

(0.4 km), and will maintain a vertical distance of 1000 ft (305 m) from the haulouts when within 0.5 miles (0.8 km), unless indications of human presence or activity warrant closer inspection of the area to assure that national security interests are protected in accordance with law;

(2) For missile and rocket launches, holders of Letters of Authorization must avoid launches during the harbor seal pupping season of May 15 through June 30, except when launches are necessary for the following purposes: human safety, national security, space vehicle launch trajectory necessary to meet mission objectives, or other purposes related to missile or rocket launches.

(3) All flights by fixed-wing aircraft associated with the marine mammal abundance quarterly surveys must maintain a minimum altitude of 500 ft (152 m) and remain 0.25 miles from recognized seal haulouts.

(4) If launch monitoring or quarterly aerial surveys indicate that the distribution, size, or productivity of the potentially affected pinniped populations has been affected due to the specified activity, the launch procedures and the monitoring methods will be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes may be made through modifications to a given LOA, prior to conducting the next launch of the same vehicle under that LOA.

(5) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 217.75 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 of this chapter and 217.76 for activities described in § 217.70(a) are required to cooperate with NMFS, and any other Federal, State, or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, NMFS, by letter, e-mail or telephone, prior to each launch. If the authorized activity identified in § 217.70(a) is thought to

have resulted in the take of marine mammals not identified in § 217.70(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301-713-2289), within 48 hours of the discovery of the take.

(b) Holders of Letters of Authorization must designate qualified protected species observers, approved in advance by NMFS, as specified in the Letter of Authorization, to:

(1) Deploy for AAC a remote camera system designed to detect pinniped responses to rocket launches for at least the first five launches conducted under these regulations. AAC will conduct visual monitoring for at least 2 hours before, during, and 2 hours after launch;

(2) Ensure a remote camera system will be in place and operating in a location which allows visual monitoring of a harbor seal rookery, if a launch during the harbor seal pupping season cannot be avoided;

(3) Relocate the camera system to or re-aim the camera system on another haulout to be chosen in cooperation with NMFS after the first five launches with harbor seals present;

(4) Review and log pinniped presence, behavior, and re-occupation time data from the visual footage obtained from the remote camera system and report results to NMFS within 90 days post launch;

(5) Obtain, whenever a new class of rocket is flown from the Kodiak Launch Complex, a real-time sound pressure and sound exposure record for documentation purposes and to correlate with the behavioral response record. Two monitors shall be used: one shall be placed at the established recording location known as Narrow Cape, and the other as close as practical to the remote video system;

(6) Conduct quarterly aerial surveys, ideally during midday coinciding with low tide, to obtain data on pinniped presence, abundance, and behavior within the action area to determine long-term trends in pinniped haulout use. Results of these quarterly surveys will be reported once as part of the year-end summary report that will accompany the request for a new LOA.

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(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit a report to the Alaska Region Administrator, NMFS, within 90 days after each launch. This report must contain the following information:

- (1) Date(s) and time(s) of the launch;
- (2) Location of camera system and acoustic recorders (if used);
- (3) Design of the monitoring program and a description of how data is stored and analyzed; and
- (4) Results of the monitoring program, including, but not necessarily limited to:
 - (i) Numbers of pinnipeds, by species and age class (if possible), present on the haulout prior to commencement of the launch;
 - (ii) Numbers of pinnipeds, by species and age class (if possible), that may have been harassed, including the number that entered the water as a result of launch noise;
 - (iii) The length of time pinnipeds remained off the haulout during post-launch monitoring;
 - (iv) Number of harbor seal pups that may have been injured or killed as a result of the launch; and
 - (v) Other behavioral modifications by pinnipeds that were likely the result of launch noise.
- (5) Results of sound pressure and sound exposure level monitoring will be reported in flat weighted, A-weighted, and peak measurements.

(e) An annual report must be submitted at the time of request for a renewal of the Letter of Authorization; it will include results of the aerial quarterly trend counts of pinnipeds at Ugak Island.

(f) A final report must be submitted at least 90 days prior to expiration of these regulations if new regulations are sought or 180 days after expiration of regulations. This report will:

- (1) Summarize the activities undertaken and the results reported in all previous reports;
- (2) Assess the impacts of launch activities on pinnipeds within the action area, including potential for pup injury and mortality; and

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(3) Assess the cumulative impacts on pinnipeds and other marine mammals from multiple rocket launches.

§217.76 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 a Letter of Authorization may not be valid beyond the effective period of the regulations.

(b) A Letter of Authorization with a period of validity less than the effective period of the regulations in this subpart may be renewed subject to renewal conditions in §217.76.

(c) A Letter of Authorization will set forth:

- (1) The number of marine mammals, by species and age class, authorized to be taken;
- (2) Permissible methods of incidental taking;
- (3) Specified geographical region;
- (4) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and
- (5) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the total taking by the activity as a whole will have no more than a negligible impact on the affected species or stocks of marine mammal(s).

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

§217.77 Renewal of a Letter of Authorization and adaptive management.

(a) A Letter of Authorization issued under §216.106 of this chapter and §217.76 for the activity identified in §217.70(a) will be renewed annually upon:

- (1) Notification to NMFS that the activity described in the application for a Letter of Authorization submitted under §217.76 will be undertaken and that there will not be a substantial modification to the described activity, mitigation, or monitoring undertaken during the upcoming season;
- (2) Timely receipt of and acceptance by NMFS of the monitoring reports required under §217.75;