

LOA, the Navy must apply for and obtain a modification of the LOA as described in §217.177.

(e) The LOA will set forth the following information:

(1) Permissible methods of incidental taking;

(2) 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

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA will 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.

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

§217.177 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§216.106 of this chapter and 217.176 for the activity identified in §217.170(a) may 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 these regulations; 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 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) A LOA issued under §§216.106 of this chapter and 217.176 for the activity identified in §217.170(a) may be modified by NMFS under the following circumstances:

(1) NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations;

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

(A) Results from Navy's monitoring from previous years;

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

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs; and

(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) 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 a LOA issued pursuant to §§216.106 of this chapter and 217.176, a LOA may be modified without prior notice or opportunity for public comment. Notification would be published in the FEDERAL REGISTER within 30 days of the action.

§§217.178–217.179 [Reserved]

Subpart S—Taking Marine Mammals Incidental to Geophysical Survey Activities in the Gulf of Mexico

SOURCE: 86 FR 5444, Jan. 19, 2021, unless otherwise noted.

EFFECTIVE DATE NOTE: At 86 FR 5444, Jan. 19, 2021, subprt S was added, effective Apr. 19, 2021, through Apr. 19, 2026.

§217.180 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to oil and gas industry operators

§ 217.181

(LOA-holders), and those persons authorized to conduct activities on their behalf, for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to geophysical survey activities.

(b) The taking of marine mammals by oil and gas industry operators may be authorized in a Letter of Authorization (LOA) only if it occurs within U.S. waters in the Gulf of Mexico, outside the area subject to a Congressional leasing moratorium under the Gulf of Mexico Energy Security Act (GOMESA) (Pub L. 109-432, §104) as of the effective date of these regulations.

§ 217.181 Effective dates.

Regulations in this subpart are effective from April 19, 2021 through April 19, 2026.

§ 217.182 Permissible methods of taking.

Under LOAs issued pursuant to §§216.106 of this chapter and 217.186, LOA-holders may incidentally, but not intentionally, take marine mammals within the area described in §217.180(b) by Level A and Level B harassment associated with geophysical survey activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 217.183 Prohibitions.

Notwithstanding takings contemplated in §§217.180 and 217.182, and authorized by a LOA issued under §§216.106 of this chapter and 217.186, no person in connection with the activities described in §217.180 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 217.186;

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

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

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

50 CFR Ch. II (10–1–22 Edition)

§ 217.184 Mitigation requirements.

When conducting the activities identified in §217.180, the mitigation measures contained in any LOA issued under §§216.106 of this chapter and 217.186 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) A copy of any issued LOA must be in the possession of the LOA-holder, vessel operator, other relevant personnel, the lead protected species observer (PSO), and any other relevant designees operating under the authority of the LOA.

(2) The LOA-holder must instruct relevant vessel personnel with regard to the authority of the protected species monitoring team (PSO team), and must ensure that relevant vessel personnel and PSO team participate in a joint on-board briefing, led by the vessel operator and lead PSO, prior to beginning work to ensure that responsibilities, communication procedures, protected species monitoring protocols, operational procedures, and LOA requirements are clearly understood. This briefing must be repeated when relevant new personnel join the survey operations before work involving those personnel commences.

(3) The acoustic source must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source must be avoided. For surveys using airgun arrays as the acoustic source, notified operational capacity (*i.e.*, total array volume) (not including redundant backup airguns) must not be exceeded during the survey, except where unavoidable for source testing and calibration purposes. All occasions where activated source volume exceeds notified operational capacity must be communicated to the PSO(s) on duty and fully documented. The lead PSO must be granted access to relevant instrumentation documenting acoustic source power and/or operational volume.

(4) PSOs must be used as specified in this paragraph (a)(4).

(i) LOA-holders must use independent, dedicated, qualified PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to