



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 218**

**RIN 0648-XG273**

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar in the Western and Central North Pacific Ocean and Eastern Indian Ocean**

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

**ACTION:** Receipt of application for rulemaking and letter of authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to the use of Surveillance Towed Array Sensor Systems Low Frequency Active (SURTASS LFA) sonar systems onboard U.S. Navy surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy in the western and central North Pacific and eastern Indian oceans beginning August 2019. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

**DATES:** Comments and information must be received no later than **[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 and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910-3225 and electronic comments should be sent to *ITP.Youngkin@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/node/23111> without change. All personal identifying information (e.g., name, address) 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. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>. In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) generally direct the Secretary of Commerce (further delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if

certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

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

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

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

The National Defense Authorization Act (NDAA) (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and defined “harassment” as it applies to a “military readiness activity” 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).

### **Summary of Request**

On June 4, 2018, NMFS received an application from the Navy requesting authorization to take individuals of 46 species of marine mammals (10 mysticete, 31 odontocete, and 5

pinniped species) representing 139 stocks, by harassment, incidental to training and testing activities conducted under the authority of the Secretary of the Navy (categorized as military readiness activities) using SURTASS LFA sonar beginning August 13, 2019.

The Navy states that these training and testing activities may expose some of the marine mammals present in the Study Area to sound from low-frequency active sonar sources, which may result in the disruption of behavioral patterns. The Navy requests authorization to take individuals of 46 species or stocks of marine mammals by Level B Harassment.

NMFS published the first incidental take rule for SURTASS LFA sonar, 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, on August 20, 2012 (77 FR 50290).

In 2016, the Navy submitted an application for a fourth incidental take regulation under the MMPA (DoN, 2016) for the taking of marine mammals by harassment incidental to the deployment of up to four SURTASS LFA sonar systems from August 15, 2017 through August 14, 2022. NMFS published a proposed rule on April 27, 2017 (82 FR 19460). On August 10, 2017, the Secretary of Defense, after conferring with the Secretary of Commerce, determined that it was necessary for the national defense to exempt all military readiness activities that use SURTASS LFA sonar from compliance with the requirements of the MMPA for two years from August 13, 2017 through August 12, 2019, or until such time when NMFS issues regulations and a LOA under Title 16, Section 1371 for military readiness activities associated with the use of SURTASS LFA sonar, whichever is earlier. During the exemption period, all military readiness activities that involve the use of SURTASS LFA sonar are required to comply with all mitigation, monitoring, and reporting measures set forth in the 2017 National Defense Exemption (NDE) for SURTASS LFA sonar. As a result of the NDE (available at

*[http://www.surtass-lfa-eis.com/wp-](http://www.surtass-lfa-eis.com/wp-content/uploads/2018/01/SURTASS_LFA_NDE_10Aug17.pdf)*

*content/uploads/2018/01/SURTASS\_LFA\_NDE\_10Aug17.pdf*), NMFS did not finalize its April 2017 proposed rule.

For this current requested rule making, the Navy is proposing to continue using SURTASS LFA sonar systems onboard USNS surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy within the western and central North Pacific, and eastern Indian oceans. The operating characteristics of the LFA sonar (inclusive of compact LFA sonar systems) have remained the same since 2001 and are consistent with the parameters described in previous rulemakings. For this rulemaking, the Navy scoped the geographic extent of the Study Area to better reflect the areas where the Navy anticipates conducting SURTASS LFA sonar training and testing activities for the requested rule/LOA. Under the proposed action, the Navy would transmit 496 LFA sonar transmission hours per year pooled across all SURTASS LFA sonar equipped vessels in the first four years of the authorization, with an increase in usage to 592 LFA transmission hours in year five and continuing into the foreseeable future, regardless of the number of vessels. This is a reduction from the current condition of 1,020 LFA transmission hours per year (255 hours of LFA sonar per vessel per year) under the NDE, and the previously authorized 1,728 LFA transmission hours per year (432 hours of LFA sonar per vessel per year) under the 2012 – 2017 Rule.

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

The Navy proposes to continue to use the system onboard USNS surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy in the western and central Pacific Ocean and eastern Indian Ocean. The U.S. Navy currently has four surveillance ships that utilize SURTASS LFA sonar systems: the USNS ABLE, the USNS EFFECTIVE, the USNS IMPECCABLE and the USNS VICTORIOUS. The Navy may develop

and field additional SURTASS LFA equipped vessels, either to replace or complement the Navy's current SURTASS LFA capable fleet, and these vessels may be in use beginning in the fifth year of the time period covered by their latest application. Thus, the Navy's activity analysis included consideration of the sonar hours associated with future testing of new or updated LFA sonar system components and new ocean surveillance vessels. This resulted in two annual transmit hour scenarios: Years 1 to 4 would entail a maximum of 496 LFA transmission hours total per year across all SURTASS LFA vessels, while year 5 and beyond would include an increase in LFA sonar transmit hours to a maximum of 592 hours across all vessels to accommodate future testing of new ocean surveillance vessels and new or updated sonar system components. The number of transmission hours per year is pooled across all SURTASS LFA sonar equipped vessels, regardless of the number of ships. The SURTASS LFA sonar transmission hours represent a distribution across six activities that include:

- Contractor crew proficiency training (80 hours/year);
- Military crew (MILCREW) proficiency training (96 hours/year);
- Participation in, or support of, Navy exercises (96 hours/year);
- Vessel and equipment maintenance (64 hours/year);
- Acoustic research testing (160 hours/year); and
- New SURTASS LFA sonar system testing (96 hours/year, occurring in year 5 and

beyond only).

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 have been included in the proposed action to minimize the potential effects to marine mammals that could potentially be affected during

SURTASS LFA sonar activities. For training and testing activities of the proposed action, these mitigation measures include:

- Restricting the use of SURTASS LFA sonar such that it will not operate in Arctic and Antarctic waters;
- Restricting the use of SURTASS LFA sonar from within the foreign territorial seas of other nations;
- Ensuring sound pressure levels (SPL) will not exceed 180 decibels (dB) re 1 micro pascals ( $\mu\text{Pa}$ ) root mean square (rms) within 12 nautical miles of any emerged features of any coastline, or within designated offshore biologically important areas (OBIAs) for marine mammals; and
- Minimizing exposure of marine mammals to SURTASS LFA sonar signal received levels of 180 dB re 1  $\mu\text{Pa}$  (rms) or more by monitoring for their presence and suspending sonar 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' development and implementation of regulations governing the incidental taking of marine mammals by the Navy's SURTASS LFA sonar activities.

Dated: July 9, 2018.  
**Donna S. Wieting,**  
*Director,*  
*Office of Protected Resources,*  
*National Marine Fisheries Service.*

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