

National Marine Fisheries Service/NOAA, Commerce

§ 217.94

§ 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.

§ 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 is clear of marine mammals, and pile driving or removal 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