

activities during nighttime hours when operationally practicable.

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (304.8 m) from pinniped haul-outs.

(8) If injurious or lethal take is discovered during monitoring conducted under § 216.155, the holder of the Letter of Authorization must contact the Regional Administrator, Southwest Region, National Marine Fisheries Service, or his/her designee, at (562) 980-4023 within 48 hours and, in cooperation with the National Marine Fisheries Service, launch procedure, mitigation measures, and monitoring methods must be reviewed and appropriate changes made prior to the next launch.

(9) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next missile launch.

§ 216.154 Prohibitions.

Notwithstanding takings authorized by § 216.151(b) and by a Letter of Authorization issued under § 216.106, 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 part or a Letter of Authorization issued under § 216.106.
- (c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

§ 216.155 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(b) The National Marine Fisheries Service must be notified 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 observer(s), approved in advance by the National Marine Fisheries Service, 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 3 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 observers described in paragraph (c) of this section, on 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 at least 1 hour immediately following the launch of all launch vehicles.

(iii) Documentation, both via autonomous video camera and human observer, will consist of:

- (A) Numbers and sexes of each age class in focal subgroups;
- (B) Description and timing of launch activities or other disruptive event(s);
- (C) Movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;
- (D) Description of reactions;
- (E) Minimum distances between interacting and reacting pinnipeds;
- (F) Study location;
- (G) Local time;
- (H) Substratum type;
- (I) Substratum slope;
- (J) Weather condition;
- (K) Horizontal visibility; and
- (L) Tide state.

(2) *Acoustic Monitoring.* (i) During all target missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the target missile's flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video and human observer monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of target missiles in three dimensions.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each target missile.

(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each target missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report on the information required under

§ 216.155(d)(1)(iii) to the National Marine Fisheries Service, Southwest Regional Office, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

- (i) Timing and nature of launch operations;
- (ii) Summary of pinniped behavioral observations;
- (iii) Estimate of the amount and nature of all takes by harassment or by other means.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of these regulations and providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization, will be due 90 days after the end of the period of effectiveness of these regulations.

(5) Both the 60-day and draft comprehensive technical reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraph (d) of this section, or in the Letter of Authorization issued under § 216.106, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

§ 216.156 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 may not exceed the period of validity of this subpart.