§ 218.188 Modifications to 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 of this chapter and §218.186 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 §218.187, 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 §218.181(b), a Letter of Authorization issued pursuant to §216.106 of this chapter and §218.186 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.

Subparts T–W [Reserved]

Subpart X—Taking and Importing of Marine Mammals; Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

Source: 77 FR 50316, Aug. 20, 2012, unless otherwise noted.

Effective Date Note: At 77 FR 50316, Aug. 20, 2012, subpart X was added, effective Aug. 15, 2012, through Aug. 15, 2017.

§ 218.230 Specified activity, level of taking, and species.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the U.S. Navy, Department of Defense, while engaged in the operation of no more than four SURTASS LFA sonar systems conducting active sonar operations in areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§216.106 and 218.238, include the transmission of low frequency sounds from the SURTASS LFA sonar system and the transmission of high frequency sounds from the mitigation sonar described in §218.234 during routine training and testing as well as during military operations.

(a) The incidental take, by Level A and Level B harassment, of marine mammals from the activity identified in this section may be authorized in certain areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea, as specified in a Letter of Authorization.

(b) The incidental take, by Level A and Level B harassment, of marine mammals from the activity identified in this section is limited to the following species and species groups:

1. **Mysticetes**—blue whale (Balaenoptera musculus), bowhead whale (Balaena mysticetus), Bryde’s whale (Balaenoptera edeni), fin whale (Balaenoptera physalus), gray whale (Eschrichtius robustus), humpback whale (Megaptera novaeangliae), minke whale (Balaenoptera acutorostrata), North Atlantic right whale (Eubalaena glacialis), North Pacific right whale (Eubalaena japonica), pygmy right whale (Caperamarginata), sei whale (Balaenoptera borealis), southern right whale (Eubalaena australis).

2. **Odontocetes**—Andrew’s beaked whale (Mesoplodon bowdoini), Arnox’s beaked whale (Berardius arnuxii), Atlantic spotted dolphin (Stenella frontalis), Atlantic white-sided dolphin (Lagenorhynchus acutus), Baird’s beaked whale (Berardius bairdii), Beluga whale (Delphinapterus leucas), Blainville’s beaked whale (Mesoplodon densirostris), Chilean dolphin (Cephalorhynchus eutropia), Clymene dolphin (Stenella clymene), Commerson’s dolphin (Cephalorhynchus commersonii), common bottlenose dolphin (Tursiops truncatus), Cuvier’s beaked whale (Ziphius cavirostris), Dall’s porpoise (Phocoenoides dalli), Dusky dolphin (Lagenorhynchus obscurus), dwarf sperm and pygmy sperm whales (Kogia simus and K. breviceps), false killer whale (Pseudorca crassidens), Fraser’s dolphin (Lagenodelphis hosei),
Gervais’ beaked whale (Mesoplodon europaeus), ginkgo-toothed beaked whale (Mesoplodon ginkgodens), Gray’s beaked whale (Mesoplodon grayi), Heaviside’s dolphin (Cephalorhynchus heavisidii), Hector’s beaked whale (Mesoplodon hectori), Hector’s dolphin (Cephalorhynchus hectori); Hourglass dolphin (Lagenorhynchus cruciger), Hubbs’ beaked whale (Mesoplodon caribbensi), harbor porpoise (Phocoena phocoena); Indo-Pacific bottlenose dolphin (Tursiops aduncus), killer whale (Orcinus Orca), long-beaked common dolphin (Delphinus capensis), long-finned pilot whale (Globicephala melas), Longman’s beaked whale (Indopacetus attu), Peale’s dolphin (Lagenorhynchus australis), Perrin’s beaked whale (Mesoplodon pernirii), pygmy beaked whale (Mesoplodon peruvianus), pygmy killer whale (Feresa attenuata), Risso’s dolphin (Grampus griseus), rough-toothed dolphin (Steno bredanensis), Shepherd’s beaked whale (Mesoplodon shepherdii), short-beaked common dolphin (Delphinus delphis), short-finned pilot whale (Globicephala macrorhynchus), southern bottlenose whale (Hyperoodon planifrons), southern right whale dolphin (Lissodelphis australis), spade-toothed beaked whale (Mesoplodon bidens), strap-toothed beaked whale (Mesoplodon layardi), striped dolphin (Stenella coeruleoalba), True’s beaked whale (Mesoplodon mirus), white-beaked dolphin (Lagenorhynchus allantirosus),

(3) Pinnipeds—Australian sea lion (Neophoca cinerea), California sea lion (Zalophus californianus), Galapagos fur seal (Arctocephalus galapagoensis), Galapagos sea lion (Zalophus californianus), gray seal (Halichoerus grypus), Guadalupe fur seal (Arctocephalus townsendi), harbor seal (Phoca vitulina), harp seal (Pagophilus groenlandicus), Hawaiian monk seal (Monachus schauinslandi), hooded seal (Cystophora cristata), Juan Fernandez fur seal (Arctocephalus philippi), Mediterranean monk seal (Monachus monachus), New Zealand fur seal (Arctocephalus forsteri), Northern elephant seal (Mirounga angustirostris), Northern fur seal (Callorhinus ursinus), ribbon seal (Phoca fasciata), South African and Australian fur seals (Arctocephalus pusillus), South American fur seal (Arctocephalus australis), South American sea lion (Otaria flavescens), Southern elephant seal (Mirounga leonina), spotted seal (Phoca largha), Steller sea lion (Eumetopias jubatus), subantarctic fur seal (Arctocephalus tropicalis).

§ 218.231 Effective dates.

Regulations are effective August 15, 2012 through August 15, 2017.

§ 218.232 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.238 of this chapter, 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 § 218.230(a), provided that the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The Holder of the Letter of Authorization must conduct the activities identified in § 218.230 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 § 218.230 is limited to the species listed in § 218.230(b)(1) through (3) annually over the course of the five-

253