

(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 this subpart (excluding changes made pursuant to adaptive management) and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous Letter of Authorization under this subpart were implemented.

(b) For Letter of Authorization modifications or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to adaptive management) 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), NMFS may publish a notice of a proposed Letter of Authorization in the FEDERAL REGISTER, including the associate analysis illustrating the change, and solicit public comment before issuing the Letter of Authorization.

(c) A Letter of Authorization issued under §§ 216.106 and 217.117 of this chapter for the activity identified in § 217.110(c) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the U.S. Air Force regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(i) Results from the U.S. Air Force's monitoring from the previous year;

(ii) Results from marine mammal and sound research; or

(iii) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by this subpart or subsequent Letters of Authorization.

(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 § 217.112(c), a Letter of Authorization issued pursuant to §§ 216.106 and 217.117 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subparts M–N [Reserved]

Subpart O—Taking of Marine Mammals Incidental to Operation of Offshore Oil and Gas Facilities in the U.S. Beaufort Sea

SOURCE: 78 FR 75507, Dec. 12, 2013, unless otherwise noted.

EFFECTIVE DATE NOTE: At 78 FR 75507, Dec. 12, 2013, subpart O was added, effective Jan. 13, 2014, through Jan. 14, 2019.

§ 217.140 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to BP Exploration (Alaska) Inc. (BP) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to operation of offshore oil and gas facilities in the U.S. Beaufort Sea, Alaska, in the Northstar Development Area.

(b) The taking of marine mammals by BP may be authorized in a Letter of Authorization only if it occurs in the geographic region that encompasses the Northstar Oil and Gas Development area within state and/or Federal waters in the U.S. Beaufort Sea.

§ 217.141 Effective dates.

Regulations in this subpart are effective from January 13, 2014 through January 14, 2019.

§ 217.142 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 217.148 of this chapter, the Holder of the Letter of Authorization (hereinafter “BP”) may incidentally, but not intentionally, take marine mammals within

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the area described in §217.140(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The activities identified in §217.140(a) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §217.140(a) is limited to the following species and by the indicated method and amount of take:

(1) Level B Harassment:

(i) Cetaceans:

(A) Bowhead whale (*Balaena mysticetus*)—75 (an average of 15 annually)

(B) Gray whale (*Eschrichtius robustus*)—10 (an average of 2 annually)

(C) Beluga whale (*Delphinapterus leucas*)—100 (an average of 20 annually)

(ii) Pinnipeds:

(A) Ringed seal (*Phoca hispida*)—155 (an average of 31 annually)

(B) Bearded seal (*Erignathus barbatus*)—25 (an average of 5 annually)

(C) Spotted seal (*Phoca largha*)—25 (an average of 5 annually)

(2) Level A Harassment and Mortality: Ringed seal—25 (an average of 5 annually)

§217.143 Prohibitions.

Notwithstanding takings contemplated in §217.140 and authorized by a Letter of Authorization issued under §§216.106 and 217.148 of this chapter, no person in connection with the activities described in §217.140 may:

(a) Take any marine mammal not specified in §217.142(c);

(b) Take any marine mammal specified in §217.142(c) other than by incidental take as specified in §217.142(c)(1) and (c)(2);

(c) Take a marine mammal specified in §217.172(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal;

(d) Take a marine mammal specified in §217.172(c) if such taking results in an unmitigable adverse impact on the species or stock for taking for subsistence uses; or

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(e) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§216.106 and 217.148 of this chapter.

§217.144 Mitigation.

(a) When conducting the activities identified in §217.140(a), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 217.148 of this chapter must be implemented. These mitigation measures include but are not limited to:

(1) Ice-covered Season:

(i) In order to reduce the taking of ringed seals to the lowest level practicable, BP must begin winter construction activities, principally ice roads, as soon as possible once weather and ice conditions permit such activity.

(ii) Any ice roads or other construction activities that are initiated after March 1, in previously undisturbed areas in waters deeper than 10 ft (3 m), must be surveyed, using trained dogs in order to identify and avoid ringed seal structures by a minimum of 492 ft (150 m).

(iii) After March 1 of each year, activities should avoid, to the greatest extent practicable, disturbance of any located seal structure.

(2) Open-water Season:

(i) BP will establish and monitor, during all daylight hours, a 190 dB re 1 µPa (rms) exclusion zone for seals around the island for all activities with sound pressure levels (SPLs) that are expected to exceed that level in waters beyond the Northstar facility on Seal Island.

(ii) BP will establish and monitor, during all daylight hours, a 180 dB re 1 µPa (rms) exclusion zone for cetaceans around the island for all activities with SPLs that are expected to exceed that level in waters beyond the Northstar facility at Seal Island.

(iii) If any marine mammals are observed within the relevant exclusion zone, described in §217.144(a)(2)(i) or (a)(2)(ii), the activity creating the noise will shutdown or reduce its SPL sufficiently (*i.e.*, power down) to ensure that received SPLs do not exceed those prescribed SPL intensities at the affected marine mammal. The shutdown