

## §216.181

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:

(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

**National Marine Fisheries Service/NOAA, Commerce**

**§216.185**

slowly to operating levels over a period of no less than 5 minutes:

- (1) At least 30 minutes prior to any SURTASS LFA sonar transmissions;
- (2) Prior to any SURTASS LFA sonar calibrations or testings that are not part of regular SURTASS LFA sonar transmissions described in paragraph (c)(1) of this section; and
- (3) Anytime after the HF/M3 source has been powered down for more than 2 minutes.
- (d) The HF/M3 sound pressure level will not be increased once a marine mammal is detected; ramp-up may resume once marine mammals are no longer detected.
- (e) The Holder of a Letter of Authorization will not operate the SURTASS LFA sonar, such that:

(1) the SURTASS LFA sonar sound field exceeds 180 dB (re 1 microPa(rms)) at a distance less than 12 nautical miles (nm) (22 kilometers (km)) from any coastline, including offshore islands;

(2) the SURTASS LFA sonar sound field exceeds 180 db (re 1 microPa(rms)) at a distance of 1 km (0.5 nm) seaward of the outer perimeter of any offshore biologically important area designated in 216.184(f) during the biologically important period specified.

(f) The following areas have been designated by NMFS as Offshore Biologically Important Areas (OBIA) for marine mammals (by season if appropriate):

Name of area	Location of area	Months of importance
(1) 200-m isobath North American East Coast.	From 28° N. to 50° N., west of 40° W ....	Year-round.
(2) Antarctic Convergence Zone .....	30° E. to 80° E. to 45°; 80° E. to 150° E. to 55°; S. 150° E. to 50° W. to 60° S.; 50° W. to 30° E. to 50° S.	October 1–March 31.
(3) Costa Rica Dome .....	Centered at 9° N. and 88° W .....	Year-round.
(4) Hawaiian Islands Humpback Whale National Marine Sanctuary-Penguin Bank.	Centered at 21° N. and 157° 30' W .....	November 1 through May 1.
(5) Cordell Bank National Marine Sanctuary.	Boundaries in accordance with 15 CFR 922.110.	Year-round.
(6) Gulf of the Farallones National Marine Sanctuary.	Boundaries in accordance with 15 CFR 922.80.	Year-round.
(7) Monterey Bay National Marine Sanctuary.	Boundaries in accordance with 15 CFR 922.30.	Year-round.
(8) Olympic Coast National Marine Sanctuary.	Boundaries within 23 nm of the coast from 47°07' N. to 48°30' N. latitude.	December January, March and May.
(9) Flower Garden Banks National Marine Sanctuary.	Boundaries in accordance with 15 CFR 922.120.	Year-round.
(10) The Gully .....	44°13' N., 59°06' W. to 43°47' N.; 58°35' W. to 43°35' N.; 58°35' W. to 43°35' N.; 59°08' W. to 44°06' N.; 59°20' W.	Year-round.

**§216.185 Requirements for monitoring.**

(a) In order to mitigate the taking of marine mammals by SURTASS LFA sonar to the greatest extent practicable, the Holder of a Letter of Authorization issued pursuant to §§216.106 and 216.188 must:

- (1) Conduct visual monitoring from the ship's bridge during all daylight hours (30 minutes before sunrise until 30 minutes after sunset);
- (2) Use low frequency passive SURTASS sonar to listen for vocalizing marine mammals; and

(3) Use the HF/M3 (high frequency) sonar developed to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

(b) Monitoring under paragraph (a) of this section must:

- (1) Commence at least 30 minutes before the first SURTASS LFA sonar transmission;
- (2) Continue between transmission pings; and
- (3) Continue either for at least 15 minutes after completion of the