

EFFECTIVE DATE NOTE: At 82 FR 10306, Feb. 10, 2017, subpart X was added, effective May 1, 2017, through Apr. 30, 2022.

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

(a) Regulations in this subpart apply only to the U.S. Army Corps of Engineers (Corps) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the jetty rehabilitation program.

(b) The taking of marine mammals by the Corps may be authorized in a Letter of Authorization (LOA) only if it occurs within the nearshore marine environment at the Mouth of the Columbia River in Oregon and Washington.

**§ 217.231 Effective dates.**

Regulations in this subpart are effective May 1, 2017 through April 30, 2022.

**§ 217.232 Permissible methods of taking.**

Under LOAs issued pursuant to § 216.106 of this chapter and § 217.236, the Holder of the LOA (hereinafter “Corps”) may incidentally, but not intentionally, take marine mammals within the area described in § 217.230(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

**§ 217.233 Prohibitions.**

(a) Notwithstanding takings contemplated in § 217.230 and authorized by an LOA issued under § 216.106 of this chapter and § 217.236, no person in connection with the activities described in § 217.230 may:

- (1) Take any marine mammal not specified in § 217.236;
- (2) Take any marine mammal specified in § 217.236(a) other than by incidental Level B harassment;
- (3) Take a marine mammal specified in § 217.236 if the National Marine Fisheries Service (NMFS) determines such taking results in more than a negligible impact on the species or stocks of such marine mammal;

(4) Take a marine mammal specified in § 217.236 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; or

(5) 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 § 217.236.

(b) [Reserved]

**§ 217.234 Mitigation requirements.**

(a) When conducting the activities identified in § 217.130(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 217.236 must be implemented. These mitigation measures include, but are not limited to:

(1) General conditions:

(i) The Corps shall conduct briefings as necessary between vessel crews, the marine mammal monitoring team, and other relevant personnel prior to the start of all pile driving and removal activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;

(ii) Each Marine Mammal Observer (MMO) will maintain a copy of the LOA at their respective monitoring location, as well as a copy in the main construction office;

(iii) Pile activities are limited to the use of a vibratory hammer. Impact hammers are prohibited;

(iv) Pile installation/maintenance/removal activities are limited to the time frame starting May 1 and ending September 30 each season; and

(v) The Corps must notify NMFS' West Coast Regional Office (562-980-3232), at least 24-hours prior to start of activities impacting marine mammals.

(2) [Reserved]

(b) Establishment of Level B harassment zone:

(1) The Corps shall establish Level B behavioral harassment Zone of Influence (ZOI) where received underwater sound pressure levels (SPLs) are higher than 120 dB (rms) re 1  $\mu$ Pa for non-pulse sources (*i.e.*, vibratory hammer). The ZOI delineates where Level B harassment would occur; and