

**NATIONAL MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE**

**NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE**

**AND**

**UNITED STATES NAVY**

**TO ASSIST IN**

**MARINE MAMMAL STRANDING INVESTIGATIONS**

Agreement No. PR-055

1. PARTIES

a. This document constitutes an agreement between the National Marine Fisheries Service (NMFS) National Oceanic and Atmospheric Administration (NOAA) U.S. Department of Commerce and the Office of the Deputy Chief of Naval Operations for Fleet Readiness and Logistics, (OPNAV N4), Department of the Navy (the Parties). This National Memorandum of Understanding (MOU) is entered into by and between NMFS Headquarters and OPNAV N4.

2. PURPOSE

a. Since 1992, the NMFS Marine Mammal Health and Stranding Response Program has coordinated responses to marine mammal strandings and will continue to oversee stranding responses and investigations through sound science. In 2009, NMFS issued Marine Mammal Protection Act (MMPA) incidental take regulations and associated Letters of Authorization (LOAs) for the Hawaii Range Complex (HRC), the Southern California (SOCAL) Range Complex, and Atlantic Fleet Active Sonar Training (AFAST) Study Area which required the Navy and NMFS to develop a Memorandum of Agreement or other mechanism establishing a framework whereby the Navy can assist NMFS with stranding investigations in

certain circumstances. This National MOU establishes a framework consistent with federal fiscal law requirements whereby the Navy may assist NMFS with response to and investigation of Uncommon Stranding Events (USEs) during major training exercises (MTEs), as these are defined for specific Navy Range Complexes or training activities in final Stranding Response Plans required by final MMPA regulations (either previously issued or issued between now and the expiration of the National MOU). Currently, final regulations and associated Stranding Response Plans are in place for the HRC, SOCAL Range Complex, AFAST Study Area, Mariana Islands Range Complex (MIRC), and in the Gulf of Alaska. Nationally consistent regional implementation will further the intent of this National MOU and the applicable MMPA regulations for specific range complexes and training exercises.

b. This National MOU describes the coordinated services the Navy may provide to assist with Phase 1 and Phase 2 Investigations of USE (See attachment (1) for definition of Phase 1 and 2, USE and MTEs). The Parties agree to develop Regional Stranding Investigation Assistance Plans (RSIAP), which will serve to describe, in further detail, specific examples of the types of assistance that NMFS regional staff anticipates, the region-specific services that are available for the Navy to potentially provide, and the protocols and mechanisms for efficiently making those services available for stranding investigations. The RSIAPs will be consistent with federal fiscal law and will be carried out as Implementing Agreements to this MOU.

### 3. AUTHORITIES

a. NMFS Headquarters has the authority to enter into this agreement under:

(1) The Marine Mammal Protection Act, 16 U.S.C. § 1361 *et seq.*

(a) § 1371(a)(5)(A)

1 Final Rule for the Taking and Importing of Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST), 74 FR 4843, January 27, 2009.

2 Final Rule for the Taking and Importing of Marine Mammals; U.S. Navy Training in the Southern California Range Complex, 74 FR 3881, January 21, 2009.

3 Final Rule for the Taking and Importing of Marine Mammals; U.S. Navy Training in the Hawaii Range Complex, 74 FR 1455, January 12, 2009

4 Final Rule for the Taking and Importing of Marine Mammals; U.S. Navy Training Activities and Research, Development, Testing and Evaluation Conducted Within the Mariana Islands Range Complex, 75 FR 45527, August 3, 2010.

5 Final Rule for the Taking and Importing of Marine Mammals; U.S. Navy Training Activities and Research, Development, Testing and Evaluation Conducted Within the Gulf of Alaska, 76 FR 25480, May 4, 2011.

(b) § 1382(b) which authorizes and directs each Federal agency to cooperate in carrying out the purposes of the MMPA

(c) § 1382(c) which authorizes the Secretary of Commerce to enter into agreements as may be necessary to carry out programs for the conservation of marine mammals with any Federal agency

(d) §§ 1421 and 1421b which authorize the Secretary of Commerce to establish a marine mammal health and stranding response program and to enter into agreements with any person to take marine mammals as part of their official duties under § 1379(h)(1) in response to a stranding.

(2) The Endangered Species Act, 16 U.S.C. § 1531 *et seq.* § 1536(a)(1) which requires that all Federal agencies use their authorities to further interagency cooperation by carrying out programs for the conservation of endangered and threatened species.

(3) The Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-667e. § 661 which authorizes the Secretary of Commerce to accept contributions of funds in furtherance of conservation and protection of wildlife.

b. OPNAV N4 has the authority to enter into this agreement under:

(1) The Marine Mammal Protection Act, 16 U.S.C. § 1361 *et seq.*

(a) § 1371(a)(5)(A)

1 Final Rule for the Taking and Importing of Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST), 74 FR 4843, January 27, 2009.

2 Final Rule for the Taking and Importing of Marine Mammals; U.S. Navy Training in the Southern California Range Complex, 74 FR 3881, January 21, 2009.

3 Final Rule for the Taking and Importing of Marine Mammals; U.S. Navy Training in the Hawaii Range Complex, 74 FR 1455, January 12, 2009.

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5 Final Rule for the Taking and Importing of Marine Mammals; U.S. Navy Training Activities and Research, Development, Testing and Evaluation Conducted Within the Gulf of Alaska, 76 FR 25480, May 4, 2011.

(b) § 1382(b) which authorizes and directs each Federal agency to cooperate in carrying out the purposes of the MMPA.

(2) The Endangered Species Act, 16 U.S.C. § 1531 *et seq.* § 1536(a)(1) which requires that all Federal agencies use their authorities to further interagency cooperation by carrying out programs for the conservation of endangered and threatened species.

#### 4. BACKGROUND

a. NMFS implements the MMPA including Title IV, for marine mammals of the Order Cetacea and Suborder Pinnipedia (except walrus) in all U.S. waters and on the high seas. This includes the development, oversight and operation of a national stranding network that responds to, evaluates, rescues, and rehabilitates stranded marine mammals; coordinates effective responses to marine mammal unusual mortality events; and investigates causes of abnormalities, strandings or injuries. The network consists of over one hundred independent public, private and governmental institutions some of which periodically receive some federal support. Few network participants are employees of NMFS or other federal agencies. The network has operations in all coastal states and territories and responds to 5,000-7,000

reported strandings per year. The entire marine mammal stranding network operates as a public-private partnership on a national level and is managed regionally by six NMFS Regional Administrators.

b. NMFS has developed protocols for response, treatment, sampling, and data collection. NMFS also provides training and sets standards for analyses using partner organizations and agencies, and has established a database to manage Level A data collected during stranding investigations. The goals of the NMFS Stranding program are to: collect and disseminate health and health trend data on populations of marine mammals in the wild; correlate the health and health trend data with information on physical, chemical, and biological environmental parameters; and provide effective responses to unusual mortality events.

## 5. AGREEMENT OF THE PARTIES

a. The Parties agree to cooperate to the extent practical and authorized by law in responding to USEs during MTEs, as defined in attachment (1) and as these are defined for specific Navy Range Complexes or training activities in final Stranding Response Plans required by final MMPA regulations (either previously issued or issued between now and the expiration of the National MOU). Such cooperation shall comply with all applicable statutes and regulations, including those applicable to fiscal and procurement law. Additionally, the Parties agree that the response and support activities to be provided by the Navy Regional Commanders and Fleets are dependent on resource availability, must be consistent with military security, must be logistically feasible, and must not negatively affect Navy operational or installation commitments.

b. The Navy (consistent with provisions of this National MOU) agrees to provide NMFS the following in-kind services in support of NMFS's USE responses and investigations required during Navy's MTEs, subject to fiscal and procurement law requirements, and consistent with resource availability, military security, logistical feasibility, and operational or installation commitments:

(1) Survey support.

(2) Logistics support which may include equipment, supplies, or other such support.

- (3) Transportation support.
- (4) Biologist/veterinary/specialty support.
- (5) Access to Navy property.

c. The Parties agree to share data (as information security requirements allow) relevant to activities conducted under this National MOU. Data-sharing shall begin pursuant to the National MOU and specific data sharing procedures shall be further described in the RSIAPs. The Parties will meet annually to discuss the implementation and progress of prior activities and mechanisms to improve stranding response, investigations, and communication for the succeeding year.

d. Navy and NMFS agree to develop RSIAPs.

(1) Navy and NMFS will develop a template for the RSIAPs to provide to Navy Regional Commanders and Fleets and to NMFS regional offices and science centers within 120 days of the signature date of this National MOU. The RSIAP template will identify high priority species based on the USE species identified in each of the final rules. The RSIAP template will identify regional assets, equipment, locations, or services: (1) that may be needed for stranding investigations and, (2) that Navy may be able to provide and the mechanism by which such assistance will be implemented within a given geographic area. These geographic areas include:

- (a) Mid-Atlantic (Maine through Virginia)
- (b) North Carolina
- (c) Southeast (South Carolina through Florida, Alabama, Mississippi, Louisiana, and Texas)
- (d) Alaska
- (e) Southwest (California)
- (f) Hawaii
- (g) Mariana Islands
- (h) Gulf of Alaska.

e. Within 12 months after completion of the RSAIP template, the Navy and NMFS regional offices will complete RSIAPs (based on the template) that include the Atlantic Fleet Active Sonar Training (AFAST) Study Area, Southern California (SOCAL) Range Complex, Hawaii Range Complex (HRC), Mariana Islands Range Complex (MIRC), and the Temporary Maritime Activities Area (TMAA) within the Gulf of Alaska (GOA).

f. The Parties agree to meet quarterly until all RSIAPs are complete to assess progress and may designate new completion dates for the documents identified in paragraph 5e, and if deemed necessary by both parties.

g. The Parties agree to exchange points of contact (POCs) to coordinate assistance requests under this National MOU. Parties may modify POCs in RSIAPs when necessary, but the list will be updated at least once per year during the annual meeting. This information will be maintained in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a, and each agency will make every effort to avoid disseminating or disclosing personally identifiable information to the public or any person or entity in or outside the Federal Government who does not have a legitimate need or use for such information.

h. The Parties recognize that NMFS possesses limited marine mammal stranding response and investigation resources and may not be in a position to fully implement all of the tests and procedures listed as part of Phase 1 and Phase 2 Investigations as defined in attachment (1). If NMFS identifies that specific tests, procedures, or analyses are needed to complete Phase 1 and Phase 2 Investigations, NMFS may request assistance from the Navy to do so. NMFS and the Navy may enter into additional implementing agreements to authorize the Navy to transfer funds to NMFS consistent with federal fiscal law, to support the implementation of the necessary investigational procedures/ tests/analyses.

## 6. OTHER PROVISIONS

a. NMFS has developed stranding response procedures and guidelines. NMFS will work with the Navy POCs to ensure that Navy personnel providing assistance are informed of these practices (in advance of their assistance to the degree possible) so that they can comply with them when assistance is rendered.

b. Specific activities that involve the transfer of funding, offer of services or the loan, use or access to property will comply with fiscal or procurement law.

c. Consistent with fiscal law, nothing in this National MOU precludes the Navy from, or requires the Navy to, assist with responses to non-USEs, or other NMFS conservation missions (e.g. Unusual Mortality Events (UMEs) or disease outbreaks such as public health-emerging infectious disease situations).

d. Nothing in this National MOU precludes the Parties from developing additional RSIAPs or other agreements from those identified in paragraph 5e if there is mutual agreement by both Parties that the RSIAPs or agreements will further the intent of this National MOU.

e. Nothing in this National MOU obligates either Party to expend appropriations, in-kind services, or equipment or enter into any contract or other obligation.

## 7. CONTACTS

The contacts of each Party to this agreement are:

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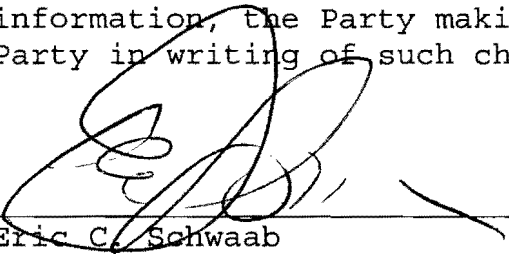
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8. PERIOD OF AGREEMENT AND MODIFICATION

This agreement will become effective when signed by both Parties. The agreement will expire on May 4, 2016, but may be extended up to one year by mutual agreement of both parties. The agreement may be amended at any time by mutual consent of the Parties. If there is a change regarding the contact information, the Party making the change will notify the other Party in writing of such change as soon as possible.



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Eric C. Schwaab  
Assistant Administrator  
NOAA Fisheries Service  
U.S. Department of Commerce  
Silver Spring, MD

11-1-11  
Date



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W. R. Burke  
Vice Admiral, U.S. Navy  
Deputy Chief of Naval Operations for  
Fleet Readiness and Logistics

20 Oct 11  
Date

ATTACHMENT:

1. Definitions.

## **ATTACHMENT 1. DEFINITIONS**

1. Level A data - Basic data collected from stranded animals using the Marine Mammal Stranding Report Form - Level a Form (NOAA form 89-864, OMB #0648-0178). Level A data includes information such as location, condition of animal, morphological data (e.g. length, girth), and disposition of the animal.

2. Major training exercise (MTE) - MTEs involve multiple Navy vessels operating at sea for several days to several weeks for purposes of operational training. MTEs vary by the objective of the training and geographic location. Letters of Authorization and/or Stranding Response Plans identify the MTEs associated with the activities covered. For example, the Atlantic Fleet Active Sonar Training Stranding Response Plan lists MTEs such as Southeastern Integrated Training Initiative (SEASWITI), Integrated ASW Course (IAC), Group Sails, Composite Training Unit Exercise (COMPTUEX) and Joint Task Force Exercise (JTFEX.) and other exercises as defined.

It should be noted that sonar is typically not in use throughout an entire event.

3. Phase 1 Investigation - A Phase 1 Investigation, for the purposes of this document, is a NMFS-led inquiry into a marine mammal stranding which typically includes the following tests and procedures (which are described in NMFS' Biomonitoring Protocols):

- a. Determination of the demographics of the stranding.
- b. Review of environmental parameters.
- c. Behavioral assessment of the group.
- d. For live animals:
  - (1) Physical examination.
  - (2) Blood work.
  - (3) Diagnostics such as AEP or ultrasound.
  - (4) Assessment or treatment.

e. For dead animals:

(1) External examination and external human interaction evaluation.

(2) Morphometrics.

(3) Photographs.

(4) Diagnostic imaging including CT/MRI scans or ultrasound as appropriate and feasible.

(5) Necropsy with internal examination, descriptions, photographs and sample collection.

f. Note that several factors will dictate whether all or a subset of these procedures is conducted, including:

(1) The condition of a carcass.

(2) For live cetaceans - the time it would take necessary personnel and equipment to arrive at the site.

(3) Availability (both in time and space) of resources and feasibility of implementation.

4. Phase 2 Investigation - A Phase 2 Investigation, for the purposes of this document, is a NMFS-led inquiry into a marine mammal stranding which typically includes the following tests and procedures (which are described in NMFS' Biomonitoring Protocols):

a. Analyses and review of diagnostic imaging obtained in Phase I.

b. Histopathology.

c. Review of special stains.

d. Ancillary diagnostics (e.g., PCR for infections, gas emboli).

e. Computer assisted tomography of marine mammal ears.

f. Additional diagnostic imaging as needed.

g. Histology of ears.

- h. Case summaries.
  - i. Review of all information collected.
  - j. Note that several factors will dictate whether all or subsets of these procedures are conducted, including:
    - (1) The condition of a carcass.
    - (2) Logistics for transport.
    - (3) Available resources.
    - (4) Validated diagnostic techniques.
5. Stranding - an event in the wild in which;
- a. A marine mammal is dead and is;
    - (1) On a beach or shore of the United States; or
    - (2) In waters under the jurisdiction of the United States (including any navigable waters).
  - b. A marine mammal is alive and is;
    - (1) On a beach or shore of the United States and unable to return to the water;
    - (2) On a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or
    - (3) In the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.
6. Uncommon Stranding Event (USE) - A stranding event that takes place during an MTE and involves any one of the following:
- a. Two or more individuals of any cetacean species (i.e., could be two different species, but not including mother/calf pairs, unless of species of concern listed in next bullet) found dead or live on shore within a two day period and within 30 miles of one another.

b. A single individual or mother/calf pair of any of the marine mammals of concern identified in the USE definition HRC, SOCAL and AFAST final rules.

c. A group of 2 or more cetaceans of any species exhibiting indicators of distress.