

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–E [Reserved]

### Subpart F—Taking of Marine Mammals Incidental To Target and Missile Launch Activities From San Nicolas Island, CA

SOURCE: 79 FR 32684, June 3, 2014, unless otherwise noted.

EFFECTIVE DATE NOTE: At 79 FR 32684, June 6, 2014, subpart F was added, effective June 3, 2014, through June 3, 2019.

#### § 217.50 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 the Naval Air Warfare Center Weapons Division, U.S. Navy, and those persons it authorizes to engage in target missile launch activities and associated aircraft and helicopter operations at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 vehicles (e.g., RAM, Coyote, MSST, Terrier, SM-3, or similar) from Alpha Launch Complex and smaller missiles and targets from Building 807 on San Nicolas Island, California.

#### § 217.51 Effective dates.

Regulations in this subpart are effective from June 3, 2014, through June 3, 2019.

#### § 217.52 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106 and 217.57 of

this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 217.50, provided the activity is in compliance with all terms, conditions, and requirements of the regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 217.50 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 is authorized for the species listed in § 217.50(b) and is limited to Level B Harassment.

#### § 217.53 Prohibitions.

Notwithstanding takings contemplated in § 217.50 and authorized by a Letter of Authorization issued under §§ 216.106 and 217.57 of this chapter, no person in connection with the activities described in § 217.50 may:

(a) Take any marine mammal not specified in § 217.50(b);

(b) Take any marine mammal specified in § 217.50(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in § 217.50(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 217.57 of this chapter.

#### § 217.54 Mitigation.

(a) When conducting operations identified in § 217.50(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 217.57 must be implemented. These mitigation measures include, but are not limited to:

(1) The holder of the Letter of Authorization must not enter pinniped haul-out sites below the missile's predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid, whenever possible, launch activities during harbor seal pupping season (February to

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April), unless constrained by factors including, but not limited to, human safety, national security, or for vehicle launch trajectory necessary to meet mission objectives.

(3) The holder of the Letter of Authorization must limit, whenever possible, launch activities during other pinniped pupping seasons, unless constrained by factors including, but not limited to, human safety, national security, or for vehicle launch trajectory necessary to meet mission objectives.

(4) The holder of the Letter of Authorization must not launch vehicles from the Alpha Complex at low elevation (less than 1,000 feet (305 m)) on launch azimuths that pass close to pinniped haul-out sites when occupied.

(5) The holder of the Letter of Authorization must avoid, where practicable, launching multiple target missiles in quick succession over haul-out sites, especially when young pups are present.

(6) The holder of the Letter of Authorization must limit launch activities during nighttime hours, except when required by the test objectives.

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (305 m) from pinniped haul-outs and rookeries, except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting), which may require approaching pinniped haul-outs and rookeries closer than 1,000 feet (305 m).

(8) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch of the same vehicle under that Letter of Authorization.

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

(b) [Reserved]

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### §217.55 Requirements for monitoring and reporting.

(a) Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, West Coast Region, NMFS, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in §217.50 is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in §217.50(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301-427-8401), and the Administrator, West Coast Region, NMFS, or designee, by telephone (562-980-3232), within 48 hours of the discovery of the injured or dead animal.

(b) The National Marine Fisheries Service must be informed immediately of any changes or deletions to any portions of the proposed monitoring plan submitted, in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site individual(s), approved in advance by NMFS, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) *Visual land-based monitoring.* (i) Prior to each missile launch, an observer(s) will place three autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site. Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, of pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to the estimated launch time and for no less than 1 hour immediately following the launch of target missiles.