

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 dioptica*), 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*),

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Longman's beaked whale (*Indopacetus pacificus*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), sperm whale (*Physeter macrocephalus*), dwarf and pygmy sperm whales (*Kogia simus* and *K. breviceps*), and short-finned and long-finned pilot whales (*Globicephala macrorhynchus* and *G. melas*).

(3) Pinnipeds—hooded seal (*Cystophora cristata*), harbor seal (*Phoca vitulina*), spotted seal (*P. largha*), ribbon seal (*P. fasciata*), gray seal (*Halichoerus grypus*), elephant seal (*Mirounga angustirostris* and *M. leonina*), Hawaiian monk seal (*Monachus schauinslandi*), Mediterranean monk seal (*Monachus monachus*), northern fur seal (*Callorhinus ursinus*), southern fur seal (*Arctocephalus spp.*), harp seal (*Phoca groenlandica*), Galapagos sea lion (*Zalophus californianus wolfebaeki*), Japanese sea lion (*Zalophus californianus japonicus*), Steller sea lion (*Eumetopias jubatus*), California sea lion (*Zalophus californianus*), Australian sea lion (*Neophoca cinerea*), New Zealand sea lion (*Phocarcos hookeri*), and South American sea lion (*Otaria flavescens*).

§216.181 Effective dates.

Regulations in this subpart are effective from August 16, 2007 through August 15, 2012.

§216.182 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.188, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment within the areas described in §216.180(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.180 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

§216.183 Prohibitions.

No person in connection with the activities described in §216.180 shall:

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(a) Take any marine mammal not specified in §216.180(b);

(b) Take any marine mammal specified in §216.180(b) other than by incidental, unintentional Level A and Level B harassment;

(c) Take a marine mammal specified in §216.180(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of the regulations in this subpart or any Letter of Authorization issued under §§216.106 and 216.188.

§216.184 Mitigation.

The activity identified in §216.180(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.180, the mitigation measures described in this section and in any Letter of Authorization issued under §§216.106 and 216.188 must be implemented.

(a) Through monitoring described under §216.185, the Holder of a Letter of Authorization must act to ensure, to the greatest extent practicable, that no marine mammal is subjected to a sound pressure level of 180 dB or greater.

(b) If a marine mammal is detected within or about to enter the mitigation zone (the area subjected to sound pressure levels of 180 dB or greater plus the 1 km (0.54 nm) buffer zone extending beyond the 180-dB zone), SURTASS LFA sonar transmissions will be immediately delayed or suspended. Transmissions will not resume earlier than 15 minutes after:

(1) All marine mammals have left the area of the mitigation and buffer zones; and

(2) There is no further detection of any marine mammal within the mitigation and buffer zones as determined by the visual and/or passive or active acoustic monitoring described in §216.185.

(c) The high-frequency marine mammal monitoring sonar (HF/M3) described in §216.185 will be ramped-up