

(2) The final comprehensive report on all marine mammal monitoring and research conducted during the applicability period of this subpart must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of applicability of this subpart or 240 days after the expiration of applicability of this subpart if new regulations will not be requested.

§217.116 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to this subpart, the U.S. citizen (as defined at §216.103 of this chapter) conducting the activities identified in §217.110(c) must apply for and obtain either an initial Letter of Authorization in accordance with §§216.106 and 217.117 of this chapter or a renewal under §217.118.

§217.117 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammals.

§217.118 Renewals and Modifications of Letters of Authorization.

(a) A Letter of Authorization issued under §216.106 and §217.117 of this chapter for the activities identified in §217.110(c) will be renewed or modified upon request of 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 this subpart (excluding changes made pursuant to adaptive management) and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous Letter of Authorization under this subpart were implemented.

(b) For Letter of Authorization modifications or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to adaptive management) 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 a proposed Letter of Authorization in the FEDERAL REGISTER, including the associate analysis illustrating the change, and solicit public comment before issuing the Letter of Authorization.

(c) A Letter of Authorization issued under §§216.106 and 217.117 of this chapter for the activity identified in §217.110(c) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the U.S. Air Force regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(i) Results from the U.S. Air Force's monitoring from the previous year;

(ii) Results from marine mammal and sound research; or

(iii) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by this subpart or subsequent Letters of Authorization.

(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 §217.112(c), a Letter of Authorization issued pursuant to §§216.106

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and 217.117 of this chapter 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.

Subpart M—Taking Marine Mammals Incidental to Seabird Research Activities in Central California

SOURCE: 86 FR 27998, May 25, 2021, unless otherwise noted.

EFFECTIVE DATE NOTE: At 86 FR 27998, May 25, 2021, subpart M was added, effective July 1, 2021, through June 30, 2026.

§ 217.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals during seabird research activities by Point Blue Conservation Science (Point Blue) and those persons it authorizes or funds to conduct activities on its behalf in the areas outlined in paragraph (b) of this section.

(b) The incidental taking of marine mammals by Point Blue may only occur in California on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in accordance with a Letter of Authorization (LOA) issued under §§ 216.106 of this chapter and 217.126.

§ 217.121 Effective dates.

Regulations in this subpart are effective from July 1, 2021, through June 30, 2026.

§ 217.122 Permissible methods of taking.

Under LOAs issued pursuant to §§ 216.106 of this chapter and 217.126, the Holder of the LOA (hereinafter “Point Blue”) may incidentally, but not intentionally, take marine mammals within the area described in § 217.120(b) by Level B harassment associated with seabird research activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

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§ 217.123 Prohibitions.

Except for the takings contemplated in § 217.120 and authorized by a LOA issued under §§ 216.106 of this chapter and 217.126, it is unlawful for any person to do any of the following in connection with the activities described in § 217.120 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 217.126;

(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 in § 217.122;

(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.

§ 217.124 Mitigation requirements.

When conducting the activities identified in § 217.120(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 217.126 must be implemented. These mitigation measures shall include but are not limited to the following general conditions:

(a) All persons must slowly approach beaches for boat landings. Boat landings must avoid causing stampede and provide marine mammals with an opportunity to safely enter the water. Vessel strikes are prohibited.

(b) All persons must observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.*, if pinnipeds are present, researchers must approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out marine mammals and to reduce flushing/stampeding of individuals).

(c) All persons must avoid pinnipeds along access ways to sites by locating