

taking will be consistent with the findings made for the total taking allowable under the regulations in this subpart.

(g) Notice of issuance or denial of an LOA shall be published in the FEDERAL REGISTER within 30 days of a determination.

§ 217.8 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 and 217.7 of this chapter for the activity identified in § 217.1(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under the regulations in this subpart were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 and 217.7 of this chapter for the activity identified in § 217.1(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with SCWA regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effec-

tively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA are:

(A) Results from SCWA's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are 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 LOAs issued pursuant to §§ 216.106 and 217.7 of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within thirty days of the action.

§§ 217.9–217.10 [Reserved]

Subpart B—Taking of Marine Mammals Incidental to Commercial Fireworks Displays

SOURCE: 82 FR 27442, June 15, 2017, unless otherwise noted.

EFFECTIVE DATE NOTE: At 82 FR 27442, June 15, 2017, subpart B was revised, effective July 4, 2017. At 82 FR 29010, June 27, 2017, the effective date was corrected to June 29, 2017, through June 28, 2022.

§ 217.11 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the Monterey Bay National Marine Sanctuary (MBNMS) and those persons it authorizes to display fireworks within the MBNMS for the taking of marine mammals that occurs in the area described in paragraph (b) of this section and that occurs incidental to authorization of commercial fireworks displays.

§217.12

(b) The taking of marine mammals by MBNMS may be authorized in a Letter of Authorization (LOA) only if it occurs in the MBNMS.

§217.12 Effective dates.

Regulations in this subpart are effective from June 29, 2017, through June 28, 2022.

[82 FR 27442, June 15, 2017; 82 FR 29010, June 27, 2017]

§217.13 Permissible methods of taking.

(a) Under LOAs issued pursuant to §216.106 of this chapter and §217.17, the Holder of the LOA (hereinafter “MBNMS”) may incidentally, but not intentionally, take California sea lions (*Eumatopias jubatus*) and harbor seals (*Phoca vitulina*) within the area described in §217.11(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) [Reserved]

§217.14 Prohibitions.

Notwithstanding takings contemplated in §217.11 and authorized by an LOA issued under §216.106 of this chapter and §217.17, no person in connection with the activities described in §217.11 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 §217.17;

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

(c) Take any marine mammal specified in such LOAs other than by incidental, unintentional Level B harassment;

(d) Take a marine mammal specified in such LOAs if 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 LOAs if NMFS determines such taking results in an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

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§217.15 Mitigation requirements.

(a) When conducting the activities identified in §217.11(a), the mitigation measures contained in any LOA issued under §216.106 of this chapter and §217.17 must be implemented. These mitigation measures include but are not limited to:

(1) Limiting the location of the authorized fireworks displays to the four specifically designated areas at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Breakwater, and Cambria (Santa Rosa Creek);

(2) Limiting the frequency of authorized fireworks displays to no more than an average frequency of less than or equal to once every two months in each of the four prescribed areas;

(3) Limiting the duration of authorized individual fireworks displays to no longer than 30 minutes each, with the exception of two longer shows per year across all four areas not to exceed 1 hour;

(4) Prohibiting fireworks displays at MBNMS between March 1 and June 30 of any year; and

(5) Continuing to implement authorization requirements and general and special restrictions for each event, as determined by MBNMS. Standard requirements include, but are not limited to, the use of a ramp-up period, wherein salutes are not allowed in the first five minutes of the display; the removal of plastic and aluminum labels and wrappings from fireworks; and post-show reporting and cleanup. MBNMS shall continue to assess displays and restrict the number of aerial salute effects on a case-by-case basis, and shall implement general and special restrictions unique to each fireworks event as necessary.

(b) [Reserved]

§217.16 Requirements for monitoring and reporting.

(a) MBNMS is responsible for ensuring that all monitoring required under an LOA is conducted appropriately, including, but not limited to:

(1) Counts of pinnipeds in the impact area prior to and after all displays. For the pre-event census, counts should be