

**§§ 217.68–217.69**

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.

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**§§ 217.68–217.69 [Reserved]**

**Subpart H—Taking of Marine Mammals Incidental to Space Vehicle and Missile Launches**

SOURCE: 82 FR 15003, Mar. 24, 2017, unless otherwise noted.

EFFECTIVE DATE NOTE: At 82 FR 15003, Mar. 24, 2017, subpart H was added, effective from Apr. 24, 2017, through Apr. 25, 2022.

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

(a) Regulations in this subpart apply only to the Alaska Aerospace Corporation (AAC) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area identified in paragraph (b) of this section and that occurs incidental to conducting up to nine space vehicle launches each year from PSCA, for a total of 45 launches over the period of these regulations.

(b) The taking of marine mammals by AAC may be authorized in a Letter of Authorization (LOA) only if it occurs at the Pacific Spaceport Alaska Complex (PSCA) on Kodiak Island, AK.

**§ 217.71 Effective dates.**

Regulations in this subpart are effective from April 24, 2017, through April 25, 2022.

**§ 217.72 Permissible methods of taking.**

Under an LOA issued pursuant to § 216.106 of this chapter and § 217.70, the Holder of the LOA (hereinafter “AAC”) and its contractors may incidentally, but not intentionally, take harbor seals (*Phoca vitulina*) by Level B harassment in the course of conducting space vehicle and missile launch operations within the area described in § 217.70(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

**§ 217.73 Prohibitions.**

Notwithstanding authorization under these regulations and any LOA issued under § 216.106 of this chapter and