



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XE848]

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

**SUMMARY:** NMFS has received a request from the U.S. Department of the Navy (Navy) for authorization to take marine mammals incidental to training and testing activities using Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) sonar systems in the western and central North Pacific and eastern Indian oceans over the course of 7 years from August 2026 through August 2033. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and issuance of a 7-year Letter of Authorization (LOA). NMFS invites the public to provide 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 should be addressed to Ben Laws, Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, National

Marine Fisheries Service, and should be sent to *ITP.clevenstine@noaa.gov*. An electronic copy of the Navy's application 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 the document, please call the contact listed below.

*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, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will be generally posted online at:

*<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>* 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:** Alyssa Clevenstine, Office of Protected Resources, NMFS, (301) 427-8401.

**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 proposed or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), 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 monitoring and reporting of the 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 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) for Fiscal Year 2004 (Pub. L. 108-136) amended section 101(a)(5) of the MMPA to remove the “small numbers” and “specified geographical region” provisions and amended the definition of “harassment” as applied 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). On August 13,

2018, the NDAA for Fiscal Year 2019 (Pub. L. 115-232) amended the MMPA to allow incidental take regulations for military readiness activities to be issued for up to 7 years.

### **Summary of Request**

On April 6, 2025, NMFS received an application from the Navy requesting authorization to take marine mammals, by Level A and Level B harassment, incidental to training and testing (characterized as military readiness activities) using SURTASS LFA sonar in the in the western and central North Pacific Ocean and eastern Indian Ocean. In response to our comments and following information exchange, the Navy submitted a final revised application that we determined was adequate and complete on July 1, 2025. The Navy requested the regulations and subsequent LOA be valid for 7 years beginning in August 2026.

This will be the fifth time NMFS has promulgated incidental take regulations pursuant to the MMPA relating to similar military readiness activities using SURTASS LFA, following those effective from August 15, 2002 through August 15, 2007 (67 FR 46712, July 16, 2002), from August 16, 2007 through August 15, 2012 (72 FR 46846, August 21, 2007), from August 15, 2012 through August 15, 2017 (77 FR 50290, August 20, 2012), and from August 12, 2019 through August 11, 2026 (84 FR 40132, August 13, 2019). Of note, 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 2 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.

## **Description of the Specified Activity**

The Navy proposes to continue utilizing SURTASS LFA sonar systems onboard Ocean Surveillance Ships (hereafter T-AGOS) for training and testing conducted under the authority of the Secretary of the Navy in the western and central North Pacific and eastern Indian oceans. Please refer to figure 2-1 of the application for a map of the Study Area. The Navy currently has four T-AGOS surveillance ships equipped with SURTASS LFA sonar systems and may develop and field additional SURTASS LFA sonar equipped vessels, either to replace or complement the Navy's current SURTASS LFA sonar capable fleet.

The Navy is proposing to use 1,100 hours of SURTASS LFA sonar per year. The analysis for the current SURTASS LFA incidental take regulations (84 FR 40132, August 13, 2019) analyzed the use of 592 hours. The change from 592 to 1,100 hours does not reflect new or additional training requirements. Instead, it is the result of a change in how the Navy counts an "hour" of transmission. Previously, SURTASS LFA sonar hours were calculated by adding the portions of time a sonar emits sound during its duty cycle (ratio of time the signal is on compared to off), whereas other Navy sonar systems, such as mid-frequency and high-frequency active sonar, report hours based on "duration" time (total time the source is active, including silent periods between pings). To bring SURTASS LFA sonar in line with these other systems, the Navy developed a conversion method that considers various factors including LFA sonar pings, wave trains, and other classified considerations. As a result, the 1,100 hours of annual SURTASS LFA training proposed are equivalent to the 592 hours under the previous counting method. The SURTASS LFA sonar transmission hours, which are classified as military readiness activities pursuant to the section 315(f) of Public Law 101-314 (16 U.S.C. 703), represent a distribution across three activities that include:

- Training (*i.e.*, contractor crew proficiency training, military crew proficiency training, active training);
- Maintenance and upgrades (*i.e.*, equipment maintenance checks and performance evaluations); and
- Exercises (*e.g.*, Valiant Shield, Rim of the Pacific (RIMPAC)).

The application includes proposed mitigation measures for marine mammals that would be implemented during SURTASS LFA sonar training and testing activities (see section 11 of the application). Proposed activity-based mitigation would generally involve: the use of one or more trained Lookouts, as well as passive acoustics and active acoustics, to detect specific biological resources within a mitigation zone, as well as requirements to implement mitigation (*e.g.*, halt an activity). Mitigation measures are also proposed for specific geographic mitigation areas and consist of a variety of measures including: limiting received levels of sound within a fixed distance from any emergent land (12 nautical miles (nmi; 22 kilometer (km)) and offshore biologically important areas (OBIA; 0.54 nmi (1 km)), and restricting the amount of SURTASS LFA sonar activities conducted within or near OBIA in a given year.

The Navy also proposes to undertake monitoring and reporting efforts to better understand the impacts of their activities on marine mammals and their habitat.

### **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 request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: July 9, 2025.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

[FR Doc. 2025-13000 Filed: 7/10/2025 8:45 am; Publication Date: 7/11/2025]