

deference (*NW Ecosystem Alliance v. USFWS*, 475 F3d 1136 (2007); *Center for Biological Diversity v. Lohn*, 296 F. Supp. 2d 1223 (W.D. Wash. 2003)); and one court expressly addressed the issue raised here and upheld the Services' interpretation that a DPS of a subspecies is a listable unit (*Center for Biological Diversity v. USFWS*, 274 Fed. Appx. 542, n.5 (9th Cir. 2008)) (unpublished). For this reason also, we continue to recognize the Southern Resident killer whale DPS as a listable unit.

In addition to delisting because of an error in the original classification, we may also delist species based on extinction or recovery. The petition did not include any information on the number of whales in the population, threats, or risk of extinction. As part of the ESA listing of the Southern Resident killer whale DPS (70 FR 69903; November 18, 2005) we conducted an analysis of the five ESA section 4(a)(1) factors and concluded that the DPS was in danger of extinction and listed it as endangered. While progress toward recovery has been achieved since the listing, as described in the 5-year review, the status of the DPS remains as endangered. Since the 5-year review was completed, additional actions have been taken to address threats, such as regulations to protect killer whales from vessel impacts (76 FR 20870; April 14, 2011), completion of a scientific review of the effects of salmon fisheries on Southern Resident killer whales (Hilborn, 2012), and ongoing technical working groups with the Environmental Protection Agency to assess contaminant exposure. However, the population growth outlined in the biological recovery criteria and some of the threats criteria have not been met. We have no new information that would change the recommendation in our 5-year review that the Southern Resident killer whale DPS remain classified as endangered (NMFS, 2011). Our determination that the Southern Resident killer whale population constitutes a DPS under the ESA and previous conclusion that the DPS is in danger of extinction and should retain endangered status all support our finding that the petitioned action to delist the Southern Resident killer whale DPS is not warranted.

References Cited

The complete citations for the references used in this document can be obtained by contacting NMFS or on our Web page (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 30, 2013.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for
Regulatory Programs National Marine
Fisheries Service.

[FR Doc. 2013-18824 Filed 8-2-13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC497

Takes of Marine Mammals Incidental to Specified Activities; Navy Research, Development, Test and Evaluation Activities at the Naval Surface Warfare Center Panama City Division

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

ACTION: Notice; issuance of Incidental Take Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Navy (Navy) to take marine mammals, by harassment, incidental to conducting research, development, test and evaluation (RDT&E) activities at the Naval Surface Warfare Center Panama City Division (NSWC PCD).

DATES: Effective July 27, 2013, through July 26, 2014.

ADDRESSES: A copy of the final IHA and application are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contacts listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

The Navy has prepared an "Overseas Environmental Assessment Testing the An/AQS-20A Mine Reconnaissance Sonar System in the NSWC PCD Testing Range, 2012-2014," which is also available at the same internet address. NMFS has prepared an "Environmental Assessment for the Issuance of an Incidental Harassment Authorization to

Take Marine Mammals by Harassment Incidental to Conducting High-Frequency Sonar Testing Activities in the Naval Surface Warfare Center Panama City Division" and signed a Finding of No Significant Impact (FONSI) on July 24, 2012, prior to the issuance of the IHA for the Navy's activities in July 2012 to July 2013. This notice and the documents it references provide all relevant environmental information and issues related to the Navy's activities and the IHA. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301-427-8401.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental taking of marine mammals 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). The authorization must set forth the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings. 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) (Public Law 108-136) removed the "small numbers" and "specified geographical region" limitations and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA):

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or

(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Summary of Request

On November 26, 2012, NMFS received an application from the Navy requesting that NMFS issue an IHA for the take, by Level B harassment only, of marine mammals incidental to conducting testing of the AN/AQS-20A Mine Reconnaissance Sonar System (hereafter referred to as the Q-20) in the Naval Surface Warfare Center, Panama City Division (NSWC PCD) testing range in the Gulf of Mexico (GOM) from July 2013 through July 2014. The Q-20 sonar test activities are planned to be conducted within the U.S. Exclusive Economic Zone (EEZ) seaward of the territorial waters of the United States (beyond 22.2 kilometers [km] or 12 nautical miles [nmi]) in the GOM (see Figure 2-1 of the Navy IHA application). On June 6, 2013, NMFS published a notice in the **Federal Register** (78 FR 34047) making preliminary determinations and proposing to issue an IHA. The notice initiated a 30-day public comment period. Additional information on the demolition and construction activities at the Children's Pool Lifeguard Station is contained in the application which is available upon request (see **ADDRESSES**).

Description of the Specified Activity

The purpose of the Navy's activities is to meet the developmental testing requirements of the Q-20 sonar system by verifying its performance in a realistic ocean and threat environment and supporting its integration with the Remote Multi-Mission Vehicle (RMMV), and ultimately the Littoral Combat Ship (LCS). Testing would include

component, subsystem-level, and full-scale system testing in an operational environment. The need for the planned activities is to support the timely deployment of the Q-20 to the operational Navy for Mine Countermeasure (MCM) activities abroad, allowing the Navy to meet its statutory mission to deploy naval forces equipped and trained to meet existing and emergent threats worldwide and to enhance its ability to operate jointly with other components of the armed forces. Testing would include component, sub-system level, and full-scale system testing in the operational environment.

The planned activities are to test the Q-20 from the RMMV and from surrogate platforms such as a small surface vessel or helicopter. The RMMV or surrogate platforms will be deployed from the Navy's new LCS or its surrogates. The Navy is evaluating potential environmental effects associated with the Q-20 test activities planned for the Q-20 study area (see below for detailed description of the Study Area), which includes non-territorial waters of Military Warning Area 151 (W-151; includes Panama City Operating Area [OPAREA]). Q-20 test activities occur at sea in the waters present within the Q-20 study area and do not involve any land-based facilities. No hazardous waste is generated at sea during Q-20 test activities. There are two components associated with the Q-20 test activities, which are addressed below:

Surface Operations

A significant portion of Q-20 test activities rely on surface operations (i.e., naval and contracted vessels, towed bodies, etc.) to successfully complete the missions. The planned action includes up to 42 testing events lasting no more than 10 hours each (420 hours cumulatively) of surface operations during active sonar testing per year in the Q-20 study area. Other surface operations occur when sonar is not active. Three subcategories make up surface operations: support activities; tows; and vessel activity during deployment and recovery of equipment. Testing requiring surface operations may include a single test event (one day of activity) or a series of test events spread out over several days. The size of the surface vessels varies in accordance with the test requirements and vessel availability. Often multiple surface craft are required to support a single test event.

The first subcategory of surface operations is support activities that are required by nearly all of the Q-20 test

missions within the Q-20 study area. These surface vessels serve as support platforms for testing and would be utilized to carry test equipment and personnel to and from the test sites, and are also used to secure and monitor the designated test area. Normally, these vessels remain on site and return to port following the completion of the test event; occasionally, however, they occasionally remain on station throughout the duration of the test cycle (a maximum of 10 hours of sonar per day) for guarding sensitive equipment in the water.

Additional surface operations include tows, and vessel activity during deployment and recovery of equipment. Tows involve either transporting the system to the designated test area where it is deployed and towed over a pre-positioned inert minefield or towing the system from shore-based facilities for operation in the designated test area. Surface vessels are also used to perform the deployment and recovery of the RMMV, mine-like objects, and other test systems. Surface vessels that are used in this manner normally return to port the same day. However, this is test dependent, and under certain circumstance the surface vessel may be required to remain on site for an extended period of time.

Sonar Operations

For the planned action, the Navy would test the Q-20 for up to 420 hours of active sonar use for 12 months starting in July 2013. Q-20 sonar operations involve the testing of various sonar systems at sea as a means of demonstrating the systems' software capability to detect, locate, and characterize mine-like objects under various environmental conditions. The data collected are used to validate the sonar systems' effectiveness and capability to meet its mission.

As sound travels through water, it creates a series of pressure disturbances (see Appendix C of the IHA application). Frequency is the number of complete cycles a sound or pressure wave occurs per unit of time (measured in cycles per second, or Hertz (Hz)). The Navy has characterized low-, mid-, or high-frequency active sonars as follows:

- Low-frequency active sonar (LFAS)—Below 1 kilohertz (kHz) (low-frequency sound sources will not be used during any Q-20 test operations);
- Mid-frequency active sonar (MFAS)—From 1 to 10 kHz (mid-frequency sound sources will not be used during any Q-20 test operations); and
- High-frequency active sonar (HFAS)—Above 10 kHz (only high-

frequency sound sources would be used during Q-20 test operations).

The Q-20 sonar systems planned to be tested within the Q-20 study area ranges in frequencies from 35 kHz to greater than 200 kHz, therefore, these are HFAS systems. Those systems that operate at very high frequencies (i.e., greater than 200 kHz), well above the hearing sensitivities of any marine mammals, are not considered to affect marine mammals. Therefore, they are not included in this document. The source levels associated with Q-20 sonar systems that could affect marine mammals range from 207 decibels (dB) re 1 micro pascal (μ Pa) at 1 meter (m) to 212 dB re 1 μ Pa at 1 m. Operating parameters of the Q-20 sonar systems can be found in Appendix A, "Supplemental Information for Underwater Noise Analysis" of the Navy's IHA application.

A 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 sonar 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 μ Pa; for airborne sound, the standard reference pressure is 20 μ Pa (Urick, 1983).

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 μ Pa or, for airborne sound, 20 μ Pa). 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 sound level, or a 10 dB decrease in noise as a halving of the sound level. 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 μ Pa 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 lower 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 and ultrasonic 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;" airguns are an example of a broadband sound source and 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, anatomical modeling, and other data, Southall *et al.* (2007) designate "functional hearing groups" 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:

- 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.

- Pinnipeds in Air: Functional hearing is estimated to occur between approximately 75 Hz and 30 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 that same sound 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. As a result, it is important not to confuse source levels and received levels when discussing the loudness of sound in the ocean.

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 sonar 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.

Sound Pressure Level

Sound pressure is the sound force per unit area, and is usually measured in microPa, 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 μ Pa, and the units for SPLs are dB re: 1 μ Pa.

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

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).

Sound Exposure Level

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 microPa²-s.

$SEL = SPL + 10 \log (\text{duration in seconds})$

As applied to tactical sonar, 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.

Dates and Duration of the Specified Activity

The Q-20 study area includes target and operational test fields located in W-151, an area within the GOM subject to military operations which also encompasses the Panama City OPAREA (see Figure 2-1 of the Navy's IHA application). The Q-20 test activities will be conducted in the non-territorial waters off the United States (beyond 22.2 km or 12 nmi) within the U.S. EEZ in the GOM. The locations and environments include:

- Wide coastal shelf to 183 meters (m) [600 feet (ft)].
- Sea surface temperature range of 27 degrees Celsius (°C) [80 degrees Fahrenheit (°F)] in summer to 10 °C (50 °F) in winter. Seasons are defined as December 23 through April 2 (winter) and July 2 through September 24 (summer) (DON, 2007a).
- Mostly sandy bottom and good underwater visibility.
- Sea heights less than 0.91 m (3 ft) during 80 percent of the time in summer and 50 percent of the time in winter (DON, 2009a).

The Navy requests an IHA for a time period of one year beginning July 27, 2013. A total of 42 Q-20 (RDT&E) test days would be conducted with a maximum sonar operation of 10 hours per a test day.

Comments and Responses

A notice of the proposed IHA for the Navy's NSWC PCD Q-20 testing activities was published in the **Federal Register** on June 6, 2013 (78 FR 34047). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and two individuals. The comments are online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Following are their substantive comments and NMFS's responses:

Comment 1: The Commission recommends that NMFS issue the IHA, but condition it to require the Navy to conduct its monitoring for at least 15 minutes prior to the initiation of and for at least 15 minutes after the cessation of Q-20 testing activities.

Response: NMFS concurs with the Commission's recommendation and has included a requirement to this effect in the IHA issued to the Navy.

Comment 2: Two individuals oppose the issuance of the IHA to the Navy. The Navy is killing marine mammals and the project should be defunded.

Response: As described in detail in the **Federal Register** notice for the proposed IHA (78 FR 34047, June 6,

2013), as well as in this document, NMFS does not believe that the Navy's Q-20 testing activities would cause injury, serious injury, or mortality to marine mammals, nor are those authorized under the IHA. The required monitoring and mitigation measures that the Navy would implement during the Q-20 testing activities would further reduce the adverse effect on marine mammals to the lowest levels practicable. NMFS anticipates only behavioral disturbance to occur during the conduct of the Q-20 testing activities.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species that potentially occur within the GOM include 28 species of cetaceans and one sirenian (Jefferson and Schiro, 1997; Wursig *et al.*, 2000; see Table 1 below). In addition to the 28 species known to occur in the GOM, the long-finned pilot whale (*Globicephala melas*), long-beaked common dolphin (*Delphinus capensis*), and short-beaked common dolphin (*Delphinus delphis*) could potentially occur there; however, there are no confirmed sightings of these species in the GOM, they have been seen close and could eventually be found there (Wursig *et al.*, 2000). NMFS considers it unlikely that these three species would be exposed to sound from the planned activities and potential impacts are thus discountable. Those three species are not considered further in this document. The marine mammals that generally occur in the action area belong to three taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), and sirenians (the West Indian manatee). Of the marine mammal species that potentially occur within the GOM, 21 species of cetaceans (20 odontocetes, 1 mysticete) are routinely present and have been included in the analysis for incidental take to the Q-20 testing operations. Marine mammal species listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), includes the North Atlantic right (*Eubalaena glacialis*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whale, as well as the West Indian (Florida) manatee (*Trichechus manatus latirostris*). Of those endangered species, none are likely to be encountered in the study area. No species of pinnipeds are known to occur regularly in the GOM and any pinniped sighted in the study area would be considered extralimital.

The Caribbean monk seal (*Monachus tropicalis*) used to inhabit the GOM, but is considered extinct and has been delisted from the ESA. The U.S. Fish and Wildlife Service (USFWS) has jurisdiction and authority for managing the West Indian manatee including authorizing incidental take under both the MMPA and ESA. This species is thus not considered further in this analysis. All other referenced species are subject to NMFS's jurisdiction and thus included in our analysis.

In general, cetaceans in the GOM appear to be partitioned by habitat preferences likely related to prey distribution (Baumgartner *et al.*, 2001). Most species in the northern GOM concentrated along the upper continental slope in or near areas of cyclonic circulation in waters 200 to 1,000 m (656.2 to 3,280.8 ft) deep.

Species sighted regularly in these waters include Risso's, rough-toothed, spinner, striped, pantropical spotted, and Clymene dolphins, as well as short-finned pilot, pygmy and dwarf sperm, sperm, *Mesoplodon* beaked, and unidentified beaked whales (Davis *et al.*, 1998). In contrast, continental shelf waters (< 200 m deep) are primarily inhabited by two species: bottlenose and Atlantic spotted dolphins (Davis *et al.*, 2000, 2002; Mullin and Fulling, 2004). Bottlenose dolphins are also found in deeper waters (Baumgartner *et al.*, 2001). The narrow continental shelf south of the Mississippi River delta (20 km [10.8 nmi] wide at its narrowest point) appears to be an important habitat for several cetacean species (Baumgartner *et al.*, 2001; Davis *et al.*, 2002). There appears to be a resident population of sperm whales within 100

km (54 nmi) of the Mississippi River delta (Davis *et al.*, 2002). The North Atlantic right, humpback, sei, fin, blue, minke, and True's beaked whale are considered extralimital and are excluded from further consideration of impacts from the NSWCD PCD Q-20 testing analysis. Table 1 (below) presents information on the abundance, distribution, population status, conservation status, and population trend of the species of marine mammals that may occur in the study area during July 2013 to July 2014.

Table 1. The habitat, regional abundance, and conservation status of marine mammals that may occur in or near the Q-20 study area in the Gulf of Mexico (See text and Table 3-1, 3-2, and 3-3 in the Navy's application for further details).

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Species	Habitat	Population Estimate ³ (Minimum)	ESA ¹	MMPA ²	Population Trend ³
Mysticetes					
North Atlantic right whale (<u>Eubalaena glacialis</u>)	Coastal and shelf	Extralimital	EN	D	Increasing
Humpback whale (<u>Megaptera novaeangliae</u>)	Pelagic, nearshore waters, and banks	Rare	EN	D	Increasing
Minke whale (<u>Balaenoptera acutorostrata</u>)	Pelagic and coastal	Rare	NL	NC	No information available
Bryde's whale (<u>Balaenoptera brydei/edeni</u>)	Pelagic and coastal	33 (16) – Northern GOM stock	NL	NC	Unable to determine
Sei whale (<u>Balaenoptera borealis</u>)	Primarily offshore, pelagic	Rare	EN	D	Unable to determine
Fin whale (<u>Balaenoptera physalus</u>)	Continental slope, pelagic	Rare	EN	D	Unable to determine
Blue whale (<u>Balaenoptera musculus</u>)	Pelagic, shelf, coastal	Extralimital	EN	D	Unable to determine
Odontocetes					
Sperm whale (<u>Physeter macrocephalus</u>)	Pelagic, deep sea	763 (560) - Northern GOM stock	EN	D	Unable to determine
Pygmy sperm whale (<u>Kogia breviceps</u>) and Dwarf sperm whale (<u>Kogia sima</u>)	Deep waters off the shelf	186 (90) - Northern GOM stock	NL	NC	Unable to determine
Cuvier's beaked whale (<u>Ziphius cavirostris</u>)	Pelagic	74 (36) - Northern GOM stock	NL	NC	Unable to determine
<i>Mesoplodon</i> beaked whale (includes Blainville's beaked whale [<u>M. densirostris</u>], Gervais' beaked whale [<u>M. europaeus</u>], and Sowerby's beaked whale [<u>M. bidens</u>])	Pelagic	149 (77) - Northern GOM stock	NL	NC	Unable to determine
Killer whale (<u>Orcinus orca</u>)	Pelagic, shelf, coastal	28 (14) – Northern GOM stock	NL	NC	Unable to determine
Short-finned pilot whale (<u>Globicephala macrorhynchus</u>)	Pelagic, shelf coastal	2,415 (1,456) - Northern GOM stock	NL	NC	Unable to determine
False killer whale (<u>Pseudorca crassidens</u>)	Pelagic	NA – Northern GOM stock	NL	NC	Unable to determine

Melon-headed whale (<u>Peponocephala electra</u>)	Pelagic	2,235 (1,274) – Northern GOM stock	NL	NC	Unable to determine
Pygmy killer whale (<u>Feresa attenuata</u>)	Pelagic	152 (75) – Northern GOM stock	NL	NC	Unable to determine
Risso's dolphin (<u>Grampus griseus</u>)	Deep water, seamounts	2,442 (1,563) - Northern GOM stock	NL	NC	Unable to determine
Bottlenose dolphin (<u>Tursiops truncatus</u>)	Offshore, inshore, coastal, estuaries	NA (NA) - 32 Northern GOM Bay, Sound and Estuary stocks NA (NA) - Northern GOM continental shelf stock 7,702 (6,551) - GOM eastern coastal stock 2,473 (2,004) - GOM northern coastal stock NA (NA) – GOM western coastal stock 5,806 (4,230) – Northern GOM oceanic stock	NL	NC S - 32 stocks inhabiting the bays, sounds, and estuaries along GOM coast, and GOM western coastal stock	Unable to determine
Rough-toothed dolphin (<u>Steno bredanensis</u>)	Pelagic	624 (311) – Northern GOM stock	NL	NC	Unable to determine
Fraser's dolphin (<u>Lagenodelphis hosei</u>)	Pelagic	NA (NA) – Northern GOM stock	NL	NC	Unable to determine
Striped dolphin (<u>Stenella coeruleoalba</u>)	Pelagic	1,849 (1,041) - Northern GOM stock	NL	NC	Unable to determine
Pantropical spotted dolphin (<u>Stenella attenuata</u>)	Pelagic	50,880 (40,699) - Northern GOM stock	NL	NC	Unable to determine
Atlantic spotted dolphin (<u>Stenella frontalis</u>)	Coastal and pelagic	NA (NA) - Northern GOM stock	NL	NC	Unable to determine
Spinner dolphin (<u>Stenella longirostris</u>)	Mostly pelagic	11,441 (6,221) - Northern GOM stock	NL	NC	Unable to determine
Clymene dolphin (<u>Stenella clymene</u>)	Pelagic	129 (64) - Northern GOM stock	NL	NC	Unable to determine
Sirenians					
West Indian (Florida) manatee (<u>Trichechus manatus latrostris</u>)	Coastal, rivers, and estuaries	3,802 - U.S. stock	EN	D	Increasing or stable throughout much of Florida

NA = Not available or not assessed.

¹ U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.

² U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, NC = Not Classified.

³ NMFS Draft 2012 Stock Assessment Reports.

⁴ USFWS Stock Assessment Reports.

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The information contained herein relies heavily on the data gathered in

the Marine Resource Assessments (MRAs). The Navy Marine Resources Assessment (MRA) program was

implemented by the Commander, United States Fleet Forces Command, to collect data and information on the

protected and commercial marine resources found in the Navy OPAREAs. Specifically, the goal of the MRA program is to describe and document the marine resources present in each of the Navy's OPAREAs. As such, an MRA was finalized in 2007 for the GOM, which comprises three adjacent OPAREAs, one of which is the Panama City OPAREA (DON, 2007a).

The MRA represents a compilation and synthesis of available scientific literature (e.g., journals, periodicals, theses, dissertations, project reports, and other technical reports published by government agencies, private businesses, or consulting firms) and NMFS reports, including stock assessment reports (SARs), recovery plans, and survey reports. The MRA summarizes the physical environment (e.g., marine geology, circulation and currents, hydrography, and plankton and primary productivity) for each test area. In addition, an in-depth discussion of the biological environment (marine mammals, sea turtles, fish, and EFH), as well as fishing grounds (recreational and commercial) and other areas of interest (e.g., maritime boundaries, navigable waters, marine managed areas, recreational diving sites) are also provided. Where applicable, the information contained in the MRA was used for analyses in this document. Appendix A of the Navy's IHA application contains more information about each marine mammal species potentially found in the Q-20 study area. The GOM MRA also contains detailed information, with a species description, status, habitat preference, distribution, behavior and life history, as well as information on its acoustics and hearing ability (DON, 2007a). A detailed description of marine mammal density estimates and their distribution in the Q-20 study area is provided in the Navy's Q-20 IHA application.

Potential Effects on Marine Mammal

The Navy considers that the planned Q-20 sonar testing activities in the Q-20 study area could potentially result in harassment to marine mammals. Although surface operations related to sonar testing involve ship movement in the vicinity of the Q-20 test area, NMFS considers it unlikely that ship strike could occur as analyzed below.

Surface Operations

Typical operations occurring at the surface include the deployment or towing of mine countermeasures (MCM) equipment, retrieval of equipment, and clearing and monitoring for non-participating vessels. As such, the potential exists for a ship to strike a

marine mammal while conducting surface operations. In an effort to reduce the likelihood of a vessel strike, the mitigation and monitoring measures discussed below would be implemented.

Collisions with commercial and U.S. Navy vessels can cause major wounds and may occasionally cause fatalities to marine mammals. 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 (e.g., the sperm whale). Laist *et al.* (2001) identified 11 species known to be hit by ships worldwide. Of these species, fin whales are struck most frequently; followed by right whales, humpback whales, sperm whales, and gray whales. More specifically, from 1975 through 1996, there were 31 dead whale strandings involving four large whales along the GOM coastline. Stranded animals included two sei whales, four minke whales, eight Bryde's whales, and 17 sperm whales. Only one of the stranded animals, a sperm whale with propeller wounds found in Louisiana on March 9, 1990, was identified as stranding as a result of a possible ship strike (Laist *et al.*, 2001). In addition, from 1999 through 2003, there was only one stranding involving a false killer whale in the northern GOM (Alabama, 1999) (Waring *et al.*, 2006). According to the 2010 Stock Assessment Report (NMFS, 2011), during 2009 there was one known Bryde's whale mortality as a result of a ship strike. Otherwise, no other marine mammal that is likely to occur in the northern GOM has been reported as either seriously or fatally injured as a result of a ship strike from 1999 through 2009 (Waring *et al.*, 2007).

It is unlikely that activities in non-territorial waters will result in a ship strike because of the nature of the operations and size of the vessels. For example, the hours of surface operations take into consideration operation times for multiple vessels during each test event. These vessels range in size from small Rigid Hull Inflatable Boat (RHIB) to surface vessels of approximately 128 m (420 ft). The majority of these vessels are small RHIBs and medium-sized vessels. A large proportion of the timeframe for the Q-20 test events include periods when ships remain stationary within the test site.

The greatest time spent in transit for tests includes navigation to and from the sites. At these times, the Navy follows standard operating procedures (SOPs). The captain and other crew members keep watch during ship transits to avoid objects in the water. Furthermore, with the implementation

of the mitigation and monitoring measures described below, NMFS believes that it is unlikely vessel strikes would occur. Consequently, because of the nature of the surface operations and the size of the vessels, the mitigation and monitoring measures developed to minimize or avoid impacts of noise, and the fact that cetaceans typically more vulnerable to ship strikes are not likely to be in the project area, the NMFS concludes that ship strikes are unlikely to occur in the Q-20 study area.

Acoustic Effects: Exposure to Sonar

For activities involving active tactical sonar, NMFS's 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 exposure to sonar signals may affect marine mammals. Then, in the "Estimated Take of Marine Mammals" section, NMFS will relate the potential effects on marine mammals from sonar exposure to the MMPA regulatory definitions of Level A and Level B harassment and attempt to quantify those effects.

Direct Physiological Effects

Based on the literature, there are two basic ways that Navy sonar 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 (e.g., 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 in the TTS description.

The following physiological mechanisms are thought to play a role in inducing auditory TSs: Effects on 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. For continuous sounds, exposures of equal energy (the same SEL) will lead to approximately equal effects. For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery will occur between 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 Navy sonar, 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 are limited to the captive bottlenose dolphin and beluga whale (Finneran *et al.*, 2000, 2002b, 2005a; Schlundt *et al.*, 2000; Nachtigall *et al.*, 2003, 2004).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpreting environmental cues for purposes such as predator avoidance and prey capture. Depending on the frequency range of TTS degree (dB), duration, 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 a time when communication is critical for successful mother/calf interactions could have more serious impacts. 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 long term 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 Navy sonar 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.*, 2001). 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 sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. Recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at sound exposure levels and tissue saturation levels that are improbable to occur in a diving marine mammal. 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, 2002). 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 (Hooker *et al.*, 2011). 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 sonar exposures. A recent review of evidence for gas-bubble incidence in marine mammal tissues suggest that diving mammals vary their physiological responses according to multiple stressors, and that the perspective on marine mammal diving physiology should change from simply minimizing nitrogen loading to management of the nitrogen load (Hooker *et al.*, 2011). This suggests several avenues for further study, ranging from the effects of gas bubbles at molecular, cellular and organ function levels, to comparative studies relating the presence/absence of gas bubbles to diving behavior. More information regarding hypotheses that attempt to explain how behavioral responses to Navy sonar 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; Clark *et al.*, 2009). 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 also decreases. This principle is also expected to apply to marine mammals because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995) 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 odontocetes (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).

As mentioned previously, the functional hearing ranges of mysticetes (baleen whales) and odontocetes (toothed whales) all encompass the frequencies of the sonar sources used in the Navy's Q-20 test activities. Additionally, almost all species' vocal repertoires span across the frequencies of the sonar 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. However, because the pulse length and duty cycle of the Navy sonar signals are of short duration and would not be continuous, masking is unlikely to occur as a result of exposure to these signals during the Q-20 test activities in the designated Q-20 study area.

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 are more important than detecting a vocalization (Brenowitz, 1982; Brumm *et al.*, 2004; Dooling, 2004; Marten and Marler, 1977; Patricelli *et al.*, 2006). Most animals that vocalize have evolved an ability to make vocal adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.*, 2004; Patricelli *et al.*, 2006). Vocalizing animals will 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.

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 Yezerinac, 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 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; 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 impair 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 experiments; 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 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 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 cetaceans 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 cetaceans 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), we also assume that stress responses are likely to 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. Exposure of marine mammals to sound sources can result in (but is not limited to) 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; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.*, 2007).

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 type 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.

There are only few empirical studies of behavioral responses of free-living cetaceans to military sonar being conducted to date, due to the difficulties in implementing experimental protocols on wild marine mammals.

An opportunistic observation was made on a tagged Blainville's beaked whale (*Mesoplodon densirostris*) before, during, and after a multi-day naval exercises involving tactical mid-frequency sonars within the U.S. Navy's sonar testing range at the Atlantic Undersea Test and Evaluation Center (AUTEC), in the Tongue of the Ocean near Andros Island in the Bahamas (Tyack *et al.*, 2011). The adult male whale was tagged with a satellite transmitter tag on May 7, 2009. During the 72 hrs before the sonar exercise started, the mean distance from whale to the center of the AUTEC range was approximately 37 km. During the 72 hrs sonar exercise, the whale moved several tens of km farther away (mean distance approximately 54 km). The received sound levels at the tagged whale during sonar exposure were estimated to be 146 dB re 1 μ Pa at the highest level. The tagged whale slowly returned for several days after the exercise stopped (mean distance approximately 29 km) from 0 to 72 hours after the exercise stopped (Tyack *et al.*, 2011).

In the past several years, controlled exposure experiments (CEE) on marine mammal behavioral responses to military sonar signals using acoustic tags have been started in the Bahamas, the Mediterranean Sea, southern

California, and Norway. These behavioral response studies (BRS), though still in their early stages, have provided some preliminary insights into cetacean behavioral disturbances when exposed to simulated and actual military sonar signals.

In 2007 and 2008, two Blainville's beaked whales were tagged in the AUTEC range and exposed to simulated mid-frequency sonar signals, killer whale (*Orcinus orca*) recordings (in 2007), and pseudo-random noise (PRN, in 2008) (Tyack *et al.*, 2011). For the simulated mid-frequency exposure BRS, the tagged whale stopped clicking during its foraging dive after 9 minutes when the received level reached 138 dB SPL, or a cumulative SEL value of 142 dB re 1 μ Pa²-s. Once the whale stopped clicking, it ascended slowly, moving away from the sound source. The whale surfaced and remained in the area for approximately 2 hours before making another foraging dive (Tyack *et al.*, 2011).

The same beaked whale was exposed to killer whale sound recording during its subsequent deep foraging dive. The whale stopped clicking about 1 minute after the received level of the killer whale sound reached 98 dB SPL, just above the ambient noise level at the whale. The whale then made a long and slow ascent. After surfacing, the whale continued to swim away from the playback location for 10 hours (Tyack *et al.*, 2011).

In 2008, a Blainville's beaked was tagged and exposed with PRN that has the same frequency band as the simulated mid-frequency sonar signal. The received level at the whale ranged from inaudible to 142 dB SPL (144 dB cumulative SEL). The whale stopped clicking less than 2 minutes after exposure to the last transmission and ascended slowly to approximately 600 m. The whale appeared to stop at this depth, at which time the tag unexpectedly released from the whale (Tyack *et al.*, 2011).

During CEEs of the BRS off Norway, social behavioral responses of pilot whales and killer whales to tagging and sonar exposure were investigated. Sonar exposure was sampled for 3 pilot whale (*Globicephala* spp.) groups and 1 group of killer whales. Results show that when exposed to sonar signals, pilot whales showed a preference for larger groups with medium-low surfacing synchrony, while starting logging, spyhopping and milling. While killer whales showed the opposite pattern, maintaining asynchronous patterns of surface behavior: decreased surfacing synchrony, increased spacing, decreased

group size, tailslaps and loggings (Visser *et al.*, 2011).

Although the small sample size of these CEEs reported here is too small to make firm conclusions about differential responses of cetaceans to military sonar exposure, none of the results showed that whales responded to sonar signals with panicked flight. Instead, the beaked whales exposed to simulated sonar signals and killer whale sound recording moved in a well oriented direction away from the source towards the deep water exit from the Tongue of the Ocean (Tyack *et al.*, 2011). In addition, different species of cetaceans exhibited different social behavioral responses towards (close) vessel presence and sonar signals, which elicit different, potentially tailored and species-specific responses (Visser *et al.*, 2011).

Much more qualitative information is available on the avoidance responses of free-living cetaceans to other acoustic sources, like seismic airguns and low-frequency active sonar, than mid-frequency active sonar. Richardson *et al.*, (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals.

Behavioral Responses

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 man-made sound with the goal of proposing exposure criteria for certain effects. This compilation of literature is very valuable, though Southall *et al.* note that not all data is 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.

In the Southall *et al.*, (2007) report, 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. HFAS/MFAS sonar is considered a non-pulse sound. Southall *et al.*, (2007) summarize the reports associated with low-, mid-, and high-frequency cetacean responses to non-pulse sounds (there are no pinnipeds in the Gulf of Mexico [GOM])

in Appendix C of their report (incorporated by reference and summarized in the three paragraphs below).

The reports 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 HFAS/MFAS) including: Vessel noise, drilling and machinery playback, low frequency M-sequences (sine wave with multiple phase reversals) playback, low frequency active sonar playback, drill vessels, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These reports generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re 1 µPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, however, 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 reports 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 HFAS/MFAS) including: Pingers, drilling playbacks, vessel and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), HFAS/MFAS, and non-pulse bands and tones. Southall *et al.* were unable to come to a clear conclusion regarding these reports. 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 responded at lower levels in the field).

The reports that address the 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 HFAS/MFAS) including: acoustic harassment devices, Acoustical Telemetry of Ocean Climate (ATOC), wind turbine, vessel noise, and construction noise. However, no conclusive results are available from these reports. In some cases, high frequency cetaceans (harbor porpoises) are observed to be quite sensitive to a wide range of human sounds at very low exposure RLs (90 to 120 dB). All recorded exposures exceeding 140 dB produced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.*, 2007).

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 are not limited to: Extensive of 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 2 NMFS has summarized the scores that Southall *et al.* (2007) assigned to the papers that reported behavioral responses of low-frequency cetaceans, mid-frequency cetaceans, and high-frequency cetaceans to non-pulse sounds.

Table 2. Data compiled from three tables from Southall *et al.* (2007) indicating when marine mammals (low-frequency cetacean = L, mid-frequency cetacean = M, and high-frequency cetacean = H) 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.

RECEIVED RMS SOUND PRESSURE LEVEL
(dB re 1 microPa)

9												
8		M	M		M		M				M	M
7						L	L					
6	H	L/H	L/H	L/M/H	L/M/H	L	L/H	H	M/H	M		
5					M							
4			H	L/M/H	L/M		L					
3		M	L/M	L/M	M							
2			L	L/M	L	L	L					
1			M	M	M							
0	L/H	L/H	L/M/H	L/M/H	L/M/H	L	M				M	M

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 marine mammal data quantitatively 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.

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 Livoireil, 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), 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 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 compared

with geese in disturbed habitat (being consistently scared off the fields on which they were foraging), which did not gain mass and had a 17 percent reproductive success. 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 jetflights (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 Alldredge, 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 ($50.2 \times 103\text{kJ}/\text{min}$), and spent energy fleeing or acting aggressively toward hikers (White *et al.*, 1999).

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; NMFS, 2007). 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 stranding are unknown (Geraci *et al.*, 1976; Eaton, 1979; Odell *et al.*, 1980; Best, 1982).

Several sources have published lists of mass stranding events of cetaceans during attempts to identify relationships between those stranding events and military 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 (IWC, 2005) identified 10 mass stranding events of Cuvier’s beaked whales that had been reported and one mass stranding of four Baird’s beaked whales (*Berardius bairdii*). The IWC concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been associated with the use of mid-frequency sonar, one of those seven had been associated with the use of low frequency sonar, and the remaining stranding event had been associated with the use of seismic airguns. None of the strandings has been associated with high frequency sonar such as the Q-20 sonar planned to be tested in this action. Therefore, NMFS does not consider it likely that the Q-20 testing activity would cause marine mammals to strand.

Anticipated Effects on Marine Mammal Habitat

There are no areas within the NSWC PCD that are specifically considered as important physical habitat for marine mammals. The prey of marine mammals are considered part of their habitat. The Navy’s Final Environmental Impact Statement and Overseas Environmental Impact Statement (FEIS) on the research, development, test and evaluation activities in the NSWC PCD study area contains a detailed discussion of the potential effects to fish from HFAS/MFAS. These effects are the same as expected from the Q-20 sonar testing activities within the same area.

The extent of data, and particularly scientifically peer-reviewed data, on the effects of high intensity sounds on fish is limited. In considering the available literature, the vast majority of fish species studied to date are hearing generalists and cannot hear sounds above 500 to 1,500 Hz (depending upon the species), and, therefore, behavioral effects on these species from higher frequency sounds are not likely. Moreover, even those fish 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.

Therefore, even among the species that have hearing ranges that overlap with some mid- and high frequency sounds, it is likely that the fish will only actually hear the sounds if the fish and source are very close to one another. Finally, since the vast majority of sounds that are of biological relevance to fish are below 1 kHz (e.g., Zelick *et al.*, 1999; Ladich and Popper, 2004), even if a fish detects a mid-or high frequency sound, these sounds will not mask detection of lower frequency biologically relevant sounds. Based on the above information, there will likely be few, if any, behavioral impacts on fish.

Alternatively, it is possible that very intense mid- and high frequency signals could have a physical impact on fish, resulting in damage to the swim bladder and other organ systems. However, even these kinds of effects have only been shown in a few cases in response to explosives, and only when the fish has been very close to the source. Such effects have never been indicated in response to any Navy sonar. Moreover, at greater distances (the distance clearly would depend on the intensity of the signal from the source) there appears to be little or no impact on fish, and particularly no impact on fish that do not have a swim bladder or other air bubble that would be affected by rapid pressure changes.

Mitigation

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) 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, and the availability of such species for taking for certain subsistence uses. The National Defense Authorization Act (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 Q-20 sonar testing activities described in the Navy's IHA application are considered military readiness activities.

For the Q-20 sonar testing activities in the GOM, NMFS worked with the Navy to develop mitigation measures. The Navy then plan to implement the following mitigation measures, which include a careful balancing of

minimizing impacts to marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the "military-readiness activity."

Protective Measures Related to Surface Operations

Visual surveys will be conducted for all test operations to reduce the potential for vessel collisions to occur with a protected species. If necessary, the ship's course and speed will be adjusted.

Personnel Training

Marine mammal mitigation training for those who participate in the active sonar activities is a key element of the protective measures. The goal of this training is for key personnel onboard Navy platforms in the Q-20 study area to understand the protective measures and be competent to carry them out. The Marine Species Awareness Training (MSAT) is provided to all applicable participants, where appropriate. The program addresses environmental protection, laws governing the protection of marine species, Navy stewardship, and general observation information including more detailed information for spotting marine mammals. Marine mammal observer training will be provided before active sonar testing begins.

Marine observers will be aware of the specific actions to be taken based on the RDT&E platform if a marine mammal is observed. Specifically, the following requirements for personnel training would apply:

- All marine mammal observers onboard platforms involved in the Q-20 sonar test activities will review the NMFS-approved MSAT material prior to use of active sonar.

- Marine mammal observers shall be trained in marine mammal recognition. Marine mammal observer training shall include completion of the MSAT, instruction on governing laws and policies, and overview of the specific Gulf of Mexico species present, and observer roles and responsibilities.

- Marine mammal observers 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.

Range Operating Procedures

The following procedures would be implemented to maximize the ability of Navy personnel to recognize instances when marine mammals are in the vicinity.

1. Marine Mammal Observer Responsibilities

- Marine mammal observers will have at least one set of binoculars available for each person to aid in the detection of marine mammals.
- Marine mammal observers shall conduct monitoring for approximately 15 minutes prior to the initiation of and for approximately 15 minutes after the cessation of Q-20 testing activities.
- Marine mammal observers will scan the water from the ship to the horizon and be responsible for all observations in their sector. In searching the assigned sector, the lookout will always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout will hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout will scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They will search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses will be lowered to allow the eyes to rest for a few seconds, and then the lookout will search back across the sector with the naked eye.
- Marine mammal observers will be responsible for informing the Test Director of any marine mammal that may need to be avoided, as warranted.
- These procedures would apply as much as possible during RMMV operations. When an RMMV is operating over the horizon, it is impossible to follow and observe it during the entire path. An observer will be located on the support vessel or platform to observe the area when the system is undergoing a small track close to the support platform.

2. Operating Procedures

- Test Directors will, as appropriate to the event, make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible, consistent with the safety of the ship.
- During Q-20 sonar activities, personnel will utilize all available sensor and optical system (such as night vision goggles) to aid in the detection of marine mammals.
- Navy aircraft participating will conduct and maintain, when operationally feasible, required, 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 by aircraft will be immediately reported to the Test Director. This action will occur when it is reasonable to conclude that the course of the ship will likely close the distance between the ship and the detected marine mammal.

- Exclusion Zones—The Navy will ensure that sonar transmissions are ceased if any detected marine mammals are within 200 yards (183 m [600.4 ft]) of the sonar source. Active sonar will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m [5,997.4 ft]) beyond the location of the last detection.

- Special conditions applicable for bow-riding dolphins only: If, after conducting an initial maneuver to avoid close quarters with dolphins, the Test Director or the Test Director's designee concludes that dolphins are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins continue to exhibit bow wave riding behavior because the dolphins are out of the main transmission axis of the active sonar while in the shallow-wave area of the vessel bow.

- Sonar levels (generally)—Navy will operate sonar at the lowest practicable level, except as required to meet testing objectives.

Clearance Procedures

When the test platform (surface vessel or aircraft) arrives at the test site, an initial evaluation of environmental suitability will be made. This evaluation will include an assessment of sea state and verification that the area is clear of visually detectable marine mammals and indicators of their presence. For example, large flocks of birds and large schools of fish are considered indicators of potential marine mammal presence.

If the initial evaluation indicates that the area is clear, visual surveying will begin. The area will be visually surveyed for the presence of protected species and protected species indicators. Visual surveys will be conducted from the test platform before test activities begin. When the platform is a surface vessel, no additional aerial surveys will be required. For surveys requiring only surface vessels, aerial surveys may be opportunistically conducted by aircraft participating in the test.

Shipboard monitoring will be staged from the highest point possible on the vessel. The observer(s) will be experienced in shipboard surveys, familiar with the marine life of the area, and equipped with binoculars of

sufficient magnification. Each observer will be provided with a two-way radio that will be dedicated to the survey, and will have direct radio contact with the Test Director. Observers will report to the Test Director any sightings of marine mammals or indicators of these species, as described previously. Distance and bearing will be provided when available. Observers may recommend a "Go"/"No Go" decision, but the final decision will be the responsibility of the Test Director.

Post-mission surveys will be conducted from the surface vessel(s) and aircraft used for pre-test surveys. Any affected marine species will be documented and reported to NMFS. The report will include the date, time, location, test activities, species (to the lowest taxonomic level possible), behavior, and number of animals.

NMFS has carefully evaluated the Navy's 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. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

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

Based on our evaluation of the Navy's measures, as well as other measures considered by NMFS, we have determined that the mitigation measures provide the 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.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "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 IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

The RDT&E Monitoring Program, planned by the Navy as part of its IHA application, is focused on mitigation-based monitoring. Main monitoring techniques include use of civilian personnel as marine mammal observers during pre-, during-, and post-test events.

Systematic monitoring of the affected area for marine mammals will be conducted prior to, during, and after test events using aerial and/or ship-based visual surveys. Observers will record information during the test activity. Data recorded will include exercise information (time, date, and location) and marine mammal and/or indicator presence, species, number of animals, their behavior, and whether there are changes in the behavior. Personnel will immediately report observed stranded or injured marine mammals to NMFS stranding response network and NMFS Regional Office. Reporting requirements will be included in the NSWC PCD Mission Activity Report and NSWC PCD Mission Activities Annual Monitoring Report as required by its Final Rule (DON, 2009a; NMFS, 2010).

Ongoing Monitoring

The Navy has an existing Monitoring Plan that provides for site-specific monitoring for MMPA and Endangered Species Act (ESA) listed species, primarily marine mammals within the Gulf of Mexico, including marine water areas of the Q-20 study area. The NSWC PCD Monitoring Plan (DON, 2011) was initially developed in support of the NSWC PCD Mission Activities Final Environmental Impact Statement/ Overseas Environmental Impact Statement and subsequent Final Rule by NMFS (DON, 2009a; NMFS, 2010). The primary goals of monitoring are to evaluate trends in marine species distribution and abundance in order to assess potential population effects from Navy training and testing events and determine the effectiveness of the Navy's mitigation measures. The monitoring plan, adjusted annually in consultation under an adaptive management review process with NMFS, includes aerial- and ship-based visual observations, acoustic monitoring, and other efforts such as oceanographic observations. The U.S.

Navy is not currently committing to increased visual surveys at this time, but will research opportunities for leveraged work that could be added under an adaptive management provision of the IHA application for future Q-20 study area monitoring.

On-Going Reporting

Due to changes in the program schedule, the Navy has not yet conducted any Q-20 activities under their current IHA. The Navy planned to conduct tests under the current IHA in April 2013.

Estimated Take by Incidental Harassment

Recent Navy applications, Draft Environmental Impact Statements, and proposed MMPA regulations for testing and training activities contain proposed acoustic criteria and thresholds that would, if adopted, represent changes from the criteria and thresholds currently employed by NMFS in incidental take authorizations and associated Biological Opinions for Navy military readiness activities. The revised thresholds are based on evaluations of recent scientific studies (Finneran *et al.*, 2010, Finneran and Schlundt, 2010, Tyack *et al.*, 2011). The proposed new criteria and thresholds based on the Finneran and Tyack studies have recently been made available for public comment, (78 FR 6978, January 31, 2013; 78 FR 7050, January 31, 2013), and the public comments are still being evaluated. Until that process is complete, it is not appropriate to apply the new criteria and thresholds in any take authorization or associated Biological Opinion. Instead, NMFS will continue its longstanding practice of considering specific modifications to the acoustic criteria and thresholds currently employed for incidental take authorizations only after providing the public with an opportunity for review and comment and responding to the comments.

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 Mammals to Sonar" 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 active sonar exposure, is considered Level B harassment. Some of the lower level physiological stress responses 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 generally does not include behaviors ranked 0–3 in Southall *et al.*, (2007).

Acoustic Masking and Communication Impairment—Acoustic masking is considered Level B harassment as 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 affect how an animal behaves in response to the environment, including conspecifics, predators, and prey. 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 Navy sonar) 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 Mammal to Sonar section, following are the types of effects that fall into the Level A harassment category:

PTS—PTS (resulting from exposure to active sonar) 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 results in changes in the chemical composition of the inner ear fluids.

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 military sonar cannot be detected or measured, a method is needed to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the planned action. To this end, NMFS uses acoustic criteria that estimate at what received level (when exposed to Navy sonar) Level B harassment and Level A harassment of marine mammals would occur. These acoustic criteria are discussed below.

Relatively few applicable data exist to support acoustic criteria specifically for HFAS (such as the Q-20 active sonar). However, because MFAS systems have larger impact ranges, NMFS will apply the criteria developed for the MFAS systems to the HFAS systems.

NMFS utilizes three acoustic criteria for HFAS/MFAS: PTS (injury—Level A

harassment), behavioral harassment from TTS, and sub-TTS (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 FEIS for the NSWC PCD (Navy, 2009).

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 is likely to occur are 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). TTS is a physiological effect that has been studied and quantified in laboratory conditions. NMFS also uses acoustic criteria to estimate the number of marine mammals that might sustain TTS incidental to a specific activity (in addition to the behavioral criteria).

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.* (2000) 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 microPa²-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.

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's TTS criteria (which indicate the received level at which onset TTS (≤ 6 dB) is induced) for HFAS/MFAS 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).

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 Q-20 IHA application.

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 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).

These criteria are based on a 20 dB increase in SEL over that required for onset-TTS. Extrapolations from terrestrial mammal data indicate that PTS 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 20-dB 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 NSWC PCD LOA application. Southall *et al.* (2007) recommend a precautionary dual criteria for TTS (230 dB re 1 μ Pa (SPL) in addition to 215 re 1 μ Pa²-s (SEL)) to account for the potentially damaging transients embedded within non-pulse exposures. However, in the case of HFAS/MFAS, the distance at which an animal would receive 215 (SEL) is farther from the source than the distance at which they would receive 230 (SPL) and therefore, it is not necessary to consider 230 dB.

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.

Level B Harassment Risk Function (Behavioral Harassment)

The first MMPA authorization for take of marine mammals incidental to tactical active sonar was issued in 2006 for Navy Rim of the Pacific training exercises in Hawaii. 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. The Navy and NMFS have previously used acoustic risk functions to estimate the probable responses of marine mammals to acoustic exposures in the Navy FEISs on the SURTASS LFA sonar (DoN, 2001c) and the North Pacific Acoustic Laboratory experiments conducted off the Island of Kauai (ONR, 2001). The specific risk functions used here were also used in the MMPA regulations and FEIS for Hawaii Range Complex (HRC), Southern California Range Complex (SOCAL), and Atlantic Fleet Active Sonar Testing (AFAS). 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 becomes available.

To assess the potential effects on marine mammals associated with active sonar used during training activity, the Navy and NMFS applied a risk function that estimates the probability of behavioral responses that NMFS would classify as harassment for the purposes of the MMPA given exposure to specific received levels of MFA sonar. The mathematical function is derived from a solution in Feller (1968) as defined in the SURTASS LFA Sonar Final OEIS/EIS (DoN, 2001), and relied on in the Supplemental SURTASS LFA Sonar EIS (DoN, 2007a) for the probability of MFA sonar risk for MMPA Level B behavioral harassment with input parameters modified by NMFS for MFA sonar for mysticetes and odontocetes (NMFS, 2008). The same risk function and input parameters will be applied to high frequency active (HFA) (≤ 10 kHz) sources until applicable data becomes available for high frequency sources.

In order to represent a probability of risk, the function should have a value near zero at very low exposures, and a value near one for very high exposures. One class of functions that satisfies this criterion is cumulative probability distributions, a type of cumulative distribution function. In selecting a particular functional expression for risk, several criteria were identified:

- The function must use parameters to focus discussion on areas of uncertainty;
- The function should contain a limited number of parameters;
- The function should be capable of accurately fitting experimental data; and
- The function should be reasonably convenient for algebraic manipulations.

As described in U.S. Department of the Navy (2001), the mathematical function below is adapted from a solution in Feller (1968).

$$R = \frac{1 - \left(\frac{L - B}{K} \right)^{-A}}{1 - \left(\frac{L - B}{K} \right)^{-2A}}$$

Where:

R = Risk (0—1.0)

L = Received level (dB re: 1 μ Pa)

B = Basement received level = 120 dB re: 1 μ Pa

K = Received level increment above B where 50 percent risk = 45 dB re: 1 μ Pa

A = Risk transition sharpness parameter = 10 (odontocetes) 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 HFAS/MFAS 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 HFAS/MFAS, 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 percent risk, or the received level at which we believe 50 percent 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 datasets 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 HFA/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 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. Until additional data is available, however, NMFS and the Navy have determined that the following three data sets are most applicable for the direct use in establishing the K parameter for the HFAS/MFAS 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 to HFAS/MFAS sources.

Even though these data are considered the most representative of the 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 J of the Navy's EIS for the NSWC PCD (DoN, 2009) and summarized in the Navy's IHA application.

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 MFA sonar (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 percent 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 (except harbor porpoises) for the HFAS/MFAS 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 (DoN, 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 1.43, 4.2.4.3 and Appendix D, and NMFS, 2008).

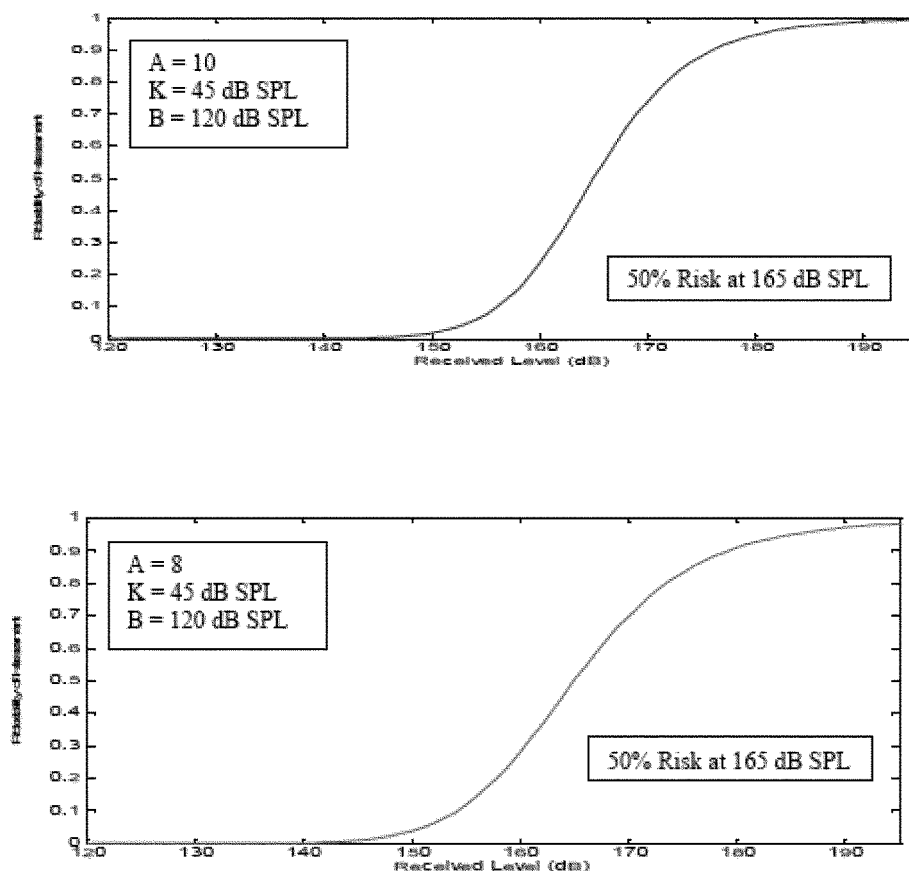
NMFS determined that a lower steepness parameter (A=8), resulting in a shallower curve, was appropriate for use with mysticetes and HFAS/MFAS. The Nowacek *et al.* (2004) dataset contains the only data illustrating mysticete behavioral responses to a mid-frequency sound source. A shallower curve (achieved 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 dataset currently available.

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 research activities with HFA/MFA sonar) 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 percent,

and Navy/NMFS applies that by estimating that 50 percent 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 (Figure 1).

Figure 1. Risk functions for odontocetes (above) and mysticetes (below).



As more specific and applicable data become available for HFAS/MFAS 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).

Estimated Exposures of Marine Mammals

Acoustical modeling provides an estimate of the actual exposures. Detailed information and formulas to model the effects of sonar from Q-20 sonar testing activities in the Q-20 study area are provided in Appendix A, Supplemental Information for Underwater Noise Analysis of the Navy's IHA application.

The quantitative analysis was based on conducting sonar operations in 13 different geographical regions, or provinces. Using combined marine mammal density and depth estimates,

which are detailed later in this section, acoustical modeling was conducted to calculate the actual exposures. Refer to Appendix B, Geographic Description of Environmental Provinces of the Navy's IHA application, for additional information on provinces. Refer to Appendix C, Definitions and Metrics for Acoustic Quantities of the Navy's IHA application, for additional information regarding the acoustical analysis.

The approach for estimating potential acoustic effects from Q-20 test activities on cetacean species uses the methodology that the DON developed in cooperation with NMFS for the Navy's HRC Draft EIS (DON, 2007c). The exposure analysis for behavioral response to sound in the water uses energy flux density for Level A harassment and the methods for risk function for Level B harassment (behavioral). The methodology is provided here to determine the number and species of marine mammals for which incidental take authorization is requested. NMFS concurs with the Navy's approach and that these are the appropriate methodologies.

To estimate acoustic effects from the Q-20 test activities, acoustic sources to

be used were examined with regard to their operational characteristics as described in the previous section. Systems with an operating frequency greater than 200 kHz were not analyzed in the detailed modeling as these signals attenuate rapidly resulting in very short propagation distances. Based on the information above, the Navy modeled the Q-20 sonar parameters including source levels, ping length, the interval between pings, output frequencies, directivity (or angle), and other characteristics based on records from previous test scenarios and projected future testing. Additional information on sonar systems and their associated parameters is in Appendix A, Supplemental Information for Underwater Noise Analysis of the Navy's IHA application.

Every active sonar operation includes the potential to expose marine animals in the neighboring waters. The number of animals exposed to the sonar is dictated by the propagation field and the manner in which the sonar is operated (i.e., source level, depth, frequency, pulse length, directivity, platform speed, repetition rate). The modeling for Q-20 test activities

involving sonar occurred in five broad steps listed below, and was conducted based on the typical RDT&E activities planned for the Q-20 study area.

1. Environmental Provinces: The Q-20 study area is divided into 13 environmental provinces, and each has a unique combination of environmental conditions. These represent various combinations of eight bathymetry provinces, one Sound Velocity Profile (SVP) province, and three Low-Frequency Bottom Loss geo-acoustic provinces and two High-Frequency Bottom Loss classes. These are addressed by defining eight fundamental environments in two seasons that span the variety of depths, bottom types, sound speed profiles, and sediment thicknesses found in the Q-20 study area. The two seasons encompass winter and summer, which are the two extremes for the GOM, the acoustic propagation characteristics do not vary significantly between the two. Each marine modeling area can be quantitatively described as a unique combination of these environments.

2. Transmission Loss: Since sound propagates differently in these environments, separate transmission loss calculations must be made for each, in both seasons. The transmission loss is predicted using Comprehensive Acoustic Simulation System/Gaussian

Ray Bundle (CASS-GRAB) sound modeling software.

3. Exposure Volumes: The transmission loss, combined with the source characteristics, gives the energy field of a single ping. The energy of more than 10 hours of pinging is summed, carefully accounting for overlap of several pings, so an accurate average exposure of an hour of pinging is calculated for each depth increment. At more than 10 hours, the source is too far away and the energy is negligible. Repeating this calculation for each environment in each season gives the hourly ensonified volume, by depth, for each environment and season. This step begins the method for risk function modeling.

4. Marine Mammal Densities: The marine mammal densities were given in two dimensions, but using reliable peer-reviewed literature sources (published literature and agency reports) described in the following subsection, the depth regimes of these marine mammals are used to project the two dimensional densities (expressed as the number of animals per area where all individuals are assumed to be at the water's surface) into three dimensions (a volumetric approach whereby two-dimensional animal density incorporates depth into the calculation estimates).

5. Exposure Calculations: Each marine mammal's three-dimensional (3-D) density is multiplied by the calculated impact volume to that marine mammal depth regime. This value is the number of exposures per hour for that particular marine mammal. In this way, each marine mammal's exposure count per hour is based on its density, depth habitat, and the ensonified volume by depth.

The planned sonar hours were inserted and a cumulative number of exposures was determined for the action.

Based on the analysis, Q-20 sonar operations in non-territorial waters may expose up to six species to sound likely to result in Level B (behavioral) harassment (Table 2). They include the bottlenose dolphin (*Tursiops truncatus*), Atlantic spotted dolphin (*Stenella frontalis*), pantropical spotted dolphin (*Stenella attenuata*), striped dolphin (*Stenella coeruleoalba*), spinner dolphin (*Stenella longirostris*), and Clymene dolphin (*Stenella clymene*). No marine mammals would be exposed to levels of sound likely to result in TTS. NMFS has authorized (and the Navy requested) the take numbers of marine mammals in the IHA which reflect the exposure numbers listed in Table 3.

TABLE 3—ESTIMATES AND REQUESTED TAKE OF MARINE MAMMAL EXPOSURES FROM SONAR IN NON-TERRITORIAL WATERS PER YEAR

[See Table 5-1 in the IHA application.]

Marine mammal species	Level A harassment	Level B harassment (TTS)	Level B harassment (behavioral)
Atlantic spotted dolphin	0	0	315
Bottlenose dolphin	0	0	399
Clymene dolphin	0	0	42
Pantropical spotted dolphin	0	0	126
Spinner dolphin	0	0	126
Striped dolphin	0	0	42

Potential for Long-Term Effects

Q-20 test activities will be conducted in the same general areas, so marine mammal populations could be exposed to repeated activities over time. However, as described earlier, this analysis assumes that short-term non-injurious SELs predicted to cause temporary behavioral disruptions qualify as Level B harassment. It is highly unlikely that behavioral disruptions will result in any long-term significant effects.

Potential for Effects on ESA-Listed Species

To further examine the possibility of whale exposures from the planned testing, CASSGRAB sound modeling software was used to estimate transmission losses and received sound pressure levels (SPLs) from the Q-20 when operating in the test area. Specifically, four radials out towards DeSoto Canyon (which is considered an important habitat for the ESA-listed sperm whales) were calculated. The results indicate the relatively rapid attenuation of sound pressure levels with distance from the source, which is not surprising given the high frequency

of the source. Below 120 dB, the risk of significant change in a biologically important behavior approaches zero. This threshold is reached at a distance of only 2.8 km (1.5 nmi) from the source. With the density of sperm whales being near zero in this potential zone of influence, this calculation reinforces NMFS's conclusion that the activity is not likely to result in the take of sperm whales. It should also be noted that DeSoto Canyon is well beyond the distance at which sound pressure levels from the Q-20 attenuate to zero.

Encouraging and Coordinating Research

The Navy sponsors a significant portion of research concerning the effects of human-generated sound in marine mammals. Worldwide, the Navy funded over \$16 million in marine mammal research in 2012. Major topics of Navy-supported research include:

- Gaining a 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.
 - Developing tools to model and estimate potential effects of sound.
- This research is directly applicable to the Q-20 study area, particularly with respect to the investigations of the potential effects of underwater noise sources on marine mammals and other protected species.

Furthermore, various research cruises by NMFS and academic institutions have been augmented with additional funding from the Navy. The Navy has also 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.

The Navy will continue to fund ongoing marine mammal research, and includes projected funding at levels greater than \$14 million per year in subsequent years. The Navy also has plans to continue in the coordination of long-term monitoring and studies of marine mammals on various established ranges and within its OPAREAs. The Navy will continue to research and contribute to university/external research to improve the state of the knowledge of the science regarding the biology and ecology of marine species, and potential acoustic effects on species from naval activities. 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.

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

Section 101(a)(5)(D) of the MMPA also requires NMFS to determine that the

authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (in the Gulf of Mexico) that implicate MMPA section 101(a)(5)(D).

Negligible Impact Determination

Pursuant to NMFS's 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, serious injury, and/or death). This estimate informs NMFS's analysis of whether the activity will have a "negligible impact" on the species or stock. To issue an IHA, NMFS must determine among other things, that the incidental take by harassment caused by the specified activity will have a negligible impact on affected species or stocks of marine mammals. 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." Level B (behavioral) harassment occurs at the level of the individual(s) and does not necessarily result in population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. 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.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated serious injuries and/or mortalities, and effects on habitat.

The Navy's specified activities have been described based on best estimates of the number of Q-20 sonar test hours that the Navy will conduct. Taking the above into account, considering the sections discussed below, and dependent upon the implementation of

the mitigation measures, NMFS has determined that Navy's Q-20 sonar test activities in the non-territorial waters will have a negligible impact on the marine mammal species and stocks present in the Q-20 study area.

Behavioral Harassment

Behavioral harassment from the Navy's training activities are expected to occur as discussed in the "Potential Effects of Exposure of Marine Mammals to Sonar" section and illustrated in the conceptual framework, marine mammals can respond to HFAS/MFAS in many different ways, a subset of which qualifies as harassment. 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. The Navy proposes a cumulative total of only 420 hours of high-frequency sonar operations per year for the Q-20 sonar testing activities, spread among 42 days with an average of 10 hours per day, in the Q-20 study area. There will be no powerful tactical mid-frequency sonar involved. Therefore, there will be no disturbance to marine mammals resulting from MFAS systems (such as 53C). The effects that might be expected from the Navy's major training exercises at the Atlantic Fleet Active Sonar Training (AFAST) Range, Hawaii Range Complex (HRC), and Southern California (SOCAL) Range Complex will not occur here. The source level of the Q-20 sonar is much lower than the 53C series MFAS system, and high frequency signals tend to have more attenuation in the water column and are more prone to lose their energy during propagation. Therefore, their zones of influence are much smaller, thereby making it easier to detect marine mammals and prevent adverse effects from occurring.

The Navy has been conducting monitoring activities since 2006 on its sonar operations in a variety of the Naval range complexes (e.g., AFAST, HRC, SOCAL) under the Navy's own protective measures and under the regulations and LOAs. Monitoring reports based on these major training exercises using military sonar have shown that no marine mammal injury or

mortality has occurred as a result of the sonar operations (DoN, 2011a; 2011b).

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 HFAS/MFAS 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. In addition, the amount of time the Q-20 sonar testing will occur is 420 hours per year in non-territorial waters, and is spread among 42 days with an average of 10 hours per day. Thus the exposure is expected to be sporadic throughout the year and is localized within a specific testing site. NMFS anticipates that the Navy's training activities will not result in substantial behavioral disturbance to recruitment or survival because the exposure is expected to be less intense than other sound sources and spread out over time, which should allow for periods of recovery.

TTS

Based on the Navy's model and NMFS analysis, it is unlikely that marine mammals would be exposed to sonar received levels that could cause TTS due to the lower source level (207 to 212 dB re 1 μ Pa at 1 m) and high attenuation rate of the HFAS signals (above 35 kHz).

Acoustic Masking or Communication Impairment

As discussed above, it is possible that anthropogenic sound could result in masking of marine mammal communication and navigation signals. 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. The Q-20 ping duration is in milliseconds and the system is relatively low-powered making its range of effect smaller. Therefore, masking effects from the Q-20 sonar signals are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of above 35 kHz (the lower limit of the Q-20 signals), 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 Q-20 sonar signal does not perfectly mimic the characteristics of any marine mammal's vocalizations.

PTS, Injury, or Mortality

Based on the Navy's model and NMFS analysis, it is unlikely that PTS, injury, or mortality of marine mammals would occur from the Q-20 sonar testing activities. As discussed earlier, the lower source level (207–212 dB re 1 μ Pa at 1 m) and high attenuation rate of the HFAS signals (above 35 kHz) make it highly unlikely that any marine mammals in the vicinity would be injured (including PTS) or killed as a result of sonar exposure. Therefore, no take by Level A harassment, serious injury, or mortality is anticipated; nor would it be authorized under the IHA.

Based on the aforementioned assessment, NMFS determines that approximately 399 bottlenose dolphins, 126 pantropical spotted dolphins, 315 Atlantic spotted dolphins, 126 spinner dolphins, 42 Clymene dolphins, and 42 striped dolphins would be affected by Level B behavioral harassment as a result of the Q-20 sonar testing activities.

Based on the supporting analyses suggesting that no marine mammals would be killed, seriously injured, or receive TTS as a result of the Q-20 sonar testing activities coupled with our assessment that these impacts will be of limited intensity and duration and likely not occur in areas and times critical to significant behavioral patterns such as reproduction, NMFS has determined that the taking by Level B harassment of these species or stocks as a result of the Navy's Q-20 sonar test will have a negligible impact on the marine mammal species and stocks present in the Q-20 study area.

Endangered Species Act

Under section 7 of the ESA, the Navy has made a no effect determination on ESA-listed species (e.g., sperm whales, sea turtles, Gulf sturgeon, sawfish), and no critical habitat for ESA-listed species

would be impacted; therefore, consultation with NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this planned Q-20 testing is not required. NMFS (Permits and Conservation Division) will also not formally consult with NMFS (Endangered Species Act Interagency Cooperation Division) on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Based on the analysis of the Navy Marine Resources Assessment (MRA) data on marine mammal distributions, there is near zero probability that the sperm whale will occur in the vicinity of the Q-20 study area. No other ESA-listed marine mammal is expected to occur in the vicinity of the test area. In addition, acoustic modeling analysis indicates that none of the ESA-listed marine mammal species would be exposed to levels of sound that would constitute a "take" under the MMPA, due to the low source level and high attenuation rates of the Q-20 sonar signal.

National Environmental Policy Act

In 2009, the Navy prepared a "Final Environmental Impact Statement/ Overseas Environmental Impact Statement for the NSWC PCD Mission Activities" (FEIS/OEIS), and NMFS subsequently adopted the FEIS/OEIS for its rule governing the Navy's RDT&E activities in the NSWC PCD study area. With its IHA application, the Navy also prepared and submitted an "Overseas Environmental Assessment Testing the AN/AQS-20A Mine Reconnaissance Sonar System in the NSWC PCD Testing Range, 2012–2014." To meet NMFS's National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements for the issuance of an IHA to the Navy, NMFS prepared an "Environmental Assessment for the Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting High-Frequency Sonar Testing Activities in the Naval Surface Warfare Center Panama City Division" and signed a FONSI on July 24, 2012 prior to the issuance of the IHA for the Navy's activities in July 2012 to July 2013. The currently planned Q-20 sonar testing activities that would be covered by the IHA from July 2013 to July 2014 are similar to the sonar testing activities described in the NMFS EA for the issuance of an IHA and the Navy's FEIS/OEIS and EA for NSWC PCD mission activities, and the effects of the IHA fall within the scope of those documents and do not require further supplementation. After considering the EA, the information in the IHA

application, the **Federal Register** notice, as well as public comments, NMFS has determined that the issuance of the IHA is not likely to result in significant impacts on the human environment and has reaffirmed its FONSI. An Environmental Impact Statement is not required and will not be prepared for the action.

Authorization

NMFS has issued an IHA for the take of six species of marine mammals, by Level B harassment, at levels specified in Table 3 (above) to the Navy for testing the Q-20 sonar system in non-territorial waters of the NSWC PCD testing range in the GOM, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 25, 2013.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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BILLING CODE 3510-22-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of a Revised Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (CFPB or Bureau), gives notice of the establishment of a revised Privacy Act System of Records.

DATES: Comments must be received no later than September 4, 2013. The new system of records will be effective September 16, 2013, unless the comments received result in a contrary determination. **ADDRESSES:** You may submit comments by any of the following methods:

- *Electronic:* privacy@cfpb.gov.
- *Mail/Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435-7220. All comments, including

attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435-7220.

SUPPLEMENTARY INFORMATION: The CFPB revises its Privacy Act System of Records Notice (SORN) "CFPB.001—CFPB Freedom of Information Act (FOIA)/Privacy Act (PA) System." In revising this SORN, the CFPB modifies the notification procedures for individuals seeking access to records maintained in this system; modifies the system location, system manager(s) and address; consolidates two routine uses (previously routine uses 6 and 7) which include the disclosure of personally identifiable information (PII) from the system to the U.S. Department of Justice (DOJ) for its use in providing legal advice to the CFPB or in representing the CFPB in a legal proceeding; and adds a new routine use for the disclosure of PII to law enforcement agencies as appropriate.

The report of the revised system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000,¹ and the Privacy Act, 5 U.S.C. 552a(r).

The revised system of records entitled "CFPB.001—CFPB Freedom of Information Act/Privacy Act System" is published in its entirety below.

Dated: July 30, 2013.

Claire Stapleton,

Chief Privacy Officer, Bureau of Consumer Financial Protection.

CFPB.001

SYSTEM NAME:

CFPB Freedom of Information Act/Privacy Act System

¹ Although pursuant to Section 1017(a)(4)E, of the Consumer Financial Protection Act, Public Law 111-203, the CFPB is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are persons who cite the Freedom of Information Act or Privacy Act to request access to records or whose information requests are treated as FOIA requests. Other individuals covered include CFPB staff assigned to process such requests, and employees who may have responsive records or are mentioned in such records. FOIA requests are subject to the PA only to the extent that they concern individuals; information pertaining to corporations and other business entities and organizations are not subject to the PA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain: (1) Correspondence with the requester including initial requests and appeals; (2) documents generated or compiled during the search and processing of the request; (3) fee schedules, cost calculations, and accessed cost for disclosed FOIA records; (4) documents and memoranda supporting the decision made in response to the request, referrals, and copies of records provided or withheld; (5) CFPB staff assigned to process, consider, and respond to requests and, where a request has been referred to another agency with equities in a responsive document, information about the individual handling the request on behalf of that agency; (6) information identifying the entity that is subject to the requests or appeals; (7) requester information, including name, address, phone number, email address; FOIA tracking number, phone number, fax number, or some combination thereof; and (8) for access requests under the Privacy Act, identifying information regarding both the party who is making the written request or appeal, and the individual on whose behalf such written requests or appeals are made, including name, Social Security number (SSNs may be submitted with documentation or as proof of identification), address, phone number, email address, FOIA number, phone number, fax number, or some combination thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111-203, Title X, Sections 1011, 1012, 1021, codified at 12 U.S.C. §§ 5491, 5492, 5511; The Freedom of Information Act of 1996, as amended 5 U.S.C. 552; Privacy Act of 1974, as amended 5 U.S.C. 552a.