

§ 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.

(e) The Navy shall deploy marine mammal observers as indicated in the final Marine Mammal Monitoring Plan and as described in § 217.255 of this chapter.

(1) For all pile driving activities, a minimum of one observer shall be stationed at the active pile driving rig or within reasonable proximity of the rig in order to monitor the shutdown zone.

(2) Monitoring shall take place from 15 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for 15 minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.*, must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The entire shutdown zone must be visible before it can be deemed clear of marine mammals.

(3) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal.

(4) Monitoring shall be conducted by trained observers, who shall have no other assigned tasks during monitoring periods. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator.

(f) The Navy shall use soft start techniques for impact pile driving. Soft start for impact drivers requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then

two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(g) Pile driving shall only be conducted during daylight hours.

§ 217.255 Requirements for monitoring and reporting.

(a) Trained observers shall complete applicable portions of the Navy's Marine Species Awareness Training, as well as a general environmental awareness briefing conducted by Navy staff. At minimum, training shall include identification of bottlenose dolphins and relevant mitigation and monitoring requirements. All observers shall have no other construction-related tasks while conducting monitoring.

(b) For shutdown zone monitoring, the Navy shall report on implementation of shutdown or delay procedures, including whether the procedures were not implemented and why (when relevant).

(c) The Navy shall deploy additional observers to monitor disturbance zones according to the minimum requirements defined in this chapter. These observers shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity, and shall communicate with the shutdown zone observer as appropriate with regard to the presence of marine mammals. All observers shall be trained in identification and reporting of marine mammal behaviors.

(1) During Project 1A (Tug Pier), Navy shall deploy a minimum of three additional marine mammal monitoring observers on a minimum of ten days of vibratory pile driving activity.

(2) During Project 2 (UMC Layberth (P-661)), Navy shall deploy a minimum of two additional marine mammal monitoring observers on a minimum of three days of impact pile driving activity.

(3) During the fiscal year 2022 phase of Project 3A (Explosives Handling