

§216.106

numbers of marine mammals by harassment, serious injury, death or a combination thereof, specific regulations shall be established for each allowed activity that set forth:

(1) Permissible methods of taking;

(2) Means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(c) Regulations will be established based on the best available information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review.

§216.106 Letter of Authorization.

(a) A Letter of Authorization, which may be issued only to U.S. citizens, is required to conduct activities pursuant to any regulations established under §216.105. Requests for Letters of Authorization shall be submitted to the Director, Office of Protected Resources. The information to be submitted in a request for an authorization will be specified in the appropriate subpart to this part or may be obtained by writing to the above named person.

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

(c) Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request.

(d) Notice of issuance of all Letters of Authorization will be published in the FEDERAL REGISTER within 30 days of issuance.

(e) Letters of Authorization shall be withdrawn or suspended, either on an individual or class basis, as appropriate, if, after notice and opportunity for public comment, the Assistant Administrator determines that:

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(1) The regulations prescribed are not being substantially complied with; or

(2) The taking allowed is having, or may have, more than a negligible impact on the species or stock or, where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

(f) The requirement for notice and opportunity for public review in §216.106(e) shall not apply if the Assistant Administrator determines that an emergency exists that poses a significant risk to the wellbeing of the species or stocks of marine mammals concerned.

(g) A violation of any of the terms and conditions of a Letter of Authorization or of the specific regulations shall subject the Holder and/or any individual who is operating under the authority of the Holder's Letter of Authorization to penalties provided in the MMPA.

§216.107 Incidental harassment authorization for Arctic waters.

(a) Except for activities that have the potential to result in serious injury or mortality, which must be authorized under §216.105, incidental harassment authorizations may be issued, following a 30-day public review period, to allowed activities that may result in only the incidental harassment of a small number of marine mammals. Each such incidental harassment authorization shall set forth:

(1) Permissible methods of taking by harassment;

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

(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(b) Issuance of an incidental harassment authorization will be based on a determination that the number of marine mammals taken by harassment will be small, will have a negligible impact on the species or stock of marine mammal(s), and will not have an unmitigable adverse impact on the

availability of species or stocks for taking for subsistence uses.

(c) An incidental harassment authorization will be either issued or denied within 45 days after the close of the public review period.

(d) Notice of issuance or denial of an incidental harassment authorization will be published in the FEDERAL REGISTER within 30 days of issuance of a determination.

(e) Incidental harassment authorizations will be valid for a period of time not to exceed 1 year but may be renewed for additional periods of time not to exceed 1 year for each reauthorization.

(f) An incidental harassment authorization shall be modified, withdrawn, or suspended if, after notice and opportunity for public comment, the Assistant Administrator determines that:

(1) The conditions and requirements prescribed in the authorization are not being substantially complied with; or

(2) The authorized taking, either individually or in combination with other authorizations, is having, or may have, more than a negligible impact on the species or stock or, where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

(g) The requirement for notice and opportunity for public review in paragraph (f) of this section shall not apply 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 concerned.

(h) A violation of any of the terms and conditions of an incidental harassment authorization shall subject the holder and/or any individual who is operating under the authority of the holder's incidental harassment authorization to penalties provided in the MMPA.

§ 216.108 Requirements for monitoring and reporting under incidental harassment authorizations for Arctic waters.

(a) Holders of an incidental harassment authorization in Arctic waters and their employees, agents, and designees must cooperate with the National Marine Fisheries Service and

other designated Federal, state, or local agencies to monitor the impacts of their activity on marine mammals. Unless stated otherwise within an incidental harassment authorization, the holder of an incidental harassment authorization effective in Arctic waters must notify the Alaska Regional Director, National Marine Fisheries Service, of any activities that may involve a take by incidental harassment in Arctic waters at least 14 calendar days prior to commencement of the activity.

(b) Holders of incidental harassment authorizations effective in Arctic waters may be required by their authorization to designate at least one qualified biological observer or another appropriately experienced individual to observe and record the effects of activities on marine mammals. The number of observers required for monitoring the impact of the activity on marine mammals will be specified in the incidental harassment authorization. If observers are required as a condition of the authorization, the observer(s) must be approved in advance by the National Marine Fisheries Service.

(c) The monitoring program must, if appropriate, document the effects (including acoustical) on marine mammals and document or estimate the actual level of take. The requirements for monitoring plans, as specified in the incidental harassment authorization, may vary depending on the activity, the location, and the time.

(d) Where the proposed activity may affect the availability of a species or stock of marine mammal for taking for subsistence purposes, proposed monitoring plans or other research proposals must be independently peer-reviewed prior to issuance of an incidental harassment authorization under this subpart. In order to complete the peer-review process within the time frames mandated by the MMPA for an incidental harassment authorization, a proposed monitoring plan submitted under this paragraph must be submitted to the Assistant Administrator no later than the date of submission of the application for an incidental harassment authorization. Upon receipt of a complete monitoring plan, and at its