

§ 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

made as close to the start of the display as possible, with at least one conducted the day before the display and, if possible, another within 30 minutes of the fireworks display. For the post-census, counts should occur in conjunction with beach clean-ups the day following the fireworks display; and

(2) Reporting to NMFS of all marine mammal injury, serious injury, or mortality encountered during debris clean-up the morning after each fireworks display.

(b) Unless specified otherwise in the LOA, MBNMS must submit a draft annual monitoring report to the Director, Office of Protected Resources, NMFS, no later than 60 days after the conclusion of each calendar year. This report must contain:

(1) An estimate of the number of marine mammals disturbed by the authorized activities; and

(2) Results of the monitoring required in paragraph (a) of this section, and any additional information required by the LOA. A final annual monitoring report must be submitted to NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final annual monitoring report.

(c) A draft comprehensive monitoring report on all marine mammal monitoring conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, NMFS at least 120 days prior to expiration of these regulations. A final comprehensive monitoring report must be submitted to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final comprehensive monitoring report.

§ 217.17 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the MBNMS must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the MBNMS must apply for and obtain a modification of the LOA as described in § 217.18.

(d) The LOA shall set forth:

(1) The number of marine mammals, by species, authorized to be taken;

(2) Permissible methods of incidental taking;

(3) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting.

(e) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

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

§ 217.18 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 217.17 for the activity identified in § 217.11(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The 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 these regulations were implemented.

(b) For 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