washington transit through portions of the PACNW OPAREA more than 12 nm off the California coast, but these transits normally occur about 50 nm off the California coast. It is estimated that less than 1% of the Navy's training time in the NWTRC is spent off the California coast. Table 1 provides a summary of Navy training activities that may occur in the NWTRC off the California coast and descriptions of these activities are provided below. It should be noted that the activities listed in Table 1 do not occur exclusively off the California coast. As noted above, most of these events occur off the Washington coast.

Anti-Surface Warfare (ASUW) Training

Anti-Surface Warfare (ASUW) addresses combat (or interdiction) activities by air, surface, or submarine forces against hostile surface ships and boats.

Surface-to-Surface Gunnery Exercise (GUNEX): Surface gunnery exercises take place in the open ocean to provide gunnery practice for Navy ship crews. Exercises can involve a variety of surface targets that are either stationary or maneuverable. Gun systems employed against surface targets include the 5-inch, 76mm, 57mm, .50 caliber and the 7.62mm. A GUNEX lasts approximately one to two hours, depending on target services and weather conditions.

GUNEX events in the NWTRC normally take place off the Washington coast. However, naval vessels homeported in Washington may conduct this exercise in the PACNW OPAREA off the coast of California while transiting to and from the Southern California Range Complex. These transits normally occur approximately 50 nm off the California coast. Any GUNEX events taking place off the California coast would be more than 12 nm from shore.

Table 1: Summary of Navy Training Activities that May Occur In the Northwest Training Range Complex off the California Coast

Range Activity	Platform	System or Ordnance	Location
ANTI-SURFACE WARFARE (ASUW)			
Surface-to-Surface (S-S) Gunnery Exercise	CVN	20mm CIWS, 7.62mm, .50 cal	Portions of the PACNW OPAREA located more than 12 nm off the California coast. Normally about 50 nm off the California coast.
	DDG	57/54 BLP, 20mm, 7.62mm, .50 cal	
	FFG	76mm, 20mm, 7.62mm, .50 cal	
	AOE	20mm, 7.62mm, .50 cal	
Air-to-Surface (A-S) Bombing Exercise	P-3C	MK-82 (live), BDU-45 (inert)	Portions of the PACNW OPAREA located more than 12 nm off the California coast.
	P-8	MK-82 (live), BDU-45 (inert)	
	P-3	MK-82, AGM-65 Maverick	
	FA-18	MK-82, MK-83, MK-84, SLAM-ER	
	EA-6B	AGM-88C HARM	
	EA-18G	AGM-88C HARM	
	SH-60	AGM-114 HELLFIRE	
	DDG	57/54	
	FFG	76mm	
SSN	MK-48 ADCAP		
ANTI-SUBMARINE WARFARE (ASW)			
Anti-Submarine Warfare (ASW) Tracking Exercise - MPA	P-3C	Targets: SSN, MK-39 EMATT Sonobuoys: SSQ-53 DIFAR (passive) SSQ-62 DICASS (active) SSQ-77 VLAD, SSQ-36 BT	Portions of the PACNW OPAREA located more than 12 nm off the California coast.
	P-8 MMA		
	P-8 MMA		
ASW Tracking Exercise - Surface Ship	DDG	SQS-53C MFA sonar	Portions of the PACNW OPAREA located more than 12 nm off the California coast. Normally about 50 nm off the California coast.
	FFG	SQS-56 MFA sonar	
ASW Tracking Exercise - Submarine	SSBN	BQQ-5 (passive only)	Portions of the PACNW OPAREA located more than 3 nm off the California coast.
	SSGN	BQQ-5 (passive only)	
	P-3		
	EP-3		
	CVN		
	DDG		
	FFG		
	AOE		
SSGN			
SSBN			
SUPPORT ACTIVITIES			
Intelligence, Surveillance, and Reconnaissance (ISR)	P-3, EP-3, EA-6B, EA-18G	None	Greater than 12 nm off the California coast in W-93B.

Air-to-Surface Bombing Exercises (BOMBEX A-S): During Air-to-Surface Bombing Exercises (BOMBEX A-S), Maritime Patrol Aircraft (MPA) and other fixed-wing aircraft deliver bombs against simulated surface maritime targets, typically a smoke float. MPA is a term used to describe both the P-3C Orion aircraft and the P-8 Poseidon. The P-8, also referred to as the Multi-mission Maritime Aircraft (MMA), will begin to replace the P-3 by 2013.

MPA use bombs to attack surfaced submarines and surface craft that would not present a major threat to the MPA itself. A single MPA approaches the target at a low altitude. In most training exercises, it drops inert training ordnance, such as the Bomb Dummy Unit (BDU-45) on a MK-58 smoke float used as the target. Historically, ordnance has been released throughout W-237 (primarily off the Washington coast), just south of W-237 (more than 100 nm off the Oregon coast), and in international waters in accordance with international laws, rules, and regulations.

The Proposed Action for the entire NWTRC includes dropping 110 inert bombs and 34 explosive bombs per year. A very small percentage of the total ordnance (approximately 4 bombs per year) would be dropped off the California coast because BOMBEX rarely occurs there. Any BOMBEX A-S events taking place off the California coast would be more than 12 nm from shore. Each BOMBEX A-S can take up to 4 hours to complete.

Anti-Submarine Warfare (ASW) Training

Tracking Exercise (TRACKEX) for ASW trains aircraft, ship, and submarine crews in tactics, techniques, and procedures for search, detection, localization, and tracking of submarines with the goal of determining a firing solution that could be used to launch a torpedo and destroy the submarine. A typical unit-level exercise involves one ASW unit (aircraft, ship, or submarine) versus one target, usually a MK-30 Mobile ASW target, a MK-39 Expendable Mobile ASW Training Target (EMATT), or a live submarine. The target may be non-evading while operating on a specified track or fully evasive. Participating units use active and passive sensors, including hull-mounted sonar, towed arrays, variable depth sonar, and sonobuoys for tracking. If the exercise continues into the firing of a practice torpedo it is termed a Torpedo Exercise (TORPEX). The ASW TORPEX usually starts as a TRACKEX to achieve the firing solution.

ASW TRACKEX Maritime Patrol Aircraft (MPA): During these activities, a typical scenario would involve a single MPA dropping sonobuoys, from an altitude below 3,000 ft, and sometimes as low as 400 ft, into specific patterns designed for both the anticipated threat submarine and the specific water conditions. These patterns vary in size and coverage area based on anticipated threat and water conditions. Typically, passive sonobuoys will be used first, so the threat submarine is not alerted. Active sonobuoys will be used as required either to locate extremely quiet submarines, or to further localize and track submarines previously detected by passive sonobuoys. A TRACKEX-MPA usually takes two to four hours. No torpedoes are fired during this training activity. Any TRACKEX-MPA events taking place off the California coast would be more than 12 nm from shore.

ASW TRACKEX (Surface Ship): In the PACNW OPAREA, locally based surface ships do not routinely conduct ASW Tracking exercises. However, mid-frequency active (MFA) sonar is used occasionally (one to one and a half hours) during ship transits through the OPAREA. All surface ship MFA sonar use is documented in this training activity description. Historically, as well as projected for the future, this use of sonar takes place greater than 50 nm from shore. All surface ship MFA sonar use off the California coast would be more than 12 nm from shore and would likely be more than 50 nm from shore.

ASW TRACKEX (Submarine): ASW TRACKEX is a primary training exercise for Bangor-based submarines. Training is conducted at the intermediate level and occurs in the PACNW OPAREA. These activities involve P-3 aircraft approximately 30% of the time. Training events in which P-3s are used

typically last 8 to 12 hours. During these activities submarines use passive sonar sensors to search, detect, classify, localize and track the threat submarine with the goal of developing a firing solution that could be used to launch a torpedo and destroy the threat submarine. However, no torpedoes are fired during this training activity. Any TRACKEX-Submarine events taking place off the California coast would be more than 3 nm from shore. As noted above, only passive sensors are used. MFA sonar is not used during this exercise.

Support Activities

Intelligence, Surveillance, and Reconnaissance (ISR): Intelligence refers to the information and knowledge obtained through observation, investigation, analysis, or understanding. Surveillance and reconnaissance refer to the means by which the information is observed. Surveillance is the systematic observation of a targeted area or group, usually over an extended time, while reconnaissance is a specific mission performed to obtain specific data about a target.

Off the California coast, ISR training may be conducted by MPA in W-93B (greater than 12 nm from shore). Activities typically last six hours and involve a crew of 11 personnel. P-3 aircrews use a variety of intelligence gathering and surveillance methods, including visual, infrared, electronic, and radar. EP-3 and EA-6B crews conduct ISR training as well, but to a lesser extent than P-3C crews. Basically, these exercises involve aircraft overflights and use of on-board systems by the crew. Ordnance or other expended materials such as chaff, flares, or sonobuoys are not used during ISR off the California coast.

Enforceable Policies and Consistency Review

This section provides an overview of the enforceable policies of the CCMP and the findings of the Navy's Consistency Review. The purpose of the Consistency Review was to determine the applicability of the enforceable policies to the Proposed Action.

The CZMA requires that each federal agency activity within or outside the coastal zone, that affects any land or water use or natural resource of the coastal zone, be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. The term "consistent to the maximum extent possible" means fully consistent with the enforceable policies of the management programs unless full consistency is prohibited by existing law applicable to the federal agency. The term "enforceable policy" means state policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a state exerts control over private and public land and water uses and natural resources in the coastal zone, and which are incorporated in the federally approved state coastal program.

The enforceable policies of the CCMP are contained in Chapter 3 of the California Coastal Act of 1976 (California Public Resource Code Section 30200 et. seq.). Applicability of the enforceable policies to the Proposed Action is summarized in Table 2. Many of the enforceable policies are not applicable to the Proposed Action because they address land-based activities and/or development and construction. As discussed previously, the Proposed Action does not include land-based activities in California or development, construction, or modification of existing facilities or infrastructure.

TABLE 2: ENFORCEABLE POLICIES OF THE CALIFORNIA COASTAL MANAGEMENT PROGRAM AND THEIR APPLICABILITY TO THE PROPOSED ACTION

Enforceable Policy	Applicability to the Proposed Action
Article 1 General	
Section 30200 Policies as standards; resolution of policy conflicts	Applicable
Article 2 Public Access	
Section 30210 Access; recreational opportunities; posting	Not Applicable
Section 30211 Development not to interfere with access	Not Applicable
Section 30212 New development projects	Not Applicable
Section 30212.5 Public facilities; distribution	Not Applicable
Section 30213 Lower cost visitor and recreational facilities	Not Applicable
Section 30214 Implementation of public access policies; legislative intent	Not Applicable
Article 3 Recreation	
Section 30220 Protection of certain water-oriented activities	Applicable
Section 30221 Oceanfront land; protection for recreational use and development	Not Applicable
Section 30222 Private lands; priority of development purposes	Not Applicable
Section 30222.5 Oceanfront lands; aquaculture facilities; priority	Not Applicable
Section 30223 Upland areas	Not Applicable
Section 30224 Recreational boating use; encouragement; facilities	Not Applicable
Article 4 Marine Environment	
Section 30230 Marine resources; maintenance	Applicable
Section 30231 Biological productivity; water quality	Applicable
Section 30232 Oil and hazardous waste substance spills	Not Applicable
Section 30233 Diking, filling or dredging; continued movement of sediment and nutrients	Not Applicable
Section 30234 Commercial fishing and recreational boating facilities	Not Applicable
Section 30234.5 Economic, commercial, and recreational fishing importance	Applicable
Section 30235 Construction altering natural shoreline	Not Applicable
Section 30236 Water supply and flood control	Not Applicable
Article 5 Land Resources	
Section 30240 Environmentally sensitive habitat areas; adjacent developments	Not Applicable
Section 30241 Prime agricultural land; maintenance in agricultural production	Not Applicable
Section 30241.5 Agricultural land; determination of viability of uses; economic feasibility evaluation	Not Applicable
Section 30242 Lands suitable for agricultural use; conversion	Not Applicable
Section 30243 Productivity of soils and timberlands; conversions	Not Applicable
Section 30244 Archaeological or paleontological resources	Not Applicable
Article 6 Development	
Section 30250 Location; existing development area	Not Applicable
Section 30251 Scenic and visual qualities	Not Applicable
Section 30252 Maintenance and enhancement of public access	Not Applicable
Section 30253 Minimization of adverse impacts	Not Applicable
Section 30254 Public works facilities	Not Applicable
Section 30254.5 Terms or conditions on sewage treatment plant development; prohibition	Not Applicable
Section 30255 Priority of coastal-dependent developments	Not Applicable
Article 7 Industrial Development	
Section 30260 Location or expansion	Not Applicable
Section 30261 Tanker facilities; use and design	Not Applicable
Section 30262 Oil and gas development	Not Applicable
Section 30263 Refineries or petrochemical facilities	Not Applicable
Section 30264 Thermal electric generating plants	Not Applicable
Section 30265 Legislative findings and declarations; offshore oil transportation	Not Applicable
Section 30265.5 Governor or designee; coordination of activities concerning offshore oil transport and refining; duties	Not Applicable

Effects Test

As summarized in Table 3, the Navy conducted an effects test to determine if activities included in the Proposed Action would have reasonably foreseeable direct and/or indirect effects on a coastal use or resource. The effects test was used to determine the need to prepare a Consistency Determination or a Negative Determination in accordance with CZMA and CCMP. The Navy's effects test considered the following and relied upon the detailed analyses provided in the Draft NWTRC DEIS/OEIS:

- The spatial relationship of the proposed activities and training areas to California's coastal zone.
- The definitions of coastal uses and resources.
- Relevant enforceable policies of the CCMP.
- The nature of the training operations included in the Proposed Action and their potential to adversely affect coastal uses and resources.

Conclusion

Based on the information in Table 3, the Navy has determined that the Proposed Action does not require a Consistency Determination because the activities would not have reasonably foreseeable direct or indirect effects on a coastal use or resource. Accordingly, this Negative Determination has been prepared.

TABLE 3: SUMMARY OF NAVY EFFECTS TEST TO IDENTIFY ELEMENTS OF THE PROPOSED ACTION WITH REASONABLY FORESEEABLE COASTAL EFFECTS

Navy Warfare Area	Activity	Areas	Reasonably Foreseeable Coastal Effects
Anti-Surface Warfare	Surface-to-Surface Gunnery Exercise	Portions of the PACNW OPAREA located more than 12 nm off the California coast. Normally about 50 nm off the California coast.	No. GUNEX events in the NWTIC normally take place off the Washington coast. However, naval vessels homeported in Washington may conduct this exercise in the PACNW OPAREA off the coast of California while transiting to and from the Southern California Range Complex. These transits normally occur approximately 50 nm off the California coast. Any GUNEX events taking place off the California coast would be more than 12 nm from shore. No impacts to marine life or wildlife that normally occurs in the coastal zone are expected based on the distance of the activity from the coastal zone. Therefore, coastal effects are not reasonably foreseeable.
	Air-to-Surface Bombing Exercise	Portions of the PACNW OPAREA located more than 12 nm off the California coast.	No. These exercises would take place outside the coastal zone and more than 12 nm offshore. Historically, ordnance has been released throughout W-237 (primarily off Washington), just south of W-237 (off Oregon), and in international waters in accordance with international laws, rules, and regulations. It is anticipated that no more than one BOMBEX event (dropping three inert and one explosive bomb) would occur off the California coast per year. No impacts to marine life or wildlife that normally occurs in the coastal zone are expected based on the distance of the activity from the coastal zone. Therefore, coastal effects are not reasonably foreseeable.
Anti-Submarine Warfare	Anti-submarine Warfare Tracking Exercise - MPA	Portions of the PACNW OPAREA located more than 12 nm off the California coast.	No. These exercises would take place outside the coastal zone and more than 12 nm offshore. Passive or active sonobuoys used during these exercises are not recoverable, would sink in deep waters well outside the coastal zone, and are not expected to drift into the coastal zone. No impacts to marine life or wildlife that normally occurs in the coastal zone are expected based on the distance of the activity from the coastal zone. Therefore, coastal effects are not reasonably foreseeable.
	Anti-submarine Warfare Tracking Exercise - Surface Ship	Portions of the PACNW OPAREA located more than 12 nm off the California coast. Normally about 50 nm off the California coast.	No. In the PACNW OPAREA, locally based surface ships do not routinely conduct ASW Tracking exercises. However, mid-frequency active (MFA) sonar is used occasionally (less than one hour) during ship transits through portions of the PACNW OPAREA off the California coast. Historically, as well as projected for the future, this use of sonar takes place greater than 50 nm from shore. All surface ship MFA sonar use off the California coast would be more than 12 nm from shore and would likely be more than 50 nm from shore. No impacts to marine life that normally occurs in the coastal zone are expected based on the distance of the activity from the coastal zone. Therefore, coastal effects are not reasonably foreseeable.
Anti-submarine Warfare Tracking Exercise - Submarine	-	Portions of the PACNW OPAREA located more than 3 nm off the California coast.	No. These exercises occur outside the coastal zone and more than 3 nm offshore. Only passive sonar sensors are used and no torpedoes are fired during this exercise. Therefore, coastal effects are not reasonably foreseeable.

TABLE 3: SUMMARY OF NAVY EFFECTS TEST TO IDENTIFY ELEMENTS OF THE PROPOSED ACTION WITH REASONABLY FORESEEABLE COASTAL EFFECTS (CONTINUED)

Navy Warfare Area	Activity	Areas	Reasonably Foreseeable Coastal Effects
Support Operations	Intelligence, Surveillance, and Reconnaissance	Greater than 12 nm off the California coast in W-93B.	No. These exercises consist of fixed-wing aircraft overflights in W-93B, which is outside the coastal zone and more than 12 nm from shore. No ordnance or other military materials would be expended during these exercises. Therefore, coastal effects are not reasonably foreseeable.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

Refer to NMFS No.:
2009/07443

May 20, 2010

John Mosher
U.S. Pacific Fleet
Northwest Environmental Program Manger
Naval Air Station Whidbey Island
Environmental Division, Attn: John Mosher (COMPACFLT)
1155 W. Lexington Street, Bldg 113
Oak Harbor, Washington 98278-3500

Re: Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat
Consultation for the Northwest Training Range Complex on the Coasts of Northern
California, Oregon, and Washington from February 2010 until February 2015.

The enclosed essential fish habitat (EFH) consultation document was prepared by the National Marine Fisheries Service (NMFS) pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and its implementing regulations (50 CFR Part 600) on the effects of the U.S. Navy's implementation of the Northwest Training Range Complex and Naval Undersea Warfare Center Keyport Range Complex Extension. In this consultation, NMFS concludes that the proposed action would adversely affect EFH and includes three conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects to EFH.

Section 305(b)(4)(B) of the MSA requires Federal agencies to provide a detailed written response to NMFS within 30 days after receiving this recommendation. If the response is inconsistent with the EFH conservation recommendation, the U.S. Navy must explain why the recommendation will not be followed, including the scientific justification for any disagreements over the effects of the action and the recommendations.

In response to increased oversight of overall EFH program effectiveness by the Office of Management and Budget, NMFS established a quarterly reporting requirement to determine how many conservation recommendations are provided as part of each EFH consultation and how many are adopted by the action agency. Therefore, in your statutory reply to this consultation, please clearly identify the number of conservation recommendations accepted.



-2-

If you have questions regarding this consultation, please contact Ms. Cathy Tortorici, Branch Chief of the Oregon Coast/Lower Columbia River Habitat Branch of the Oregon State Habitat Office, at 503.231.6268.

Sincerely,

Michael P. Tehan
Assistant Regional Administrator
Habitat Conservation Division

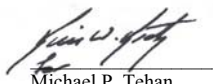
Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation

Northwest Training Range Complex on the Coasts of Northern California, Oregon, and Washington for February 2010 February 2015

Lead Action Agency: U.S. Navy, Naval Air Station Whidbey Island

Consultation Conducted By: National Marine Fisheries Service
Northwest Region

Date Issued: May 20, 2010

Issued by: 
Michael P. Tehan
Assistant Regional Administrator
Habitat Conservation Division

NMFS No.: 2009/07443

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MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

Consultation Background

The consultation requirement of section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) directs Federal agencies to consult with NMFS on all actions or proposed actions that may adversely affect essential fish habitat (EFH). Adverse effects include the direct or indirect physical, chemical, or biological alterations of the waters or substrate, and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside EFH, and may include site-specific or EFH-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR 600.810). Section 305(b) also requires NMFS to recommend measures that may be taken by the action agency to conserve EFH.

From April to July 2009, the National Marine Fisheries Service (NMFS) met with the U.S. Navy and reviewed the July 2009 preliminary draft Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) for the Northwest Training Range Complex (NWTRC) and the November 2008, and July 2009, EFH assessment of the U.S. Navy for this action.

During the course of these conversations, the U.S. Navy stated and confirmed in their July 2009, EFH Assessment that “based on the limited extent, duration, and magnitude of potential impacts from NWTRC training activities, there would not be adverse effects on managed species or EFH. Range operations and potential enhancements would not significantly contribute to cumulative impacts on present or future uses of the area.” Therefore, they did not request consultation on their EFH Assessment under section 305 of the MSA for this project.

The U.S. Navy discussed the EFH definition they used with NMFS. As documented in the July 2009, the preliminary final EIS/OEIS (pages 3.7-28 and 29) for the NWTRC states:

The preliminary final EIS/OEIS analyzes potential effects to fish and EFH in the context of the MSFCMA (federally managed species and EFH), ESA (species listed under the ESA only), NEPA, and EO 12114. The factors used to assess the significance of effects vary under these Acts. Under the MSFCMA an “adverse effect” is defined as any impact that reduces the quality and/or quantity of EFH (NMFS 2004a, 2004b). The EFH regulations in 50 CFR 600.815(a)(2)(ii) (NMFS 2002a) establish a threshold for determining adverse effects (NMFS 2002b). Adverse effects are more than minimal and not temporary in nature. Temporary effects are those that are limited in duration and allow the particular environment to recover without measurable impact (NMFS 2002b). Minimal effects are those that may result in relatively small changes in the affected environment and insignificant changes in ecological functions. To help identify Navy activities falling within the adverse effect determination, the Navy has determined that temporary or minimal impacts are not considered to “adversely affect” EFH. The EFH Final Rule (67 Federal Register 2354) and 50 CFR 600.815(a)(2)(ii) were

used as guidance for this determination, as they highlight activities with impacts that are more than minimal and not temporary in nature, as opposed to those activities resulting in inconsequential changes to habitat. Whether an impact is minimal will depend on a number of factors:

- The intensity of the impact at the specific site being affected;
- The spatial extent of the impact relative to the availability of the habitat type affected;
- The sensitivity/vulnerability of the habitat to the impact;
- The habitat functions that may be altered by the impact (e.g., shelter from predators); and;
- The timing of the impact relative to when the species or life stage needs the habitat.

NMFS indicated that the definition of EFH that the U.S. Navy was using needed to be corrected in order to properly characterize the extent and magnitude of effects to EFH. First, the definition of “adverse effects” to EFH is contained in the EFH regulatory guidance 50 CFR 600.810 (a), not in NMFS 2004a or NMFS 2004b as is referenced by the U.S. Navy. Second, The EFH regulatory guidance at 50 CFR 600.815(a)(2)(ii) regarding effects that are more than minimal and not temporary pertain to adverse effects to EFH from fishing activities by Federal Fishery Management Councils. Thus, the U.S. Navy’s was informed that the use of this threshold to satisfy its requirement to consult with NMFS on actions that may adversely affect EFH was not appropriate. The U.S. Navy may determine that its actions are not significant under NEPA. However, such a determination regarding NEPA significance did not absolve the U.S. Navy from the MSA requirement to consult with NMFS on actions that may have an adverse effect on EFH.

Part of the lack of request for consultation therefore may be the EFH definition that the U.S. Navy used in their EFH assessment. Based on the NMFS’ review of that document, the preliminary final EIS/OEIS, and consideration of the U.S. Navy’s definition of EFH, and what we consider the appropriate definition of EFH to be for a project like this, NMFS determined that potential impacts of the implementation of this project on EFH were such that an EFH consultation would be prepared.

NMFS informed the U.S. Navy during a July 15, 2009 meeting we believed that the project may adversely affect essential fish habitat (EFH) for Pacific salmon and Pacific coast groundfish and coastal pelagic species and would be providing EFH conservation recommendations.

NMFS’ EFH consultation document was prepared in accordance with section 305(b)(2) of the MSA (16 U.S.C. 1801, *et seq.*) and implementing regulations at 50 CFR 600. The docket for this consultation is on file at the Oregon State Habitat Office in Portland, Oregon.

Identification of EFH

EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity (MSA § 3(10)). For the purpose of interpreting the definition of essential fish habitat: “Waters” include aquatic areas and their associated physical, chemical, and

biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; "substrate" includes sediment, hard bottom, structures underlying the waters, and associated biological communities; "necessary" means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle. EFH is described in amendments to Fishery Management Plans, and is approved by the Secretary of Commerce acting through NOAA Fisheries. (50 CFR 600.10)

Pursuant to the MSA, the Pacific Fisheries Management Council (PFMC) has designated EFH for Federally-managed fisheries within the waters of Washington, Oregon, and California. Designated EFH for salmon, groundfish and coastal pelagic species encompasses all waters or substrate from the mean high water line, and upriver extent of saltwater intrusion in river mouths, along the coasts of Washington, Oregon, and California, and seaward to the boundary of the U.S. exclusive economic zone (EEZ) (200 miles) (PFMC 1998, 2005). In estuarine and marine areas, designated salmon EFH includes the nearshore and tidal submerged environments within state territorial waters, and the full extent of the EEZ offshore of Washington, Oregon, and California north of Point Conception (PFMC 1999).

Proposed Action

The purpose of the U.S. Navy's readiness activities is to meet the requirements of the U.S. Navy's Fleet Response Training Plan and allow U.S. Navy personnel to remain proficient in anti-submarine warfare and mine warfare skills.

According to the July 2009, preliminary final EIS/OEIS and Essential Fish Habitat Assessment for the NWTRC:

The purpose of the Proposed Action is to achieve and maintain Fleet readiness using the Northwest Training Range Complex (NWTRC) to support and conduct current, emerging, and future training and research, development, test and evaluation (RDT&E) operations, while enhancing training resources through investment on the ranges. The NWTRC includes offshore air, sea, and undersea space; nearshore air, land, sea, and undersea space, and inland airspace and land ranges. Offshore and nearshore operating areas contain EFH for species covered under Fishery Management Plans (managed species) including: salmonids, coastal pelagic species, Pacific Coast groundfish, and highly migratory species. The NWTRC is located within the California Current System: the offshore and nearshore areas adjacent to Washington, Oregon and northern California coasts; and the marine and estuarine waters of the inshore basins of Puget Sound. Navy training activities in the NWTRC include: air combat maneuvers; missile, gunnery, bombing, vessel sink, and electronic combat exercises; antisubmarine warfare tracking and extended echo ranging exercises; mine countermeasures training; Explosive Ordinance Disposal training; insertion and extraction activities; naval special warfare training; intelligence, surveillance, and reconnaissance activities; and unmanned aerial vehicle activities. The Navy proposes to implement actions within the NWTRC to:

- Maintain baseline training and RDT&E operations at current levels;
- Increase certain training and RDT&E operations from current levels as necessary to support the Fleet Readiness Training Plan (FRTP);
- Accommodate mission requirements associated with force structure changes and introduction of new weapons and systems to the Fleet; and
- Implement enhanced range complex capabilities.

The NWTRC consists of four primary components: ocean operating areas, the Puget Sound operating areas, special-use airspace, and training land areas. The range complex includes ranges and airspace that extend west to 250 nautical miles (nm) (463 kilometers [km]) beyond the coast of Northern California, Oregon, and Washington and east to Idaho. The components of the NWTRC encompass 122,400 nm² (420,163 km²) of surface/subsurface ocean OPAREAs, 46,048 nm² (157,928 km²) of special use airspace, and 875 acres (354 hectares) of land. For range management and scheduling purposes, the NWTRC is divided into numerous sub-component ranges or training areas used to conduct training and RDT&E activities.

NWTRC Ocean OPAREAS. The ocean areas of the Range Complex include surface and subsurface operating areas extending generally west from the coastline of Northern California, Oregon, and Washington for a distance of approximately 250 nm (463 km) into international waters (see Figure 2).

Puget Sound Surface/Subsurface Areas. There are several areas within Puget Sound routinely used by the Navy for a variety of surface and underwater activities. These areas are:

- Navy 3. Navy 3 is a polygon of water space used by Navy ships for training. This 46 nm² (158km²) area is located 8 nm (15 km) west of Ault Field, NAS Whidbey Island, in the Strait of Juan de Fuca.
- Navy 7. Navy 7 is defined as the sea surface and subsurface area beneath R-6701.

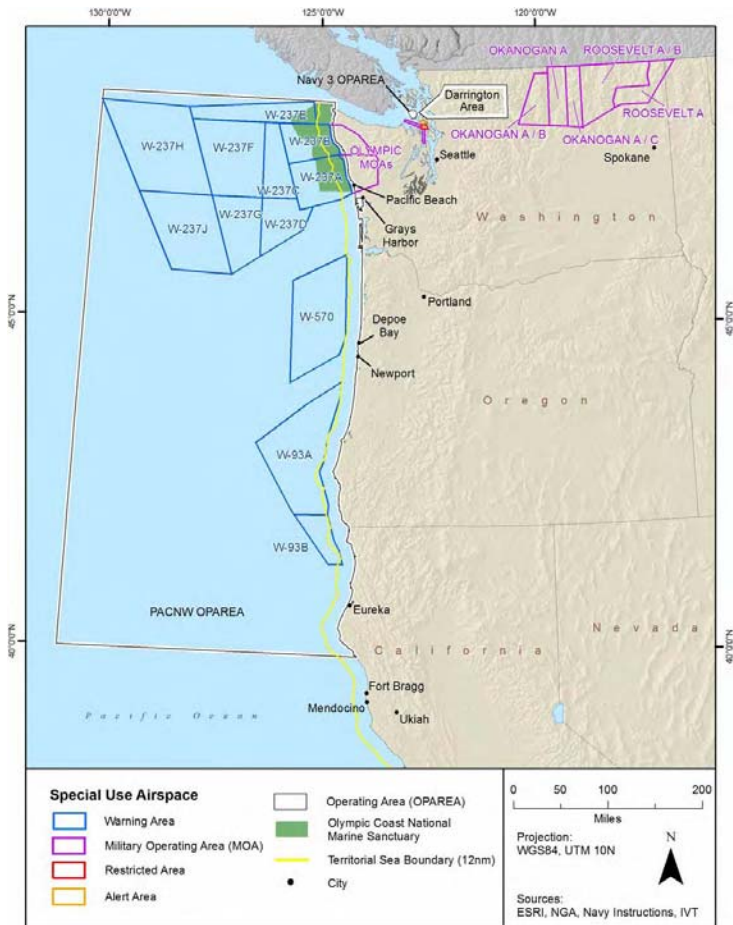


Figure 1: NWTRC

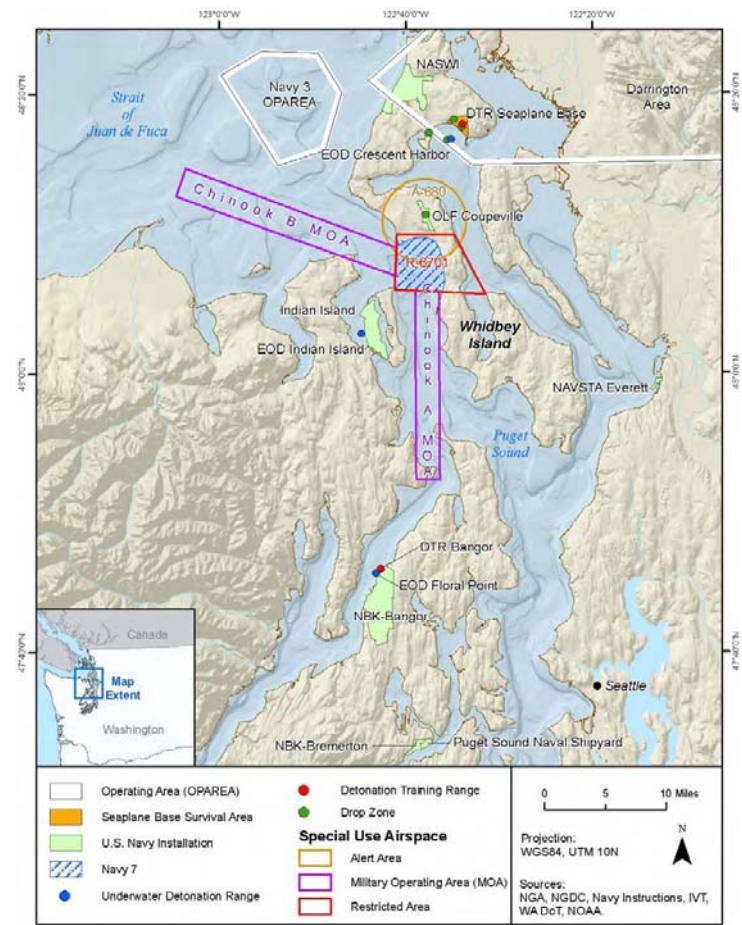


Figure 2: Puget Sound Training Areas of the NWTRC

- Crescent Harbor Underwater EOD Range. This EOD underwater range is located in Crescent Harbor off of the Seaplane Base at Whidbey Island.
- Indian Island EOD Underwater Range. This area is located offshore, just west of Naval Magazine Indian Island.
- Bangor EOD Underwater Range. This area, also known as the Floral Point EOD Underwater Range, is located within a Navy operating area in Hood Canal, near NBK-Bangor.

Airspace. The NWTRC study area includes airspace used either exclusively by the military, or co-use with civilian and commercial aircraft. Some of this airspace is special use airspace, military airspace designated by the Federal Aviation Administration as Warning Areas, Restricted Areas, and Military Operating Areas (MOAs). The airspace included in the NWTRC study area includes:

Warning Area 237. W-237 comprises 33,997 nm² (116,606 km²) of airspace that generally overlays the NWTRC Ocean OPAREAS off the coast of Washington. W-237 begins approximately 3 nm (5 km) off the coast and extends westward in international waters and airspace for a distance of approximately 250 nm (463 km) from the ocean surface up to several specified altitudes depending upon which sub-area is used. The floor of W-237 airspace begins at the ocean surface, and the ceiling varies between 27,000 ft (8,230 m) and unlimited.

Olympic MOAs. The Olympic A and B MOAs are located over the northwest coast of the Olympic Peninsula in Washington and extend out 3 nm to join with W-237. The MOAs cover 1,641 nm² (5,628 km²) of area. Olympic A and B have a floor of 6,000 feet (ft) (1,829 meters [m]) and a ceiling of 18,000 ft (5,486 m). Olympic B air traffic controlled assigned airspace (ATCAA) has a floor of 18,000 ft (5,486 m) and a ceiling of 50,000 ft (15,240 m).

- The Chinook A and B MOAs are adjacent to R-6701 over the eastern portion of the Strait of Juan de Fuca and Admiralty Inlet respectively. Both Chinook MOAs cover 56 nm² (192 km²) of surface area and have a floor of 300 ft (91 m) and a ceiling of 5,000 ft (1,524 m).
- Restricted Area 6701. R-6701 is a 22 nm² (75 km²) area over Admiralty bay that extends from the surface to 5,000 ft (1,524 m).
- Okanogan MOA. The Okanogan MOA is located above north central Washington and covers 4,364 nm² (14,968 km²) in area. This MOA is divided into A, B, and C sections. Okanogan A is available from 9,000 ft (2,743 m) to 18,000 ft (5,486 m). Okanogan B and C have a floor of 300 ft (91 m) above the ground and a ceiling of 9,000 ft (2,743 m). The ATCAAs corresponding to the Okanogan MOA extends the airspace to 50,000 ft (15,240 m).

- Roosevelt MOA. The Roosevelt MOA is located just east of the Okanogan MOA and covers an area of 5,413 nm² (18,566 km²). This MOA is divided into two sections. Roosevelt A has a floor of 9,000 ft (2,743 m) and a ceiling of 18,000 ft (5,486 m). Roosevelt B has a floor of 300 ft (91m) above the ground and a ceiling of 9,000 ft (2,743 m). ATCAAs associated with the Roosevelt MOA extends its airspace to 50,000 ft (15,240 m).
- W-570, located off the central coast of Oregon, is 4,470 nm² (15,330 km²) in size. The airspace begins at the ocean's surface and extends to 50,000 ft (15,240 m). This area is used by P-3 aircraft for reconnaissance training.
- W-93 is located south of W-570, off the coast of Oregon and northern California. The 4,652 nm² (15,960 km²) of airspace in W-570 is also used for P-3 reconnaissance training and extends from the surface to 50,000 ft (15,240 m).

Land Range. The land areas of the NWTRC study area, all of which are on Navy property, include the Seaplane Base Survival Area, OLF Coupeville, the EOD detonation training range at NBK-Bangor, and NAS Whidbey Island. Seaplane Base Survival Area comprises approximately 875 acres (354 hectares) of undeveloped Navy property, located adjacent to Crescent Harbor. It provides a robust suite of range capabilities for use in small unit amphibious and land tactical maneuvers, land navigation, and survival training. Additionally, Seaplane Base Survival Area has several unimproved helicopter landing zones, small boat landing beaches, and a parachute drop zone. Indian Island is located west of Marrowstone Island between the waters of Port Townsend and Whidbey Island. It is approximately 4.2 miles (6.7 km) long and oriented on a north-south axis. Indian Island is used by NSW to conduct insertion/extraction activities. All activities at Indian Island are covert in nature, and no live fire weapons or other ordnance are used.

Three alternatives are analyzed in the EIS/OEIS. Alternative 2 is the U.S. Navy's Preferred Alternative, because it would optimize the training capability of the NWTRC and meet U.S. Navy minimum required capabilities as documented in the U.S Navy Ranges Required Capabilities Document of September 8, 2005. Table 2-1 of the July 2009 U.S. Navy EFH Assessment describes the current and proposed activities in the NWTRC study area.

Implementation of Alternative 2 would include all elements of Alternative 1. That alternative consists of all training activities currently conducted, plus an increase in training activities to include force structure changes associated with the introduction of new weapon systems, vessels, and aircraft into the Fleet. Under Alternative 1, baseline-training activities would be increased. In addition, training activities associated with force structure changes would be implemented for the EA-18G Growler, Guided Missile Submarine (SSGN), P-8 Multimission Maritime Aircraft (MMA), and unmanned aerial systems. Force structure changes associated with new weapons systems would include new Air-to-Air missiles, and new sonobuoys.)

Alternative 2 would, in addition, include the following elements:

- In order to optimize training throughput and meet the FRTP, training activities of the types currently conducted would be increased over levels identified in Alternative 1;
- Range enhancements would be implemented, to include new electronic combat threat simulators/targets, development of a small scale non-explosive underwater training minefield, development of a Portable Undersea Tracking Range, and development of air and surface target services.

Action Area

According to the July 2009, preliminary final EIS/OEIS and EFH Assessment for the NWTRC:

The ocean areas of the NWTRC include surface and subsurface operating areas extending generally west from the coastline of Washington, Oregon, and Northern California for a distance of approximately 250 nm (463 km) into international waters (see Figure 1). Although this area extends to the coastline of these states, no training that involves live explosives is conducted within 3 nm of shore. Historically, as well as projected for the future, training within 12 nm seldom if ever occurs off the coast of Oregon and Northern California.

Pacific Northwest Ocean Surface/Subsurface OPAREA. The PACNW OPAREA is approximately 510 nm (945 km) in length from the northern boundary to the southern boundary, and 250 nm (463 km) from the coastline to the western boundary at 130° W longitude. The southern boundary of the OPAREA is at 40° N latitude, which corresponds to the northern boundary of Mendocino County in Northern California. Total surface area of the PACNW OPAREA is 122,400 nm² (420,163 km²).

- Warning Area 237. W-237 comprises 33,997 nm² (116,606 km²) of airspace that generally overlays the NWTRC Ocean OPAREAS off the coast of Washington, W-237 begins approximately 3 nm (5 km) off the coast and extends westward in international waters and airspace for a distance of approximately 250 nm (463 km) from the ocean surface up to several specified altitudes depending upon which sub-area is used. The floor of W-237 airspace begins at the ocean surface, and the ceiling varies between 27,000 ft (8,230 m) and unlimited altitude. 7
- W-570, located approximately 12 nm off the central coast of Oregon, is 4,470 nm² (15,330 km²) in size. The airspace begins at the ocean's surface and extends to 50,000 ft (15,240 m). This area is used by P-3 aircraft for reconnaissance training.
- W-93 is located south of W-570, approximately 12 nm off the coast of Oregon and northern California. The 4,652 nm² (15,960 km²) of airspace in W-570 is also used for P-3 reconnaissance training and extends from the surface to 50,000 ft (15,240 m).

The action area include habitat which has been designated as EFH for various life stages of Pacific coast groundfish, coastal pelagic species, and Pacific salmon. The action area also includes habitat which has been designated as habitat areas of particular concern (HAPC) for groundfish. HAPCs are specific habitat areas, a subset of the much larger area identified as EFH, that play a particularly important ecological role in the fish life cycle or that are especially sensitive, rare, or vulnerable. Estuaries, sea grass beds, canopy kelp, rocky reefs, and other "areas of interest" (e.g., seamounts, offshore banks, canyons) are designated Groundfish HAPCs.

Effects of the Action

The proposed project may adversely affect EFH for Pacific coast groundfish, coastal pelagic species, and Pacific salmon through activities that contact the substrate. All of the action area has been designated as EFH for coho, Chinook and pink salmon (PFMC 1999). All lifestages of the Pacific Coast groundfish (PFMC 2005) occur within the NWTRC (Table 1).

Table 1. Species of fish and life stages with designated EFH that may occur within the action area, activities and prey.

Groundfish Species	Life stage	Activity*	Prey
Arrowtooth flounder	Adults	All	Gadids, <i>Theragra chalcogramma</i> , krill, clupeids, shrimp
	Eggs	Unknown	
	Larvae		
Big skate	Adults	All	Crustaceans, fish
Black rockfish	Juveniles	Feeding, growth to maturity	
	Adults	All	
Blue rockfish	Juveniles	All	
	Adults	All	
	Larvae	Feeding	
Bocaccio	Juveniles	Feeding	Euphausiids, copepods
Butter sole	Adults	All	Polychaetes, molluscs, fish, decapod crustaceans, amphipods, shrimp, sea stars
Cabezon	Adults	All	Fish eggs, lobsters, molluscs, small fishes, crabs
California skate	Eggs	Unknown	
Canary rockfish	Juveniles	Feeding, growth to maturity	
Chilipepper	Adults	All	Clupeids, euphausiids, <i>Merluccius productus</i> , squids, copepods, euphausiids
	Juveniles	Feeding, growth to maturity	

Groundfish Species	Life stage	Activity*	Prey
Copper rockfish	Adults	All	Crustaceans, fish, shrimp, molluscs
Curlfin sole	Adults	All	Crustacean eggs, <i>Echiurid proboscises</i> , nudibranchs, polychaetes
Dusky rockfish	Adults	All	
English sole	Juveniles	Feeding, growth to maturity	Polychaetes, molluscs, cumaceans, copepods, amphipods, mysids
	Adults	All	Polychaetes, ophiuroids, molluscs, cumaceans, amphipods, crustaceans
Flathead sole	Adults	All	Polychaetes, mysids, shrimp, molluscs, clupeids, fish
Kelp greenling	Adults	All	Worms, crabs, octopi, shrimp, small fishes, brittle stars, snails
	Larvae		
Lingcod	Adults	All	Juvenile crab, demersal fish, squid, octopi
	Larvae	Feeding	Decapod larvae, copepods, euphausiids, copepod nauplii, copepod eggs, amphipods
Longnose skate	Adults	All	
Pacific cod	Juveniles		Amphipods, shrimp, copepods, crabs
	Larvae		Copepods
Pacific hake	Juveniles		Euphausiids
	Adults	All	
Pacific sanddab	Adults	All	Squids, octopi, crab larvae, clupeids
Petrale sole	Adults	All	Shrimp, <i>Eopsetta jordani</i> , euphausiids, ophiuroids, pelagic fishes
Quillback rockfish	Adults	All	Amphipods, molluscs, euphausiids, polychaetes, fish juveniles, shrimp, clupeids, crabs
Redstripe rockfish	Adults	All	Fish juveniles, squid, clupeids
Rex sole	Adults	All	Cumaceans, euphausiids, larvacea, polychaetes
Petrale sole	Adults	All	Shrimp, <i>Eopsetta jordani</i> , euphausiids, ophiuroids, pelagic fishes
Quillback rockfish	Adults	All	Amphipods, molluscs, euphausiids, polychaetes, fish juveniles, shrimp, clupeids, crabs

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Groundfish Species	Life stage	Activity*	Prey
Petrale sole	Adults	All	Shrimp, <i>Eopsetta jordani</i> , euphausiids, ophiuroids, pelagic fishes
Quillback rockfish	Adults	All	Amphipods, molluscs, euphausiids, polychaetes, fish juveniles, shrimp, clupeids, crabs
Redstripe rockfish	Adults	All	Fish juveniles, squid, clupeids
Rex sole	Adults	All	Cumaceans, euphausiids, larvacea, polychaetes
Rock sole	Adults	All	Tunicates, echinoderms, fish, molluscs, polychaetes, echiurans
Rosy rockfish	Adults	All	Crabs, shrimp
Sablefish	Adults		Octopi, clupeids, euphausiids, shrimp, rockfish
	Juveniles	Growth to Maturity	Krill, small fishes, squids, euphausiids, demersal fish, tunicates, cephalopods, amphipods, copepods
	Larvae	Feeding	
Sand sole	Adults	All	Polychaetes, clupeids, crabs, fish, mysids, shrimp, molluscs
	Juveniles	Growth to Maturity, feeding	Euphausiids, molluscs, mysids, polychaetes, shrimp
Silvergray rockfish	Adults	All	
Soupfin shark	Adults	All	Fish, invertebrates
	Juveniles	Growth to Maturity	Invertebrates, fish
Spiny dogfish	Adults	All	Pelagic fishes, invertebrates
Splitnose rockfish	Juveniles	Feeding	Copepods, cladocerans, amphipods
	Larvae		
Spotted rattfish	Adults	All	Amphipods, annelids, brittle stars, fish, algae, molluscs, squids, small crustacea, ostracods, opisthobranchs, nudibranchs
	Juveniles	Growth to Maturity	Small crustacea, squids, ostracods, opisthobranchs, nudibranchs, molluscs, fish, brittle stars, amphipods, algae, annelids
Spotted rattfish	Adults	All	Amphipods, annelids, brittle stars, fish, algae, molluscs, squids, small crustacea, ostracods, opisthobranchs, nudibranchs
	Juveniles	Growth to Maturity	Small crustacea, squids, ostracods, opisthobranchs, nudibranchs, molluscs, fish, brittle stars, amphipods, algae, annelids
Starry flounder	Adults	Growth to Maturity	Molluscs, fish juveniles, polychaetes, crabs
	Juveniles	Feeding	Polychaetes, copepods, amphipods
Stripetail rockfish	Adults	All	Euphausiids, copepods
	Juveniles	Growth to Maturity	Copepods

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Groundfish Species	Life stage	Activity*	Prey
Tiger rockfish	Adults	All	Juvenile rockfish, amphipods, fish juveniles, shrimp, clupeids, crabs
Vermilion rockfish	Adults		Clupeids, juvenile rockfish, krill, octopi, squids
Widow rockfish	Juveniles	Growth to Maturity, feeding	Copepods, copepod eggs, euphausiid eggs
Yellowtail rockfish	Adults	All	Clupeids, euphausiids, tunicates, mysids, salps, squid, krill, <i>Merluccius productus</i>
Coastal Pelagic Species			
Northern anchovy	Eggs		
	Larvae		
	Juvenile		
	Adult	All	Zooplankton
Pacific sardine	Eggs		
	Larvae		
	Juvenile		
	Adult	All	Zooplankton
Pacific mackerel	Eggs		
	Larvae		
	Juvenile		
	Adult	All	Zooplankton, micronekton
Jack mackerel	Adult		Krill, small crustacea
Market squid	Eggs		
	Larvae		
	Juvenile		
	Adult	All	Plankton, small crustacea, euphausiids, copepods
	Spawning		
Pacific Salmon			
Coho salmon**	Juvenile		
	Adults	Feeding	
Chinook salmon	Juvenile		Plankton, insects, small fish
	Adults	Feeding	
Pink Salmon	Juvenile		Plankton, insects, small fish
	Adults	Feeding	

*Activity categories include breeding, feeding, growth to maturity, spawning, and unknown.

While the majority of ordnance rounds would be expended in W-237, the effects analysis of this assessment addresses the NWTRC Ocean OPAREAS for Oregon and Washington. Items expended during training include sonobuoys; parachutes; and nylon cord, some towed,

stationary, and remote-controlled targets; markers; chaff; inert munitions; torpedoes; and exploded and unexploded munitions, including missiles, bombs, and shells. Materials include a variety of metals, plastic, fiberglass, and batteries (preliminary final EIS/OEIS, page 3.6-17). According to the preliminary final EIS/OEIS (page 3.7-73) approximately 189,000 objects of potential concern to marine plants and invertebrates would be expended annually. The U.S. Navy states in their EFH Assessment that the majority of the expended materials would have no significant impact on fish or essential fish habitat in territorial or non-territorial waters because most of the missile fragments will lose their kinetic energy on impact with the water and will not injure fish or impact EFH that are in the area of the training. The U.S. Navy indicates that the majority of the expended materials would rapidly sink to the sea floor and over the mid- to long-term, “become encrusted by natural processes, and incorporated into the sea floor, with no significant accumulations in any particular area and no adverse effects to water quality or marine benthic communities.” In addition, assuming all ordnance would be expended evenly throughout W-237, the concentration of expended rounds under the proposed action would be approximately 6 per square nautical mile (1.6 per square kilometer). The U.S. Navy also noted that most marine litter comes from merchant shipping, which by implication has a much greater impact than generated by the U.S. Navy as a result of these continuing training exercises.

The NMFS does not concur with the conclusions drawn by the U.S. Navy, especially those related to expended materials becoming encrusted and not impacting EFH, and assuming that the material would be evenly distributed on the ocean floor. Primary effects to EFH include expended materials that result from training operations and impact waters and substrate – (*i.e.*, HAPCs, rockfish conservation areas, substrate important to overfished and/or rebuilding stocks such as canary rockfish, darkblotched rockfish, Pacific ocean perch, petrale sole, widow rockfish, yelloweye rockfish and habitat needed to support deep sea corals and sponges (structure forming benthic invertebrates) (NMFS 2010). It is important to note that the W-237H overlaps broadly with or is adjacent to areas that are currently under review by the PFMC for modification as groundfish essential fish habitat conservation areas – the Juan De Fuca Coral Canyons & Grays Canyon Sponge Reefs Important Ecological Areas.

Depending on the size, quantity, and distribution, accumulation and movement of the expended materials can have a long-term impact on hard bottom substrate and benthic organisms. The expended materials being produced by the U.S. Navy is a form of marine debris as defined by NOAA, that being, “Marine debris is typically defined as any man-made object discarded, disposed of, or abandoned that enters the coastal or marine environment.” (<http://marinedebris.noaa.gov>). While other sectors like merchant marine shipping, as noted in the EFH assessment, certainly contribute to the generation of marine debris, the U.S. Navy needs to account for the impacts resulting from their continued training operations and generation of marine debris in the form of expended materials.

Marine debris can damage habitats in a variety of different ways, (*e.g.*, scour, break, smother, and otherwise damage important marine habitat) that can result in a reduction in the structural complexity and degradation of habitats. Many of these habitats serve as the basis of marine ecosystems and thus they are critical to the survival of many other species. A two year study of marine debris caught in the NOAA groundfish trawl survey off the West Coast (2007 and 2008) by NMFS’ Northwest Fisheries Science Center (Fruh et al. 2008) demonstrated that military debris collected during the coast-wide survey was found off of California, presumably in areas of

historic military maneuvers. The trawl survey operates exclusively shoreward of 700 fathoms off of all three states. No military debris was encountered off the Oregon and Washington Coasts during the surveys because the trawl survey is not conducted in areas of known military operations off these two state coasts.

The U.S. Navy has been operating in the NWTRC since the early 1900s.¹ Although the U.S. Navy did reference some studies to support their contention that EFH would not be adversely affected as a result of the implementation of this project, they did not provide any monitoring data in the training area to support the conclusions drawn in their EFH assessment or EIS/OEIS. The U.S. Navy indicated in conversations with NMFS that there has never been a monitoring program to assess the effects of expended materials at any point during the operation of the NWTRC and support the conclusions in the EFH assessment and EIS/OEIS.

NMFS also notes that this EIS/OEIS addresses a 5-year period of U.S. Navy training activities, and that the U.S. Navy has expressed its intent to begin another NEPA review process for the subsequent 5-year training period. Many of the trust resources under NMFS jurisdiction, namely groundfish, have lifespans of several decades. With U.S. Navy training analyzed in 5-year segments, the cumulative effects of U.S. Navy at-sea training over time do not receive appropriate consideration with regard to EFH impacts.

The potential adverse effects on EFH as a result of this project's implementation could also affect important data collection efforts on the part of NMFS. The NMFS noted both in writing and in verbal communication with personnel of the U.S. Navy that both the Portable Undersea Tracking Range (PUTR) and the underwater training minefield discussed in the EIS/OEIS have the potential to negatively affect a number of NMFS' data collection and survey programs which are used to assess fish stocks. NMFS operates a coast-wide midwater acoustics survey, a juvenile species survey, a hook and line survey and a coast-wide bottom trawl survey on an annual basis. These surveys are conducted over a period of months and involve multiple vessels accessing areas of the shelf and slope over significant time windows. In particular, the NMFS Bottom Trawl Survey of Groundfish Resources is the nation's primary fisheries-independent data source on West Coast groundfish.

This survey has been conducted in various forms since 1977 and continued uninterrupted access to survey waters is vital to the continued integrity of its time series data. These data form the basis for a majority of the information for west coast groundfish stock assessments, EFH designations, and fishery management decision-making. If either the PUTR or the underwater training minefield are placed between the 25 m and 1,290 m depth contours, those training range enhancements could likely negatively affect how groundfish use the areas NMFS surveys due to habitat alterations. This would in turn affect the integrity of the survey, the data it collects, and reduce NMFS' ability to correctly characterize EFH for West Coast groundfish used for protection and conservation of those species and their habitats.

¹ In a personal communication between John Mosher of the U.S. Navy and Cathy Tortorici of NMFS in February, 2010, Mr. Mosher indicated that the final EIS would be using an operation date of since "World War II" and not since the 1900s.

Essential Fish Habitat Conservation Recommendations

Pursuant to section 305(b)(4)(A) of the MSA, NMFS is required to provide EFH conservation recommendations to Federal agencies regarding actions that would adversely affect EFH. NMFS recommends that the U.S. Navy implement the following conservation measure to minimize the potential adverse effects to EFH for Pacific groundfish, coastal pelagics, and Pacific salmon:

1. Inventory portions of the action area to characterize the presence, absence, and quality of sensitive habitats such as HAPCs, rockfish conservation areas, substrate important to overfished and/or rebuilding stocks such as canary rockfish, darkblotched rockfish, Pacific ocean perch, petrale sole, widow rockfish, yelloweye rockfish and habitat needed to support deep sea corals and sponges (structure-forming benthic invertebrates) that are most likely to experience training on a regular basis. In conjunction with this inventory, the U.S. Navy should develop and implement a plan that minimizes and/or avoids substrate impacts and sensitive habitats, deep sea corals, and sponges.
2. Develop and implement a long-term monitoring and adaptive plan in coordination with NMFS that addresses the fate, transport and effects of expended materials on EFH resulting from implementation of the proposed action. This monitoring plan should be developed and implemented in coordination with the NW Fisheries Science Center and NMFS' NW Region Sustainable Fisheries Division in order to build upon NOAA's current existing data collection efforts and minimize conflicts with our on-going, at-sea research activities. The results of the monitoring plan should be reviewed on an annual basis with NMFS to determine how to adjust training operations to avoid and/or minimize impacts to EFH.
3. Coordinate with NMFS on any further analysis to be conducted on the placement of any underwater training minefield proposed for placement off the coasts of Oregon and Washington State to determine, minimize, and/or avoid impacts to EFH.

Statutory Response Requirement

Federal agencies are required to provide a detailed written response to NMFS' EFH conservation recommendations within 30 days of receipt of these recommendations [50 CFR 600.920(k) (1)]. The response must include a description of measures proposed to avoid, mitigate, or offset the adverse affects of the activity on EFH. If the response is inconsistent with the EFH conservation recommendations, the response must explain the reasons for not following the recommendations. The reasons must include the scientific justification for any disagreements over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects.

Where the U.S. Navy believes they do not have authority or jurisdiction to implement EFH conservation recommendations, NMFS requests the U.S. Navy provide, in writing, the rules and regulations that limit their authority or jurisdiction to condition permits accordingly.

Due to increased oversight of overall EFH program effectiveness by the Office of Management and Budget, NMFS established a quarterly reporting requirement to determine how many conservation recommendations are provided as part of each EFH consultation and how many are

adopted by the action agency. Therefore, in your statutory reply to the EFH portion of this consultation, we ask that you clearly identify the number of conservation recommendations accepted.

Supplemental Consultation

The U.S. Navy must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations [50 CFR 600.920(k)].

DATA QUALITY ACT DOCUMENTATION AND PRE-DISSEMINATION REVIEW

Section 515 of the Treasury and General Government Appropriations Act of 2001 (Public Law 106-554) (Data Quality Act) specifies three components contributing to the quality of a document. They are utility, integrity, and objectivity. This section of the EFH consultation addresses these Data Quality Act (DQA) components, documents compliance with the DQA, and certifies that this consultation has undergone pre-dissemination review.

Utility: Utility principally refers to ensuring that the information contained in this consultation is helpful, serviceable, and beneficial to the intended users.

This EFH consultation concludes that the proposed action will adversely modify EFH, and includes three conservation recommendations to the action agency that avoids, minimizes, or otherwise offsets those adverse modifications. The U.S. Navy may authorize this action in accordance with its authorities. The intended users are the U.S. Navy. Individual copies were provided to the above-listed entities. This consultation will be posted on NMFS Northwest Region website (<http://www.nwr.noaa.gov>). The format and naming adheres to conventional standards for style.

Integrity: This consultation was completed on a computer system managed by NMFS in accordance with relevant information technology security policies and standards set out in Appendix III, 'Security of Automated Information Resources,' Office of Management and Budget Circular A-130; the Computer Security Act; and the Government Information Security Reform Act.

Objectivity:

Information Product Category: Natural Resource Plan.

Standards: This consultation and supporting documents are clear, concise, complete, and unbiased; and were developed using commonly accepted scientific research methods. They adhere to published standards including MSA implementing regulations regarding EFH, 50 CFR 600.920(j).

Best Available Information: This consultation and supporting documents use the best available information, as referenced in the Literature Cited section. The analyses in this Opinion/EFH consultation contain more background on information sources and quality.

Referencing: All supporting materials, information, data and analyses are properly referenced, consistent with standard scientific referencing style.

Review Process: This consultation was drafted by NMFS staff with training in MSA implementation, and reviewed in accordance with Northwest Region quality control and assurance processes.

LITERATURE CITED

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<http://www.pcouncil.org/salmon/salfmp/a14.html>
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DEPARTMENT OF THE NAVY

COMMANDER
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
5090
Ser N01CE1/0676
7 Jul 10

Michael Tehan
Assistant Regional Administrator
Habitat Conservation Division
National Marine Fisheries Service
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

Dear Mr. Tehan:

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and regulations governing conservation of Essential Fish Habitat (EFH), this responds to National Marine Fisheries Service's (NMFS) May 20, 2010 conservation recommendations for proposed military readiness activities identified in the U.S. Pacific Fleet's Northwest Training Range Complex (NWTRC) Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS). The Navy received your letter on June 11, 2010, and this letter serves as 30-day written response pursuant to section 305(b)(4)(B) of the MSA.

Having analyzed the potential for impacts based on the best available scientific data, the Navy contends that the proposed action in the NWTRC EIS/OEIS will not reduce the quality or quantity of EFH and maintains its determination of no adverse effect. Although the Navy's proposed training will not result in adverse impacts to EFH as described in the EFH Assessment for the NWTRC EIS/OEIS, the Navy herein responds to NMFS' three (3) EFH conservation recommendations provided in your letter as required by the MSA:

NMFS EFH Conservation Recommendation 1:

Inventory portions of the action area to characterize the presence, absence, and quality of sensitive habitats such as Habitat Areas of Particular Concern (HAPC), rockfish conservation areas, substrate important to overfished and/or rebuilding stocks such as canary rockfish, dark blotched rockfish, Pacific ocean perch, petrale sole, widow rockfish, yelloweye rockfish and habitat needed to support deep sea corals and sponges (structure forming benthic invertebrates) that are most likely to experience training on a

regular basis. In conjunction with this inventory, the U.S. Navy should develop and implement a plan that minimizes and/or avoids substrate impacts and sensitive habitats, deep sea corals, and sponges.

Navy Response:

a. The Navy is unable to commit to inventorying portions of the action area to assist NMFS in identifying sensitive habitats as requested in this conservation recommendation. In the off-shore areas of the NWTRC, there are no specific areas that experience training at any more frequency than any other area within the NWTRC. The vast majority (approximately 99%) of Navy training in the NWTRC occurs off the Washington State coast within the military Warning Area designated as W-237. As indicated in the EIS/OEIS, W-237 is a smaller subset of the entire NWTRC, though still encompasses approximately 33,997 square nautical miles of ocean. Training distribution is characterized as being randomly dispersed across W-237 and does not necessarily occur in the same location twice. It is not within the Navy's charter to conduct large area ocean bottom surveys, nor is it budgeted and funded for such undertakings. Additionally, it is felt that this recommendation is not economically practical given the large areas of seafloor and extreme water depths present.

b. Though the Navy does not intend to conduct inventories to identify additional sensitive habitats within the NWTRC as discussed above, the presence of known sensitive areas, such as HAPC were included in the analysis of the potential effects to EFH. By overlaying HAPC on the Navy's primary training area (W-237) it was determined that training events largely fall outside of identified sensitive areas, as depicted in Figure 3.7-1 of the Preliminary Final EIS/OEIS (enclosure 1). When referring to Figure 3.7-1, it is noteworthy that although the additional Warning Areas W-570 and W-93 do overlay HAPC, that only approximately one percent of the training in the NWTRC is conducted in these areas with almost all the events being aircraft training that would have no effect on in-water resources. Despite no adverse impacts to EFH, the Navy supports working with NMFS to improve the sharing of data, and as additional research information for habitat areas becomes available, the Navy will continue to incorporate such results into future environmental planning and assessments of impact for the NWTRC.

NMFS EFH Conservation Recommendation 2:

Develop and implement a long-term monitoring and adaptive plan in coordination with NMFS that addresses the fate, transport and effects of expended materials on EFH resulting from implementation of the proposed action. This monitoring plan should be developed and implemented in coordination with the NW Fisheries Science Center and the NMFS' NW Region Sustainable Fisheries Division in order to build upon NOAA's current existing data collection efforts and minimize conflicts with our on-going, at-sea research activities. The results of the monitoring plan should be reviewed on an annual basis with NMFS to determine how to adjust training operations to avoid and/or minimize impacts to EFH.

Navy Response:

a. Sufficient data currently does not exist to justify commitment to an annual review and potential adjustments to vital training, nor to the development of a long term monitoring plan based on perceived impacts to EFH. As discussed in the response to conservation recommendation 1 above and presented in the EIS/OEIS, the majority of training events in the NWTRC occur in W-237 (approximately 99%), with a generally random distribution across this training area. Assuming an even distribution of military expended materials (MEM) within W-237, the concentration of MEM would be approximately 5.6 individual items per square nautical mile per year, with more than 60 percent of the items being small caliber bullets. Given the quantity, wide dispersion and low potential for accumulation, the Navy stands by its determination that MEM will not reduce the long term quality or quantity of EFH. The Navy contends that this conclusion is supported by the 2007 and 2008 NOAA groundfish trawl survey conducted off the west coast by NMFS' Northwest Fisheries Science Center (Fruh et al. 2008). The conservation recommendations letter discounts the relevance of this study to the Navy's impact determination, stating that "No military debris was encountered off the Oregon and Washington Coasts during the surveys because the trawl survey is not conducted in areas of known military operations off these two state coasts." The Navy disagrees with this statement, as trawls for the study were in fact conducted through W-237 where military training is known to have occurred, as indicated on Figure 3.3-1 of the EIS/OEIS, overlaying trawl study locations with NWTRC training areas (enclosure 2).

b. The above notwithstanding, the Navy believes that the general intent of this conservation recommendation is consistent and compatible with its goals to better understand the disposition of

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MEM in the ocean. Further, the Navy agrees that regional coordination is necessary to help avoid conflicts between NMFS' ongoing, at-sea research activities and Navy training.

NMFS EFH Conservation Recommendation 3:

Coordinate with NMFS on any further analysis to be conducted on the placement of any underwater training minefield proposed to be placed off the coasts of Oregon and Washington State to determine, minimize, and/or avoid impacts to EFH.

Navy Response:

The Navy concurs with this conservation recommendation and intends to coordinate with NMFS on any further environmental analysis and planning to address the placement of the proposed underwater training minefield. Though the NWTRC EIS/OEIS includes a quantitative study regarding training activities associated with this potential range enhancement, location alternatives have not yet been determined or evaluated. Navy and NMFS interaction would be beneficial to help minimize environmental effects and potential impacts to regional fisheries.

In response to your request that the Navy clearly identify the number of conservation recommendations accepted; one (1) of the three (3) conservations recommendations provided by NMFS was fully accepted by the Navy.

The Navy appreciates the NMFS Northwest Regional office's expertise, and review and input on the NWTRC EIS/OEIS project. Realistic training at sea is critical to the Navy's preparedness, and analyses like this one are a vital piece of the Navy's dedication to environmental stewardship in the completion of its mission. I would like to reaffirm the U.S. Pacific Fleet's commitment to working with your agency in support of our mutual goals. My point of contact on this matter is Mr. John Mosher, at 360-257-3234 or john.g.mosher@navy.mil.

Sincerely,



D. A. MCNAIR
Captain, U.S. Navy
Deputy Fleet Engineer
By direction

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7 Jul 10

Enclosures: 1. HAPC within the PACNW Study Area
2. Marine Debris Survey Tow Locations

Copy to:
OPNAV N45
Navy Region Northwest (N40)
Naval Facilities Engineering Command Northwest (N45)

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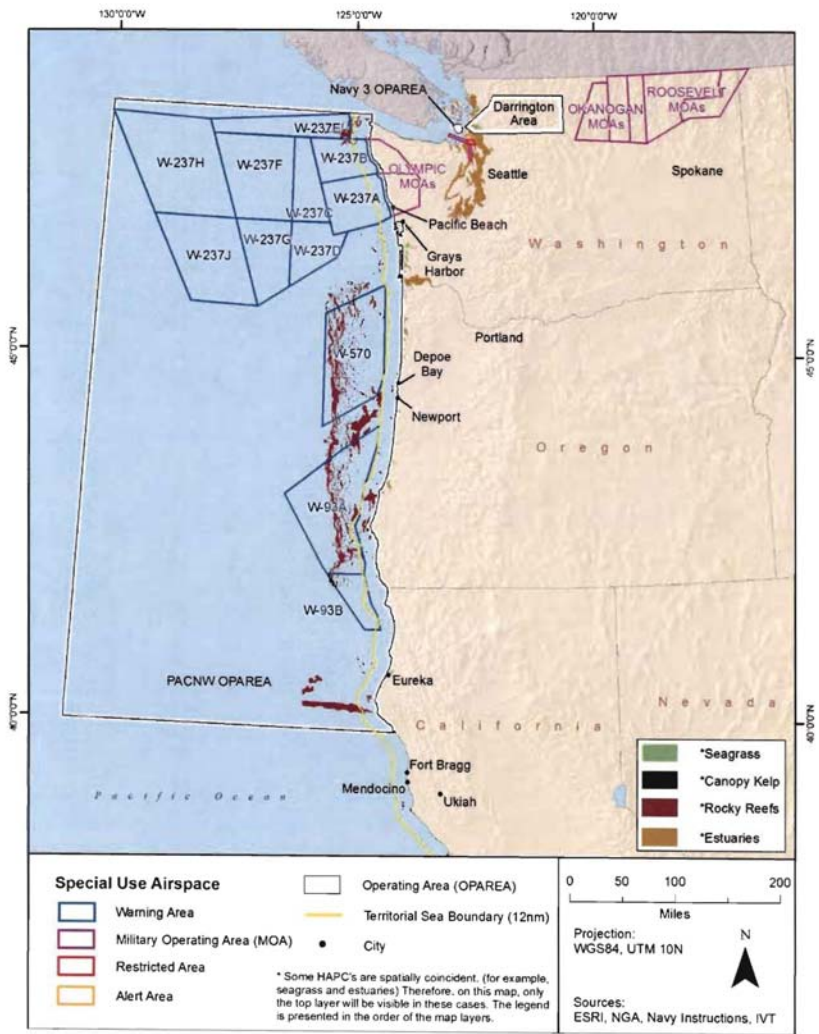


Figure 3.7-1: Habitat Areas of Particular Concern within the PACNW Study Area

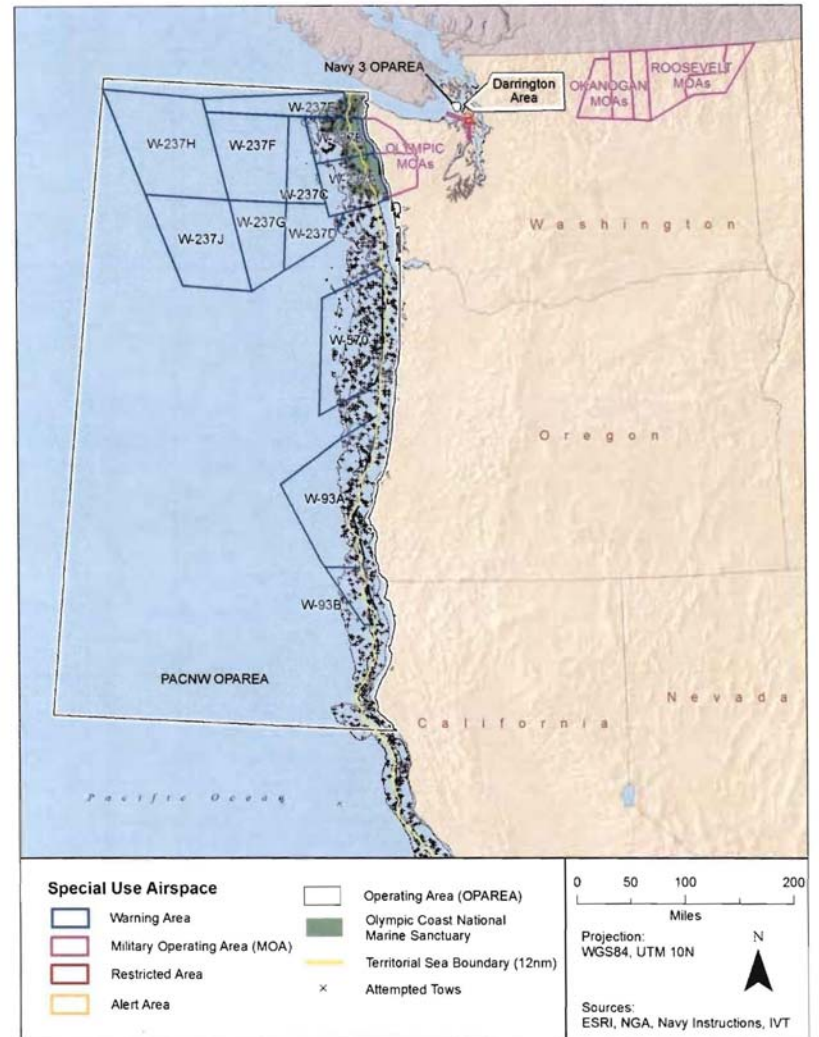


Figure 3.3-1: 2007-2008 Marine Debris Survey Tow Locations

