

compliance parameters, and contingency measures established for the SO<sub>2</sub> sources impacting the Indiana Area.

EPA has determined that Pennsylvania's SO<sub>2</sub> attainment plan for the 2010 1-hour SO<sub>2</sub> NAAQS for Indiana County meets the applicable requirements of the CAA. Thus, EPA is proposing to approve Pennsylvania's attainment plan for the Indiana Area as submitted on October 11, 2017. EPA's analysis for this proposed action is discussed in Section III of this proposed rulemaking. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Final approval of this SIP submittal will remove EPA's duty to promulgate and implement a FIP under CAA section 110(c).

#### V. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the portions of the COAs or COs entered between Pennsylvania and Conemaugh, Homer City, Keystone, and Seward that are not redacted, as well as the unredacted portions of the TVOPs or Plan Approval included in the October 11, 2017 submittal. These include emission limits and associated compliance parameters (*i.e.* the measures which include system audits, record-keeping and reporting, and corrective actions). EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rulemaking for more information).

#### VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office

of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, concerning the SO<sub>2</sub> attainment plan for the Indiana nonattainment area in Pennsylvania, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 27, 2018.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 218

**RIN 0648-XG273**

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

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

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

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

**DATES:** Comments and information must be received no later than August 13, 2018.

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910-3225 and electronic comments should be sent to [ITP.Youngkin@noaa.gov](mailto:ITP.Youngkin@noaa.gov).

**Instructions:** NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/node/23111> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Dale Youngkin, Office of Protected Resources, NMFS; phone: (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>. In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) generally direct the Secretary of Commerce (further delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

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

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that

cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

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

The National Defense Authorization Act (NDAA) (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and defined “harassment” as it applies to a “military readiness activity” as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

**Summary of Request**

On June 4, 2018, NMFS received an application from the Navy requesting authorization to take individuals of 46 species of marine mammals (10 mysticete, 31 odontocete, and 5 pinniped species) representing 139 stocks, by harassment, incidental to training and testing activities conducted under the authority of the Secretary of the Navy (categorized as military readiness activities) using SURTASS LFA sonar beginning August 13, 2019.

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

NMFS published the first incidental take rule for SURTASS LFA sonar, effective from August 2002 through August 2007, on July 16, 2002 (67 FR 46712); the second rule, effective from August 2007 through August 2012, on August 21, 2007 (72 FR 46846); and the third rule, effective from August 2012 through August 2012, on August 20, 2012 (77 FR 50290).

In 2016, the Navy submitted an application for a fourth incidental take regulation under the MMPA (DoN, 2016) for the taking of marine mammals by harassment incidental to the deployment of up to four SURTASS

LFA sonar systems from August 15, 2017 through August 14, 2022. NMFS published a proposed rule on April 27, 2017 (82 FR 19460). On August 10, 2017, the Secretary of Defense, after conferring with the Secretary of Commerce, determined that it was necessary for the national defense to exempt all military readiness activities that use SURTASS LFA sonar from compliance with the requirements of the MMPA for two years from August 13, 2017 through August 12, 2019, or until such time when NMFS issues regulations and a LOA under Title 16, Section 1371 for military readiness activities associated with the use of SURTASS LFA sonar, whichever is earlier. During the exemption period, all military readiness activities that involve the use of SURTASS LFA sonar are required to comply with all mitigation, monitoring, and reporting measures set forth in the 2017 National Defense Exemption (NDE) for SURTASS LFA sonar. As a result of the NDE (available at [http://www.surtass-lfa-eis.com/wp-content/uploads/2018/01/SURTASS\\_LFA\\_NDE\\_10Aug17.pdf](http://www.surtass-lfa-eis.com/wp-content/uploads/2018/01/SURTASS_LFA_NDE_10Aug17.pdf)), NMFS did not finalize its April 2017 proposed rule.

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

### Description of the Specified Activity

The Navy proposes to continue to use the system onboard USNS surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy in the western and central Pacific Ocean and eastern Indian Ocean. The U.S. Navy currently has four surveillance ships that utilize SURTASS LFA sonar systems: the USNS ABLE, the USNS EFFECTIVE, the USNS IMPECCABLE and the USNS VICTORIOUS. The Navy may develop and field additional SURTASS LFA equipped vessels, either to replace or complement the Navy's current SURTASS LFA capable fleet, and these vessels may be in use beginning in the fifth year of the time period covered by their latest application. Thus, the Navy's activity analysis included consideration of the sonar hours associated with future testing of new or updated LFA sonar system components and new ocean surveillance vessels. This resulted in two annual transmit hour scenarios: Years 1 to 4 would entail a maximum of 496 LFA transmission hours total per year across all SURTASS LFA vessels, while year 5 and beyond would include an increase in LFA sonar transmit hours to a maximum of 592 hours across all vessels to accommodate future testing of new ocean surveillance vessels and new or updated sonar system components.

The number of transmission hours per year is pooled across all SURTASS LFA sonar equipped vessels, regardless of the number of ships. The SURTASS LFA sonar transmission hours represent a distribution across six activities that include:

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

The application describes the activity types, the equipment and platforms involved, and the duration and potential locations of the specified activities.

A suite of proposed mitigation measures have been included in the proposed action to minimize the potential effects to marine mammals that could potentially be affected during SURTASS LFA sonar activities. For training and testing activities of the proposed action, these mitigation measures include:

- Restricting the use of SURTASS LFA sonar such that it will not operate in Arctic and Antarctic waters;

- Restricting the use of SURTASS LFA sonar from within the foreign territorial seas of other nations;
- Ensuring sound pressure levels (SPL) will not exceed 180 decibels (dB) re 1 micro pascals ( $\mu\text{Pa}$ ) root mean square (rms) within 12 nautical miles of any emerged features of any coastline, or within designated offshore biologically important areas (OBIA) for marine mammals; and
- Minimizing exposure of marine mammals to SURTASS LFA sonar signal received levels of 180 dB re 1  $\mu\text{Pa}$  (rms) or more by monitoring for their presence and suspending sonar transmission when animals enter the mitigation zone.

### Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the Navy's request and NMFS' development and implementation of regulations governing the incidental taking of marine mammals by the Navy's SURTASS LFA sonar activities.

Dated: July 9, 2018.

#### **Donna S. Wieting,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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