

taking allowable under these regulations.

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

**§ 216.158 Modifications to the Letter of Authorization.**

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and 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 § 216.151(b), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER subsequent to the action.

**Subparts O–P [Reserved]**

**Subpart Q—Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar**

SOURCE: 67 FR 46785, July 16, 2002, unless otherwise noted.

EFFECTIVE DATE NOTE: At 67 FR 46785, July 16, 2002, subpart Q, consisting of §§ 216.180 through 216.191 were added, effective Aug. 15, 2002, through Aug. 15, 2007.

**§ 216.180 Specified activity and specified geographical region.**

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 two SURTASS LFA sonar systems conducting active sonar oper-

ations, in areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§ 216.106 and 216.188, include the transmission of low frequency sounds from the SURTASS LFA sonar and the transmission of high frequency sounds from the mitigation sonar described in § 216.185 during training, testing, and routine military operations of SURTASS LFA sonar.

(a) With the exception of those areas specified in § 216.183(d), the incidental taking by harassment may be authorized in the following areas as specified in a Letter of Authorization:

- (1) Atlantic Polar Biome:
  - (i) Boreal Polar Province (1/BPLR)(i.e., LFA sonar 180-dB exclusion zone);
  - (ii) Atlantic Arctic Province (2/ARCT);
  - (iii) Atlantic Subarctic Province (3/SARC);
- (2) North Atlantic Coastal Biome:
  - (i) Northeast Atlantic Shelves Province (11/NECS),
    - (A) North/Irish Sea Subprovince,
    - (B) English Channel Subprovince,
    - (C) Southern Outer Shelf Subprovince,
    - (D) Northern Outer Shelf Subprovince, and
    - (E) Baltic Subprovince; and
  - (ii) Northwest Atlantic Shelves Province (15/NWCS),
    - (A) Newfoundland/Nova Scotia Shelf Subprovince,
    - (B) Gulf of St. Lawrence Coastal Subprovince,
    - (C) Gulf of Maine/Bay of Fundy Coastal Subprovince,
    - (D) Georges Bank/New York Bight Coastal Subprovince,
    - (E) Middle Atlantic Bight Coastal Subprovince,
    - (F) South Atlantic Bight Coastal Subprovince;
  - (3) South Atlantic Coastal Biome:
    - (i) Benguela Current Coastal Province (22/BENG);
    - (ii) Brazil Current Coastal Province (20/BRAZ);
    - (iii) Eastern (Canary) Coastal Province (12/CNRY);
    - (iv) Southwest Atlantic Shelves Province (21/FKLD);
    - (v) Guianas Coastal Province (14/GUIA);

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- (vi) Guinea Current Coastal Province (13/GUIN),
  - (A) Guiana Coastal Subprovince, and
  - (B) Central African Coastal Subprovince;
- (4) Atlantic Westerly Winds Biome:
  - (i) Gulf Stream Province (5/GFST);
  - (ii) North Atlantic Drift Province (4/NADR);
  - (iii) North Atlantic Subtropical Gyral East Province (18/NASTE); and
  - (iv) North Atlantic Subtropical Gyral West Province (6/NASTW);
- (5) Atlantic Trade Wind Biome:
  - (i) Caribbean Province (17/CARB);
  - (A) Gulf of Mexico Subprovince;
  - (B) Caribbean Sea Subprovince;
  - (ii) Eastern Tropical Atlantic Province (9/ETRA);
  - (iii) North Atlantic Tropical Gyral Province (7/NATR);
  - (iv) South Atlantic Gyral Province (10/SATL);
  - (v) Western Tropical Atlantic Province (8/WTRA);
- (6) Mediterranean/Black Sea Biome:
  - (i) Mediterranean Sea Province (16A/MEDI);
  - (ii) Black Sea Province (16B/BLSE);
- (7) Indian Ocean Coastal Biome:
  - (i) Australia/Indonesia Coastal Province (37/AUSW);
  - (ii) Eastern India Coastal Province (35/INDE);
  - (iii) Northwestern Arabian Upwelling Province (34/ARAB);
  - (iv) Eastern Africa Coastal Province (32/EAFR);
  - (v) Western India Coastal Province (36/INDW);
  - (vi) Red Sea, Persian Gulf Province (33/REDS);
- (8) Indian Ocean Trade Wind Biome:
  - (i) Indian South Subtropical Gyre Province (31/ISSG);
  - (ii) Indian Monsoon Gyres Province (30/MONS);
- (9) North Pacific Coastal Biome:
  - (i) Alaska Downwelling Coastal Province (65/ALSK),
    - (A) Canadian/Alaskan Coastal Subprovince,
    - (B) Aleutian Stream Coastal Subprovince,
  - (ii) California Current Province (66/CALC),
    - (A) Oregon-British Columbia Coastal Subprovince,
    - (B) Point Conception/Cape Mendicino Coastal Subprovince,

- (C) Southern California Bight Subprovince, and
- (D) Baja California Subprovince;
- (iii) Central American Coastal Province (67/CAMR);
- (iv) China Sea Coastal Province (69/CHIN);
- (10) South Pacific Coastal Biome:
  - (i) East Australian Coastal Province (71/AUSE);
  - (ii) Humboldt Current Coastal Province (68/HUMB);
    - (A) Chilean Coastal Subprovince and
    - (B) Peruvian Coastal Subprovince;
  - (iii) New Zealand Coastal Province (72/NEWZ);
  - (iv) Sunda/Arafura Shelves Province (70/SUND);
- (11) Pacific Polar Biome:
  - (i) North Pacific Epicontinental Sea Province (50/BERS);
    - (A) Bering Sea Subprovince;
    - (B) Okhotsk Sea Subprovince;
  - (ii) Reserved;
- (12) Pacific Trade Wind Biome:
  - (i) Archipelagic Deep Basins Province (64/ARCH);
  - (ii) North Pacific Tropical Gyre West Province (56/NPTGW);
  - (iii) North Pacific Tropical Gyre East Province (60/NPTGE);
  - (iv) Pacific Equatorial Divergence Province (62/PEQD);
  - (v) North Pacific Equatorial Countercurrent Province (61/PNEC);
  - (vi) South Pacific Subtropical Gyre Province (59/SPGS);
  - (vii) Western Pacific Warm Pool Province (63/WARM);
- (13) Pacific Westerly Winds Biome:
  - (i) Kuroshio Current Province (53/KURO);
  - (ii) North Pacific Transition Zone Province (54/NPPF);
  - (iii) Pacific Subarctic Gyres (East) Province (51/PSAGE);
  - (iv) Pacific Subarctic Gyres (West) Province (52/PSAGW);
- (14) Antarctic Westerly Winds Biome:
  - (i) Subantarctic Water Ring Province (81/SANT),
    - (A) Atlantic Subantarctic Ring Subprovince;
    - (B) Indian Ocean Subantarctic Ring Subprovince;
    - (C) Pacific Ocean Subantarctic Water Ring Subprovince;
  - (ii) Subtropical Convergence Province (80/SSTC),

(A) Atlantic South Subtropical Convergence Subprovince;

(B) Indian Ocean South Subtropical Convergence Subprovince;

(C) Pacific Ocean South Subtropical Convergence Subprovince;

(iii) Tasman Sea Province (58/TASM);

(15) Antarctic Polar Biome: (SURTASS LFA sonar exclusion zone);

(i) Antarctic Province (82/ANTA)

(ii) Austral Polar Province (83/APLR).

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

(1) Mysticete whales—blue whale (*Balaenoptera musculus*), fin whale (*Balaenoptera physalus*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), humpback whale (*Megaptera novaeangliae*), northern right whale (*Eubalaena glacialis*), southern right whale (*Eubalaena australis*), pygmy right whale (*Capera marginata*), bowhead whale (*Balaena mysticetus*), and gray whales (*Eschrichtius robustus*).

(2) Odontocete whales—Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), right-whale dolphin (*Lissodelphis spp.*), bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), beluga whale (*Delphinapterus leucas*), *Stenella spp.*, *Lagenorhynchus spp.*, *Cephalorhynchus spp.*, melon-headed whale (*Peponocephala spp.*), beaked whales (*Berardius spp.*, *Hyperoodon spp.*, *Mesoplodon spp.*), Cuvier's beaked whale (*Ziphius cavirostris*), Shepard's beaked whale (*Tasmacetus shepherdii*), Longman's beaked whale (*Indopacetus pacificus*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), sperm whale (*Physeter macrocephalus*), dwarf and pygmy sperm whales (*Kogia simus* and *K. breviceps*), and short-finned and long-finned pilot whales (*Globicephala macrorhynchus* and *G. melas*).

(3) Pinnipeds—harbor seals (*Phoca vitulina*), spotted seals (*P. largha*), rib-

bon seals (*P. fasciata*), gray seals (*Halichoerus grypus*), hooded seal (*Cystophora cristata*), elephant seals (*Mirounga angustirostris* and *M. leonina*), Hawaiian monk seals (*Monachus schauinslandi*), Mediterranean monk seals (*Monachus monachus*), northern fur seals (*Callorhinus ursinus*); southern fur seals (*Arctocephalus spp.*), Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), Australian sea lions (*Neophoca cinerea*), New Zealand sea lions (*Phocarcos hookeri*), and South American sea lions (*Otaria flavescens*).

#### §216.181 Effective dates.

Regulations in this subpart are effective from August 15, 2002 through August 15, 2007.

#### §216.182 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.188, 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 §216.180(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.180 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and the availability of marine mammals for subsistence uses.

#### §216.183 Prohibitions.

Notwithstanding takings authorized by §216.180 and by a Letter of Authorization issued under §§216.106 and 216.188, no person in connection with the activities described in §216.180 shall:

(a) Take any marine mammal not specified in §216.180(b);

(b) Take any marine mammal specified in §216.180(b) other than by incidental, unintentional Level A and Level B harassment;

(c) Take any marine mammal by receiving a sound pressure level greater than 180 dB while operating under a