

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

reporting measures required under § 217.165(c) and the LOA issued under §§ 216.106 of this chapter and 217.166, were undertaken and are expected to be undertaken during the period of validity of the LOA.

(b) If a request for a renewal of a Letter of Authorization indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request as well as the proposed modification to the LOA. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the original determinations made for the regulations are in need of reconsideration; and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

(d) An LOA issued under §§ 216.16 of this chapter and 217.166 for the activity identified in § 217.160 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS, in response to new information and in consultation with Hilcorp, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations.

(i) Possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures include:

(A) Results from Hilcorp's monitoring from the previous year(s).

(B) Results from marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) *Withdrawal or suspension.* NMFS will withdraw or suspend an LOA if, after notice and opportunity for public comment, NMFS determines these regulations are not being substantially complied with or that the taking allowed is or may be having more than a negligible impact on an affected species or stock specified in § 217.162(b) or an unmitigable adverse impact on the availability of the species or stock for subsistence uses. The requirement for notice and comment will not apply if NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals. Notice will be published in the FEDERAL REGISTER within 30 days of such action.

§§ 217.168—217.169 [Reserved]

Subpart R—Taking and Importing Marine Mammals Incidental to U.S. Navy Bulkhead Replacement/Repairs at Naval Station Newport in Newport, Rhode Island

SOURCE: 86 FR 71178, Dec. 15, 2021; 87 FR 885, Jan. 7, 2022, unless otherwise noted.

EFFECTIVE DATE NOTE: At 86 FR 71178, Dec. 15, 2021, subpart R was added, effective May 15, 2022, through May 14, 2027. At 87 FR 885, Jan. 7, 2022, subpart R was corrected, effective May 15, 2022, through May 14, 2027.

§ 217.170 Specified activity and geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy (Navy) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to construction activities including for bulkhead replacement and repairs at Naval Station (NAVSTA) Newport, Rhode Island.

(b) The taking of marine mammals by the Navy may be authorized in a Letter of Authorization (LOA) only if