U.S.C. 610 (DFARS Case 2015–D028), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

VI. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. DoD administers FMS programs to maintain and strengthen relationships with partner nations. Failure to nurture these relationships may create a threat to national security. This action is necessary because of the recent and foreseeable trend of increasing numbers and complexity of indirect offsets desired by DoD's Foreign Military Sales (FMS) customers.

Currently, Defense Federal Acquisition Regulation Supplement (DFARS) 225.7303–2(a)(3)(ii) provides that the U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs. However, DFARS 225.7301(b) provides that the U.S. Government conduct FMS acquisitions under the same acquisition and contract management procedures used for other defense acquisitions. This requires the contracting officer to adhere to FAR provisions concerning the negotiation of contracts and subcontracts (FAR part 15) and contract cost principles (FAR part 31), and thus be capable of attesting to the price reasonableness of FMS contracts, including indirect offset costs that are not tied directly to the end item. Contracting officers must follow these regulations even though no DoD appropriated funds are being used to pay for the effort, and DoD contracting officers have no insight to pricing of the indirect offset. In the past several years, compliance with regulations has resulted in an inability of contracting officers to finalize FMS contract negotiations.

The interim rule affirms that all offset costs that involve benefits provided by a U.S. defense contractor to an FMS customer that are unrelated to the item being purchased under a Letter of Offer and Acceptance (LOA), *i.e.,* indirect offset costs, are deemed reasonable for purposes of FAR part 31. The rule provides that no additional analysis is necessary on the part of the contracting officer, provided that the U.S. defense contractor submits to the contracting officer a signed offset agreement or other documentation showing that the FMS customer has made the provision of an indirect offset of a certain dollar value a condition of the FMS acquisition. Finally, the rule provides that the FMS customer shall be notified through the LOA that indirect offset costs are deemed reasonable without any further analysis by the contracting officer.

It is essential that DoD implement this interim rule immediately to clarify that contracting officers are not required to make price reasonableness determinations on costs associated with indirect offsets under FMS agreements, which, while included in the FMS contract, fall outside of the DoD contracting officer's purview. Immediate implementation will allow DoD contracting officers to finalize pending negotiations for FMS contracts to support U.S. allies and partners, and maintain bilateral relationships. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 225

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 225.7301 by revising paragraph (a) to read as follows:

225.7301 General.

(a) The U.S. Government sells defense articles and services to foreign governments or international organizations through FMS agreements. The agreement is documented in a Letter of Offer and Acceptance (LOA) (see the Defense Security Cooperation Agency (DSCA) Security Assistance Management Manual (DSCA 5105.38–M)).

* * * * *

■ 3. Amend section 225.7303–2 by—

■ a. Adding a heading to paragraph (a)(3), and revising the introductory text of paragraph (a)(3); and

■ b. Adding a new paragraph (a)(3)(iii).

The revision and additions read as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) * * *

(3) *Offsets.* For additional information see PGI 225.7303–2(a)(3)), and also see 225.7306.

* * * * *

(iii) All offset costs that involve benefits provided by the U.S. defense contractor to the FMS customer that are unrelated to the item being purchased under the LOA (indirect offset costs) are deemed reasonable for purposes of FAR part 31 with no further analysis necessary on the part of the contracting officer, provided that the U.S. defense contractor submits to the contracting officer a signed offset agreement or other documentation showing that the FMS customer has made the provision of an indirect offset of a certain dollar value a condition of the FMS acquisition. FMS customers are placed on notice through the LOA that indirect offset costs are deemed reasonable without any further analysis by the contracting officer.

* * * * *

[FR Doc. 2015–12901 Filed 6–1–15; 8:45 am]

BILLING CODE 5006–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 140909771–5427–02]

RIN 0648–BE51

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Joint Logistics Over-the-Shore Training Activities in Virginia and North Carolina

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

ACTION: Final rule.

SUMMARY: Upon application from the U.S. Navy (Navy), we (the National Marine Fisheries Service) are issuing regulations under the Marine Mammal Protection Act (MMPA) to govern the unintentional taking of marine mammals incidental to the Joint Logistics Over-the-Shore (JLOTS) training activities conducted in Virginia and North Carolina, from June 2015 through June 2020. These regulations allows us to issue a Letter of Authorization (LOA) for the incidental take of marine mammals during the Navy's specified activities and

timeframes, set forth the permissible methods of taking, set forth other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, and set forth requirements pertaining to the monitoring and reporting of the incidental take.

DATES: Effective June 2, 2015, through June 2, 2020.

ADDRESSES: To obtain an electronic copy of the Navy's application or other referenced documents, visit the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this rule may also be viewed, by appointment, during regular business hours, at the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

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

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

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–136) amended section 101(a)(5)(A) of the MMPA by removing the ''small numbers'' and ''specified geographic region'' limitations indicated above and amended the definition of ''harassment'' as applied to ''military readiness activity'' to mean: ''(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].'' (Section 3(18)(B) of the MMPA.)

Summary of Request

On August 20, 2014, NMFS received an application from the Navy requesting a letter of authorization (LOA) for the take of bottlenose and Atlantic spotted dolphins incidental to the Navy's JLOTS training activities in nearshore waters at the Joint Expeditionary Base (JEB) Little Creek-Fort Story in Virginia and at Camp Lejeune in North Carolina. The Navy is requesting regulations that would allow NMFS to authorize take, via a 5-year LOA, of marine mammals incidental to training activities. These activities are classified as military readiness activities. The Navy states that these activities may result in take of marine mammals from noise from temporary pier construction associated with the JLOTS training activities. The Navy requests to take bottlenose and Atlantic spotted dolphins by Level B harassment.

Specified Activity

A detailed description of the Navy's proposed JLOTS activities is provided in the proposed rule (80 FR 2636; January 20, 2015) and is not repeated here. No changes were made to the proposed action since the proposed rule was published.

Comments and Responses

On January 20, 2015 (80 FR 2636), NMFS published a proposed rule to authorize the taking of marine mammals incidental to the Navy's JLOTS training activities. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and a private citizen. Comments specific to section 101(a)(5)(A) of the MMPA and NMFS' analysis of impacts to marine mammals are summarized and addressed below and/or throughout the final rule.

Comment 1: The Commission recommends that NMFS require the Navy to submit a proposed monitoring plan in support of JLOTS training activities, which at the very least should include a brief synopsis of the projects the Navy plans to conduct, for public review and comment prior to issuance of the final regulations.

Response 1: The Navy will use the existing Integrated Comprehensive Monitoring Program and the study-based approach that Navy and NMFS agreed to during a prior adaptive management session to satisfy monitoring requirements for the JLOTS MMPA authorization. The Navy's LOA application provided details on the Integrated Comprehensive Monitoring Plan, as well as the Web site where the public can obtain further information on all of the Navy's marine species monitoring work (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

To ensure efficient implementation of the Navy's monitoring program and maintain consistency with how the program is already being implemented for the Atlantic Fleet Training and Testing (AFTT) MMPA authorization, the same AFTT adaptive management process and reporting deadlines will be used for the JLOTS authorization. In fact, the in-water pile driving associated with JLOTS was originally part of the AFTT Environmental Impact Statement (EIS) and LOA, and this pile-driving activity and its associated monitoring requirements already went through public review and comment during the AFTT EIS and MMPA process, as JLOTS activities were not removed until the Final Rule and Final EIS stage.

Table 1 shows Navy projects that help achieve the Integrated Comprehensive Monitoring Program's top level goals. There may be future unforeseen budget or other logistical issues that require modification to study design, scope, or direction of one or more of these projects. However, the Navy has currently either planned for or is currently undertaking these projects as described. The first two projects will investigate the sound source level of pile driving and its effects on marine species and the remaining four projects help advance scientific knowledge of presence, density, distribution, and movement of marine species found in the Chesapeake Bay and along the coasts of Virginia and North Carolina. Information on these projects and all Navy monitoring projects can be found at *http://www.navymarinespeciesmonitoring.us/.*

Therefore, NMFS does not believe that an additional monitoring plan in support of JLOTS training activities or additional comment period is warranted.

TABLE 1—NAVY MONITORING PROJECTS

Project description	Intermediate scientific objectives	Status
Title: Responses of Marine Mammals to Vibratory Pile Driving. Location: Marine Mammal Program (MMP) Research Facility, San Diego, CA. Objectives: Determine potential effects to marine mammals from vibratory pile driving noise. Methods: Source measurements and acoustic propagation modelling. Performing Organizations: Navy Marine Mammal Program. Timeline: 2013–2015.	Observe and record potential effects to marine mammals from vibratory pile driving noise. This entails a controlled exposure experiment with the bottlenose dolphin as a representative species. Their behavioral responses are evaluated at various received levels and durations of pre-recorded vibratory pile driving noise playback.	2013–14: MMP developed experimental design and performed experimental trials with five dolphins. 2014–2015: MMP conducting trials and analyzing dolphin responses.
Title: Sound Source Measurements from Pile Driving Location: Navy installations along the U.S. East Coast. Objectives: Determine the source levels produced by impact and vibratory driving of different size and material piles during construction projects. Methods: Source measurements and acoustic propagation modelling. Performing Organizations: HDR Inc., Illingworth and Rodkin Inc.. Timeline: 2012–2015.	Measure the sound produced by both vibratory and impact pile driving methods on various types of piles at Navy installations along the U.S. East Coast. This data will support sound source measurement and propagation modelling for assessing the impacts of pile driving.	Field work 2013–2015. Reports available for measurements at JEB Little Creek, NS Norfolk, and Philadelphia Naval Shipyard. Additional measurements to be completed at NS Mayport and SUBASE Kings Bay in 2015.
Title: Lower Chesapeake Bay Sea Turtle Tagging and Tracking. Location: Hampton Roads. Objectives: Assess occurrence and behavior of loggerhead, green, and Kemp's ridley sea turtles in the Chesapeake Bay. Methods: Satellite, GPS, and acoustic transmitter tags. Performing Organizations: Virginia Aquarium and Marine Science Center Foundation, NAVFAC Atlantic. Timeline: 2013 through 2016—anticipated 3 field seasons.	The project will estimate the density of sea turtles in Navy training areas by using a combination of satellite and acoustic transmitters. Satellite tags provide spatial locations, and dive and environmental data, allowing for habitat and home range modeling. The acoustic transmitter data will provide residency time and seasonality. Combination of the two tags types will yield a robust data set, providing greater insight into marine turtle use of the area.	Field work summers 2013–15. Technical progress reports for 2013 and 2014 are available on Marine Species Monitoring Web site.
Title: Occurrence, Distribution, and Density of Marine Mammals Near Naval Station Norfolk and Virginia Beach. Location: Hampton Roads coastal Atlantic Ocean, W–50 MINEX training range. Objectives: Assess occurrence, seasonality, and stock structure of Tursiops in the coastal waters off military installations. Methods: Small vessel visual line transect surveys, photo ID, PAM. Performing Organizations: HDR Inc. Timeline: 2012 through 2015.	This project will conduct monthly line-transect surveys to determine distribution of marine near Norfolk and Virginia Beach and conduct monthly photo-ID vessel surveys to determine the site fidelity of marine mammals utilizing these areas.	Field work summers 2013–15 Technical progress reports for 2013 and 2014 are available on Marine Species Monitoring Web site.
Title: Baseline Monitoring for Marine Mammals in the East Coast Range Complexes. Location: Virginia Capes, Cherry Point, and Jacksonville Range Complexes. Objectives: Assess occurrence, habitat associations, density, stock structure, and vocal activity of marine mammal and sea turtle in key areas of Navy range complexes. Methods: Aerial and vessel visual surveys, biopsy sampling, photo ID, PAM. Performing Organizations: Duke University, UNC Wilmington, University of St. Andrews, Scripps Institute of Oceanography. Timeline: Ongoing.	This project will use aerial and vessel surveys to determine species and estimate density of marine mammals and sea turtles present in Navy range complexes and will ultimately evaluate trends in distribution and abundance of populations that are regularly exposed to sonar and underwater explosives.	Ongoing. Began in 2008 as preliminary Undersea Warfare Training Range (USWTR) baseline monitoring. Yearly reports can be found on the Marine Species Monitoring Web site. Monitoring will continue for FY16 and beyond but plans have not been finalized yet.
Title: Mid-Atlantic Humpback Whale Monitoring ..... Location: VACAPEs Range Complex. Objectives: Assess occurrence, habitat use, and baseline behavior of humpback whales in the mid-Atlantic region. Methods: Focal follow observational methods, photo ID, biopsy sampling. Performing Organizations: HDR Inc. Timeline: 2014 through 2017—anticipated 3 field seasons.	This project will establish baseline occurrence and behavior data for humpback whales in the Hampton Roads Mid-Atlantic region through boat surveys, photo ID, and biopsy sampling.	New start (FY14). First field season winter 2015.

Comment 2: A private citizen wrote against NMFS issuing the LOA to the Navy because of concerns that marine mammals will be killed.

Response 2: As described in detail in the proposed rule (80 FR 2636; January 20, 2015), the Navy's proposed JLOTS training activities would only result in Level B behavioral harassment of bottlenose and Atlantic spotted dolphins. No injury or mortality is expected, and none is authorized.

Description of Marine Mammals in the Area of the Specified Activities

There are six marine mammal species under NMFS jurisdiction with possible or known occurrence in the Navy's JLOTS training area at the JEB Little Creek-Fort Story in Virginia and at Camp Lejeune in North Carolina, as indicated in Table 2. Four marine mammal species are listed under the Endangered Species Act: North Atlantic right whale, humpback whale, sei whale, and fin whale.

TABLE 2—MARINE MAMMAL OCCURRENCE WITHIN THE JLOTS TRAINING AREAS OFF THE ATLANTIC COAST

Common name	Scientific name	Status		Stock(s)	Stock abundance best (CV)/Min	Density in Activity Area [2] (per km^2)	
		ESA	MMPA			JEB Little Creek-Fort Story	Camp Lejeune
Mysticetes							
fin whale	*Balaenoptera physalus*.	E	strategic; depleted	Western North Atlantic.	3,522 (0.27)/2,817	0.00	
humpback whale	*Megaptera novaeangliae*.	E	depleted	Gulf of Maine	823 (0)/823	0.000034	0.00009
North Atlantic right whale.	*Eubalaena glacialis*.	E	strategic; depleted	Western North Atlantic.	444 (0)/(444)	0.000033	
sei whale	*Balaenoptera borealis*.	E	strategic; depleted	Nova Scotia	357 (0.52)/236	0.000101	
Odontocetes							
Atlantic spotted dolphin.	*Stenella frontalis*			Western North Atlantic.	26,798 (0.66)/16,151	0.0007728	0.153
bottlenose dolphin.[3]	*Tursiops truncatus*.		strategic	Northern North Carolina Estuarine System.	950 (0.23)/785	0.159	0.169871
			strategic	Southern North Carolina Estuarine System.	2,454 (0.53)/1,614.		
			strategic; depleted	Western North Atlantic Southern Migratory Coastal.	12,482 (0.32)/9,591.		

* E = endangered under the ESA.

NMFS has reviewed the information compiled by the Navy on the abundance, status, and distribution of marine mammal species in the waters of the JLOTS training areas of the North Atlantic coast, which was derived from peer reviewed literature, the Navy Marine Resource Assessments, and NMFS Stock Assessment Reports. NMFS considers this information to be the best available. This information may be viewed in the Navy's LOA application and the Navy's EA (*see* Availability). Additional information is available in the NMFS Stock Assessment Reports, which may be viewed at: *http://www.nmfs.noaa.gov/pr/sars/species.htm.*

Fin whales, North Atlantic right whale, humpback whale, and sei whale are considered rare in the JLOTS training areas. These mysticete whales tend to be distributed in offshore areas. Occurrences of these species in the inshore waters off JEB Little Creek-Fort Story or near shore waters off Camp Lejeune are expected to be rare. Due to their extremely rare occurrence within the training areas where pile driving and removal occur, the Navy and NMFS do not anticipate any take of fin, North Atlantic right, humpback, or sei whales. Therefore, these species are not addressed further in this document.

Potential Effects of the Specified Activity on Marine Mammals

When considering the effects 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 have been derived using auditory evoked potentials, anatomical modeling, and other data. From this, Southall *et al.* (2007) designated ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below. It should be noted that animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies towards 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 30 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;
- Phocid pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 100 kHz; and
- Otariid pinnipeds in Water: Functional hearing is estimated to occur between approximately 100 Hz and 40 kHz.

As mentioned previously in this document, only bottlenose dolphin and Atlantic spotted dolphin are likely to occur in the JLOTS training areas. Both of these two species are classified as mid-frequency cetaceans (Southall *et al.* 2007). Because their hearing frequency range overlaps with the frequencies associated with pile driving, the Navy and NMFS determined that in-water pile removal and pile driving during the JLOTS training activities have the potential to result in behavioral harassment.

Marine mammals exposed to high-intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the reduction of hearing sensitivity in the frequency ranges of the sound source (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the reduction of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's reduction of hearing sensitivity will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, hearing impairment could result in the reduced ability of marine mammals to detect or interpret important sounds. Repeated noise exposure that causes TTS could lead to PTS.

Experiments on a bottlenose dolphin (*Tursiops truncatus*) and beluga whale (*Delphinapterus leucas*) showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB (p-p) re 1 µPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of one hammer strike for pile driving is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of sound exposure level (SEL) than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.* 2009). Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Masking generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking can interfere with detection of acoustic signals, such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired.

Masking occurs at the frequency band which the animals utilize. Since noise generated from in-water pile removal and driving is mostly concentrated at low frequency ranges, it may have little effect on high-frequency echolocation sounds by odontocetes (toothed whales). However, the lower frequency man-made noises are more likely to affect the detection of communication calls and other potentially important natural sounds, such as surf and prey noise. The noises may also affect communication signals when those signals occur near the noise band, and thus reduce the communication space of animals (*e.g.,* Clark *et al.* 2009), cause modification in vocalization patterns (*e.g.,* Foote *et al.* 2004; Holt *et al.* 2009), and cause increased stress levels (Rolland *et al.* 2012).

Masking can potentially impact the species at community, population, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels in the world's oceans have increased by as much as 20 dB (more than 3 times, in terms of SPL) from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessel traffic and pile removal and driving, contribute to the elevated ambient noise levels, thus intensifying masking.

The sum of noise from the Navy's JLOTS training activities is confined to a limited area and is temporary and intermittent; therefore, the noise generated is not expected to contribute to increased ocean ambient noise. In addition, due to shallow water depths in the training area, underwater sound propagation of low-frequency sound (which is the major noise source from pile driving) is expected to be poor.

Finally, in addition to TS and masking, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities, such as socializing or feeding; visible startle response or aggressive behavior, such as tail/fluke slapping or jaw clapping; and avoidance of areas where noise sources are located.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant at the population level if the change affects growth, survival, or reproduction. Some of these types of significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale strandings due to exposure to military mid-frequency tactical sonar);
- Extended habitat abandonment due to loss of desirable acoustic environment; and
- Extended cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography), and is therefore difficult to predict (Southall *et al.* 2007). In order to give rise to significant/population level effects we would expect that exposures would have to be prolonged and over a large area.

Anticipated Effects on Marine Mammal Habitat

No permanent impacts to marine mammal habitat are anticipated to occur as a result of the training activities. The Navy's JLOTS training activities would

not modify the existing habitat. Therefore, no restoration of the habitat would be necessary. A temporary, small-scale loss of foraging habitat may occur for marine mammals, if the marine mammals leave the area during pile extraction and driving activities.

Acoustic energy created during pile driving and removal work would have the potential to disturb fish within the vicinity of the training areas. As a result, the affected areas could temporarily lose foraging value to marine mammals. During pile driving, high noise levels may exclude fish from the vicinity of the pile driving. Hastings and Popper (2005) identified several studies that suggest fish will relocate to avoid areas of damaging noise energy. If fish leave the area of disturbance, the affected area may have a temporarily decreased foraging value during impact hammering and vibratory removal of piles.

The duration of fish avoidance of this area after pile driving stops is unknown. However, the affected area represents an extremely small portion of the total foraging range of marine mammals that may be present in and around the project area.

Because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or marine mammal populations.

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 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 JLOTS LOA application are considered military readiness activities. Details of the mitigation measures are provided below. They have not changed from the mitigation we proposed in the proposed rule.

Impact Pile Driving Ramp-Up

Soft starts are performed during impact installation each day. During a soft start, an initial set of strikes from the impact hammer at reduced energy is performed before the hammer is able to be operated at full power and speed. The energy reduction of an individual hammer cannot be quantified because they vary by individual driver. Also, the number of strikes will vary at reduced energy because raising the hammer at less than full power and then releasing it results in the hammer ''bouncing'' as it strikes the pile resulting in multiple ''strikes.'' A benefit of a soft start is that marine species in the vicinity are provided a ''warning,'' giving them an opportunity to leave the area at the first occurrence of the noise, prior to full capacity operation. This is expected to reduce any potential exposures to underwater noise levels that could cause behavioral disturbance or injury.

Mitigation Zone and Shutdown Measure

The Navy will establish a mitigation zone of 60 yards (55 m) around the pile being driven. Visual observation will be conducted starting 30 minutes prior to, during, and until 30 minutes after the exercise within the mitigation zone. The exercise will not commence if concentrations of floating vegetation (*Sargassum*) are observed in the mitigation zone.

Pile driving will cease if a marine mammal is visually detected within the mitigation zone. Pile driving may re-commence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

Marine Species Awareness Training

Consistent with current requirements, all personnel standing watch on the bridge, Commanding Officers, Executive Officers, and Lookouts will successfully complete the Marine Species Awareness Training prior to standing watch or serving as a Lookout. The training is designed to improve the effectiveness of visual observations for marine resources, including marine mammals. The training provides information on sighting cues, visual observation tools and techniques, and sighting notification procedures.

Vessels

Vessels will avoid approaching marine mammals head on and will maneuver to maintain a mitigation zone of 500 yards (457 m) around observed whales and 200 yards (183 m) around all other marine mammals (except bow riding dolphins), providing it is safe to do so.

North Atlantic Right Whale Mid-Atlantic Migration Corridor

A North Atlantic right whale migratory route is located off the mid-Atlantic coast of the United States. When transiting within the following areas from November 1 through April 30, which correspond to the portions of the JLOTS study area where a vessel speed limit applies to non-federal vessels, the Navy will practice increased vigilance, exercise extreme caution, and proceed at the slowest speed that is consistent with safety, mission, and training objectives:

- Chesapeake Bay: Within a 20 nm radius of the following (as measured seaward from the COLREGS lines): 37°00′36.9″ North/075°57′50.5″ West.
- Morehead City, North Carolina: Within a 20 nm radius of the following (as measured seaward from the COLREGS lines): 34°41′32.0″ North/076°40′08.3″ West.
- Wilmington, North Carolina, through South Carolina, and to Brunswick, Georgia: Within a continuous area 20 nautical miles from shore and west back to shore bounded by 34°10′30″ North/077°49′12″ West; 33°56′42″ North/077°31′30″ West; 33°36′30″ North/077°47′06″ West; 33°28′24″ North/078°32′30″ West; 32°59′06″ North/078°50′18″ West; 31°50′00″ North/080°33′12″ West; 31°27′00″ North/080°51′36″ West.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a 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. No additional mitigation measures were recommended during the public comment period on the rule. Our evaluation of potential measures included consideration of the following factors in relation to one another:

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

impact on the effectiveness of the military readiness activity.

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:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of noise, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. 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 noise, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of noise, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).

5. 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.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

NMFS has determined that the mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(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:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below.

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of noise that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on 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) through any of the following methods:

a. Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information).

b. Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information).

c. Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli.

4. An increased knowledge of the affected species.

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Monitoring Measures

(1) Standard Watch Personnel

Ships operated by or for the Navy shall have personnel assigned to stand watch at all times, day and night, when moving through the water (underway). Watch personnel shall undertake extensive training in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent, including on-the-job instruction and a formal Personal Qualification Standard program (or equivalent program for supporting contractors or civilians), to certify that they have demonstrated all necessary skills (such as detection and reporting of floating or partially submerged objects). Watch personnel are composed of officers, enlisted men and women, and civilian equivalents. Their duties may be performed in conjunction with other job responsibilities, such as navigating the ship or supervising other personnel. While on watch, personnel employ visual search techniques, including the use of binoculars, using a scanning method in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent. After sunset and prior to sunrise, watch personnel employ night visual search techniques, which could include the use of night vision devices.

A primary duty of watch personnel is to detect and report all objects and disturbances sighted in the water that may be indicative of a threat to the ship and its crew, such as debris, a periscope, surfaced submarine, or surface disturbance. Per safety requirements, watch personnel also report any marine mammals sighted that have the potential to be in the direct path of the ship as a standard collision avoidance procedure. Because watch personnel are primarily posted for safety of navigation, range clearance, and man-overboard precautions, they are not normally posted while ships are moored to a pier. When anchored or moored to a buoy, a watch team is still maintained but with fewer personnel than when underway.

While underway, Navy ships greater than 65 ft. (20 m) in length have at least two watch personnel; Navy ships less than 65 ft. (20 m) in length and contractor ships have at least one watch person. While underway, watch personnel are alert at all times and have access to binoculars. Due to limited manning and space limitations, small boats and some craft transferring cargo from ship to shore do not have dedicated watch personnel, and the boat crew is responsible for maintaining the safety of the boat.

All vessels use extreme caution and proceed at a ''safe speed'' so they can take proper and effective action to avoid a collision with any sighted object or disturbance and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(2) Lookouts

Lookouts perform similar duties to standard watch personnel, and are also responsible for satisfying mitigation requirements. The Navy will have one Lookout positioned on the platform (which could include a small boat, the elevated causeway, or the shore) that will maximize the potential for sightings during pile driving and pile removal.

The Lookout positioned on the elevated causeway or the shore will be dedicated solely to diligent observation of the air and surface of the water. They will have multiple observation objectives, which include but are not limited to detecting the presence of biological resources and recreational or fishing boats, observing the mitigation zone, and monitoring for equipment and personnel safety concerns. Due to small boat manning and space restrictions, a Lookout positioned on a small boat may include a member of the boat crew, and may be responsible for tasks in addition to observing the air or surface of the water (*e.g.,* navigation of a rigid hull inflatable boat). However, a boat Lookout will, to the maximum extent practicable and consistent with safety and training requirements, comply with the observation objectives described above for a Lookout positioned on the elevated causeway or the shore.

Lookouts will also perform visual observation starting 30 minutes prior to, during, and until 30 minutes after the exercise within a mitigation zone of 60 yards (55 m) around the pile being driven.

Integrated Comprehensive Monitoring Program

The Navy will use the existing Integrated Comprehensive Monitoring Program (ICMP) and its new ''study-based'' approach to satisfy monitoring requirements for the JLOTS MMPA authorization. To ensure efficient implementation of the program and maintain consistency with how the program is currently being implemented for the Atlantic Fleet Training and Testing (AFTT) MMPA authorization, Navy will use the same AFTT adaptive management process and reporting deadlines for the JLOTS authorization.

The ICMP is intended to coordinate monitoring efforts across all regions where the Navy trains and tests and to allocate the most appropriate level and type of effort for each range complex (U.S. Department of the Navy 2010). Originally, the Navy monitoring program was composed of a collection of ''range-specific'' monitoring plans, each developed individually as part of Marine Mammal Protection Act and Endangered Species Act compliance processes as environmental documentation was completed. These individual plans established specific monitoring requirements for each range complex and were collectively intended to address the ICMP top-level goals. More information is provided in the **Federal Register** notice for the propose rule (80 FR 2636; January 20, 2015).

Past and Current Monitoring in the Navy JLOTS Training Areas

NMFS has not previously issued incidental take authorizations to the Navy concerning its JLOTS training on the Atlantic coast. Therefore, no past and current monitoring is available.

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. Reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects will be posted to the U.S. Navy Marine Species Monitoring web portal as they become available. For the Navy's JLOTS LOA, NMFS requires the following reporting measures to be implemented:

(1) General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise. The Navy will provide NMFS with species identification 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 photographs or video (if available).

(2) Annual Monitoring and Exercise Report

As noted above, reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects would be posted to the *Navy's Marine Species Monitoring web portal* as they become available. Progress and results from all monitoring activity conducted within the JLOTS training area would be summarized in an annual report. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

Draft reports should be combined with the Navy's Atlantic Fleet Training and Testing exercise and monitoring reports and submitted to NMFS for review by February 13 (for exercises) and April 1 (for monitoring) each year. NMFS would review the report and provide comments for incorporation within 3 months.

Estimated Take of Marine Mammals

In the potential effects section, NMFS' analysis identified a variety of impacts that could potentially result from exposure to noise during the Navy's JLOTS training activities. In this section, we will relate the potential effects to marine mammals from these sound sources to the MMPA 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 proposes in the JLOTS training areas.

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].

As discussed above, in-water pile removal and pile driving (vibratory and impact) generate loud noises that could potentially harass marine mammals in the vicinity of the Navy's JLOTS training activities.

Currently, NMFS uses 120 dB re 1 µPa and 160 dB re 1 µPa at the received levels for the onset of Level B harassment from non-impulse (vibratory pile driving and removal) and impulse sources (impact pile driving) underwater, respectively. Table 3 summarizes the current NMFS marine mammal take criteria.

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER

Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 μPa (cetaceans) 190 dB re 1 μPa (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises) ..	160 dB re 1 μPa (rms).
Level B Harassment	Behavioral Disruption (for non-impulse noise).	120 dB re 1 μPa (rms).

Methods for Estimating Takes

The methods for estimating the number and types of exposure are described in the sections below, followed by the method for quantifying exposures of marine mammals to sources of energy exceeding those threshold values. Exposure of each was determined by:

- The potential of each species to be impacted by the acoustic sources as determined by acoustic criteria for marine mammals.
- The potential presence of each species and their estimated density inside the range to effect.
- The range to effect for impact installation and vibratory extraction (estimated by taking into account the source levels, propagation loss, and thresholds at which each acoustic criterion is met).

Potential exposures were calculated by multiplying the density of each marine mammal species potentially present by the total impacted area for each threshold value, rounding the result to the closest integer, and then multiplying that result by the potential number of days of pile driving.

Underwater Sound From Pile Driving

Sound levels produced by pile driving are greatly influenced by factors including pile type, driving method, and the physical environment in which the activity takes place. A number of studies have examined sound pressure levels recorded from underwater pile driving projects in California and Washington, creating a large body of data for impact driving of steel pipe piles.

To determine the most appropriate sound pressure levels for this project, data from studies which met the following parameters were considered:

- Pile size and type: 24-inch diameter steel pipe piles
- Installation and removal method: Vibratory and/or impact hammer
- Physical environment: Water depth, sediment type

Details of the physical characteristics of the waters and substrate off the JLOTS locations were taken into consideration for determining the size of ensonified zones. Source levels were selected from NAVFAC Atlantic's comprehensive dataset based on similarity to site conditions at JEB Little Creek-Fort Story (sand with shell debris sediments, average depth 1–5 meters), and Camp Lejeune (lower sedimentation with hard-bottom in some areas, depth around 7 meters), equipment (*i.e.,* diesel hammer), and lack of conditions that might introduce extra noise into the measurements (*e.g.,* riverine environments). Calculated averages of selected source levels used as proxies for modeling are summarized in Table 4.

TABLE 4—SUMMARY OF SOURCE LEVELS

Method	Location	dB re 1μPa rms
Impact Installation	JEB Little Creek-Fort Story	188
	Camp Lejeune	189
Vibratory Removal	JEB Little Creek-Fort Story	160
	Camp Lejeune.	

Take Zone Size Calculation

Modeling sound propagation is useful in evaluating noise levels at various distances from the pile driving activity. The decrease in acoustic intensity as a sound wave propagates outward from a source is known as transmission loss (TL). The formula for transmission loss is:

$$TL = B * \log_{10}(R_1/R_2) + C * R_1,$$

Where:

B = logarithmic (predominantly spreading) loss
C = linear (scattering and absorption) loss
R_1 = range from source in meters
R_2 = range from driven pile to original measurement location (generally 10 m for pile driving activities)

The amount of linear loss (C) is proportional to the frequency of a sound. Due to the low frequencies of sound generated by impact and vibratory pile driving, this factor was assumed to be zero for all calculations in this assessment and transmission loss was calculated using only logarithmic spreading. Therefore, using practical spreading (B = 15), the revised formula for transmission loss is $TL = 15 \log_{10} (R_1/10)$.

The practical spreading loss model ($TL = 15 \log_{10} (R_1/10)$) discussed above was used to calculate the underwater propagation of pile driving sound in and around the three locations. A total of 30 days of pile driving were modeled for JEB Little Creek-Fort Story and Camp Lejeune; 20 days of impact driving, and 10 days of vibratory extraction. No noise mitigation methods (bubble curtains, cofferdams, etc.) are proposed and therefore no attenuation was included in the acoustic model.

Impact driving of each pile is expected to last no more than 15 minutes. Typically, 6 piles would be installed each day, for up to 20 days. Generally, two pile drivers are used, but not simultaneously: While one is installing a pile, the other is being repositioned for the next pile. For vibratory extraction, the acoustic model assumed that 12 piles would be extracted each day, lasting 6 minutes each, over the course of 10 days.

The range to effects (Table 5) for underwater noise is assumed to take a circular shape around the notional pile bring driven at the furthest offshore point of the ELCAS (M) (approximately 1,500 ft. [457 m] from shore). Zones with radii larger than 1,500 ft. (457 m) will be truncated by the shoreline, and were modeled as semicircles extending to the west, north, and east in the case

of JEB Little Creek-Fort Story; and north, east, and south at Camp Lejeune since the beaches at each of the locations would represent the boundary for underwater propagation. The calculated ranges assume no obstructions, and sounds will attenuate as they encounter land or other solid obstacles. As a result, the distances calculated may not actually be attained at the two installations.

TABLE 5—CALCULATED RANGE TO EFFECTS AND ZONES OF INFLUENCE FOR MARINE MAMMALS DURING PILE DRIVING

Driving method	Threshold	Range		Area	
		JEB Little Creek-Fort Story	Camp Lejeune	JEB Little Creek-Fort Story	Camp Lejeune
Impact Pile Drive	Injury: 180 dB re 1 μPa rms.	37 yds (34 m) ...	44 yds (40 m) ...	0.001 mi^2 (0.0037 km^2)	0.002 mi^2 (0.005 km^2).
	Behavioral: 160 dB re 1 μPa rms.	805 yds (736 m)	938 yds (858 m)	0.328 mi^2 (0.85 km^2)	0.446 mi^2 (1.156 km^2).
Vibratory Pile Removal.	Injury: 180 dB re 1 μPa rms.	n/a		n/a.	
	Behavioral: 120 dB re 1 μPa rms.	5,077 yds (4,642 m)		13.07 mi^2 (33.84 km^2).	

Note: All sound levels expressed in dB re 1 μPA rms; dB = decibel; rms = root mean square; m = meter; mi^2 = square mile; km^2 = square kilometer; behavioral zones of influence are semi-circles based on notional distance from shore of the pile being driven; injury zones of influence are circular since they will not extend to and therefore be attenuated by land.

Take Number Requested

Based on the size of the areas in which pile driving and extraction may exceed established thresholds, the Navy applied estimated densities for the bottlenose dolphin and Atlantic spotted dolphin and the number of active pile driving days. The result shows that approximately 50 Northern North Carolina estuarine system and 60 Southern North Carolina estuarine system bottlenose dolphins and 50 Western North Atlantic spotted dolphins could be taken by Level B behavioral harassment annually from sound in the water, with a total of 250 Northern North Carolina estuarine system and 300 Southern North Carolina estuarine system bottlenose dolphins and 250 Western North Atlantic spotted dolphins taken by Level B behavioral harassment from sound in the water during the five-year period of the rule (Table 6). No Level A takes is expected and none is authorized due to the low sound intensity from the proposed JLOTS activities. The annual percentage of takes of these species/stocks is less than 6% of each population.

TABLE 6—SPECIES-SPECIFIC LEVEL B INCIDENTAL TAKES FOR JLOTS TRAINING ACTIVITIES

Species	Stock	Annual	Percent of population	Total (5 years)
Bottlenose dolphin	Northern North Carolina Estuarine System	50	5.26	250
	Southern North Carolina Estuarine System	60	2.44	300
Atlantic spotted dolphin	Western North Atlantic	50	0.18	250

Analysis and Determinations

Negligible Impact

Negligible impact is ''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'' (50 CFR 216.103). 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 harassment takes, the number of estimated mortalities, and effects on habitat.

To avoid repetition, the following discussion applies to Northern North Carolina estuarine system and Southern North Carolina estuarine system bottlenose dolphins and Western North Atlantic spotted dolphins, given that the best available information indicates that effects of the specified activity on individuals of those odontocete stocks will be similar, and there is no information about the population size, status, structure, or habitat use of the areas to warrant separate discussion.

The Navy's JLOTS training activity would involve pile driving and removal activities during the training exercise. Elevated noise levels are expected to be generated as a result of these activities. However, the source levels generated by the pile driving and removal activities are expected be low due to the low-power hammer being used. In addition, given the standard operating procedure of soft starts and required mitigation and monitoring such as shutdown measures when marine mammals are sighted approaching the mitigation zone, no injuries (Level A harassment) or mortalities are anticipated to occur as a result of the Navy's JLOTS training activities, and none are authorized. As described above, marine mammals in the area would not be exposed to activities or sound levels which would result in hearing impairment (TTS or PTS) or non-auditory physiological effects.

In-water construction activities would occur in nearshore shallow waters at the

JEB Little Creek-Fort Story in Virginia and at Camp Lejeune in North Carolina. The training areas are not considered significant habitat for marine mammals. Marine mammals approaching the action area would likely be traveling or opportunistically foraging. There are no rookeries or major haul-out sites nearby, foraging hotspots, or other ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the training areas. The training areas are not prime habitats for marine mammals, nor are they considered areas frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with the JLOTS training activities are expected to affect only relatively small numbers of marine mammals on an infrequent basis. Although it is possible that some individual marine mammals may be exposed to sounds from in-water pile driving activities more than once, the duration of these multi-exposures is expected to be low since animals would be constantly moving in and out of the area and in-water pile driving activities would not occur continuously throughout the day.

Marine mammals may be temporarily impacted by noise from pile driving and pile removal activities. These low intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modifications by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Moreover, marine mammals are expected to avoid the area during in-water construction because animals generally move away from active sound sources, thereby reducing exposure and impacts. In addition, through soft starts, a standard operating procedure, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious, and detection of marine mammals by lookouts would enable the implementation of shutdowns to avoid injury, serious injury, or mortality. In-water pile driving and pile removal are expected to occur for about 20 days and 10 days total annually at each location, respectively. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of a stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

The training areas overlap with habitat of Northern North Carolina estuarine system and Southern North Carolina estuarine system bottlenose dolphins, and are considered to be biologically important areas to these bottlenose dolphin stocks. However, the brief duration and rare occurrence of the Navy's JLOTS activities are expected to affect only a small number of marine mammals on an infrequent and limited basis.

Based on the application and subsequent analysis, the impact of the described in-water pile driving activities may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

Accordingly, based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total per-stock taking of marine mammals from the Navy's JLOTS training activity will have a negligible impact on the affected marine mammal species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

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

Endangered Species Act (ESA)

No species listed under the ESA are expected to be affected by pile driving activities in the JLOTS training area. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

NEPA

NMFS has participated as a cooperating agency on the JLOTS EA, which was published on March 6, 2015. The JLOTS EA is posted on NMFS' Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* NMFS has reviewed the EA and concluded that the EA includes alternatives relevant to NMFS' action of an incidental take authorization and the environmental consequences analyzed reflect NMFS' action. Therefore, NMFS determined to adopt the Navy's EA and prepared its own Finding of No Significant Impact. Accordingly, an EIS is not required and will not be prepared for this action.

Classification

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), 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 rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this final rule. As a result, a final regulatory flexibility analysis is not required and one was not prepared.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in the effective date of the measures contained in this rule. A 30-day delay in the effective date of the rule from the date of publication in the **Federal Register** would cause an impracticable interruption to the U.S. Navy's scheduled training events. Congress has mandated that the Chief of Naval Operations organize, train, and equip all naval forces for combat (10 U.S.C. 5062). In order to meet the congressional mandate, the U.S. Navy must continually train to maintain its ability to operate in challenging at-sea environments and conduct military operations. The training requirements analyzed in the JLOTS EA will be implemented immediately into the training cycle to reinstate Naval Beach Group TWO's certification for the construction of the Elevated Causeway System—Modular. This training must occur in order for the Naval Beach Group TWO to be able report if directed to an overseas theater of operations. Based on the preceding discussion, it is impracticable to delay implementation of this rule for 30 days. This agency finds good cause for excepting the 30-

day delay. The measures contained in this rule will become effective upon publication.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: May 27, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 218 is 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 B is added to part 218 to read as follows:

Subpart B—Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Joint Logistics Over-the-Shore (JLOTS) Training Activities in Virginia and North Carolina

Sec.

Subpart B—Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Joint Logistics Over-the-Shore (JLOTS) Training Activities in Virginia and North Carolina

§ 218.10 Specified activity and region.

(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 occurs 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 JLOTS training areas, which is in nearshore shallow waters at the Joint Expeditionary Base (JEB) Little Creek-Fort Story in Virginia and at Camp Lejeune in North Carolina.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the JLOTS training activities in the JLOTS training areas, which may occur any time of year, but not more than once annually at JEB Little Creek-Fort Story, and once annually at Camp Lejeune.

§ 218.11 Effective dates.

Regulations in this subpart are effective June 2, 2015, through June 2, 2020.

§ 218.12 Permissible methods of taking.

(a) Under Letters of Authorization (LOAs) issued pursuant to § 218.17, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by sound in the water from pile driving activities within the area described in § 218.10, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate LOA.

(b) The activities identified in § 218.10(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 § 218.10(c) is limited to Level B behavioral harassment:

(1) Bottlenose dolphin (*Tursiops truncatus*)/Northern North Carolina Estuarine System: 250 (50 per year);

(2) Bottlenose dolphin (*Tursiops truncatus*)/Southern North Carolina Estuarine System: 300 (60 per year); and

(3) Atlantic spotted dolphin (*Stenella frontalis*)/Western North Atlantic: 250 (50 per year).

§ 218.13 Prohibitions.

Notwithstanding takings contemplated in § 218.12 and authorized by an LOA issued under § 216.106 of this chapter and § 218.17, no person in connection with the activities described in § 218.10 may:

(a) Take any marine mammal not specified in § 218.12(c);

(b) Take any marine mammal specified in § 218.12(c) other than by incidental take as specified in § 218.12(c);

(c) Take a marine mammal specified in § 218.12(c) if a finding is made that such taking is having 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 an LOA issued under § 216.106 of this chapter and § 218.17.

§ 218.14 Mitigation.

(a) When conducting training and testing activities identified in § 218.10, the mitigation measures contained in the LOA issued under § 216.106 of this chapter and § 218.17 must be implemented. These mitigation measures include, but are not limited to:

(1) *Establishing mitigation zone.* (i) A mitigation zone of 60 yards (55 m) around the pile being driven must be established.

(ii) Visual observation must be conducted starting 30 minutes prior to, during, and until 30 minutes after the ELCAS (M) exercise within the mitigation zone. The exercise must not commence if concentrations of floating vegetation (Sargassum) are observed in the mitigation zone.

(2) *Soft starts.* (i) Soft starts, or gradually ramping up the power of pile driving hammer, must be performed during impact installation each day.

(ii) During a soft start, an initial set of strikes from the impact hammer at reduced energy are performed before it is able to be operated at full power and speed.

(3) *Shutdown measures.* (i) Pile driving must cease if a marine mammal is visually detected within or approaching the mitigation zone.

(ii) Pile driving may resume if any one of the following conditions is met:

(A) The animal is observed exiting the mitigation zone,

(B) The animal is thought to have exited the mitigation zone based on its course and speed, or

(C) The mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(b) *Marine species awareness training.* (1) All personnel standing watch on the bridge, Commanding Officers, Executive Officers, and Lookouts must successfully complete the Marine Species Awareness Training prior to standing watch or serving as a Lookout.

(2) The Marine Species Awareness Training must be designed to improve the effectiveness of visual observations for marine resources, including marine mammals.

(3) The training must provide information on sighting cues, visual observation tools and techniques, and sighting notification procedures.

(c) *Vessels.* Vessels must avoid approaching marine mammals head on and must maneuver to maintain a mitigation zone of 500 yards (457 m) around observed whales and 200 yards (183 m) around all other marine mammals (except bow riding dolphins), providing it is safe to do so.

(d) *North Atlantic Right Whale Protection.* When transiting within the following areas between November 1 and April 30, the Navy must practice increased vigilance, exercise extreme

caution, and proceed at the slowest speed that is consistent with safety, mission, and training objectives:

(1) Chesapeake Bay: Within a 20 nm radius of the following (as measured seaward from the COLREGS lines): 37°00′36.9″ North/075°57′50.5″ West.

(2) Morehead City, North Carolina: Within a 20 nm radius of the following (as measured seaward from the COLREGS lines): 34°41′32.0″ North/076°40′08.3″ West.

(3) Wilmington, North Carolina, through South Carolina, and to Brunswick, Georgia: Within a continuous area 20 nautical miles from shore and west back to shore bounded by 34°10′30″ North/077°49′12″ West; 33°56′42″ North/077°31′30″ West; 33°36′30″ North/077°47′06″ West; 33°28′24″ North/078°32′30″ West; 32°59′06″ North/078°50′18″ West; 31°50′00″ North/080°33′12″ West; 31°27′00″ North/080°51′36″ West.

§ 218.15 Requirements for monitoring and reporting.

(a) *Monitoring measures*—(1) *Standard watch personnel.* (i) Ships operated by or for the Navy must have personnel assigned to stand watch at all times, day and night, when moving through the water.

(ii) Watch personnel must undertake extensive training in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent, including on-the-job instruction and a formal Personal Qualification Standard program (or equivalent program for supporting contractors or civilians), to certify that they have demonstrated all necessary skills (such as detection and reporting of floating or partially submerged objects).

(iii) While on watch, watch personnel must employ visual search techniques, including the use of binoculars, using a scanning method in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent.

(iv) After sunset and prior to sunrise, watch personnel must employ night visual search techniques, which could include the use of night vision devices.

(v) A primary duty of watch personnel is to detect and report all objects and disturbances sighted in the water that may be indicative of a threat to the ship and its crew, such as debris, a periscope, surfaced submarine, or surface disturbance.

(vi) Per safety requirements, watch personnel also report any marine mammals sighted that have the potential to be in the direct path of the ship as a standard collision avoidance procedure. Because watch personnel are primarily posted for safety of navigation, range clearance, and man-overboard precautions, they are not normally posted while ships are moored to a pier.

(vii) When anchored or moored to a buoy, a watch team is still maintained but with fewer personnel than when underway.

(viii) When moored or at anchor, watch personnel may maintain security and safety of the ship by scanning the water for any indications of a threat.

(ix) While underway, Navy ships (with the exception of submarines) greater than 65 ft. (20 m) in length have at least two watch personnel; Navy ships less than 65 ft. (20 m) in length, surfaced submarines, and contractor ships have at least one watch person. While underway, watch personnel are alert at all times and have access to binoculars. Due to limited manning and space limitations, small boats and some craft transferring cargo from ship to shore do not have dedicated watch personnel, and the boat crew is responsible for maintaining the safety of the boat and surrounding environment.

(x) All vessels use extreme caution and proceed at a ''safe speed'' so they can take proper and effective action to avoid a collision with any sighted object or disturbance and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(2) *Lookouts.* (i) Lookouts must perform similar duties to standard watch personnel, and are also responsible for satisfying mitigation requirements.

(ii) The Navy must have one Lookout positioned on the platform (which could include a small boat, the elevated causeway, or the shore) that must maximize the potential for sightings during pile driving and pile removal.

(iii) The Lookout positioned on the elevated causeway or the shore must be dedicated solely to diligent observation of the air and surface of the water. They must have multiple observation objectives, which include but are not limited to detecting the presence of biological resources and recreational or fishing boats, observing the mitigation zone, and monitoring for equipment and personnel safety concerns.

(iv) A Lookout positioned on a small boat may include a member of the boat crew, and may be responsible for tasks in addition to observing the air or surface of the water (*e.g.,* navigation of a rigid hull inflatable boat). However, a boat Lookout must, to the maximum extent practicable and consistent with safety and training requirements, comply with the observation objectives described above for a Lookout positioned on the elevated causeway or the shore.

(v) Lookouts must also perform visual observation starting 30 minutes prior to, during, and 30 minutes after the exercise within a mitigation zone of 60 yards (55 m) around the pile being driven.

(3) *Integrated comprehensive monitoring program.* (i) The Navy must use the existing Integrated Comprehensive Monitoring Program (ICMP) and its new ''study-based'' approach.

(ii) [Reserved]

(b) *Reporting measures*—(1) *General notification of injured or dead marine mammals.* (i) Navy personnel must ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise.

(ii) The Navy must provide NMFS with species identification 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 photographs or video (if available).

(2) *Annual monitoring and exercise report.* (i) Reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects must be posted to the *Navy's Marine Species Monitoring web portal* as they become available.

(ii) Progress and results from all monitoring activity conducted within the JLOTS training area must be summarized in an annual report. This report must detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(iii) Draft reports should be combined with the Navy's Atlantic Fleet Training and Testing exercise and monitoring reports and submitted to NMFS for review by February 13 (for exercises) and April 1 (for monitoring) each year. NMFS will review the report and provide comments for incorporation within 3 months.

§ 218.16 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. Navy must apply for and obtain either an initial LOA in accordance with § 218.17.

§ 218.17 Letters of Authorization.

(a) An LOA, unless suspended or revoked, must be valid for a period of

time not to exceed the period of validity of this subpart.

(b) Each LOA must 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 of the LOA will be based on a determination that the total number of marine mammals taken by the activity as a whole must have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.18 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the LOA by NMFS, issued pursuant to § 216.106 of this chapter and § 218.17 and subject to the provisions of this subpart must be made until after notification and an opportunity for public comment has been provided.

(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 § 218.12(c), an LOA issued pursuant to § 216.106 of this chapter and § 218.17 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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