representative, the SVH conducting the employee incentive program.

(d) Payments made under this part for a specific employee incentive program shall be used solely for that purpose.

(Authority: 38 U.S.C. 101, 501, 1744).

§ 53.31 Annual report.

(a) A State receiving payment under this part shall provide to VA a report setting forth in detail the use of the funds, including a descriptive analysis of how effective the employee incentive program has been in improving nurse staffing in the SVH. The report shall be provided to VA within 60 days of the close of the Federal fiscal year (September 30) in which payment was made and shall be subject to audit by VA.

(b) A State receiving payment under this part shall also prepare audit reports as required by the Single Audit Act of 1984 (see 38 CFR part 41) and submit them to VA.

(Authority: 38 U.S.C. 101, 501, 1744).

§ 53.32 Recapture provisions.

If a State fails to use the funds provided under this part for the purpose for which payment was made or receives more than is allowed under this part, the United States shall be entitled to recover from the State the amount not used for such purpose or the excess amount received.

(Authority: 38 U.S.C. 101, 501, 1744).

§ 53.40 Submissions of information and documents.

All submissions of information and documents required to be presented to VA must be made to the Chief Consultant, Geriatrics and Extended Care (114), VHA Headquarters, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 101, 501, 1744).

§ 53.41 Notification of Funding Decision.

If the Chief Consultant, Geriatrics and Extended Care, determines that a submission from a State fails to meet the requirements of this part for funding, the Chief Consultant shall provide written notice of the decision and the reasons for the decision.

(Authority: 38 U.S.C. 101, 501, 1744).

[FR Doc. E8–7641 Filed 4–10–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 080220219–8445–02]

RIN 0648–AT77

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to a U.S. Navy Shock Trial

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

ACTION: Proposed rule; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for an authorization for the taking of marine mammals incidental to conducting a Full Ship Shock Trial (FSST) of the MESA VERDE (LPD 19) in the offshore waters of the Atlantic Ocean off Mayport, FL. By this document, NMFS is proposing regulations to govern that take. In order to issue final regulations governing the take and Letters of Authorization (LOAs) thereunder, NMFS must determine that the total taking will have a negligible impact on the affected species or stocks of marine mammals. NMFS regulations must set forth the permissible methods of take and other means of effecting the least practicable adverse impact on the affected species or stocks of marine mammals and their habitat, as well as monitoring and reporting requirements. NMFS invites comment on the proposed regulations and findings.

DATES: Comments and information must be received by May 12, 2008.

ADDRESSES: You may submit comments on the application and proposed rule, using the identifier 0648–AT77, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov*.

Fax: 301–427–2521 (using the identifier: *0648–AT77*).

Mail: paper, disk, or CD-ROM comments should be addressed to: Mr. P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* 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.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

A copy of the application, containing a list of references used in this document, and other documents cited herein, may be obtained by writing to the above address, by telephoning one of the contacts listed under **FOR FURTHER INFORMATION CONTACT**, or at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

A copy of the Navy's documents cited in this proposed rule may also be viewed, by appointment, during regular business hours at this address.

FOR FURTHER INFORMATION CONTACT: Ken Hollingshead Office of Protected Resources, NMFS, (301) 713–2289, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the 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 may be granted if NMFS finds that the taking will have no more than 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 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 June 25, 2007, NMFS received an application from the Navy requesting authorization for the taking of marine mammals incidental to its FSST during a 4–week period in the spring/ summer of 2008 utilizing the MESA VERDE (LPD 19), a new amphibious transport dock ship. The shock trial of the MESA VERDE consists of up to four underwater detonations of a nominal 4,536 kilogram (kg) (10,000 pound (lb)) charge at a rate of one detonation per week. The purpose of the proposed action is to generate data that the Navy would use to assess the survivability of SAN ANTONIO Class amphibious transport dock ships. According to the Navy, an entire manned ship must undergo an at-sea shock trial to obtain survivability data that are not obtainable through computer modeling and component testing on machines or surrogates. Navy ship design, crew training, and survivability lessons learned during previous shock trials, and total ship survivability trials, have proven their value by increasing a ship's ability to survive battle damage. Because marine mammals may be killed, injured or harassed incidental to conducting the FSST, regulations and an authorization under section 101(a)(5)(A) of the MMPA are warranted.

Background

According to the Navy, each new class of surface ships must undergo realistic survivability testing to assess the survivability of the hull and the ship's systems, and to evaluate the ship's capability to protect the crew from an underwater explosion. The Navy has developed the shock trial to meet its obligation to perform realistic survivability testing. A shock trial consists of a series of underwater detonations that propagate a shock wave through the ship's hull under deliberate and controlled conditions. The effects of the shock wave on the ship's hull, equipment, and personnel safety features are then evaluated. This information is used by the Navy to validate or improve the survivability of the SAN ANTONIO Class, thereby reducing the risk of injury to the crew, and damage to or loss of a ship. The proposed shock trial qualifies as a military readiness activity as defined in Section 315(f) of Public Law 107–314 (16 USC 703 note).

The Navy proposes that the MESA VERDE (LPD 19), would be exposed to a series of underwater detonations. The MESA VERDE is the third ship in the new SAN ANTONIO (LPD 17) Class of nine planned amphibious transport dock ships being acquired by the Navy to meet Marine Air-Ground Task Force lift requirements. The ships of the SAN ANTONIO Class will be replacements for four classes of amphibious ships-two classes that have reached the end of their service life (LPD 4 and LSD 36) and two classes that have already been retired (LKA 113 and LST 1179)-replacing a total of 41 ships. These new LPDs are a means to support Marine Expeditionary Brigade (MEB) amphibious lift requirements. The mission of the SAN ANTONIO Class will be to operate in various scenarios, as a member of a three-ship, forward-deployed Amphibious Ready Group with a Marine Expeditionary Unit; in a variety of Expeditionary Strike Group scenarios; or as a member of a 12–14 ship MEB.

The FSST is proposed to take place at a location at least 70 km (38 nm) off-shore of Naval Station Mayport within the Navy's Jacksonville/Charleston Operating Area over a four-week period in the summer of 2008, based on the Navy's operational and scheduling requirements for the ship class. The ship and the explosive charge will be brought closer together with each successive detonation to increase the severity of the shock to the ship. This approach ensures that the maximum shock intensity goal is achieved in a safe manner. A nominal 4,536 kilogram (kg) (10,000 pound (lb)) explosive charge would be used. This charge size is used to ensure that the entire ship is subjected to the desired level of shock intensity. The use of smaller charges would require many more detonations to excite the entire ship to the desired shock intensity level. The proposed shock trial would be conducted at a rate of one detonation per week to allow time to perform detailed inspections of the ship's systems prior to the next detonation.

Three detonations would be required to collect adequate data on survivability and vulnerability. The first detonation would be conducted to ensure that the ship's systems are prepared for the subsequent higher severity detonations. The second detonation would be conducted to ensure the safety of the ship's systems during the third detonation, and to assess the performance of system configuration changes implemented as a result of the first detonation. The third and most severe detonation would be conducted to assess system configuration changes from the previous detonations. In the event that one of the three detonations does not provide adequate data, a fourth detonation may be required. As a result, the Navy's proposed action will be described in the remainder of this document as consisting of up to four detonations.

The operations vessel would tow the explosive charge in parallel with the MESA VERDE using the parallel tow method, as illustrated in Figure 1 of the Navy's LOA application. The charge would be located approximately 610 meters (m) (2,000 feet (ft)) behind the operations vessel and suspended from a pontoon at a depth of 61 m (200 ft) below the water surface. Co-located with the charge would be a transponder used to track the exact location of the charge prior to detonation. After each detonation, the shock trial array and rigging debris would be recovered.

For each detonation, the MESA VERDE would cruise in the same direction as the operations vessel at a speed of up to 13 kilometers per hour (km/h) (up to 7 knots (kts or nm/hr)) with the charge directly abeam of it. After each detonation, an initial inspection for damage would be performed. The MESA VERDE would return to the shore facility for a detailed post-detonation inspection and to prepare for the next detonation. For each subsequent detonation, the MESA VERDE would move closer to the charge to experience a more intense shock level.

Comments and Responses

On October 26, 2007 (72 FR 60823), NMFS published a notice of receipt of the Navy's application for an incidental take authorization and requested comments, information and suggestions concerning the request and the structure and content of regulations to govern the take. During the 30–day public comment period, NMFS did not receive any comments.

Affected Marine Mammals

Up to 26 marine mammal species may be present in the waters off Mayport, FL, including 4 mysticetes, 19 odontocetes, 2 pinnipeds, and 1 sirenian (manatee). Mysticetes are unlikely to occur in this area during the spring or summer time period. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, 4 species of beaked whales, and 11 species of dolphins and porpoises. For detailed information on marine mammal species, abundance, density,

and the methods used to obtain this information, reviewers are requested to refer to either the Navy's LOA application or Draft Environmental Impact Statement/Overseas Environmental Impact Statement for the Shock Trial of the MESA VERDE (Draft EIS/OEIS)(see the discussion on NEPA compliance later in this proposed rule for information on the availability of the Navy's NEPA documents).

Potential Impacts to Marine Mammals

Potential impacts on the marine mammal species known to occur in the area offshore of Mayport, FL from shock testing include both lethal and non-lethal injury, as well as harassment. The Navy believes that it is very unlikely that injury will occur from exposure to the chemical by-products released into the surface waters due to the low initial concentrations and rapid dispersion of such by-products. The Navy also believes that no permanent alteration of marine mammal habitat would occur as a result of the detonations. While the Navy does not anticipate any lethal takes would result from these detonations, calculations (including mitigation effectiveness) indicate that the Mayport site has the potential to result in up to 1 take by mortality, 2 Level A harassment takes (injuries), and 282 takings by Level B (behavioral) harassment across all species. Calculations by species are provided in the Navy's LOA application and summarized here.

Mortality and Injury

Marine mammals can be killed or injured by underwater explosions due to the response of air cavities, such as the lungs and bubbles in the intestines, to the shock wave (Office of the Surgeon General, 1991). The criterion for mortality used by the Navy in its analysis for the proposed MESA VERDE shock trial is the onset of extensive lung hemorrhage. In this analysis, the acoustic exposure associated with onset of severe lung injury (extensive lung hemorrhage) is used to define the outer limit of the zone within which species are considered to experience mortality. Extensive lung hemorrhage is considered debilitating and potentially fatal as a result of air embolism or suffocation. For the predicted impact ranges, representative marine mammal body sizes (mean body mass values) and average lung volumes were established, relative densities identified, and species were subsequently grouped by size (i.e., mysticetes and sperm whales, large odontocetes, small odontocetes). Thresholds and associated ranges for the onset of severe lung injury are variable for each of these groups depending upon their mean body mass and lung volume. Tables 4 and 5 in the Navy's LOA application provide a list of the criterion with thresholds and ranges for each grouping by mean body mass.

In the Navy's analysis, all marine mammals within the calculated radius for onset of extensive lung injury (i.e., onset of mortality) are counted as lethal takes. The range at which onset of extensive lung hemorrhage is expected to occur is greater than the ranges at which 50 percent to 100 percent lethality would occur from closest proximity to the charge or from presence within the bulk cavitation region (see Tables 4 and 5 of the Navy's LOA application). The region of bulk cavitation is an area near the water surface above the detonation point in which the reflected shock wave creates a region of cavitation within which smaller animals would not be expected to survive. Because the range for onset of extensive lung hemorrhage for smaller animals exceeds the range for bulk cavitation and all more serious injuries, all smaller animals within the region of cavitation and all animals (regardless of body mass) with more serious injuries than onset of extensive lung hemorrhage are accounted for in the lethal take estimate. The calculated maximum ranges for onset of extensive lung hemorrhage depend upon animal body mass, with smaller animals having the greatest potential for impact, as well as water column temperature and density. Appendix D of the MESA VERDE Draft EIS/OEIS presents calculations that estimate the range for the onset of extensive lung hemorrhage.

For injury (Level A harassment), the criterion applied is permanent threshold shift (PTS), a non-recoverable injury that must result from the destruction of tissues within the auditory system (e.g., tympanic membrane rupture, disarticulation of the middle ear ossicles, and hair-cell damage). Onset-PTS is indicative of the minimum level of injury that can occur due to sound exposure. All other forms of trauma would occur closer to the sound source than the range at which the onset of PTS occurs. In this analysis, the smallest amount of PTS (onset-PTS) is taken to be the indicator for the smallest degree of injury that can be measured. The acoustic exposure associated with onset-PTS is an energy flux density (EL) of 198 decibel (dB) re 1 μPa^2–sec or greater for all mean body mass sizes. Appendix D of the MESA VERDE Draft EIS/OEIS presents calculations that estimate the range for the onset of PTS in blast-exposed marine mammals.

Incidental Level B Harassment

In the Navy's LOA request and the accompanying MESA VERDE Draft EIS/OEIS, temporary threshold shift (TTS) is used as the criterion for Level B (behavioral) harassment for marine mammals. As the Navy explains in the Draft OEIS/EIS:

> Some physiological effects can occur that are non-injurious but which can potentially disrupt the behavior of a marine mammal. These include temporary distortions in sensory tissue that alter physiological function but which are fully recoverable without the requirement for tissue replacement or regeneration. For example, an animal that experiences a temporary reduction in hearing sensitivity suffers no injury to its auditory system, but may not perceive some sounds due to the reduction in sensitivity. As a result, the animal may not respond to sounds that would normally produce a behavioral reaction. This lack of response qualifies as a disruption of normal behavioral patterns-the animal is impeded from responding in a normal manner to an acoustic stimulus (DoN, 2007b).

As explained in previous incidental take authorizations for explosions, the smallest measurable amount of TTS (onset-TTS) is taken as the best indicator for Level B (behavioral) harassment. Because it is considered non-injurious, the acoustic exposure associated with onset-TTS is used to define the outer limit of the range within which marine mammal species are predicted to experience harassment attributable to physiological effects. This follows from the concept that hearing loss potentially affects an animal's ability to react normally to the sounds around it; it potentially disrupts normal behavior by preventing it from occurring. Therefore, the potential for TTS qualifies as a Level B harassment that is mediated by physiological effects upon the auditory system.

In this analysis, a dual criterion for onset-TTS has been developed by the Navy: (1) an energy-based TTS criterion of 183 dB re 1 μPa^2–sec EL, and (2) 224 dB re 1 microPa (23 psi) received peak pressure. If either threshold is met or exceeded, TTS is assumed to have occurred. The thresholds are primarily based on cetacean TTS data from Finneran *et al.* (2002). Since these impulsive sound exposures are similar to the sounds of interest for this analysis, they provide the data that are most directly relevant to this action. The predicted impact ranges applied the more stringent criterion, 183 dB re 1 $microPa^2$–sec weighted energy flux density level.

Corresponding TTS ranges are listed in Table 5 in the Navy's LOA application. For onset-TTS, the more conservative of the two criteria was

chosen by the Navy for determining the range that defined the impact zone, regardless of water depth. Expected numbers of marine mammals within these radii were calculated using mean densities from Appendix B of the MESA VERDE Draft EIS/OEIS. Mean density values were previously adjusted to account for submerged (undetectable) individuals. Because the range defining the zone in which onset-TTS is predicted is much larger than the range corresponding to mortality or injury, more individuals and more species could be affected. Marine mammal species historically present at or near the proposed Mayport location, but not seen during aerial surveys used to develop density estimates (i.e., fin, humpback, minke, sperm, and North Atlantic right whales, and several dolphin species), were not taken into account in these calculations. The results for individual species were rounded to the nearest whole number and then summed. For summations which were less than 0.5, calculations were rounded down to zero (see MESA VERDE Draft EIS/OEIS, Appendix C).

Table 1 (table 7 in the Navy's LOA application) summarizes the mortality, injury, and harassment exposure estimates in summer, for the proposed Mayport location. The Navy estimates that for offshore Mayport, FL in summer 1 marine mammal (a bottlenose dolphin) will be killed and 2 injured. Estimated numbers of marine mammals predicted to experience Level B harassment are 282 individual marine mammals at Mayport, FL in the summer. Results for individual species were rounded up to the nearest whole number.

TABLE 1: EXPOSURE ESTIMATES AT THE PROPOSED MAYPORT LOCATION IN SUMMER

Summer - Number of Individuals (Four detonations, with protective measures)						
	Mortality		Injury		Harassment	
	Calc.	Round	Calc.	Round	Calc.	Round
MARINE MAMMALS						
Minke whale	0.000	0	0.000	0	0.000	0
North Atlantic right whale	0.000	0	0.000	0	0.000	0
Atlantic spotted dolphin	0.133	0	0.321	0	71.706	72
Beaked whales	0.016	0	0.212	0	7.039	7
Bottlenose dolphin	0.508	1	1.227	1	110.124	110
Common dolphin	0.000	0	0.000	0	0.000	0
Dwarf/pygmy sperm whale	0.087	0	0.209	0	9.147	9
False killer whale	0.000	0	0.003	0	0.159	0
Pilot whale	0.006	0	0.078	0	5.568	6
Risso's dolphin	0.370	0	0.894	1	62.241	62
Rough-toothed dolphin	0.000	0	0.001	0	0.000	0
Spinner dolphin	0.096	0	0.233	0	16.266	16
Total - Marine Mammals		**1**		**2**		**282**

Potential Impact on Marine Mammal Habitat

As described in the Draft EIS/OEIS, detonations would have only short-term, localized impacts on water column physical, chemical, and biological characteristics. No lasting or significant impact on marine mammal habitat is anticipated, and no restoration would be necessary. Therefore, marine mammal habitat would not be affected.

Proposed Mitigation and Monitoring Measures

The operational site for the proposed shock trial off Mayport, FL would be a 3.5–nm (6.5–km) radius Safety Range centered on the explosive charge. The concept of Safety Range is an integral part of the Navy's protective measures plan, the purpose of which is to prevent death and injury to marine mammals (and sea turtles). The Safety Range for the Mayport location would be greater than the predicted maximum ranges for mortality and injury associated with detonation of a 4,536 kg (10,000 lb) explosive (see Table 5 of the Navy's LOA application).

The Navy's proposed action includes mitigation and monitoring that would minimize risk to marine mammals. (Mitigation measures for sea turtles have been addressed in the Navy's Draft EIS/OEIS and will be addressed through consultation under the Endangered Species Act (ESA)). The mitigation and monitoring measures to minimize risk to marine mammals are as follows:

(1) Through pre-detonation aerial surveys, the Navy will select a primary and two secondary test sites within the test area where, based on the results of aerial surveys conducted one to two days prior to the first detonation, observations indicate that marine mammal populations are the lowest;

(2) Pre-detonation aerial monitoring will be conducted on the day of each detonation to evaluate the primary test site and verify that the 3.5 nm (6.5 km) Safety Range is free of visually detectable marine mammals (and other critical marine life). If marine mammals are detected in the primary test area, the Navy will survey the secondary areas for marine mammals, and may move the shock test to one of the other two sites;

(3) Independent marine mammal biologists will visually monitor the Safety Range by air (3 observers), onboard the MESA VERDE (6 observers) and onboard the MART support vessel before each test and postpone detonation if any marine mammal is detected within the Safety Range of 3.5 nm (6.5 km);

(4) A detonation will not occur if an ESA-listed marine mammal is detected within the Safety Range, and subsequently cannot be detected. If a North Atlantic right whale is seen, detonation will not occur until the animal is positively relocated outside the Safety Range and at least one additional aerial monitoring of the Safety Range shows that no other right whales are present;

(5) Detonation will not occur if the sea state exceeds 3 on the Beaufort scale (i.e., whitecaps on 33 to 50 percent of surface; 0.6 m (2 ft) to 0.9 m (3 ft) waves), or the visibility is not 5.6 km (3 nm) or greater, and/or the aircraft ceiling (i.e., vertical visibility) is not 305 m (1,000 ft) or greater;

(6) Detonation will not occur earlier than 3 hours after sunrise or later than

3 hours prior to sunset to ensure adequate daylight for pre- and post-detonation monitoring; and

(7) The area will be monitored by observers onboard the MART vessel and by aircraft observers for 48 hours after each detonation, and for 7 days following the last detonation, to find, document and track any injured or dead animals. The aerial survey would search for a minimum of 3 hrs/day; the MART observers would monitor during all daylight hours. If post-detonation monitoring shows that marine mammals were killed or injured as a result of the test, or if any marine mammals are observed in the Safety Range immediately after a detonation, NMFS will be notified immediately and detonations will be halted until procedures for subsequent detonations can be reviewed by NMFS and the Navy and changed as necessary.

More detailed descriptions of the protocols for mitigation and monitoring the shock test can be found in Section 5 of the Navy's Draft EIS/OEIS.

Proposed Reporting Requirements

Within 120 days of the completion of shock testing the MESA VERDE, the Navy will submit a final report to NMFS. This report will include the following information: (1) date and time of each of the detonations; (2) a detailed description of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammals; (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonations and an estimate of the number of marine mammals that may have been harassed due to undetected presence within the Safety Range (based on density estimates); and (4) results of coordination with coastal marine mammal/sea turtle stranding networks.

Preliminary Determinations

Based on the scientific analyses detailed in the Navy's LOA application and further supported by information and data contained in the Navy's Draft EIS/OEIS for the MESA VERDE shock trial and summarized in this proposed rule, NMFS has preliminarily determined that the incidental taking of marine mammals resulting from conducting this FSST would have a negligible impact on the affected marine mammal species or stocks. While NMFS believes that detonation of three to four 4,536–kg (10,000–lb) charges may affect some marine mammals, the latest abundance and seasonal distribution estimates support the finding that the lethal taking of a single bottlenose dolphin, the injury of one bottlenose dolphin and one Risso's dolphin and the Level B harassment of 282 small whales and dolphins will have a negligible impact on the affected populations of marine mammals inhabiting the waters of the U.S. Atlantic Coast. Preliminarily, NMFS concurs with the U.S. Navy, as provided in its LOA application and Draft EIS/OEIS, that impacts can be mitigated by mandating a conservative safety range for marine mammal exclusion, incorporating aerial and shipboard monitoring efforts in the program both prior to, and after, detonation of explosives, and provided detonations are not conducted whenever marine mammals are either detected within the 3.5–nm (6.5–km) Safety Range (or may enter the Safety Range at the time of detonation), or if weather and sea conditions preclude adequate aerial surveillance. Since the potential taking will not result in more than a single mortality and the incidental harassment of 284 marine mammals (including 2 injuries), the potential taking will have only a negligible impact on these stocks. Implementation of required mitigation and monitoring measures will result in the least practicable adverse impact on marine mammal stocks. Therefore, NMFS has preliminarily determined that the requirements of section 101(a)(5)(A) of the MMPA have been met. Finally, the FSST operation will not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses identified in MMPA section 101(a)(5)(A)(i) (16 USC 1371(a)(5)(A)(i)).

National Environmental Policy Act (NEPA)

The Navy has released a Draft EIS under NEPA for the MESA VERDE Shock Trial that was available for public review and comment until December 10, 2007. NMFS is a cooperating agency, as defined by the Council on Environmental Quality (40 CFR 1501.6), in the preparation of this Draft EIS/OEIS. NMFS is currently reviewing the Navy's NEPA documents and will either adopt the Navy's Final EIS/OEIS for this shock trial or prepare its own NEPA document prior to making a determination on the issuance of a final rule and an LOA thereunder. The Navy's Draft EIS/OEIS is available for viewing or downloading at: *http://www.mesaverdeeis.com*.

ESA

On June 12, 2007, the Navy submitted a Biological Assessment to NMFS to initiate consultation under section 7 of the ESA for the MESA VERDE shock trial. The consultation, which will also include this proposed rule, will be concluded prior to issuance of a final rule.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. If implemented, this proposed rule would affect only the U.S. Navy which, by definition, is not a small business. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: April 7, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart O is added to read as follows:

Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS MESA VERDE (LPD–19) by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

Sec.

Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS MESA VERDE (LPD–19) by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

§ 216.161 Specified activity and incidental take levels by species.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of up to four 4,536 kg (10,000 lb) conventional explosive charges within the waters of the U.S. Atlantic Coast offshore Mayport, FL, for the purpose of conducting one full ship-shock trial (FSST) of the USS MESA VERDE (LPD 19) during the period of May 1 through September 30 only.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Minke whale (*Balaenoptera acutorostrata*), dwarf sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); pilot whale (*Globicephala macrorhynchus*); Atlantic spotted dolphin (*Stenella frontalis*); spinner dolphin (*S. longirostris*); bottlenose dolphin (*Tursiops truncatus*); Risso's dolphin (*Grampus griseus*); rough-toothed dolphin (*Steno bredanensis*); false killer whale (*Pseudorca crassidens*); Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*); Gervais' beaked whale (*M. europaeus*); and True's beaked whale (*M. mirus*).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total, across all species, of no more than 1 mortality or serious injury, 2 Level A harassments (injuries), and 282 takings by Level B behavioral harassment (through temporary threshold shift), except that the incidental taking by serious injury or mortality of species listed in paragraph (b) of this section that are also listed as threatened or endangered under the Endangered Species Act, is prohibited.

§ 216.162 Effective dates.

Regulations in this subpart are effective [*date 30 days after date of publication of the final rule in the FEDERAL REGISTER*] through [*date 5 years from date 30 days from date of publication of the final rule in the FEDERAL REGISTER*].

§ 216.163 Mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals in the course of the activity described in § 216.161(a) provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are met.

(b) The activity identified in § 216.161(a) of this part must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be implemented:

(1) If any marine mammals are visually detected within the designated 3.5 nm (6.5 km) Safety Range, detonation must be delayed until the marine mammals are positively reacquired outside the Safety Range either due to the animal(s) swimming out of the Safety Range or due to the Safety Range moving beyond the mammal's last verified location.

(2) If a North Atlantic right whale or other marine mammal listed under the Endangered Species Act is seen, detonation must not occur until the animal is positively reacquired outside the Safety Range and at least one additional aerial monitoring of the Safety Range shows that no other right whales or other listed marine mammals are present;

(3) If

(i) the sea state exceeds 3 on the Beaufort scale (i.e., whitecaps on 33 to 50 percent of surface; 2 ft (0.6 m) to 3 ft (0.9 m) waves),

(ii) the visibility is not 3 nm (5.6 km) or greater, and/or

(iii) the aircraft ceiling (i.e., vertical visibility) is not 1,000 ft (305 m) or greater, detonation must not occur until conditions improve sufficiently for aerial surveillance to be undertaken.

(4) If post-test surveys determine that a serious injury or lethal take of a marine mammal has occurred, (A) the Director, Office of Protected Resources, National Marine Fisheries Service must be notified within 24 hours of the taking determination, (B) the FSST procedures and monitoring methods must be reviewed in coordination with the National Marine Fisheries Service, and (C) appropriate changes to avoid future injury or mortality takings must be made prior to conducting the next detonation.

§ 216.164 Prohibitions.

The following activities are prohibited:

(a) The intentional taking of a marine mammal.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under § 216.106.

§ 216.165 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency with regulatory authority for monitoring the impacts of the activity on marine mammals. The holder must notify the Director, Office of Protected Resources, National Marine Fisheries Service at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate qualified on-site marine mammal observers (MMOs) to monitor the Safety Range for presence of marine mammals and to record the effects of explosives detonation on marine mammals that inhabit the Navy's Jacksonville/Charleston Operating Area offshore of Mayport, Florida.

(c) The test area must be monitored by trained MMOs and other trained individuals, 48–72 hours prior to a scheduled detonation, on the day of detonation, and for a period of time specified in the Letter of Authorization after each detonation. Monitoring shall include, but not necessarily be limited to, aerial and vessel surveillance sufficient to ensure that no marine mammals are within the designated Safety Range prior to or at the time of detonation.

(d) Under the direction of a certified marine mammal veterinarian, examination and recovery of any dead or injured marine mammals will be conducted in accordance with protocols and best practices of the NOAA Health and Stranding Response Program. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea. The presence of uninjured marine mammals in the vicinity of the Safety Range will also be documented and reported.

(e) Activities related to the monitoring described in paragraphs (c) and (d) of this section, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to subpart D of this part.

(f) In coordination and compliance with appropriate Navy regulations, at its

discretion, the National Marine Fisheries Service may place an observer on any ship or aircraft involved in marine mammal monitoring either prior to, during, or after explosives detonation.

(g) A final report must be submitted to the Director, Office of Protected Resources, no later than 120 days after completion of shock testing the USS MESA VERDE (LPD–19). This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation due to presence within the designated Safety Range.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

§ 216.166 Modifications to the Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in§ 216.151(b), the Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 080130104–8105–01]

RIN 0648–AW46

Atlantic Highly Migratory Species; Renewal of Atlantic Tunas Longline Limited Access Permits; and, Atlantic Shark Dealer Workshop Attendance Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would amend the regulations governing the renewal of Atlantic tunas longline limited access permits (LAPs) and amend the workshop attendance requirements for businesses issued Atlantic shark dealer permits. Specifically, the proposed regulatory changes would allow for the renewal of Atlantic tunas longline LAPs that have been expired for more than one year, if the most recent permit holder of record originally qualified for the Atlantic tunas LAP, or if the most recent permit holder of record subsequently obtained a permit by transfer, and has maintained the associated swordfish and shark LAPs through timely renewal. Also, this rule proposes to amend the Atlantic Shark Identification Workshop requirements by: specifying that a workshop certificate be submitted and displayed for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, rather than from each location listed on their dealer permit; and requiring that a copy of a valid workshop certificate be possessed in a truck or other conveyance serving as an extension of a dealer's business.

DATES: Written comments on the proposed rule must be received by May 12, 2008. Public hearings will be held in May of 2008. See the preamble of this notice for specific dates, times, and locations.

ADDRESSES: Written comments on the proposed rule may be submitted to Richard A. Pearson, Fishery Management Specialist, Highly Migratory Species Management Division. Please submit comments using any of the following methods:

• Federal e-Rulemaking Portal: *http://www.regulations.gov*. Include in the subject line the following identifier: ''RIN 0648–AW46.''

• Mail: NMFS HMS Management Division, 263 13th Avenue South, Saint Petersburg, FL, 33701. Please mark the outside of the envelope ''Comments on Proposed Tuna Permits/Workshops Rule.''

• Fax: (727)824–5398.

All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Related documents, including a 2007 Final Environmental Assessment (EA) and Final Rule (72 FR 31688, June 7, 2007) implementing revised vessel upgrading regulations for vessels concurrently issued Atlantic tunas longline, swordfish, and shark LAPs; and the 2006 Final Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) and its Final Rule (71 FR 58058, October 2, 2006) implementing Atlantic Shark Identification Workshops are available from the HMS Management Division website at: *http://www.nmfs.noaa.gov/sfa/hms*, or by contacting Richard A. Pearson (see **FOR FURTHER INFORMATION CONTACT**).

The public hearings will be held in Gloucester, MA; Saint Petersburg, FL; and Silver Spring, MD. See the preamble of this notice for specific dates, times, and locations.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, by phone: 727–824–5399; by fax: 727–824–5398.

SUPPLEMENTARY INFORMATION:

Background

Atlantic tuna and swordfish fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Consolidated HMS FMP is implemented by regulations at 50 CFR part 635.

Renewal of Atlantic Tunas Longline LAPs

LAPs were first implemented in HMS fisheries in 1999, primarily to