

Dated: November 21, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.120, paragraph (a)(1) is revised to read as follows:

§ 216.120 Specified activity and specified geographical region.

(a) * * *

(1) Launching up to 30 space and missiles vehicles each year from Vandenberg Air Force Base, for a total of up to 150 missiles and rockets over the 5-year authorization period.

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3. Section 216.121 is revised to read as follows:

§ 216.121 Effective dates.

Regulations in this subpart are effective from January 1, 2004, through December 31, 2008.

4. In 216.123, paragraph (c) and (d) are revised as follows:

§ 216.123 Prohibitions.

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(c) No person in connection with the activities described in § 216.120 shall:

(1) Take any marine mammal not specified in § 216.120(b);

(2) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;

(3) Take a marine mammal specified in § 216.120(b) if such take 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 these regulations or a Letter of Authorization issued under § 216.106.

5. In § 216.124, paragraphs (a)(1)–(3) are revised to read as follows:

§ 216.124 Mitigation.

(a) * * *

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require

approaching pinniped rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons, March through June.

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6. In § 216.125, paragraphs (b) introductory text, (b)(2)–(b)(5) and (e) are revised and paragraphs (b)(6) and (b)(7) are added to read as follows:

§ 216.125 Requirements for monitoring and reporting.

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(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, as specified in the Letter of Authorization, to:

* * * * *

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals,

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf could occur in those areas (this determination will be made in consultation with the National Marine Fisheries Service),

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season,

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental

conditions such as tide, wind speed, air temperature, and swell.

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(e) An annual report must be submitted at the time of renewal of the LOA, described in § 216.127

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7. Section 216.127 is revised to read as follows:

§ 216.127 Renewal of Letters of Authorization.

A Letter of Authorization issued under § 216.126 for the activity identified in § 216.120(a) will be renewed annually upon:

(a) Timely receipt of the reports required under § 216.125(d), if determined by the Assistant Administrator to be acceptable; and

(b) A determination that the mitigation measures required under § 216.124 and the Letter of Authorization have been undertaken.

8. Section 216.128 is revised to read as follows:

§ 216.128 Modifications of Letters of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(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 § 216.120 (b), a Letter of Authorization may be substantively modified without prior notice and opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 697

[I.D. 110102A]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coast Weakfish Fishery; Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.