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(1) SCWA shall maintain a one week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach;

(2) A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

(3) If a pup less than one week old is on the beach where heavy machinery will be used or on the path used to access the work location, the management action shall be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA shall consult with NMFS and the California Department of Fish and Wildlife to determine the appropriate course of action. SCWA shall determine if pups less than one week old are on the beach prior to a breaching event.

(4) Physical and biological monitoring shall not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

§ 217.6 Requirements for monitoring and reporting.

(a) Monitoring and reporting shall be conducted in accordance with the approved Pinniped Monitoring Plan.

(b) Reporting:

(1) Annual reporting:

(i) SCWA shall submit an annual summary report to NMFS not later than ninety days following the end of a given calendar year. SCWA shall provide a final report within thirty days following resolution of comments on the draft report.

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

(A) The number of seals taken, by species and age class (if possible);

(B) Behavior prior to and during water level management events;

(C) Start and end time of activity;

(D) Estimated distances between source and seals when disturbance occurs;

(E) Weather conditions (*e.g.*, temperature, wind, etc.);

(F) Haul-out reoccupation time of any seals based on post-activity monitoring;

(G) Tide levels and estuary water surface elevation; and

(H) Seal census from haul-out monitoring.

(2) [Reserved]

(c) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the activity defined in § 217.1(a) clearly causes the take of a marine mammal in a prohibited manner, SCWA shall immediately cease such activity and report the incident to the Office of Protected Resources (OPR), NMFS and the West Coast Regional Stranding Coordinator, NMFS. Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with SCWA to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. SCWA may not resume their activities until notified by NMFS. The report must include the following information:

(i) Time and date of the incident;

(ii) Description of the incident;

(iii) Environmental conditions;

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Fate of the animal(s); and

(vii) Photographs or video footage of the animal(s).

(2) In the event that SCWA discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), SCWA shall immediately report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (c)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with SCWA to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that SCWA discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in §217.1(a) (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), SCWA shall report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. SCWA shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

(4) Pursuant to paragraphs (c)(2–3) of this section, SCWA may use discretion in determining what injuries (*i.e.*, nature and severity) are appropriate for reporting. At minimum, SCWA must report those injuries considered to be serious (*i.e.*, will likely result in death) or that are likely caused by human interaction (*e.g.*, entanglement, gunshot). Also pursuant to sections paragraphs (c)(2–3) of this section, SCWA may use discretion in determining the appropriate vantage point for obtaining photographs of injured/dead marine mammals.

§217.7 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, SCWA 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, SCWA 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, SCWA must apply for and obtain a modification of the LOA as described in §217.8.

(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 30 days of a determination.

§217.8 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§216.106 of this chapter and 217.7 for the activity identified in §217.1(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) NMFS 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), NMFS 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 217.7 for the activity identified in §217.1(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting