

§216.218

activities, mitigation measures, monitoring efforts, and other information as required by a Letter of Authorization, must be submitted to the Director, Office of Protected Resources, within 30 days of completion of the removal activity.

(2) The National Marine Fisheries Service will accept the NMFS observer report as the activity report required by subparagraph (1) of this paragraph if all requirements for reporting contained in the Letter of Authorization are provided to the NMFS observer before the NMFS observer's report is submitted to the PROP Manager.

(3) If a marine mammal is found shocked, injured, or dead, the Holder of the Letter of Authorization, or designee, must report the incident to the National Marine Fisheries Service Southeast Regional Office, at the earliest opportunity.

§216.218 Letters of Authorization.

(a) To incidentally take marine mammal species listed in §216.211(b) pursuant to these regulations, each company or contractor responsible for the removal of the structure or an industry-related seafloor obstruction in the area specified in §216.211(a) must apply for and obtain either a Letter of Authorization in accordance with §216.106 or a renewal under §216.219(a).

(b) An application for a Letter of Authorization must be submitted to the National Marine Fisheries Service at least 30 days before the explosive removal activity is scheduled to begin.

(c) Issuance of a Letter of Authorization and renewal of a Letter of Authorization under §216.219(a) will be based on a determination by the National Marine Fisheries Service that the number of each species or stock of cetaceans taken annually by the activity will be small and that the total taking over the 5-year period will have a negligible impact on the species or stock of affected marine mammal(s).

(d) A Letter of Authorization may be renewed annually, subject to conditions in §216.219(a).

(e) A Letter of Authorization for activities in this subpart will not be valid after the effective period of this subpart.

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(f) A copy of the Letter of Authorization must be in the possession of the persons conducting the activity specified in §216.211(a) that may involve incidental takings of marine mammals.

(g) Notice of issuance or denial of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§216.219 Renewal and modifications of Letters of Authorization.

(a) A Letter of Authorization issued for the activity identified in §216.211(a) will be renewed annually upon:

(1) Receipt of an application for renewal of a Letter of Authorization under §216.218.

(2) Timely receipt of the report(s) required under §216.217(f), which have been reviewed by the Assistant Administrator and determined to be acceptable; and

(3) A determination that the required mitigation, monitoring and reporting measures have been undertaken.

(b) Notice of issuance of a renewal of the Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of issuance.

(c) In addition to complying with the provisions of §216.106, except as provided in paragraph (d) of this section, no substantive modification, including a request for a variance in the mitigation or monitoring requirements in this subpart or a withdrawal or suspension of 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 §216.219, without modification other than an effective date change, is not considered a substantive modification.

(d) 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 §216.211(b), a Letter of Authorization issued pursuant to §§216.106 and 216.118, or renewed pursuant to this paragraph may be modified without prior notice and opportunity for public comment. A notice will be published in the FEDERAL REGISTER subsequent to the action.