

§218.101

provided that the variation does not result in exceeding the amount of take indicated in §218.102.

§218.101 Effective dates.

Regulations are effective August 3, 2010 through August 3, 2015.

§218.102 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 218.107 of this chapter, the Holder of the Letter of Authorization (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in §218.100(b), 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 §218.100(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §218.100(c) is limited to the species listed in this paragraph (4), (5), and (6) of this section (c) by the indicated method of take and the indicated number of times (estimated based on the authorized amounts of sound source operation), but with the following allowances for annual variation in activities:

(1) In any given year, annual take, by harassment, of any species of marine mammal may not exceed the amount identified in paragraphs (b)(4) and (b)(5) of this section, for that species by more than 25% (a post-calculation/estimation of which must be provided in the annual LOA application);

(2) In any given year, annual take by harassment of all marine mammal species combined may not exceed the estimated total of all species combined, indicated in paragraphs (b)(4) and (b)(5) of this section, by more than 10%; and

(3) Over the course of the effective period of this subpart, total take, by harassment, of any species may not exceed the 5-year amounts indicated in paragraphs (b)(4) and (b)(5) of this section by more than 10%. A running calculation/estimation of takes of each species over the course of the years

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covered by the rule must be maintained.

(4) Level B Harassment:

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—4,025 (an average of 805 annually);

(B) Fin whale (*Balaenoptera physalus*)—910 (an average of 182 annually);

(C) Blue whale (*Balaenoptera musculus*)—650 (an average of 130 annually);

(D) Sei whale (*Balaenoptera borealis*)—1,625 (an average of 325 annually);

(E) Minke whale (*Balaenoptera acutorostrata*)—2,225 (an average of 445 annually);

(F) Bryde’s whale (*Balaenoptera edeni*)—2,285 (an average of 457 annually); and

(G) Unidentified Baleopterid whales—360 (an average of 72 annually).

(ii) Odontocetes:

(A) Sperm whales (*Physeter macrocephalus*)—4,120 (an average of 824 annually);

(B) Killer whale (*Orcinus orca*)—1,150 (an average of 230 annually);

(C) Pygmy or dwarf sperm whales (*Kogia breviceps* or *Kogia sima*)—33,530 (an average of 6,706 annually);

(D) Blainville’s beaked whales (*Mesoplodon densirostris*)—3,850 (an average of 770 annually);

(E) Cuvier’s beaked whales (*Ziphius cavirostris*)—18,140 (an average of 3,628 annually);

(F) Ginkgo-toothed beaked whales (*Mesoplodon ginkgodens*)—2,150 (an average of 430 annually);

(G) Longman’s beaked whale (*Indopacetus pacificus*)—1,030 (an average of 206 annually);

(H) Short-finned pilot whale (*Globicephala macrorhynchus*)—11,370 (an average of 2,274 annually);

(I) Melon-headed whale (*Peponocephala electra*)—14,315 (an average of 2,863 annually);

(J) Pygmy killer whale (*Feresa attenuata*)—800 (an average of 160 annually);

(K) False killer whale (*Pseudorca crassidens*)—6,445 (an average of 1,289 annually);

(L) Striped dolphin (*Stenella coeruleoalba*)—44,290 (an average of 8,858 annually);