

substantial, NMFS will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §217.13(b) of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notification would be published in the FEDERAL REGISTER within 30 days of the action.

Subparts C–G [Reserved]

Subpart H—Taking of Marine Mammals Incidental to Space Vehicle and Missile Launches at Kodiak Launch Complex, Alaska

SOURCE: 76 FR 16318, Mar. 23, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 16318, Mar. 23, 2011, subpart H was added, effective Mar. 22, 2011 to Mar. 22, 2016.

§ 217.70 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in space vehicle and missile launch activities at the Kodiak Launch Complex on Kodiak Island, Alaska.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to 32 juvenile and adult Steller sea lions (*Eumetopius jubatus*), 1,125 Pacific harbor seals (*Phoca vitulina*) of all ages, and 17 harbor seal pups.

§ 217.71 Effective dates.

Regulations in this subpart are effective from March 22, 2011 through March 22, 2016.

§ 217.72 Permissible methods of taking.

(a) Under a Letter of Authorization issued pursuant to §216.106 of this chapter, the Alaska Aerospace Corporation and its contractors may incidentally, but not intentionally, take Steller sea lions and Pacific harbor seals by Level

B harassment and harbor seal pups by Level A harassment or mortality in the course of conducting space vehicle and missile launch activities within the area described in §217.70(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activities identified in §217.70(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitat.

§ 217.73 Prohibitions.

The following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §216.106 of this chapter.

(c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

§ 217.74 Mitigation.

(a) The activity identified in §217.70(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 §217.70(a), the mitigation measures contained in the Letter of Authorization issued under §§216.106 of this chapter and 217.76 must be implemented. These mitigation measures include (but are not limited to):

(1) Security overflights by helicopter associated with a launch will not approach occupied pinniped haulouts on Ugak Island by closer than 0.25 mile (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