

§ 217.250

EFFECTIVE DATE NOTE: At 82 FR 26373, June 7, 2017, subpart Z was added, effective July 12, 2017, through July 11, 2022.

§ 217.250 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy (Navy), and those persons it authorizes or funds 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 waterfront construction activities.

(b) The taking of marine mammals by Navy may be authorized in a Letter of Authorization (LOA) only if it occurs within waters adjacent to Naval Submarine Base Kings Bay and Crab Island.

§ 217.251 Effective dates.

Regulations in this subpart are effective from July 12, 2017, through July 11, 2022.

§ 217.252 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 217.256, the Holder of the LOA (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in § 217.250(b) by Level B harassment associated with waterfront construction activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 217.253 Prohibitions.

Notwithstanding takings contemplated in § 217.250 and authorized by a LOA issued under § 216.106 of this chapter and § 217.256, no person in connection with the activities described in § 217.250 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 § 217.256;

(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;

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(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; or

(e) Take a marine mammal specified in such LOAs 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.

§ 217.254 Mitigation requirements.

When conducting the activities identified in § 217.250, the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 217.256 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 Navy, its designees, and work crew personnel operating under the authority of the issued LOA.

(2) The Navy shall conduct briefings for construction supervisors and crews, marine mammal monitoring team, acoustic monitoring team, and Navy staff prior to the start of the first pile driving activity conducted pursuant to this chapter, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(b) Except for pile driving covered under paragraphs (c) and (d) of this section, for all pile driving activity, the Navy shall implement a minimum shutdown zone of 15 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(c) For impact pile driving associated with Project 3F (Warping Wharf with Capstan), the Navy shall implement a minimum shutdown zone of 40 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(d) For impact pile driving associated with Project 4B (Small Craft Berth Site VI), the Navy shall implement a minimum shutdown zone of 20 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.