



**BILLING CODE: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XE859**

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar**

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

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

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) for authorization to take, by harassment, marine mammals incidental to conducting operations of Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) sonar for the period beginning August 2017 and ending August 2022. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

**DATES:** Comments and information must be received no later than [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is *ITP.Youngkin@noaa.gov*. NMFS is not responsible for

e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

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

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

**SUPPLEMENTARY INFORMATION:**

**Availability**

An electronic copy of the Navy's application may be obtained online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. The Navy released a draft Supplemental Environmental Impact Statement (DSEIS) for the employment of SURTASS LFA sonar on August 26, 2016. A copy of the DSEIS, which would also support NMFS' proposed rulemaking under the MMPA, is available at <http://www.surtass-lfa-eis.com>.

**Background**

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

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

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

With respect to military readiness activities, the MMPA defines "harassment" as:

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

### **Summary of Request**

On August 26, 2016, NMFS received an application from the Navy requesting authorization to take individuals of 104 species of marine mammals (75 cetaceans and 29 pinnipeds), by harassment, incidental to training, testing, and routine military operations (all categorized as military readiness activities) using SURTASS LFA sonar over the course of five years between August 15, 2017 and August 15, 2022.

The Navy states that these training, testing, and routine military activities may expose some of the marine mammals present in the operational areas to sound from low-frequency active sonar sources. Because marine mammals may be harassed due to noise disturbance incidental to the use of SURTASS LFA sonar during training, testing, and routine military operations, the Navy utilized the most recent NMFS acoustic Technical Guidance (NMFS 2016) to analyze potential takes of marine mammals. The Navy requests authorization to take individuals of 104

species of marine mammals by Level B Harassment. Further, the Navy states that the probability of taking marine mammals by Level A Harassment is less than 0.001 percent. However, because the probability is not zero, the Navy has included a small number of Level A harassment in its authorization request as a precautionary measure.

This will be NMFS' fourth rule making for SURTASS LFA sonar operations under the MMPA. NMFS published the first rule effective from August 2002 through August 2007 on July 16, 2002 (67 FR 46712); the second rule effective from August 2007 through August 2012 on August 21, 2007 (72 FR 46846); and the third rule effective from August 2012 through August 2012 (77 FR 50290). For this fourth rule making, the Navy is proposing to conduct the same types of sonar activities in the proposed rulemaking as they have conducted over the past fourteen years in the previous three rule makings with the exceptions of updating the LFA sonar duty cycle from 20 percent to 7.5 – 10 percent based on historical data. In addition, the Navy is proposing a Preferred Alternative (Alternative 2) in their DSEIS that would transmit a maximum number of 255 hours of LFA sonar per vessel per year, as opposed to the previously authorized 432 hours of LFA sonar per vessel per year.

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

The Navy proposes to deploy the system on a maximum of four U.S. Naval ships: the USNS ABLE, the USNS EFFECTIVE, the USNS IMPECCABLE and the USNS VICTORIOUS) in certain areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea. Nominal at-sea missions for each vessel using SURTASS LFA sonar would last up to 294 days, with 240 days of active sonar transmissions and 54 days of transit. The maximum number of actual transmission hours per vessel would not exceed 255 hours annually under the Preferred Alternative. The application describes the activity types, the equipment and platforms involved, and the duration and potential locations of the specified activities.

A suite of proposed mitigation measures for marine mammals that could potentially be affected during SURTASS LFA sonar operations includes restricting the use of SURTASS LFA sonar such that it will not operate in Arctic and Antarctic waters; sound pressure levels (SPL) will not exceed 180 decibels (dB) re 1  $\mu$ Pa (rms) within 12 nautical miles of any emerged features of any coastline, or within designated offshore biologically important areas (OBIAs) for marine mammals; and the Navy will minimize exposure of marine mammals to SURTASS LFA sonar signal received levels of 180 dB re 1  $\mu$ Pa (rms) by monitoring for their presence and suspending transmission when animals enter the mitigation zone.

#### Information Solicited

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

Dated: October 4, 2016.

Donna S. Wieting,  
Director,  
Office of Protected Resources,  
National Marine Fisheries Service.

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