

determination by NMFS and the applicant that modifications are appropriate pursuant to the adaptive management component of these regulations indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season shall occur, NMFS shall publish a proposed modification to the Letter of Authorization in the FEDERAL REGISTER and provide the public a period of 30 days for review and comment. Review and comment on renewals or modifications of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed substantive changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization shall be published in the FEDERAL REGISTER.

(d) Adaptive Management—NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the U.S. Air Force regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the U.S. Air Force's monitoring from the previous year;

(2) Results from marine mammal and sound research; or

(3) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 217.89 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization

by NMFS issued pursuant to § 216.106 of this chapter and § 217.87 of this chapter and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 217.88, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.80(b), a Letter of Authorization issued pursuant to § 216.106 of this chapter and § 217.87 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification shall be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart J—Taking and Importing Marine Mammals; U.S. Navy's Submarine Base New London Pier Construction

SOURCE: 83 FR 36788, July 31, 2018, unless otherwise noted.

EFFECTIVE DATE NOTE: At 83 FR 36788, July 31, 2018, subpart J was added, effective Mar. 1, 2020, until Feb. 28, 2025.

§ 217.90 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 the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy may be authorized in Letters of Authorization (LOAs) only if it occurs within the Navy Submarine Base New London Study Area, which is located in the towns of Groton and Ledyard in New London County, Connecticut.

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(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the Navy's conducting in-water pier construction or demolition activities.

§ 217.91 Effective dates and definitions.

Regulations in this subpart are effective March 1, 2020 through February 28, 2025.

§ 217.92 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 217.96, the Holder of the LOAs (hereinafter "Navy") may incidentally, but not intentionally, take marine mammals within the area described in § 217.90(b) by Level A harassment and Level B harassment associated with in-water pile driving and pile removal activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOAs.

§ 217.93 Prohibitions.

Notwithstanding takings contemplated in § 217.92 and authorized by LOAs issued under § 216.106 of this chapter and § 217.96, no person in connection with the activities described in § 217.90 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 § 217.96;
- (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;
- (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 availability of such species or stock of marine mammal for taking for subsistence uses.

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§ 217.94 Mitigation requirements.

When conducting the activities identified in § 217.90(c), the mitigation measures contained in any LOAs issued under § 216.106 of this chapter and § 217.96 must be implemented. These mitigation measures shall include but are not limited to:

(a) *Time restriction.* In-water construction and demolition work shall occur only during daylight hours.

(b) *Establishment of monitoring and shutdown zones.* (1) For all relevant in-water construction and demolition activity, the Navy shall designate Level A harassment zones with radial distances as identified in any LOA issued under § 216.106 of this chapter and § 217.96.

(2) For all relevant in-water construction and demolition activity, the Navy shall designate Level B harassment zones with radial distances as identified in any LOA issued under § 216.106 of this chapter and § 217.96.

(3) For all in-water construction and demolition activity, the Navy shall implement a minimum shutdown zone of a 10-m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(c) *Monitoring visibility.* Pile driving shall only take place when the shutdown and Level A zones are visible and can be adequately monitored. If conditions (*e.g.*, fog) prevent the visual detection of marine mammals, activities with the potential to result in Level A harassment shall not be initiated. If such conditions arise after the activity has begun, pile driving or pile removal activities shall be halted if the 10-m shutdown zone is not visible.

(d) *Shutdown measures.* (1) The Navy shall deploy three protected species observers (PSOs) to monitor marine mammals during in-water pile driving and pile removal. One PSO shall be located on land and two shall be located in a boat to monitor the farther locations.

(2) Monitoring shall take place from 15 minutes prior to initiation of pile driving or removal activity through 30 minutes post-completion of pile driving or removal activity. Pre-activity monitoring shall be conducted for 15 minutes to ensure that the shutdown zone