

§ 217.66

such as tide, wind speed, air temperature, and swell. Number of marine mammals hauled out must be recorded immediately prior to the launch, unless weather conditions prevent accurate recording or it is technologically infeasible. When flushing behavior is observed, the amount of time for animals to return to the haulout must be recorded.

(10) Marine mammal monitoring of activities that occur during darkness at VAFB must include night video monitoring, when feasible.

(b) The USAF must submit a report to the Administrator, West Coast Region, NMFS, and Office of Protected Resources, NMFS, within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch;

(2) Design of the monitoring program; and

(3) Results of the monitoring program, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haulout prior to commencement of the launch;

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have moved in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degree, or, entered the water as a result of launch noise;

(iii) For any marine mammals that entered the water, the length of time they remained off the haulout;

(iv) Description of behavioral modifications by pinnipeds that were likely the result of launch noise or sonic boom; and

(v) Results of acoustic monitoring, including the intensity of any sonic boom (psf) and sound levels in SELs, SPL_{peak} and SPL_{rms} .

(c) If the authorized activity identified in § 217.60(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not authorized in LOAs, then the USAF must notify the Director, Office of Protected Resources, NMFS, and the stranding coordinator,

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West Coast Region, NMFS, within 48 hours of the discovery of the injured or dead marine mammal or of the take of marine mammals not authorized in an LOA.

(d) An annual report must be submitted on March 1 of each year to the Office of Protected Resources, NMFS.

(e) A final report must be submitted at least 180 days prior to expiration of these regulations to the Office of Protected Resources, NMFS. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports;

(2) Assess the impacts at each of the major rookeries;

(3) Assess the cumulative impacts on pinnipeds and other marine mammals from the activities specified in § 217.60(a); and

(4) State the date(s), location(s), and findings of any research activities related to monitoring the effects on launch noise, sonic booms, and harbor activities on marine mammal populations.

§ 217.66 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the USAF 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) If an LOA expires prior to the expiration date of these regulations, the USAF may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the USAF must apply for and obtain a modification of the LOA as described in § 217.67.

(e) The LOA will set forth:

(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 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.

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

§ 217.67 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§216.106 of this chapter and 217.66 for the activity identified in §217.60(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 these regulations (excluding changes made pursuant to the adaptive management provision in §217.67(c)(1)); 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 §217.67(c)(1)) 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) An LOA issued under §§216.106 of this chapter and 217.66 for the activity identified in §217.60(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the USAF 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 an LOA:

(A) Results from the USAF's monitoring from the previous year(s).

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

(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.

(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) Emergencies—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 §217.62(c), an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within 30 days of the action.

§§ 217.68–217.69 [Reserved]

Subpart H [Reserved]

Subpart I—Taking of Marine Mammals Incidental to Naval Explosive Ordnance Disposal School (NEODS) Training Operations

SOURCE: 77 FR 16736, Mar. 22, 2012, unless otherwise noted.

§ 217.80 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by the United States Air Force, Headquarters 96th Air Base Wing, Eglin Air Force Base, and those persons who engage in activities described in paragraphs (a)(1) through (7) of this section and the area