

§ 216.146

50 CFR Ch. II (10–1–98 Edition)

(d)(1) A report summarizing the results of structure removal activities, mitigation measures, monitoring efforts, and other information as required by a Letter of Authorization, must be submitted to the Director, NMFS, Southeast Region, 9721 Executive Center Drive N, St. Petersburg, FL 33702 within 30 calendar days of completion of the removal of the rig.

(2) NMFS will accept the U.S. Government observer report as the activity report if all requirements for reporting contained in the Letter of Authorization are provided to that observer before the observer's report is complete.

**§ 216.146 Letters of Authorization.**

(a) To incidentally take bottlenose and spotted dolphins pursuant to these regulations, each company operating or which operated an oil or gas structure in the geographical area described in § 216.141, and which is responsible for abandonment or removal of the platform, must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of bottlenose and spotted dolphins.

[60 FR 53145, Oct. 12, 1995. Redesignated and amended at 61 FR 15887, 15890, Apr. 10, 1996]

**§ 216.147 Renewal of Letters of Authorization.**

(a) A Letter of Authorization issued under § 216.106 for the activity identified in § 216.141 will be renewed annually upon:

(1) Timely receipt of the reports required under § 216.145(d), which have been reviewed by the Assistant Administrator and determined to be acceptable;

(2) A determination that the maximum incidental take authorizations in § 216.141(b) will not be exceeded; and

(3) A determination that the mitigation measures required under § 216.143(b) and the Letter of Authorization have been undertaken.

(b) If a species' annual authorization is exceeded, the Assistant Administrator will review the documentation submitted with the annual reports re-

quired under § 216.145(d), to determine that the taking is not having more than a negligible impact on the species or stock involved.

(c) Notice of issuance of a renewal of the Letter of Authorization will be published in the FEDERAL REGISTER.

[60 FR 53145, Oct. 12, 1995. Redesignated and amended at 61 FR 15887, 15890, Apr. 10, 1996]

**§ 216.148 Modifications to 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 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. For purposes of this paragraph, renewal of a Letter of Authorization under § 216.147, without modification, 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 § 216.141(b), the Letter of Authorization issued pursuant to § 216.106, or renewed pursuant to this section may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the FEDERAL REGISTER subsequent to the action.

[60 FR 53145, Oct. 12, 1995. Redesignated and amended at 61 FR 15887, 15890, Apr. 10, 1996]

**Subpart N—Taking of Marine Mammals Incidental to Underwater Detonation of Conventional Explosives by the Department of Defense**

SOURCE: 59 FR 5126, Feb. 3, 1994, unless otherwise noted. Redesignated at 61 FR 15887, Apr. 10, 1996.

EFFECTIVE DATE NOTE: At 59 FR 5126, Feb. 3, 1994, subpart F to part 228 was added, effective March 3, 1994 through March 3, 1999. At 61 FR 15887, Apr. 10, 1996, subpart F of part 228 was redesignated as subpart N of part 216.

**§216.151 Specified activity, geographical region, and incidental take levels.**

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of conventional military explosives within the waters of the Outer Sea Test Range of the Naval Air Warfare Center, Pt. Mugu, Ventura County, CA.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited annually to the following species and species groups:

	Le- thal	In- jury	Har- ass- ment
California Sea Lion .....	2	38	173
Harbor Seal .....	2	16	68
Northern Elephant Seal .....	9	158	724
Northern Fur Seal .....	2	13	57
Common Dolphin .....	1	16	67
Striped Dolphin .....	0	2	5
Risso's Dolphin .....	0	1	2
Pacific White-Sided Dolphin .....	3	52	236
Northern Rt. Whale Dolphin .....	2	24	108
Dall's Porpoise .....	0	6	18
Bottlenose Dolphin .....	0	4	15
Killer Whale .....	0	0	1
Sperm Whale .....	0	6	20
Beaked Whales .....	0	0	3
Minke Whale .....	0	0	4
Blue Whale .....	0	1	11
Fin Whale .....	0	0	6
Sei Whale .....	0	0	1
Humpback Whale .....	0	0	4
Gray Whale .....	0	3	40
Right Whale .....	0	0	1

**§216.152 Effective dates.**

Regulations in this subpart are effective from March 3, 1994, through March 3, 1999.

**§216.153 Permissible methods of taking; mitigation.**

(a) U.S. citizens holding a Letter of Authorization issued pursuant to §216.106 may incidentally, but not intentionally, take marine mammals by harassment, injury or killing in the course of the detonation of conventional explosives up to the following maximum annual level within the area described in §216.151(a):

- (1) 12 detonations of 10,000 lbs (4,536 kg);
- (2) 2 detonations of 1,200 lbs (544 kg);
- (3) 10 detonations of 100 lbs (45 kg);

(4) 10 detonations of 10 lbs (4.5 kg); and

(5) 20 detonations of 1 lb (0.45 kg), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be utilized:

(1) If marine mammals are observed within the designated safety zone prescribed in the Letter of Authorization, or on a course that will put them within the safety zone prior to detonation, detonation must be delayed until the marine mammals are no longer within the safety zone.

(2) If weather and/or sea conditions preclude adequate aerial surveillance, detonation must be delayed until conditions improve sufficiently for aerial surveillance to be undertaken.

(3) 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 project.

[59 FR 5126, Feb. 3, 1994. Redesignated and amended at 61 FR 15887, 15890, Apr. 10, 1996]

**§216.154 Prohibitions.**

Notwithstanding takings authorized by §216.153 or 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 or renewed under §216.106 or §216.156; and

(c) The incidental taking of any marine mammal of a species either not specified in this subpart or whose taking authorization for the year has been reached.

[59 FR 5126, Feb. 3, 1994. Redesignated and amended at 61 FR 15887, 15890, Apr. 10, 1996]