

Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington; the territories of Guam, the U.S. Virgin Islands, and American Samoa; and the Commonwealths of Puerto Rico and the Northern Mariana Islands.

\* \* \* \* \*

■ 21. Revise § 80.24 to read as follows:

**§ 80.24 Recreational boating access facilities.**

The State must allocate 15 percent of each annual apportionment under the Dingell-Johnson Sport Fish Restoration Act for recreational boating access facilities. However, a State may allocate more or less than 15 percent of its annual allocation with the approval of the Service's Regional Director. Although a broad range of access facilities and associated amenities can qualify for funding under the 15-percent provision, the State must accommodate power boats with common horsepower ratings, and must make reasonable efforts to accommodate boats with larger horsepower ratings if they would not conflict with aquatic resources management. Any portion of a State's 15-percent set aside for the above purposes that remain unexpended or unobligated after 5 years must revert to the Service for apportionment among the States.

**§ 80.25 [Amended]**

■ 22. Amend § 80.25 by:

- a. In the section heading and paragraph (a), removing the words "Federal Aid in" and adding in their place the words "Dingell-Johnson"; and
- b. In paragraphs (a)(1) and (a)(2), removing the word "Aid".

■ 23. Amend § 80.26 by revising the text of the introductory paragraph and paragraphs (b), (f) introductory text, (g) introductory text, and (h) introductory text to read as set forth below:

**§ 80.26 Symbols.**

We have prescribed distinctive symbols to identify projects funded by the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act and items on which taxes and duties have been collected to support the respective Acts.

\* \* \* \* \*

(b) Other persons or organizations may use the symbol(s) for purposes related to the Wildlife and Sport Fish Restoration Program as authorized by the Director. Authorization for the use of the symbol(s) will be by written

agreement executed by the Service and the user. To obtain authorization, submit a written request stating the specific use and items to which the symbol(s) will be applied to Director, U.S. Fish and Wildlife Service, Washington, DC 20240.

\* \* \* \* \*

(f) The symbol pertaining to the Pittman-Robertson Wildlife Restoration Act is below. \* \* \*

(g) The symbol pertaining to the Dingell-Johnson Sport Fish Restoration Act is below. \* \* \*

(h) The symbol pertaining to the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act when used in combination is below.

\* \* \*

■ 24. Revise § 80.27 to read as follows:

**§ 80.27 Information collection requirements.**

(a) Information gathering requirements include filling out forms to apply for certain benefits offered by the Federal Government. Information gathered under this part is authorized under the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777-777n) and the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669-669k). The Service may not conduct or sponsor, and applicants or grantees are not required to respond to, a collection of information unless the request displays a currently valid OMB control number. OMB has approved our collection of information under OMB control number 1018-0007. Our requests for information will be used to apportion funds and to review and make decisions on grant applications and reimbursement payment requests submitted to the Wildlife and Sport Fish Restoration Program.

(b) Submit comments on the accuracy of the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203.

Dated: July 14, 2008.

**Lyle Laverty,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 216**

[Docket No. 080220219-8829-02]

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:** Final rule.

**SUMMARY:** NMFS, upon application from the U.S. Navy (Navy), issues regulations to govern the unintentional taking of marine mammals incidental to conducting a Full Ship Shock Trial (FSST) of the USS MESA VERDE (LPD 19) in the waters of the Atlantic Ocean offshore of Mayport, FL. Authorization of incidental take is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the affected species or stocks of marine mammals and will not have an unmitigable adverse impact on their availability for taking for subsistence uses. These regulations 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.

**DATES:** July 18, 2008 through July 18, 2013.

**ADDRESSES:** A copy of the Navy's MMPA application, containing a list of references used in this document, NMFS' Record of Decision (ROD), and other documents cited herein, may be obtained by writing to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

A copy of the Navy's Final Environmental Impact Statement/ Overseas Environmental Impact Statement (Final EIS/OEIS) can be downloaded at: <http://www.mesaverdeeis.com>. A copy of the Navy's documents cited in this final rule may also be viewed, by

appointment, during regular business hours at the NMFS address provided here.

**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 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 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). NMFS must promulgate regulations setting forth the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking.

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 (MRAs), such as the FSST, 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 USS MESA VERDE (LPD 19), a new amphibious transport dock ship. The shock trial of the USS 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 behaviorally harassed incidental to conducting the FSST, regulations and an authorization under section 101(a)(5)(A) of the MMPA are required.

**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 U.S.C. 703 note).

The USS 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 USS MESA VERDE, would be exposed to a series of underwater detonations. 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 kg (10,000 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 was analyzed as consisting of up to four detonations.

An operations vessel would tow the explosive charge in parallel with the USS MESA VERDE using the parallel tow method, as illustrated in Figure 1 of the Navy's Letter of Authorization (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 USS 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 USS 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 USS MESA VERDE would move closer to the charge to experience a more intense shock level.

### Comments and Responses

On April 11, 2008 (73 FR 19789), NMFS published a proposed rule on 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 received comments from the U.S. Marine Mammal Commission and from one member of the public. The comments of the individual did not address issues specific to NMFS' proposed action, so it is not addressed further in this final rule. The Commission concurs with NMFS' finding that the planned shock trial is unlikely to have more than a negligible, short-term impact on the potentially affected marine mammal species and stocks, provided that the planned mitigation measures are imposed. Specific recommendations of the Commission follow.

*Comment 1:* The Commission recommends that NMFS issue the requested authorization, subject to a requirement that operations be suspended immediately if more than the anticipated number of marine mammals are killed or injured incidental to the operations or if a dead or seriously injured North Atlantic right whale is found in the vicinity of the operations and the death or injury could have occurred incidental to the proposed activities. Suspension of operations should remain in place until NMFS (1) has determined that the death is not related to the shock testing activities, (2) has reviewed the situation and determined that further deaths or serious injuries are unlikely to occur, or (3) has revised the regulations to authorize additional takes under section 101(a)(5)(A) of the MMPA.

*Response:* Taking marine mammal species not authorized (e.g., North Atlantic right whales), by means not authorized (e.g., ship strike), and/or in numbers greater than authorized in the regulations, will result in at least a temporary suspension of the LOA while NMFS scientists investigate the mitigation and monitoring measures and recommend improvements to that program. While NMFS believes that the 1-week period between detonations will provide sufficient time to investigate any unauthorized takings and recommend a solution, future detonations may need to be delayed pending resolution.

*Comment 2:* The Commission agrees that the data used to estimate marine mammal density, seasonality of habitat use, and other relevant biological factors appear to be the latest and best data from NMFS and other sources. One exception involves the use of data collected jointly by NMFS and the Minerals Management Service (MMS) between 1996 and 2001, which is used instead of more recent data from the MMS' (sperm whale seismic study (Palka and Johnson, 2007)). The final report for that program was published in 2007, and several related, peer-reviewed publications of sighting and tagging data also are available.

*Response:* The Navy's MMPA application for taking marine mammals incidental to conducting the FSST is for takings in the offshore waters of northern Florida and southern Georgia during the spring/summer of 2008. Sperm whales will not be found in these waters at this time of the year. As a result, the new analysis by Palka and Johnson (2007), which was conducted in waters north of Cape Hatteras, is not relevant to the current action. However, NMFS plans to merge the line transect data from Palka and Johnson (2007) with data collected during its previous surveys to investigate habitat preferences of sperm whales in the Atlantic Ocean. This new information will be used by NMFS and the Navy in future MMPA applications.

*Comment 3:* The Commission is concerned about the possible consequences of staging the shock tests in the DeSoto Canyon area because the canyon appears to support relatively high concentrations of sperm whales, beaked whales, and other deep-diving cetaceans.

*Response:* While the Navy's Draft EIS/OEIS identified offshore Norfolk, VA, Mayport, FL, and Pensacola, FL, as locations for conducting the shock trial, the Navy's application under section 101(a)(5)(A) of the MMPA requested an authorization for taking marine

mammals in the offshore waters of Mayport, FL (the Navy's preferred alternative under its Final EIS/OEIS). As a result, the FSST will not take place in DeSoto Canyon, which is off the west coast of Florida.

*Comment 4:* The Commission recommends if the proposed shock trial cannot be completed before the end of summer 2008, that it be postponed until the spring or summer of 2009 to avoid the seasons when North Atlantic right whales are most likely to be present.

*Response:* During the 5-year effectiveness period of these final regulations, NMFS, through an LOA, will authorize take incidental to the Navy's proposed ship shock trial only during a period from May 1 through September 20, except in the case of 2008, where an LOA will authorize take only upon the effective date of the regulations, and in the case of 2013, where an LOA would authorize take only up until the regulations expire.

*Comment 5:* The Commission questions NMFS's view that temporary threshold shift (TTS) constitutes Level B harassment under the MMPA. The Commission continues to believe that an across-the-board definition of "TTS" as constituting no more than Level B harassment inappropriately dismisses the possibility that an affected animal may experience injury or biologically significant behavioral changes if its hearing is compromised, even temporarily. The Commission believes this constitutes Level A harassment under both the generally applicable definition of this term and applicability to military readiness activities. NMFS should revisit this issue and revise its interpretation of TTS to recognize the potential for Level A harassment due to secondary effects of temporary hearing loss.

*Response:* NMFS has addressed to this issue in several previous **Federal Register** notices in regards to potential impacts on marine mammals from explosives and sonar. Please see 70 FR 48675, 48677 (August 19, 2005) and 66 FR 22450 (May 4, 2001) for a detailed response.

### Affected Marine Mammals

Up to 26 marine mammal species may be present in the waters off Mayport, FL: 4 species of mysticetes, 19 species of odontocetes, 2 species of pinnipeds, and 1 sirenian species (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 estimates, and the methods used to obtain this information, reviewers are requested to refer to the Navy's LOA application, and Final EIS/OEIS for the Shock Trial of the USS MESA VERDE (see **ADDRESSES** for information on the availability of the Navy's LOA application and Final EIS/OEIS).

#### 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 Level B harassment. NMFS concurs with the Navy 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. NMFS concurs with the Navy also believe that no permanent alteration of marine mammal habitat would occur as a result of the detonations. The Navy's calculations (which include mitigation effectiveness) indicate that the FSST at the Mayport site, during summer, 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 of odontocetes. 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. The criterion for mortality used by the Navy in its analysis for the proposed USS 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 tends beyond the range of bulk cavitation and because all injuries more serious than onset of extensive lung hemorrhage are considered lethal takes, 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 USS MESA VERDE Final 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 would 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  $\mu\text{Pa}^2\text{-sec}$  or greater for all mean body mass sizes. Appendix D of the USS MESA VERDE Final EIS/OEIS presents calculations that estimate the range for the onset of PTS in marine

mammals exposed to detonations associated with the FSST.

#### Incidental Level B Harassment

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

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.

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 Level B 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  $\mu\text{Pa}^2\text{-sec}$  EL, and (2) a pressure-based TTS criterion of 224 dB re 1  $\mu\text{Pa}$  (23 psi) received peak pressure. For additional information on the establishment of these criteria by the Navy and NMFS, please see Appendix D in the Final EIS/OEIS. 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). Because the impulsive sound exposures analyzed in this cetacean TTS data 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, in this case, the 183-dB re 1  $\mu\text{Pa}^2\text{-sec}$  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 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 USS MESA VERDE Final 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 known to occur 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) and not expected to be present during the time of the year when the FSST will occur (summer), 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 USS MESA VERDE Final EIS/OEIS, App. C).

Table 1 below (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 (a bottlenose dolphin and a Risso's dolphin). Estimated numbers of marine mammals predicted to experience Level B harassment are 282 individual marine mammals at Mayport, FL in the summer.

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**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
<b>MARINE MAMMALS</b>						
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
<b>Total - Marine Mammals</b>		<b>1</b>		<b>2</b>		<b>282</b>

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#### **Potential Impact on Marine Mammal Habitat**

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

#### **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 (onset PTS) 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, which NMFS included in its proposed rule. (Mitigation measures for sea turtles have been analyzed in the Navy's Final

EIS/OEIS and addressed through consultation under section 7 of the Endangered Species Act (ESA) and issuance of a Biological Opinion on this action). The mitigation and monitoring measures that will be implemented 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 day 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 observers (MMOs) will visually monitor the Safety Range by air (2 MMOs), onboard the USS MESA VERDE (a minimum of 6 MMOs) and onboard the Marine Animal Recovery Team (MART) support vessel (a minimum of 2 MMOs) before each test and coordinate with the Lead Scientist and Shock Trial Officer to 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 or other ESA-listed marine mammal 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 or other listed marine mammals 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 equal to or less than 5.6 km (3 nm), and/or the aircraft ceiling (i.e., vertical visibility) is equal to or less than 305 m (1,000 ft);

(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 will search for a minimum of 3 hrs/day; the MART observers will monitor during all daylight hours. If post-detonation monitoring shows that marine mammals were killed or injured as a result of the shock trial, 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 the shock trial's mitigation

and monitoring can be found in Section 5 of the Navy's Final EIS/OEIS.

### Reporting Requirements

Within 120 days of the completion of the USS MESA VERDE shock trial, 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 in the Safety Range at the time of the detonation based on post-test aerial monitoring and current density estimates; and (4) results of coordination with coastal marine mammal/sea turtle stranding networks.

### 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 Final EIS/OEIS for the USS MESA VERDE shock trial and summarized in the preamble to this final rule, NMFS has determined that the incidental taking of marine mammals resulting from conducting an FSST on the USS MESA VERDE in the waters offshore of Mayport, FL during the summer months would have a negligible impact on the affected marine mammal species or stocks. While detonation of up to four 4,536-kg (10,000-lb) charges may adversely 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 behavioral harassment of 282 small whales and dolphins of 7 different genera will have a negligible impact on the affected species or stocks of marine mammals inhabiting the waters of the U.S. Atlantic Coast. Impacts will be mitigated by mandating a conservative safety range for pre-detonation marine mammal exclusion, incorporating aerial and shipboard monitoring efforts in the program both prior to, and after, detonation of explosives, and prohibiting detonations 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. Implementation of

required mitigation and monitoring measures will result in the least practicable adverse impact on marine mammal stocks. NMFS has also determined that 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 U.S.C. 1371(a)(5)(A)(i)). Therefore, NMFS has determined that the requirements of section 101(a)(5)(A) of the MMPA have been met.

### National Environmental Policy Act (NEPA)

The Navy released its Draft EIS/OEIS for the USS MESA VERDE shock trial for public review on October 26, 2007 (72 FR 60846; 72 FR 61329, October 30, 2007) with the public review period ending on December 10, 2007. On May 30, 2008 (73 FR 3115), the Environmental Protection Agency (EPA) announced receipt of the Navy's Final EIS/OEIS on this action. NMFS is a cooperating agency, as defined by the Council on Environmental Quality (40 CFR 1501.6), in the preparation of both the Draft and Final EIS/OEIS. The Navy's Draft and Final EIS/OEISs are available for viewing or downloading at: <http://www.mesaverdeeis.com>.

In accordance with NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in the Navy's Final EIS/OEIS and determined that the Navy's Final EIS/OEIS accurately and completely describes the Navy proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. NMFS has also concluded that the impacts on the human environment (particularly on marine mammals) evaluated by the Navy are substantially the same as the impacts of NMFS/NOAA's proposed action to issue these regulations and an authorization under section 101(a)(5)(A) of the MMPA to the Navy to take marine mammals, by harassment, incidental to conducting an FSST on the USS MESA VERDE in the waters off Mayport, FL. In addition, the NMFS/NOAA has evaluated the U.S. Navy's Final EIS/OEIS and found that it includes all required components for adoption by NOAA, including: (1) A discussion of the purpose and need for the action; (2) a summary of the EIS, including the issues to be resolved, and in the Final EIS/OEIS, the major conclusions and

areas of controversy including those raised by the public; (3) a listing of the alternatives to the proposed action; (4) a description of the affected environment; (5) a succinct description of the environmental impacts of the proposed action and alternatives, including cumulative impacts; and (6) a listing of agencies and persons consulted, and to whom copies of the EIS have been sent.

Based on this review and analysis, NMFS/NOAA has adopted the Navy's Final EIS/OEIS under the Council on Environmental Quality's Regulations for Implementing the National Environmental Policy Act (40 CFR 1506.3). As a result, NMFS has determined it is not necessary to issue an Environmental Assessment (EA), supplemental EA or a new EIS for the issuance of regulations and an LOA to the Navy for the taking of marine mammals incidental to this activity. NMFS (ROD is available on NMFS' Web site (see **ADDRESSES**).

#### ESA

On June 12, 2007, the Navy submitted a Biological Assessment to NMFS to initiate consultation under section 7 of the ESA for the USS MESA VERDE shock trial. NMFS concluded consultation with the Navy on this action on July 17, 2008. The conclusion of that consultation is NMFS' Biological Opinion that conducting an FSST of the USS MESA VERDE in the waters offshore of Mayport, FL during the summer of 2008 and the issuance by NMFS of an incidental take authorization under section 101(a)(5)(A) for this activity are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

#### 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 certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage, 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 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.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effective date for this final rule under 5 U.S.C. 553(d)(3) as impracticable and contrary to the public interest. This rule governs NMFS' issuance of an LOA and sets forth the mitigation, monitoring and reporting requirements with which the U.S. Navy must comply in conducting the shock test of the USS MESA VERDE. The Navy has provided NMFS with information that a 30-day delay in effective date would eliminate any opportunity to conduct the FSST for two full years because of the short window available in 2008 to conduct the test and because the Navy can conduct LPD 17 class FSSTs on the East Coast only every other year. The Navy is required by 10 U.S.C. Section 2366 to conduct realistic life fire testing of new classes of ships and the FSST is a critical piece of this testing. Additionally the Navy conducts the FSST on a class of ships prior to overseas deployment, to ensure that the ship can survive damage sustained in a combat situation. As a result, the delay would negatively affect national security and military readiness by requiring the Navy to either alter the scheduled deployment of several ships, or send ships overseas without their normal validation of combat survivability. For these reasons, NMFS finds good cause to waive the 30-day delay in effective date. This rule is effective upon filing.

#### Changes From the Proposed Rule

Other than minor edits to the rule for clarification and consistency NMFS has made one change to the rule:

1. The common dolphin has been added to the marine mammal species authorized for incidental taking in 50 CFR 216.161(b).

#### List of Subjects in 50 CFR Part 216

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

Dated: July 18, 2008.

**John Oliver**,  
Deputy Assistant Administrator for  
Operations, National Marine Fisheries  
Service.

■ For reasons set forth in the preamble, 50 CFR part 216 is 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.

- 216.161 Specified activity and incidental take levels by species.
- 216.162 Effective dates.
- 216.163 Mitigation.
- 216.164 Prohibitions.
- 216.165 Requirements for monitoring and reporting.
- 216.166 Modifications to the Letter of Authorization.

#### 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 persons 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 time period between July 23 and September 20, 2008, and May 1 and September 20, 2009 through 2013.

(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*); common dolphin (*Delphinus delphis*), 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 takings by Level A



harassment (injuries), and 282 takings by Level B behavioral harassment (through temporary threshold shift). The incidental taking of any species listed as threatened or endangered under the Endangered Species Act is prohibited.

**§ 216.162 Effective dates.**

Regulations in this subpart are effective July 18, 2008 through July 18, 2013.

**§ 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 requirements of these regulations and such Letter of Authorization are met.

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

(1) Except as provided under the following paragraph (2), if any marine mammals are visually detected within the designated 3.5 nm (6.5 km) Safety Range surrounding the USS MESA VERDE, detonation must be delayed until the marine mammals are positively resighted 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 (ESA) is seen within the Safety Range, detonation must not occur until the animal is positively resighted outside the Safety Range and at least one additional aerial monitoring of the Safety Range shows that no other right whales or other ESA-listed marine mammals are present;

(3) If 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), the visibility is equal to or less than 3 nm (5.6 km), or the aircraft ceiling (i.e., vertical visibility) is equal to or less than 1,000 ft (305 m), detonation must not occur until conditions improve sufficiently for aerial surveillance to be undertaken.

(4) A detonation must not be conducted earlier than 3 hours after sunrise or later than 3 hours prior to sunset to ensure adequate daylight for conducting the pre-detonation and post-detonation monitoring requirements in § 216.165;

(5) If post-detonation surveys determine that an injury or lethal take of a marine mammal has occurred,

(i) the Director, Office of Protected Resources, National Marine Fisheries Service must be notified within 24 hours of the taking determination,

(ii) the FSST procedures and monitoring methods must be reviewed in coordination with the National Marine Fisheries Service, and

(iii) appropriate changes to avoid future injury or mortality must be made prior to conducting the next detonation.

**§ 216.164 Prohibitions.**

No person in connection with the activities described in § 216.161(a) shall:

(a) Take any marine mammal not specified in § 216.161(b);

(b) Take any marine mammal specified in § 216.161(b) other than by incidental, unintentional Level A or Level B harassment or mortality;

(c) Take a marine mammal specified in § 216.161(b) if such taking results in more than a negligible impact on the species or stocks or marine mammals;

(d) Violate, or failure to comply with, the requirements of 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, or 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 at least 6 experienced on-site marine mammal observers (MMOs) onboard the USS MESA VERDE, 2 experienced MMOs onboard the survey aircraft and 2 experienced MMOs onboard the Navy support vessel each of whom has been approved in advance by NMFS, 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)(1) Prior to each detonation for the FSST, an area will be located which has been determined by an aerial survey to contain the lowest marine mammal abundance relative to other areas within the area off Mayport, FL.

(2) The test area must be monitored by aerial and shipboard monitoring for the following periods of time:

(i) 48–72 hours prior to a scheduled detonation (aircraft only),

(ii) on the day of detonation,

(iii) immediately after each detonation and continuing for at least 3 hours subsequent to each detonation (or until sighting conditions become unsuitable for visual observations),

(iv) for at least 2 days after each detonation, unless weather and/or sea conditions preclude surveillance, in which case post-test survey dates must be extended, and

(v) for a period of 7 days after the last detonation for a minimum of 3 hours per day at the detonation site and down-current from the site.

(3) Monitoring shall include, but is not 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 an attending U.S.-licensed veterinarian (an attending U.S. licensed veterinarian is one who has graduated from a veterinary school accredited by the American Veterinary Medical Association Council on Education, has a certificate by the American Veterinary Graduates Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education, as determined by the NMFS Assistant Administrator), an 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.

(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 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) Subject to relevant Navy regulations, the National Marine Fisheries Service at its discretion 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 the USS MESA VERDE (LPD 19) shock trial. This report must contain the following information:

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

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

(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 and an estimate of the number, by species, of marine mammals in the Safety Range at the time of detonation based on post-test aerial monitoring and current density estimates.

(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 a 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.

[FR Doc. 08-1461 Filed 7-18-08; 3:06 pm]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 660**

[Docket No. 070430095-7095-01]

RIN 0648-XH85

#### **Fisheries Off West Coast States; Modifications of the West Coast Commercial Salmon Fishery; Inseason Action #1 and #2**

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

**ACTION:** Modification of fishing seasons; request for comments.

**SUMMARY:** NOAA Fisheries announces two inseason actions in the ocean salmon fisheries. Inseason action #1 modified the commercial fishery from Cape Falcon, Oregon, to the Oregon/California Border, and from Horse Mountain, California, to Point Arena, California. Inseason action #2 modified the recreational fishery from Cape Falcon, Oregon, to Humbug Mountain, Oregon and from Horse Mountain, Oregon, to the U.S./Mexico Border.

**DATES:** Inseason action #1 was effective on March 15, 2008, in the area from Cape Falcon, Oregon, to the Oregon/California Border, effective April 7, 2008, in the area from Horse Mountain to Point Arena, CA. Inseason action #2 was effective March 15, 2008 in the area from Cape Falcon to Humbug Mountain, Oregon, effective on April 1, 2008, in the area from Horse Mountain to Point Arena, CA, and effective April 15, 2008, in the area from Point Arena, CA, to the U.S./Mexico Border. Comments will be accepted through August 8, 2008.

**ADDRESSES:** You may submit comments, identified by 0648-AV56, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- Fax: 206-526-6736 Attn: Sarah McAvinchey
- Mail: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115-0070 or to Rod McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213

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.

**FOR FURTHER INFORMATION CONTACT:** Sarah McAvinchey 206-526-4323.

**SUPPLEMENTARY INFORMATION:** In the 2007 annual management measures for ocean salmon fisheries (72 FR 24539, May 3, 2007), NMFS announced the

commercial and recreational fisheries in the area from Cape Falcon, Oregon, to the U.S./Mexico Border.

On March 13, 2008, the Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife and California Department of Fish and Game. Information related to catch to date, Chinook and coho catch rates, and possible impacts to Sacramento Fall Chinook were discussed. These inseason actions were taken because these fisheries were to occur in the impact area for Sacramento Fall Chinook. This stock was projected not to meet its escapement goal in 2008 and therefore consistent with the Magnuson-Stevens Act all fisheries that impact the stock were to be closed. By moving the opening dates of these fisheries NMFS and the Council would have more time to evaluate the impacts of these fisheries on the Sacramento River fall Chinook stock.

As a result, on March 13, 2008, the states recommended, and the RA concurred that inseason action #1 would move the opening date of the commercial fishery in the area from Cape Falcon, Oregon, to the Oregon/California Border, from March 15, 2008, to April 15, 2008. This action also closed the area from Horse Mountain, California, to Point Arena, California, effective April 7, 2008. Inseason action #2, modified recreational fishing in the area from Cape Falcon, Oregon, to Humbug Mountain, Oregon, by adjusting the opening date of the fishery from March 15, 2008, to April 15, 2008. Inseason action #2 also closed the area from Horse Mountain, California, to Point Arena, California, effective April 1; and closed the area from Point Arena, California, to the U.S./Mexico Border effective April 5, 2008. Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i).

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206-526-6667 and 800-662-9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and