

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.*, mitigation); and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA will be published in the FEDERAL REGISTER within thirty days of a determination.

**§ 218.238 Renewals and modifications of a Letter of Authorization.**

(a) An LOA issued under §§ 216.106 of this chapter and 218.237 for the activity identified in § 218.230 may be renewed or modified upon request by the applicant, provided that:

(1) The planned specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA(s) were implemented.

(b) For LOA modification or renewal requests by the Navy that include changes to the activity or to the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or that do not result in more than a minor change in the total estimated number of takes (or distribution by species or stock or years), NMFS may publish notification of a planned LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 218.237 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* After consulting with the Navy regarding the practicability of the modifications, NMFS may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include:

(A) Results from the Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of planned LOA in the FEDERAL REGISTER and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 218.237, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within thirty days of the action.

**PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

**Subpart A—Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research**

Sec.

219.1 Specified activity and specified geographical region.

219.2 Effective dates.

219.3 Permissible methods of taking.

219.4 Prohibitions.

219.5 Mitigation requirements.

219.6 Requirements for monitoring and reporting.

## § 219.1

- 219.7 Letters of Authorization.  
219.8 Renewals and modifications of Letters of Authorization.  
219.9–219.10 [Reserved]

### Subpart B–C [Reserved]

### Subpart D—Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries Research in the Atlantic Coast Region

- 219.31 Specified activity and specified geographical region.  
219.32 Effective dates.  
219.33 Permissible methods of taking.  
219.34 Prohibitions.  
219.35 Mitigation requirements.  
219.36 Requirements for monitoring and reporting.  
219.37 Letters of Authorization.  
219.38 Renewals and modifications of Letters of Authorization.  
219.39–219.40 [Reserved]

AUTHORITY: 16 U.S.C. 1361 *et seq.*

SOURCE: 86 FR 3868, Jan. 15, 2021, unless otherwise noted.

EFFECTIVE DATE NOTE: At 86 FR 3868, Jan. 15, 2021, part 219 was added, effective Jan. 15, 2021, through Jan. 15, 2026.

### Subpart A—Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research

#### § 219.1 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Marine Fisheries Service's (NMFS) Southwest Fisheries Science Center (SWFSC) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to research survey program operations.

(b) The taking of marine mammals by SWFSC may be authorized in a Letter of Authorization (LOA) only if it occurs within the California Current Ecosystem (CCE) or Antarctic Marine Living Resources Ecosystem (AMLR).

#### § 219.2 Effective dates.

Regulations in this subpart are effective from January 15, 2021 through January 15, 2026.

## 50 CFR Ch. II (10–1–22 Edition)

#### § 219.3 Permissible methods of taking.

Under LOAs issued pursuant to §§216.106 of this chapter and 219.7, the Holder of the LOA (hereinafter “SWFSC”) may incidentally, but not intentionally, take marine mammals within the area described in §219.1(b) by Level B harassment associated with use of active acoustic systems and physical or visual disturbance of hauled-out pinnipeds and by Level A harassment, serious injury, or mortality associated with use of fisheries research gear, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

#### § 219.4 Prohibitions.

(a) Notwithstanding takings contemplated in §219.1 and authorized by a LOA issued under §§216.106 of this chapter and 219.7, no person in connection with the activities described in §219.1 may:

(1) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§216.106 of this chapter and 219.7;

(2) Take any marine mammal not specified in such LOA;

(3) Take any marine mammal specified in such LOA in any manner other than as specified;

(4) Take a marine mammal specified in such LOA if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(5) Take a marine mammal specified in such LOA if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

(b) [Reserved]

#### § 219.5 Mitigation requirements.

When conducting the activities identified in §219.1(a), the mitigation measures contained in any LOA issued under §§216.106 of this chapter and 219.7 must be implemented.

(a) *General conditions.* (1) SWFSC must take all necessary measures to coordinate and communicate in advance of each specific survey with the

National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon.

(2) SWFSC must coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (Commanding Officer/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(3) SWFSC must coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

(4) When deploying any type of sampling gear at sea, SWFSC must at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

(5) SWFSC must implement handling and/or disentanglement protocols as specified in guidance provided to SWFSC survey personnel.

(b) *Trawl survey protocols.* (1) SWFSC must conduct trawl operations as soon as is practicable upon arrival at the sampling station.

(2) SWFSC must initiate marine mammal watches (visual observation) at least 15 minutes prior to beginning of net deployment (or for the amount of time to travel between stations if less than 15 minutes) but must also conduct monitoring during any pre-set activities including CTD casts and plankton or bongo net hauls.

(3) In the CCE, SWFSC must implement the move-on rule mitigation protocol, as described in this paragraph. If one or more marine mammals, with the exception of baleen whales, are observed within 1 nautical mile (nmi) of

the planned sampling location during the visual observation period, SWFSC must move on to another sampling location. If, after moving on, marine mammals remain within 1 nmi, the SWFSC must move again or skip the station. SWFSC may use best professional judgment in making these decisions but may not elect to conduct trawl survey activity when marine mammals other than baleen whales remain within the 1-nmi zone.

(4) SWFSC must maintain visual monitoring effort during the entire period of time that trawl gear is in the water (*i.e.*, throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, SWFSC must take the most appropriate action to avoid marine mammal interaction. SWFSC may use best professional judgment in making this decision.

(5) If trawling operations have been suspended because of the presence of marine mammals, SWFSC may resume trawl operations when practicable only when the animals are believed to have departed the 1 nmi area. SWFSC may use best professional judgment in making this determination.

(6) SWFSC must implement standard survey protocols to minimize potential for marine mammal interactions, including maximum tow durations at target depth and maximum tow distance, and shall carefully empty the trawl as quickly as possible upon retrieval. Trawl nets must be cleaned prior to deployment.

(7) SWFSC must install and use a marine mammal excluder device at all times when the Nordic 264 trawl net or any other net is used for which the device is appropriate.

(8) SWFSC must install and use acoustic deterrent devices whenever any midwater trawl net is used, with two to four devices placed along the footrope and/or headrope of the net. SWFSC must ensure that the devices are operating properly before deploying the net.

(c) *Pelagic longline survey protocols.* (1) SWFSC must deploy longline gear as soon as is practicable upon arrival at the sampling station.

(2) SWFSC must initiate marine mammal watches (visual observation)

## §219.6

no less than 15 minutes (or for the duration of transit between locations, if shorter than 15 minutes) prior to both deployment and retrieval of longline gear.

(3) SWFSC must implement the move-on rule mitigation protocol, as described in this paragraph. If one or more marine mammals, with the exception of groups of five or fewer California sea lions, are observed within 1 nmi of the planned sampling location during the visual observation period, SWFSC must move on to another sampling location. If, after moving on, marine mammals remain within 1 nmi, the SWFSC must move again or skip the station. SWFSC may use best professional judgment in making these decisions but may not elect to conduct pelagic longline survey activity when animals remain within the 1-nmi zone.

(4) SWFSC must maintain visual monitoring effort during the entire period of gear deployment and retrieval. If marine mammals are sighted before the gear is fully deployed or retrieved, SWFSC must take the most appropriate action to avoid marine mammal interaction. SWFSC may use best professional judgment in making this decision.

(5) If deployment or retrieval operations have been suspended because of the presence of marine mammals, SWFSC may resume such operations when practicable only when the animals are believed to have departed the 1 nmi area. SWFSC may use best professional judgment in making this decision.

(6) SWFSC must implement standard survey protocols, including maximum soak durations and a prohibition on chumming.

(d) *Purse seine survey protocols.* (1) SWFSC must conduct purse seine operations as soon as is practicable upon arrival at the sampling station.

(2) SWFSC must conduct marine mammal watches (visual observation) prior to beginning of net deployment.

(3) SWFSC must implement the move-on rule mitigation protocol, as described in this paragraph for use of purse seine gear. If one or more killer whales or small cetaceans (*i.e.*, dolphin or porpoise) or five or more pinnipeds are observed within 500 m of the

## 50 CFR Ch. II (10–1–22 Edition)

planned sampling location before setting the purse seine gear, SWFSC must either remain onsite or move on to another sampling location. If remaining onsite, the set must be delayed. If the animals depart or appear to no longer be at risk of interacting with the vessel or gear, a further observation period must be conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the set may be made. If the vessel is moved to a different area, the move-on rule mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the SWFSC must move again or skip the station. Marine mammals that are sighted further than 500 m from the vessel must be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. SWFSC may use best professional judgment in making these decisions.

(4) SWFSC must maintain visual monitoring effort during the entire period of time that purse seine gear is in the water (*i.e.*, throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, SWFSC must take the most appropriate action to avoid marine mammal interaction. SWFSC may use best professional judgment in making this decision.

(5) If purse seine operations have been suspended because of the presence of marine mammals, SWFSC may resume seine operations when practicable only when the animals are believed to have departed the area. SWFSC may use best professional judgment in making this determination.

(6) If any cetaceans are observed in a purse seine net, SWFSC must immediately open the net and free the animals.

### §219.6 Requirements for monitoring and reporting.

(a) *Compliance coordinator.* SWFSC must designate a compliance coordinator who shall be responsible for ensuring compliance with all requirements of any LOA issued pursuant to §216.106 of this chapter and §219.7 and

for preparing for any subsequent request(s) for incidental take authorization.

(b) *Visual monitoring program.* (1) Marine mammal visual monitoring must occur prior to deployment of trawl, hook and line, and purse seine gear, respectively; throughout deployment of gear and active fishing of research gears (not including longline soak time); prior to retrieval of longline gear; and throughout retrieval of all research gear.

(2) Marine mammal watches must be conducted by watch-standers (those navigating the vessel and/or other crew) at all times when the vessel is being operated.

(3) SWFSC must monitor any potential disturbance of pinnipeds on ice, paying particular attention to the distance at which different species of pinniped are disturbed. Disturbance must be recorded according to a three-point scale representing increasing seal response to disturbance.

(c) *Training.* (1) SWFSC must conduct annual training for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, completion of datasheets, and use of equipment. SWFSC may determine the agenda for these trainings.

(2) SWFSC must also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful.

(3) SWFSC must coordinate with NMFS' Northwest Fisheries Science Center (NWFS) regarding surveys conducted in the CCE, such that training and guidance related to handling procedures and data collection is consistent.

(d) *Handling procedures and data collection.* (1) SWFSC must implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by

NMFS's Office of Protected Resources (OPR).

(2) When practicable, for any marine mammal interaction involving the release of a live animal, SWFSC must collect necessary data to facilitate a serious injury determination.

(3) SWFSC must provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction.

(4) SWFSC must record such data on standardized forms, which will be subject to approval by OPR. SWFSC must also answer a standard series of supplemental questions regarding the details of any marine mammal interaction.

(e) *Reporting.* (1) SWFSC must report all incidents of marine mammal interaction to NMFS's Protected Species Incidental Take database within 48 hours of occurrence and must provide supplemental information to OPR upon request. Information related to marine mammal interaction (animal captured or entangled in research gear) must include details of survey effort, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made, and rationale for decisions made in vessel and gear handling.

(2) SWFSC must submit annual reports including:

(i) An annual summary report to OPR not later than 90 days following the end of a given year. SWFSC must provide a final report within 30 days following resolution of comments on the draft report.

(ii) These reports must contain, at minimum, the following:

(A) Annual line-kilometers surveyed during which predominant active acoustic sources were used;

(B) Summary information regarding use of all hook and line, purse seine, and trawl gear, including number of sets, hook hours, tows, etc., specific to each gear;

(C) Accounts of all incidents of significant marine mammal interactions, including circumstances of the event

## §219.7

## 50 CFR Ch. II (10–1–22 Edition)

and descriptions of any mitigation procedures implemented or not implemented and why, and, for interactions due to use of pelagic longline or purse seine, whether the move-on rule was waived due to the presence of five or fewer California sea lions;

(D) Summary information related to any on-ice disturbance of pinnipeds, including raw sightings data and the event-specific total counts of animals present, counts of reactions according to a three-point scale of response severity and numbers of takes (differentiated by species and age class), the distance at which a pinniped is disturbed and the closest point of approach for each disturbance event;

(E) A written evaluation of the effectiveness of SWFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any;

(F) Final outcome of serious injury determinations for all incidents of marine mammal interactions where the animal(s) were released alive; and

(G) A summary of all relevant training provided by SWFSC and any coordination with NWFSC or NMFS' West Coast Regional Office.

(f) *Reporting of injured or dead marine mammals.* (1) In the event that personnel involved in the survey activities covered by the authorization discover an injured or dead marine mammal, SWFSC must report the incident to OPR and to the appropriate West Coast Regional Stranding Coordinator as soon as feasible. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

(2) In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, SWFSC must report the incident to OPR and to the appropriate West Coast Regional Stranding Coordinator as soon as feasible. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Vessel's speed during and leading up to the incident;

(iv) Vessel's course/heading and what operations were being conducted (if applicable);

(v) Status of all sound sources in use;

(vi) Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

(vii) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

(viii) Estimated size and length of animal that was struck;

(ix) Description of the behavior of the marine mammal immediately preceding and following the strike;

(x) If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

(xi) Estimated fate of the animal (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

(xii) To the extent practicable, photographs or video footage of the animal(s).

### §219.7 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, SWFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations,

SWFSC may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, SWFSC must apply for and obtain a modification of the LOA as described in §219.8.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the FEDERAL REGISTER within thirty days of a determination.

#### **§ 219.8 Renewals and modifications of Letters of Authorization.**

(a) An LOA issued under §§216.106 of this chapter and 219.7 for the activity identified in §219.1(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated

number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§216.106 of this chapter and 219.7 for the activity identified in §219.1(a) may be modified by OPR under the following circumstances:

(1) OPR may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with SWFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from SWFSC's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies;

(C) Any information that reveals marine mammals may have been taken in a manner; and extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§216.106 of this chapter and 219.7, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within thirty days of the action.

**§§ 219.9–219.10 [Reserved]**

**Subparts B–C [Reserved]**

**Subpart D—Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries Research in the Atlantic Coast Region**

SOURCE: 86 FR 58467, Oct. 21, 2021, unless otherwise noted.

EFFECTIVE DATE NOTE: At, 86 FR 58467, Oct. 21, 2021, subpart D was added, effective Oct. 21, 2021, through Oct. 21, 2026

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

(a) This subpart applies only to the National Marine Fisheries Service's (NMFS) Northeast Fisheries Science Center and those persons it authorizes or funds to conduct activities in the area outlined in paragraph (b) of this section during research survey program operations.

(b) The incidental taking of marine mammals by Northeast Fisheries Science Center may be authorized in a Letter of Authorization (LOA) only if it occurs within the Northeast and Southeast Large Marine Ecosystem.

**§ 219.32 Effective dates.**

Regulations in this subpart are effective from October 21, 2021, through October 21, 2026.

**§ 219.33 Permissible methods of taking.**

Under LOAs issued pursuant to §§216.106 of this chapter and 219.37, the Holder of the LOA (hereinafter “NEFSC”) may incidentally, but not intentionally, take marine mammals within the area described in §219.31(b) by Level B harassment associated with use of active acoustic systems and physical or visual disturbance of hauled out pinnipeds and by Level A harassment, serious injury, or mortality associated with use of trawl, dredge, bottom and pelagic longline, gillnet, pot and trap, and fyke net gears, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

**§ 219.34 Prohibitions.**

Except for takings contemplated in § 219.33 and authorized by a LOA issued under §§216.106 of this chapter and 219.37, it shall be unlawful for any person to do any of the following in connection with the activities described in § 219.31:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§216.106 of this chapter and 219.37;

(b) Take any marine mammal not specified in such LOA;

(c) Take any marine mammal specified in such LOA in any manner other than as specified;

(d) Take a marine mammal specified in such LOA if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOA if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

**§ 219.35 Mitigation requirements.**

When conducting the activities identified in §219.31(a), the mitigation measures contained in any LOA issued under §§216.106 of this chapter and 219.37 must be implemented. These mitigation measures must include but are not limited to:

(a) *General conditions.* (1) NEFSC must take all necessary measures to coordinate and communicate in advance of each specific survey with the National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon;

(2) NEFSC must coordinate and conduct briefings at the outset of each survey and as necessary between the ship's crew (Commanding Officer/master or designee(s), contracted vessel owners, as appropriate) and scientific



party or in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;

(3) NEFSC must coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and properly implemented;

(4) When deploying any type of sampling gear at sea, NEFSC must at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment;

(5) All vessels must comply with applicable and relevant take reduction plans, including any required use of acoustic deterrent devices;

(6) If a NEFSC vessel 65 ft (19.8 m) or longer is traveling within a North Atlantic right whale Seasonal Management Area, the vessel shall not exceed 10 knots in speed. When practicable, all NEFSC vessels traveling within a Dynamic Management Area or acoustically-triggered Slow Zone should not exceed 10 knots in speed;

(7) All NEFSC vessels shall maintain a separation distance of 500 m and 100 m from a North Atlantic right whale and other large whales, respectively;

(8) NEFSC must implement handling and/or disentanglement protocols as specified in the guidance provided to NEFSC survey personnel; and

(9) In the case of a bottlenose dolphin entanglement resulting in mortality and stock origin is unknown, the NEFSC must request and arrange for expedited genetic sampling for stock determination and photograph the dorsal fin and submit the image to the NMFS Regional Marine Mammal Stranding Coordinator for identification/matching to bottlenose dolphins in the Bottlenose Dolphin Photo-identification Catalog.

(b) *Trawl survey protocols.* (1) NEFSC must conduct trawl operations as soon as is practicable upon arrival at the sampling station;

(2) NEFSC must initiate marine mammal watches (visual observation)

15 minutes prior to sampling within 1 nm of the site. Marine mammal watches must be conducted by scanning the surrounding waters with the naked eye and binoculars (or monocular). During nighttime operations, visual observation will be conducted using the naked eye and available vessel lighting;

(3) NEFSC must implement the following “move-on rule.” If a marine mammal is sighted within 1 nautical mile (nm) of the planned location in the 15 minutes before gear deployment, NEFSC may move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear based on best professional judgement. If, after moving on, marine mammals are still visible from the vessel, NEFSC may decide to move again or to skip the station. NMFS may use best professional judgement in making this decision;

(4) NEFSC must maintain visual monitoring effort during the entire period of time that trawl gear is in the water (*i.e.*, throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, NEFSC must take the most appropriate action to avoid marine mammal interaction. NEFSC may use best professional judgement in making this decision;

(5) If trawling operations have been suspended because of the presence of marine mammals, NEFSC may resume only after there are no sightings for 15 minutes within 1nm of sampling location;

(6) If deploying bongo plankton or other small net prior to trawl gear, NEFSC will continue visual observations until trawl gear is ready to be deployed;

(7) NEFSC must implement standard survey protocols to minimize potential for marine mammal interactions. These protocols include, but are not limited to:

(i) Standard tow durations of no more than 30 minutes at target depth for distances less than 3 nautical miles (nm). The exceptions to the 30-minute tow duration are the Atlantic Herring Acoustic Pelagic Trawl Survey and the Deepwater Biodiversity Survey where total time in the water (deployment,

fishing, and haul-back) is 40 to 60 minutes and 180 minutes, respectively;

(ii) Trawl tow distances of no more than 3 nm;

(iii) Bottom trawl tows will be made in either straight lines or following depth contours, whereas other tows targeting fish aggregations and deep-water biodiversity tows may be made along oceanographic or bathymetric features;

(iv) Sharp course changes will be avoided in all surveys;

(v) Open the codend of the net close to the deck/sorting area to avoid damage to animals that may be caught in gear; and

(vi) Gear will be emptied as close to the deck/sorting area and as quickly as possible after retrieval; and

(vii) Trawl nets must be cleaned prior to deployment.

(c) *Dredge survey protocols.* (1) NEFSC must deploy dredge gear as soon as is practicable upon arrival at the sampling station;

(2) NEFSC must initiate marine mammal watches (visual observation) prior to sampling. Marine mammal watches must be conducted by scanning the surrounding waters with the naked eye and binoculars (or monocular). During nighttime operations, visual observation must be conducted using the naked eye and available vessel lighting;

(3) NEFSC must implement the following “move-on rule.” If marine mammals are sighted within 1 nautical mile (nm) of the planned location in the 15 minutes before gear deployment, the NEFSC may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear, based on best professional judgement. If, after moving on, marine mammals are still visible from the vessel, NEFSC may decide to move again or to skip the station”;

(4) NEFSC must maintain visual monitoring effort during the entire period of time that dredge gear is in the water (*i.e.*, throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, NEFSC must take the most appropriate action

to avoid marine mammal interaction. NEFSC may use best professional judgment in making this decision;

(5) If dredging operations have been suspended because of the presence of marine mammals, NEFSC may resume operations when practicable only when the animals are believed to have departed the area or after 15 minutes of no sightings. NEFSC may use best professional judgment in making this determination; and

(6) NEFSC must carefully empty the dredge gear as close to the deck/sorting area and quickly as possible upon retrieval to determine if marine mammals are present in the gear.

(d) *Bottom and pelagic longline survey protocols.* (1) NEFSC must deploy longline gear as soon as is practicable upon arrival at the sampling station;

(2) NEFSC must initiate marine mammal watches (visual observation) no less than fifteen minutes prior to both deployment and retrieval of the longline gear. Marine mammal watches must be conducted by scanning the surrounding waters with the naked eye and binoculars (or monocular). During nighttime operations, visual observation must be conducted using the naked eye and available vessel lighting;

(3) NEFSC must implement the following “move-on rule.” If marine mammals are sighted within 1 nautical mile (nmi) of the planned location in the 15 minutes before gear deployment, the NEFSC may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear, based on best professional judgement. If, after moving on, marine mammals are still visible from the vessel, NEFSC may decide to move again or to skip the station;

(4) For the Apex Predators Bottom Longline Coastal Shark Survey, if one or more marine mammals are observed within 1 nautical mile (nm) of the planned location in the 15 minutes before gear deployment, NEFSC must transit to a different section of the sampling area to maintain a minimum set distance of 1 nmi from the observed marine mammals. If, after moving on, marine mammals remain within 1 nmi,

NEFSC may decide to move again or to skip the station. NEFSC may use best professional judgment in making this decision but may not elect to conduct pelagic longline survey activity when animals remain within the 1-nmi zone;

(5) NEFSC must maintain visual monitoring effort during the entire period of gear deployment or retrieval. If marine mammals are sighted before the gear is fully deployed or retrieved, NEFSC must take the most appropriate action to avoid marine mammal interaction. NEFSC may use best professional judgment in making this decision;

(6) If deployment or retrieval operations have been suspended because of the presence of marine mammals, NEFSC may resume such operations after there are no sightings of marine mammals for at least 15 minutes within 1nm area of sampling location. In no case will longlines be deployed if animals are considered at-risk of interaction; and

(7) NEFSC must implement standard survey protocols, including maximum soak durations and a prohibition on chumming.

(e) *Gillnet survey protocols.* (1) The NEFSC must deploy gillnet gear as soon as is practicable upon arrival at the sampling station;

(2) The NEFSC must initiate marine mammal watches (visual observation) prior to both deployment and retrieval of the gillnet gear. When the vessel is on station during the soak, marine mammal watches must be conducted during the soak by scanning the surrounding waters with the naked eye and binoculars (or monocular);

(3) The NEFSC must implement the following "move-on rule." If marine mammals are sighted within 1 nmi of the planned location in the 15 minutes before gear deployment, the NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains, may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear based on best professional judgement. If, after moving on, marine mammals are still visible from the vessel, the NEFSC and/or its cooperating institutions, con-

tracted vessels, or commercially-hired captains may decide to move again or to skip the station;

(4) If marine mammals are sighted near the vessel during the soak and are determined to be at risk of interacting with the gear, then the NEFSC must carefully retrieve the gear as quickly as possible. The NEFSC may use best professional judgment in making this decision;

(5) The NEFSC must implement standard survey protocols, including continuously monitoring the gillnet gear during soak time and removing debris with each pass as the net is reset into the water to minimize bycatch;

(6) The NEFSC must ensure that surveys deploy acoustic pingers on gillnets in areas where required for commercial fisheries. NEFSC must ensure that the devices are operating properly before deploying the net;

(7) NEFSC must maintain visual monitoring effort during the entire period of gear deployment or retrieval. If marine mammals are sighted during the soak and are deemed at risk of interaction, the gillnet must be pulled. If fishing operations are halted, operations resume when animal(s) have not been sighted within 15 minutes or are determined to no longer be at risk. In other instances, the station is moved or cancelled;

(8) NEFSC must ensure that cooperating institutions, contracted vessels, or commercially-hired captains conducting gillnet surveys adhere to monitoring and mitigation requirements and must include required protocols in all survey instructions, contracts, and agreements;

(9) For the COASTSPAN gillnet surveys, the NEFSC will actively monitor for potential bottlenose dolphin entanglements by hand-checking the gillnet every 30 minutes or if a disturbance in the net is observed. In the unexpected case of a bottlenose dolphin entanglement resulting in mortality, NEFSC must request and arrange for expedited genetic sampling for stock determination. NEFSC must also photograph the dorsal fin and submit the image to the NMFS Southeast Stranding Coordinator for identification/matching to bottlenose dolphins in the Mid-Atlantic

Bottlenose Dolphin Photo-Identification Catalog;

(10) NEFSC must pull gear immediately if disturbance in the nets is observed.

(11) All gillnets will be designed with minimal net slack and excess floating and trailing lines will be removed.

(12) NEFSC will set only new or fully repaired gill nets, and modify nets to avoid large vertical gaps between float line and net as well as lead line and net when set,

(13) On Observer Training cruises, acoustic pingers and weak links may be used on all gillnets consistent with the regulations and TRPs for commercial fisheries. NEFSC must ensure that surveys deploy acoustic deterrent devices on gillnets in areas where required for commercial fisheries. NEFSC must ensure that the devices are operating properly before deploying the net.

(f) *Pot and trap survey protocols.* (1) The NEFSC must deploy pot gear as soon as is practicable upon arrival at the sampling station;

(2) The NEFSC must initiate marine mammal watches (visual observation) no less than 15 minutes prior to both deployment and retrieval of the pot and trap gear. Marine mammal watches must be conducted by scanning the surrounding waters with the naked eye and binoculars (or monocular). During nighttime operations, visual observation must be conducted using the naked eye and available vessel lighting;

(3) The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains must implement the following “move-on” rule. If marine mammals are sighted within 1 nmi of the planned location in the 15 minutes before gear deployment, the NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains, as appropriate, may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear, based on best professional judgement. If, after moving on, marine mammals are still visible from the vessel, the NEFSC may decide to move again or to skip the station;

(4) If marine mammals are sighted near the vessel during the soak and are determined to be at risk of interacting with the gear, then the NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains must carefully retrieve the gear as quickly as possible. The NEFSC may use best professional judgment in making this decision; and

(5) The NEFSC must ensure that surveys deploy gear fulfilling all pot/trap universal commercial gear configurations such as weak link requirements and marking requirements as specified by applicable take reduction plans as required for commercial pot/trap fisheries.

(g) *Fyke net gear protocols.* (1) NEFSC must conduct fyke net gear deployment as soon as is practicable upon arrival at the sampling station;

(2) NEFSC must visually survey the area prior to both deployment and retrieval of the fyke net gear. NEFSC must conduct monitoring and retrieval of the gear every 12- to 24-hour soak period;

(3) If marine mammals are in close proximity (approximately 328 feet [100 meters]) of the set location, NEFSC must determine if the net should be removed from the water and the set location should be moved using best professional judgment;

(4) If marine mammals are observed to interact with the gear during the setting, NEFSC must remove the gear from the water and implement best handling practices; and

(5) NEFSC must install and use a marine mammal excluder device at all times when using fyke nets equal or greater to 2 m.

(h) *Rotary screw trap gear protocols.* (1) NEFSC must conduct rotary screw trap deployment as soon as is practicable upon arrival at the sampling station;

(2) NEFSC must visually survey the area prior to both setting and retrieval of the rotary screw trap gear. If marine mammals are observed in the sampling area, NEFSC must suspend or delay the sampling. NEFSC may use best professional judgment in making this decision;

(3) NEFSC must tend to the trap on a daily basis to monitor for marine mammal interactions with the gear; and

(4) If the rotary screw trap captures a marine mammal, NEFSC must remove gear and implement best handling practices.

**§ 219.36 Requirements for monitoring and reporting.**

(a) *Compliance coordinator.* NEFSC shall designate a compliance coordinator who shall be responsible for ensuring compliance with all requirements of any LOA issued pursuant to § 216.106 of this chapter and § 219.7 and for preparing for any subsequent request(s) for incidental take authorization.

(b) *Visual monitoring program.* (1) Marine mammal visual monitoring must occur prior to deployment of beam, mid-water, and bottom trawl, bottom and pelagic longline, gillnet, fyke net, pot, trap, and rotary screw trap gear; throughout deployment of gear and active fishing of all research gears; and throughout retrieval of all research gear;

(2) Marine mammal watches must be conducted by watch-standers (those navigating the vessel and/or other crew) at all times when the vessel is being operated;

(3) NEFSC must monitor any potential disturbance of pinnipeds on ledges, paying particular attention to the distance at which different species of pinniped are disturbed. Disturbance must be recorded according to a three-point scale of response to disturbance; and

(4) The NEFSC must continue to conduct a local census of pinniped haulout areas prior to conducting any fisheries research in the Penobscot River estuary. The NEFSC's census reports must include an accounting of disturbance based on the three-point scale of response severity metrics.

(c) *Training.* (1) NEFSC must conduct annual training for all chief scientists and other personnel (including its co-operating institutions, contracted vessels, or commercially-hired captains) who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, completion of datasheets, and use

of equipment. NEFSC may determine the agenda for these trainings;

(2) NEFSC must also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful; and

(3) NEFSC must coordinate with NMFS' Southeast Fisheries Science Center (SEFSC) regarding surveys conducted in the southern portion of the Atlantic coast region, such that training and guidance related to handling procedures and data collection is consistent.

(d) *Handling procedures and data collection.* (1) NEFSC must develop and implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS Office of Protected Resources (OPR);

(2) When practicable, for any marine mammal interaction involving the release of a live animal, NEFSC must collect necessary data to facilitate a serious injury determination;

(3) NEFSC must provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring/or not bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction; and

(4) NEFSC must record such data on standardized forms, which will be subject to approval by OPR. The data must be collected at a sufficient level of detail (*e.g.*, circumstances leading to the interaction, extent of injury, condition upon release) to facilitate serious injury determinations under the MMPA.

(e) *Reporting.* (i) NEFSC must report all incidents of marine mammal interaction to NMFS' Protected Species Incidental Take database within 48 hours of occurrence. Information related to marine mammal interaction (animal captured or entangled in research gear) must include details of survey effort, full descriptions of any observations of

the animals, the context (vessel and conditions), decisions made and rationale for decisions made in vessel and gear handling.

(ii) The NEFSC must submit annual reports. The period of reporting will be one year beginning at the date of issuance of the LOA. NEFSC must submit an annual summary report to OPR not later than ninety days following the end of the reporting period. These reports must contain, at minimum, the following:

(A) Annual line-kilometers surveyed during which the EK60, ME70, DSM300 (or equivalent sources) were predominant;

(B) Summary information regarding use of the following: All trawl gear, all longline gear, all gillnet gear, all dredge gear, fyke net gear, and rotary screw trap gear (including number of sets, hook hours, tows, and tending frequency specific to each gear type);

(C) Accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why;

(D) Summary information from the pinniped haulout censuses in the and summary information related to any disturbance of pinnipeds, including event-specific total counts of animals present, counts of reactions according to a three-point scale of response severity, and distance of closest approach;

(E) A written evaluation of the effectiveness of NEFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any;

(F) Final outcome of serious injury determinations for all incidents of marine mammal interactions where the animal(s) were released alive; and

(G) A summary of all relevant training provided by the NEFSC and any coordination with the NMFS Southeast Fishery Science Center, the Greater Atlantic Regional Fisheries Office, and the Southeast Regional Office.

(iii) Reporting of North Atlantic right whales and injured or dead marine mammals:

(A) In the event that the NEFSC observes a North Atlantic right whale during a survey, they must report the sighting as soon as possible to 866-755-6622 if the sighting occurs in the Northeast region (VA to ME) or to 877-WHALE-HELP if the sighting occurs in the Southeast region (FL to NC). The NEFSC must also report the sighting to the U.S. Coast Guard via Channel 16.

(B) In the event that the NEFSC discovers an injured or dead marine mammal, NEFSC must report the incident to OPR (*PR.ITP.MonitoringReports@noaa.gov*), 866-755-6622 in the Northeast region (VA to ME) and 877-WHALE-HELP in the Southeast region (FL to NC).

(C) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a prohibited manner, NEFSC must immediately cease such activity until such time as an appropriate decision regarding activity continuation can be made by the NEFSC Director (or designee). The incident must be immediately reported to the contacts in 6(c)(ii). OPR will review the circumstances of the prohibited take and work with NEFSC to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

(3) In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, NEFSC must report the incident to OPR and to the appropriate Regional Stranding Network as soon as feasible. The report must include the following information:

- (i) Time, date, and location (latitude/longitude) of the incident;
- (ii) Species identification (if known) or description of the animal(s) involved;
- (iii) Vessel's speed during and leading up to the incident;
- (iv) Vessel's course/heading and what operations were being conducted (if applicable);
- (v) Status of all sound sources in use;
- (vi) Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- (vii) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- (viii) Estimated size and length of animal that was struck;
- (ix) Description of the behavior of the marine mammal immediately preceding and following the strike;
- (x) If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- (xi) Estimated fate of the animal (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- (xii) To the extent practicable, photographs or video footage of the animal(s).

#### § 219.37 Letters of Authorization.

- (a) To incidentally take marine mammals pursuant to these regulations, NEFSC must apply for and obtain an LOA.
- (b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.
- (c) If an LOA expires prior to the expiration date of these regulations, NEFSC may apply for and obtain a renewal of the LOA.
- (d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, NEFSC must apply for and obtain a modification of the LOA as described in § 219.38.
- (e) The LOA must set forth:

- (1) Permissible methods of incidental taking;
- (2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and
- (3) Requirements for monitoring and reporting.
- (f) Issuance of the LOA must be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.
- (g) Notice of issuance or denial of an LOA must be published in the FEDERAL REGISTER within 30 days of a determination.

#### § 219.38 Renewals and modifications of Letters of Authorization.

- (a) A LOA issued under §§ 216.106 of this chapter and 219.37 for the activity identified in § 219.31(a) must be renewed or modified upon request by the applicant, provided that:
  - (1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and
  - (2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.
- (b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.
- (c) An LOA issued under §§ 216.106 of this chapter and 219.37 for the activity

## §§ 219.39–219.40

identified in §219.31(a) may be modified by OPR under the following circumstances:

(1) OPR may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with NEFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from NEFSC's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §219.32(b), a 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.

§§ 219.39–219.40 [Reserved]

## PART 220 [RESERVED]

## PART 221—CONDITIONS AND PRESCRIPTIONS IN FERC HYDRO-POWER LICENSES

### Subpart A—General Provisions

Sec.

221.1 What is the purpose of this part, and to what license proceedings does it apply?

221.2 What terms are used in this part?

221.3 How are time periods computed?

## 50 CFR Ch. II (10–1–22 Edition)

221.4 What deadlines apply to the trial-type hearing and alternatives processes?

### Subpart B—Hearing Process

#### REPRESENTATIVES

221.10 Who may represent a party, and what requirements apply to a representative?

#### DOCUMENT FILING AND SERVICE

221.11 What are the form and content requirements for documents under this subpart?

221.12 Where and how must documents be filed?

221.13 What are the requirements for service of documents?

#### INITIATION OF HEARING PROCESS

221.20 What supporting information must NOAA provide with its preliminary conditions or prescriptions?

221.21 How do I request a hearing?

221.22 How do I file a notice of intervention and response?

221.23 Will hearing requests be consolidated?

221.24 Can a hearing process be stayed to allow for settlement discussions?

221.25 How will NOAA respond to any hearing requests?

221.26 What will the Office of Habitat Conservation do with any hearing requests?

221.27 What regulations apply to a case referred for a hearing?

#### GENERAL PROVISIONS RELATED TO HEARINGS

221.30 What will the Department of Commerce's designated ALJ office do with a case referral?

221.31 What are the powers of the ALJ?

221.32 What happens if the ALJ becomes unavailable?

221.33 Under what circumstances may the ALJ be disqualified?

221.34 What is the law governing ex parte communications?

221.35 What are the requirements for motions?

#### PREHEARING CONFERENCES AND DISCOVERY

221.40 What are the requirements for prehearing conferences?

221.41 How may parties obtain discovery of information needed for the case?

221.42 When must a party supplement or amend information it has previously provided?

221.43 What are the requirements for written interrogatories?

221.44 What are the requirements for depositions?

221.45 What are the requirements for requests for documents or tangible things or entry on land?