

modification (except for the period of validity), is not considered a substantive modification.

(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 §216.120(b), a Letter of Authorization issued pursuant to §§216.106 and 216.127 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subparts L–M [Reserved]

Subpart N—Taking Of Marine Mammals Incidental To Missile Launch Activities from San Nicolas Island, CA

SOURCE: 74 FR 26587, June 3, 2009, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 26587, June 3, 2009, subpart N, consisting of §§216.150 through 216.159 was added, effective June 2, 2009 through June 2, 2014.

§ 216.150 Specified activity and specified geographical region.

(a) This subpart applies only to the incidental taking of marine mammals specified in paragraph (b) of this section by the Naval Air Warfare Center Weapons Division, U.S. Navy, and those persons it authorizes to engage in missile launch activities and associated aircraft and helicopter operations at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Coyote (or similar sized and smaller) missiles per year from San Nicolas Island, California.

§ 216.151 Effective dates.

This subpart is effective June 2, 2009 through June 2, 2014.

§ 216.152 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.157, the U.S. Navy, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in §216.150, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The taking of marine mammals is authorized for the species listed in §216.150(b) and is limited to Level B Harassment.

§ 216.153 Prohibitions.

Notwithstanding takings contemplated in §216.150 and authorized by a Letter of Authorization issued under §§216.106 and 216.157, no person in connection with the activities described in §216.150 may:

(a) Take any marine mammal not specified in §216.150(b);

(b) Take any marine mammal specified in §216.150(b) other than by incidental, unintentional harassment, as discussed in §216.152;

(c) Take a marine mammal specified in §216.150(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§216.106 and 216.157.

§ 216.154 Mitigation.

(a) The activity identified in §216.150 must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.150(c), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 216.157 must be implemented. These mitigation measures include (but are not limited to):