

and must have successfully completed an approved PSO training course appropriate for their designated task.

(ii) Hilcorp must submit PSO resumes for NMFS review and approval. Resumes must be accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.*, experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course. NMFS will approve or disapprove PSOs within one week from the time that the necessary information is received by NMFS, after which PSOs meeting the minimum requirements will automatically be considered approved.

(iii) To the maximum extent practicable, the lead PSO must devise the duty schedule such that experienced PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

(6) Operations must shut down completely if a beluga whale is sighted within the relevant Level B harassment isopleth.

(h) Hilcorp must implement soft start techniques for impact pile driving.

(1) Hilcorp must conduct an initial set of three strikes from the impact hammer 30 seconds apart, at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three strike sets.

(2) Soft start is required for any impact driving, including at the beginning of the day, after 30 minutes of pre-activity monitoring, and at any time following a cessation of impact pile driving of 30 minutes or longer.

(i) Hilcorp must implement ramp ups for seismic airgun use.

(1) Ramp up must be used at the start of airgun operations, including after a shutdown, and after any period greater than 30 minutes in duration without airgun operations.

(2) The rate of ramp up must be no more than 6 dB per 5-minute period.

(3) Ramp up must begin with the smallest gun in the array that is being used for all airgun array configurations.

(4) During the ramp up, the EZ for the full airgun array must be implemented.

(5) If the complete EZ has not been visible for at least 30 minutes prior to the start of operations, ramp up must not commence.

(6) Ramp up of the airguns must not be initiated if a marine mammal is sighted within or entering the EZ at any time.

(j) Hilcorp must use aircraft for mitigation.

(1) Hilcorp must use aircraft daily to survey the planned seismic survey area prior to the start of seismic surveying. Surveying must not begin unless the aerial flights confirm the planned survey area for that day is clear of beluga whales. If weather conditions make flying before the start of seismic in daylight unsafe, Hilcorp may delay the aerial survey until weather conditions improve and it is safe to fly.

(2) If beluga whales are sighted during flights, start of seismic surveying must be delayed until it is confirmed the area is free of beluga whales.

(k) Hilcorp must implement exclusion zones for beluga whales.

(1) Hilcorp must not operate with noise producing activity within 10 miles (16 km) of the mean higher high water (MHHW) line of the Susitna Delta (Beluga River to the Little Susitna River) between April 15 and October 15. Hilcorp must not conduct seismic activity within the Level B isopleth distance of the mouth of the Kasilof River between January 1 and May 31.

(m) Hilcorp must abide by all mitigation measures described in the Biological Opinion for Hilcorp Alaska and Harvest Alaska Oil and Gas Activities, Cook Inlet, Alaska.

§217.165 Requirements for monitoring and reporting.

(a) *Marine mammal monitoring protocols.* Hilcorp must conduct briefings between construction supervisors and crews and the observer team prior to the start of all pile driving and removal activities, and when new personnel join the work. Trained observers must receive a general environmental awareness briefing conducted by Hilcorp staff. At minimum, training

must include identification of marine mammals that may occur in the project vicinity and relevant mitigation and monitoring requirements. All observers must have no other construction-related tasks while conducting monitoring.

(b) *Visibility.* Activities must only commence when the entire exclusion zone (EZ) is visible to the naked eye and can be adequately monitored. If conditions (*e.g.*, fog) prevent the visual detection of marine mammals, activities must not be initiated. For activities other than seismic surveying, activity must be halted in low visibility but vibratory pile driving or removal will be allowed to continue if started in good visibility.

(c) *Monitoring periods.* Monitoring must begin 15 minutes prior to initiation of stationary source activity and 30 minutes prior to initiation of mobile source activity, occur throughout the time required to complete the activity, and continue through 30 minutes post-completion of the activity. Pre-activity monitoring must be conducted to ensure that the EZ is clear of marine mammals, and activities may only commence once observers have declared the EZ clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the EZ, the animals' behavior must be monitored and documented.

(d) *Placement of PSOs.* (1) At least one on-duty PSO must be placed on the source vessel (for seismic and geohazard surveys) or drill rig (for pipe driving and VSP).

(2) During seismic surveys a mitigation vessel must be used with at least one on-duty PSO aboard the vessel monitoring for marine mammal occurrence.

(e) *Reporting measures*—(1) *Take limits.* Hilcorp must contact NMFS when they have reached the limit of authorized takes of beluga whale within a year.

(2) *Monthly reports.* Monthly reports must be submitted to NMFS for all months during which in-water seismic activities take place. The monthly report must contain and summarize the following information: Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea

state and wind force), and associated activities during all seismic operations and marine mammal sightings; Species, number, location, distance from the vessel, and behavior of any sighted marine mammals, as well as associated seismic activity (number of power-downs and shutdowns), observed throughout all monitoring activities; An estimate of the number (by species) exposed to the seismic activity (based on visual observation) at received levels greater than or equal to the NMFS thresholds discussed above with a discussion of any specific behaviors those individuals exhibited; A description of the implementation and effectiveness of the terms and conditions of the Biological Opinion's Incidental Take Statement (ITS) and mitigation measures of the LOA.

(3) *Annual reports.* (i) Hilcorp must submit an annual report within 90 days after each activity year, starting from the date when the LOA is issued (for the first annual report) or from the date when the previous annual report ended.

(ii) Annual reports will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed during the period of the report.

(iii) NMFS will provide comments within 30 days after receiving annual reports, and Hilcorp must address the comments and submit revisions within 30 days after receiving NMFS comments. If no comment is received from the NMFS within 30 days, the annual report will be considered completed.

(4) *Final report.* (i) Hilcorp must submit a comprehensive summary report to NMFS not later than 90 days following the conclusion of marine mammal monitoring efforts described in this subpart.

(ii) The final report must synthesize all data recorded during marine mammal monitoring, and estimate the number of marine mammals that may have been harassed through the entire project.

(iii) NMFS will provide comments within 30 days after receiving this report, and Hilcorp must address the comments and submit revisions within

30 days after receiving NMFS comments. If no comment is received from the NMFS within 30 days, the final report will be considered as final.

(5) *Reporting of injured or dead marine mammals.* (i) In the event that personnel involved in the survey activities discover an injured or dead marine mammal, Hilcorp must report the incident to the Office of Protected Resources (OPR), NMFS (301–427–8401) and to regional stranding network (877–925–7773) as soon as feasible. The report must include the following information:

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

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

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

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

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

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

(ii) In the event of a ship strike of a marine mammal by any vessel involved in the survey activities, Hilcorp must report the incident to OPR, NMFS and to regional stranding networks as soon as feasible. The report must include the following information:

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

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

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

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

(E) Status of all sound sources in use;

(F) 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;

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

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

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

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

(K) 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

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

(iii) In the event of a live stranding (or near-shore atypical milling) event within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee) will advise Hilcorp of the need to implement shutdown procedures for all active acoustic sources operating within 50 km of the stranding. Shutdown procedures for live stranding or milling marine mammals include the following:

(A) If at any time, the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee) will advise Hilcorp that the shutdown around the animals' location is no longer needed.

(B) Otherwise, shutdown procedures must remain in effect until the Director of OPR, NMFS (or designee) determines and advises Hilcorp that all live animals involved have left the area (either of their own volition or following an intervention).

(C) If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with Hilcorp must occur to determine what measures are necessary to minimize that likelihood (*e.g.*, extending the shutdown or moving operations farther away) and Hilcorp must implement those measures as appropriate.

(iv) If NMFS determines that the circumstances of any marine mammal stranding found in the vicinity of the activity suggest investigation of the association with survey activities is

warranted, and an investigation into the stranding is being pursued, NMFS will submit a written request to Hilcorp indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information.

(A) Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and

(B) If available, description of the behavior of any marine mammal(s) observed preceding (*i.e.*, within 48 hours and 50 km) and immediately after the discovery of the stranding.

(C) In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

§217.166 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Hilcorp must apply for and obtain (LOAs) in accordance with §216.106 of this chapter for conducting the activity identified in §217.160(c).

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

(c) An LOA application must be submitted to the Director, Office of Protected Resources, NMFS, by March 1st of the year preceding the desired start date.

(d) An LOA application must include the following information:

(1) The date(s), duration, and the area(s) where the activity will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each area;

(3) The estimated number of takes for each marine mammal stock potentially affected in each area for the period of effectiveness of the Letter of Authorization.

(4) An updated Stakeholder Engagement Plan detailing Hilcorp's meetings with stakeholders and any concerns

raised that relate to marine mammals or subsistence activities.

(e) In the event of projected changes to the activity or to mitigation, monitoring, reporting (excluding changes made pursuant to the adaptive management provision of §217.97(c)(1)) required by an LOA, Hilcorp must apply for and obtain a modification of LOAs as described in §217.167.

(f) Each 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, their habitat, and the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

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

(h) If NMFS determines that the level of taking is resulting or may result in more than a negligible impact on the species or stocks of such marine mammal, the LOA may be modified or suspended after notice and a public comment period.

(i) Notice of issuance or denial of the LOA(s) must be published in the FEDERAL REGISTER within 30 days of a determination.

§217.167 Renewals and modifications of Letters of Authorization and adaptive management.

(a) An LOA issued under §§216.106 of this chapter and 217.166 for the activity identified in §217.160(c) may be renewed or modified upon request by the applicant, provided that the following are met:

(1) Notification to NMFS that the activity described in the application submitted under §217.160(a) will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming or remaining LOA period;

(2) Timely receipt (by the dates indicated) of monitoring reports, as required under §217.165(C)(3);

(3) A determination by the NMFS that the mitigation, monitoring and