

## §216.156

(ii) Summary of pinniped behavioral observations;

(iii) Estimate of the amount and nature of all takes by harassment or by other means.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of these regulations and providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization, will be due 90 days after the end of the period of effectiveness of these regulations.

(5) Both the 60-day and draft comprehensive technical reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraph (d) of this section, or in the Letter of Authorization issued under §216.106, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

### §216.156 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization but may not exceed the period of validity of this subpart.

(b) A Letter of Authorization with a period of validity less than the period of validity of this subpart may be renewed subject to renewal conditions in §216.157.

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(c) A Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Specified geographic area for taking;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(4) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(e) Notice of issuance or denial of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

### §216.157 Renewal of a Letter of Authorization.

(a) A Letter of Authorization issued under §216.106 and §216.156 for the activity specified in §216.151 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under §216.156 will be undertaken and that there will not be a substantial modification to the described work, mitigation, or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under §216.155, and acceptance by the National Marine Fisheries Service;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring, and reporting measures required under §§216.153 and 216.155 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity continues to be small and that the level of taking will be consistent with the findings made for the total

taking allowable under these regulations.

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

**§ 216.158 Modifications to the Letter of Authorization.**

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(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 § 216.151(b), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER subsequent to the action.

**Subparts O–P [Reserved]**

**Subpart Q—Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA sonar) Sonar**

SOURCE: 72 FR 46890, Aug. 21, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 72 FR 46890, Aug. 21, 2007, subpart Q, consisting of §§ 216.180 through 216.191 was added, effective Aug. 16, 2007 through Aug. 15, 2012.

**§ 216.180 Specified activity.**

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the U.S. Navy, Department of Defense, while engaged in the operation of no more than four SURTASS LFA sonar systems conducting active sonar operations, in areas specified in paragraph

(a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§ 216.106 and 216.188, include the transmission of low frequency sounds from the SURTASS LFA sonar and the transmission of high frequency sounds from the mitigation sonar described in § 216.185 during training, testing, and routine military operations of SURTASS LFA sonar.

(a) With the exception of those areas specified in § 216.183(d), the incidental taking by harassment may be authorized in the areas (biomes, provinces, and subprovinces) described in Longhurst (1998), as specified in a Letter of Authorization.

(b) The incidental take, by Level A and Level B harassment, of marine mammals from the activity identified in this section is limited to the following species and species groups:

(1) Mysticete whales—blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), minke (*Balaenoptera acutorostrata*), Bryde's (*Balaenoptera edeni*), sei (*Balaenoptera borealis*), humpback (*Megaptera novaeangliae*), North Atlantic right (*Eubalaena glacialis*), North Pacific right (*Eubalaena japonica*) southern right (*Eubalaena australis*), pygmy right (*Caperea marginata*), bowhead (*Balaena mysticetus*), and gray (*Eschrichtius robustus*) whales.

(2) Odontocete whales—harbor porpoise (*Phocoena phocoena*), spectacled porpoise (*Phocoena dioptrica*), beluga (*Dephinapterus leucas*), *Stenella* spp., Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), northern right-whale dolphin (*Lissodelphis borealis*), southern right whale dolphin (*Lissodelphis peronii*), short-beaked common dolphin (*Delphinus delphis*), long-beaked common dolphin (*Delphinus capensis*), very long-beaked common dolphin (*Delphinus tropicalis*), *Lagenorhynchus* spp., *Cephalorhynchus* spp., bottlenose dolphin (*Tursiops truncatus*), Dall's porpoise (*Phocoenoides dalli*), melon-headed whale (*Peponocephala* spp.), beaked whales (*Berardius* spp., *Hyperoodon* spp., *Mesoplodon* spp.), Cuvier's beaked whale (*Ziphius cavirostris*), Shepard's beaked whale (*Tasmacetus shepherdi*),