

§ 217.76, no person conducting the activities described in § 217.70 may:

(a) 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 § 217.76;

(b) Take any marine mammal not specified in such LOA;

(c) Take any marine mammal specified in such LOA in any manner other than as specified;

(d) Take a marine mammal specified in such LOA 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 LOA 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.

#### § 217.74 Mitigation.

(a) When conducting operations identified in § 217.70(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 217.76 must be implemented. These mitigation measures include:

(1) Security overflights immediately associated with the launch shall not approach pinniped haulouts on Ugak Island by closer than 0.25 mi (0.4 km), and shall maintain a vertical distance of 1,000 ft (305 m) from the haulouts when within 0.5 mi (0.8 km), unless indications of human presence or activity warrant closer inspection of the area to assure that national security interests are protected in accordance with law; and

(2) All Castor 120 equivalent launches shall be conducted at LP1.

(b) [Reserved]

#### § 217.75 Requirements for monitoring and reporting.

(a) If the authorized activity identified in § 217.70(a) is thought to have resulted in the mortality or injury of any marine mammals or take of marine mammals not identified in § 217.70(b), then the Holder of the LOA must notify NMFS Office of Protected Resources and NMFS Alaska Regional Office, within 48 hours of the injury or death.

(b) Holders of LOAs must designate qualified, on-site individuals, technical experts who have implemented time-lapsed photography technology for wildlife studies, approved in advance by NMFS Office of Protected Resources to:

(1) Install time-lapsed photography systems designed to monitor pinniped abundance and detect pinniped responses to rocket launches at each of the pinniped haulout locations around Ugak Island. The number of camera systems, equipment capabilities, placement of the systems to be used, and the daily photo frequency shall be determined through a cooperative effort between AAC, NMFS Office of Protected Resources, and the technical experts;

(2) Ensure the time-lapsed photography systems shall be in place and operating in locations that allow for visual monitoring of all pinniped haulouts during launches;

(3) Relocate the time-lapsed photography systems in cooperation with NMFS after five launches if the system is not accurately capturing all pinniped haulouts and total pinniped abundance during the launches;

(4) Monitor and review the effectiveness of these systems, comparing the results to aerial surveys for pinniped presence, abundance, behavior, and re-occupation time from the data obtained from the time-lapsed photography systems for the first five launches and report results to NMFS Office of Protected Resources within 90 days (after the 5th launch); and

(5) Conduct a study in coordination with NMFS Office of Protected Resources to evaluate the effectiveness of the time-lapsed photography systems (specifically, the accuracy of the photography systems compared with aerial count surveys). The results of this study shall determine the need to continue aerial surveys. The study shall be conducted through a minimum of five launches.

(c) AAC shall conduct one pre-launch aerial survey and one post-launch aerial survey for each launch to obtain data on pinniped presence, abundance, and behavior at all pinniped haulouts. Results of these pre- and post-launch surveys shall be reported to NMFS Office of Protected Resources once as

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part of the year-end summary report required under paragraph (e) of this section.

(d) AAC shall conduct quarterly aerial surveys, ideally during mid-day coinciding with low tide, to obtain data on pinniped presence, abundance, and behavior within the action area to determine long-term trends in pinniped haulout use capturing all pinniped haulouts. Results of these quarterly surveys shall be reported to NMFS Office of Protected Resources once as part of the year-end summary report required under paragraph (e) of this section.

(e) A year-end summary report must be submitted on March 1 of each year to NMFS Office of Protected Resources that shall include results of the pre- and post-launch aerial surveys, quarterly aerial survey trend counts of pinnipeds, and comparison of the results using the time-lapsed photography systems on Ugak Island. Future aerial surveys may be reduced if the time-lapsed photography systems capture similar or better data than aerial surveys. This report must contain the following information:

- (1) Date(s) and time(s) of the launches;
- (2) Locations of the time-lapsed photography systems;
- (3) Design of the monitoring program for the time-lapsed photography systems and a description of how data is stored and analyzed; and
- (4) Results of the monitoring program for pre- and post-launch aerial surveys, quarterly aerial surveys, and the time-lapsed photography systems, including, but not necessarily limited to:
  - (i) Numbers of pinnipeds, by species and age class (if possible), present on the haulout prior to commencement of the launch;
  - (ii) Numbers of pinnipeds, by species and age class (if possible), that may have been harassed, including the number that entered the water as a result of launch noise;
  - (iii) The length of time pinnipeds remained off the haulout during post-launch monitoring;
  - (iv) Number of harbor seal pups that may have been injured or killed as a result of the launch; and

(v) Other behavioral modifications by pinnipeds that were likely the result of launch noise.

(f) A final 5-year report must be submitted to NMFS Office of Protected Resources at least 90 days prior to expiration of these regulations if new regulations are sought or 180 days after expiration of regulations. This report shall:

- (1) Summarize the activities undertaken and the results reported in all previous reports;
- (2) Assess the impacts of launch activities on pinnipeds within the action area, including potential for pup injury and mortality;
- (3) Assess the cumulative impacts on pinnipeds and other marine mammals from multiple rocket launches; and
- (4) State the date(s), location(s), and findings of any research activities related to monitoring using time-lapsed photography systems on marine mammal populations

(g) AAC shall conduct quarterly aerial surveys in the event no launch occurs during a calendar year. These quarterly surveys shall be reported in the year-end summary report as described in paragraph (e) of this section; and

(h) If NMFS believes that launch monitoring or quarterly aerial surveys indicate that the distribution, size, or productivity of the potentially affected pinniped populations has been affected due to the specified activity, the launch procedures and the monitoring methods shall be reviewed in cooperation with NMFS, and, if necessary, appropriate changes may be made through modifications to a given LOA, prior to conducting the next launch of the same vehicle under that LOA.

**§217.76 Letters of Authorization.**

(a) To incidentally take marine mammals pursuant to these regulations, AAC 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, AAC must apply for and obtain a renewal of the LOA.