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marine mammals, 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 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations contained in this subpart, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 216.150 (Naval Air Warfare Center Weapons Division, U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 216.157 or a renewal under § 216.158.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Applications for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of pinnipeds.

§ 216.157 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.158.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of

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the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 216.158 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §§ 216.106 and 216.157 for the activity identified in § 216.150 will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application 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 12 months;

(2) Timely receipt of the monitoring reports required under § 216.155(e), and the Letter of Authorization issued under § 216.157, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 216.154 and 216.155 and the Letter of Authorization issued under §§ 216.106 and 216.157, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under § 216.106 and this section indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals 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 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 will be published in the FEDERAL REGISTER.

§ 216.159 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 and 216.157 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 § 216.158, 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 § 216.150(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.157 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS MESA VERDE (LPD 19) by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

SOURCE: 73 FR 43136, July 24, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 73 FR 43136, July 24, 2008, subpart O, consisting of §§ 216.161 through 216.166 was added, effective July 18, 2008 through July 18, 2013.

§ 216.161 Specified activity and incidental take levels by species.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by persons engaged in the detonation of up to four 4,536 kg (10,000 lb) conventional explosive charges

within the waters of the U.S. Atlantic Coast offshore Mayport, FL, for the purpose of conducting one full ship-shock trial (FSST) of the USS MESA VERDE (LPD 19) during the time period between July 23 and September 20, 2008, and May 1 and September 20, 2009 through 2013.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Minke whale (*Balaenoptera acutorostrata*), dwarf sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); pilot whale (*Globicephala macrorhynchus*); Atlantic spotted dolphin (*Stenella frontalis*); spinner dolphin (*S. longirostris*); bottlenose dolphin (*Tursiops truncatus*); Risso's dolphin (*Grampus griseus*); rough-toothed dolphin (*Steno bredanensis*); common dolphin (*Delphinus delphis*), false killer whale (*Pseudorca crassidens*); Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*); Gervais' beaked whale (*M. europaeus*); and True's beaked whale (*M. mirus*).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total, across all species, of no more than 1 mortality or serious injury, 2 takings by Level A harassment (injuries), and 282 takings by Level B behavioral harassment (through temporary threshold shift). The incidental taking of any species listed as threatened or endangered under the Endangered Species Act is prohibited.

§ 216.162 Effective dates.

Regulations in this subpart are effective July 18, 2008 through July 18, 2013.

§ 216.163 Mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals in the course of the activity described in § 216.161(a) provided all requirements of these regulations and such Letter of Authorization are met.

(b) The activity identified in paragraph § 216.161(a) of this section must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine