

substantial, NMFS will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §217.62(c), an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within 30 days of the action.

§§ 217.68–217.69 [Reserved]

**Subpart H—Taking of Marine Mammals Incidental to Space Vehicle and Missile Launches**

SOURCE: 82 FR 15003, Mar. 24, 2017, unless otherwise noted.

EFFECTIVE DATE NOTE: At 82 FR 15003, Mar. 24, 2017, subpart H was added, effective from Apr. 24, 2017, through Apr. 25, 2022.

**§217.70 Specified activity and specified geographical region.**

(a) Regulations in this subpart apply only to the Alaska Aerospace Corporation (AAC) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area identified in paragraph (b) of this section and that occurs incidental to conducting up to nine space vehicle launches each year from PSCA, for a total of 45 launches over the period of these regulations.

(b) The taking of marine mammals by AAC may be authorized in a Letter of Authorization (LOA) only if it occurs at the Pacific Spaceport Alaska Complex (PSCA) on Kodiak Island, AK.

**§217.71 Effective dates.**

Regulations in this subpart are effective from April 24, 2017, through April 25, 2022.

**§217.72 Permissible methods of taking.**

Under an LOA issued pursuant to §216.106 of this chapter and §217.70, the Holder of the LOA (hereinafter “AAC”) and its contractors may incidentally, but not intentionally, take harbor seals (*Phoca vitulina*) by Level B har-

assment in the course of conducting space vehicle and missile launch operations within the area described in §217.70(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

**§217.73 Prohibitions.**

Notwithstanding authorization under these regulations and any LOA issued under §216.106 of this chapter and §217.76, no person conducting the activities described in §217.70 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §216.106 of this chapter and §217.76;

(b) Take any marine mammal not specified in such LOA;

(c) Take any marine mammal specified in such LOA in any manner other than as specified;

(d) Take a marine mammal specified in such LOA if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOA if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

**§217.74 Mitigation.**

(a) When conducting operations identified in §217.70(a), the mitigation measures contained in any LOA issued under §216.106 of this chapter and §217.76 must be implemented. These mitigation measures include:

(1) Security overflights immediately associated with the launch shall not approach pinniped haulouts on Ugak Island by closer than 0.25 mi (0.4 km), and shall maintain a vertical distance of 1,000 ft (305 m) from the haulouts when within 0.5 mi (0.8 km), unless indications of human presence or activity warrant closer inspection of the area to assure that national security interests are protected in accordance with law; and

(2) All Castor 120 equivalent launches shall be conducted at LP1.

(b) [Reserved]