



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

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RTID 0648-XA448**

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Training Operations at the Marine Corps Air Station Cherry Point Range Complex**

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

**ACTION:** Notice; receipt of application for Letter of Authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the U.S. Marine Corp (USMC) for authorization to take bottlenose dolphin incidental to training operations at the Marine Corps Air Station (MCAS) Cherry Point Range Complex over the course of seven years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the USMC's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on USMC'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 applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National

Marine Fisheries Service. Written comments should be submitted via email to *ITP.guan@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/permit/incidental-take-authorizations-undermarine-mammal-protection-act>* 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:** Shane Guan, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of USMC's application may be obtained online at: *<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-undermarine-mammal-protection-act>*. In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

**Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as 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 incidental take authorization may be 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) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The NDAA (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity.” The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

### **Summary of Request**

On August 3, 2020, NMFS received an application from USMC requesting authorization for take of bottlenose dolphin incidental to training operations at the MCAS

Cherry Point Range Complex off North Carolina. The requested regulations would be valid for seven years, from May 18, 2021 through May 17, 2028. USMC plans to conduct training activities conducted at the in-water ranges that involve the use of live (explosive) and inert (non-explosive) ordnance, and small boat maneuvers. The proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of sound and potential auditory injury in the form of permanent threshold shift, thereby resulting in incidental take, by Level A and Level B harassment. NMFS provided questions and comments to USMC after receiving the initial application regarding the scope of the project and impact analysis. After receiving USMC's responses, NMFS considered the Letter of Authorization application adequate and complete on September 10, 2020.

### **Specified Activities**

USMC's proposed training operations involve the use of live (explosive) and inert (non-explosive) ordnance, and small boat maneuvers. These activities would occur at the in-water bombing targets Brant Island (BT-9) and Rattan Bay (BT-11) located in Pamlico Sound, North Carolina (NC).

Munitions firing training conducted on the water ranges includes air-to-surface (firing from aircraft to surface water targets) and surface-to-surface (firing from ship or boat to surface targets). The number of sorties that conduct these missions may vary from year to year. The deployment of live ordnance would only occur at BT-9; all munitions fired at BT-11 would be inert with the exception of a signal charge in practice bombs.

#### *Surface-to-Surface Firing*

Gunnery exercise is the only category of surface-to-surface activity currently conducted at BT-9 and BT-11. During this exercise, a small boat, typically operated by

Special Boat Team personnel, uses a machine gun to attack a surface target that simulates another ship, boat, swimmer, floating mine or near-shore land targets. Boats conducting surface-to-surface firing activities will typically use 7.62 millimeter (mm) or .50 caliber (cal) machine guns; 40 mm grenade machine guns; or G911 concussion hand grenades. This exercise is usually a live-fire exercise, but blanks may be used so that the boat crews can practice their ship handling skills. BT-9 is the most common target used for gunnery exercises. A target is not used for the gunnery exercises employing the G911 Concussion grenade, as the goal of this specific training is to learn how to throw the grenade into the water.

#### *Air-to-Surface Firing*

There are four categories of air-to-surface activities conducted at the MCAS Cherry Point bombing targets: mine laying, bombing, gunnery, and rocket exercises.

- Mine Laying: These activities involve a fixed-wing aircraft deploying inert mine shapes in an offensive or defensive pattern. Mine laying operations are conducted in the waters around BT-9. Mine laying exercises could include the use of Mark (MK)-62/63, MK-76, BDU-45, or Bomb Dummy Unit (BDU)-48 inert training shapes. Each training shape weighs 500/1000, 25, 500, and 10 (lbs.) (227/454, 11, 227, and 4.5 kg), respectively.

- Bombing Exercise: During these exercises, fixed-wing aircraft (two-four craft) deliver bombs against surface maritime targets with the goal of destroying or disabling enemy ships or boats. These exercises occur during day and night. Air-to-surface bombing exercises employ either unguided or precision-guided munitions. Unguided munitions include MK-76 and BDU-45 inert training bombs, as well as the

MK-80 series of inert bombs (no cluster munitions are authorized). Precision-guided munitions consist of laser-guided bombs (inert) and laser-guided training rounds (inert).

- **Gunnery Exercise:** Rotary-wing (and tilt-wing) gunnery exercises involve CH-53, UH-1, CH-46, MV-22, or H-60 rotary-wing aircraft with mounted 7.62 mm or .50 cal machine guns. Each gunner expends approximately 800 rounds of 7.62 mm or 200 rounds of .50 cal ammunition per exercise. Fixed-wing gunnery exercises involve two aircraft that begin descent to the target from an altitude of approximately 914 meters (m) (3,000 feet [ft]) while still several miles away. Within a distance of 1,219 m (4,000 ft) from the target, each aircraft fires a burst of approximately 30 rounds before descending to a minimum altitude of 305 m (1,000 ft) and then breaks off and repositions for another strafing run. This continues until each aircraft expends its exercise ordnance allowance of approximately 250 rounds. Typically fixed-wing gunnery exercises involve F/A-18 with Vulcan M61A1/A2, 20 mm cannon, and AV-8 with GAU-12, 25 mm cannon.

- **Rocket Exercise:** Fixed- and rotary-wing aircraft crews launch rockets at surface maritime targets during rocket exercises with the goal of destroying or disabling enemy ships or boats. Rocket exercises may occur day or night. These operations employ 2.75-inch (in) and 5-in rockets.

A suite of proposed mitigation and monitoring measures for marine mammals that would be applied during specific training activities includes: (1) establishing and monitoring exclusion zones for marine mammals, (2) conducting range sweeps during the morning of each exercise day prior to range operations, and (3) conducting a cold pass by an aircraft immediately prior to ordnance delivery at the bombing targets.

### **Information Solicited**

Interested persons may submit information, suggestions, and comments concerning USMC's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the USMC, if appropriate.

Dated: October 1, 2020.

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

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