

made as close to the start of the display as possible, with at least one conducted the day before the display and, if possible, another within 30 minutes of the fireworks display. For the post-census, counts should occur in conjunction with beach clean-ups the day following the fireworks display; and

(2) Reporting to NMFS of all marine mammal injury, serious injury, or mortality encountered during debris clean-up the morning after each fireworks display.

(b) Unless specified otherwise in the LOA, MBNMS must submit a draft annual monitoring report to the Director, Office of Protected Resources, NMFS, no later than 60 days after the conclusion of each calendar year. This report must contain:

(1) An estimate of the number of marine mammals disturbed by the authorized activities; and

(2) Results of the monitoring required in paragraph (a) of this section, and any additional information required by the LOA. A final annual monitoring report must be submitted to NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final annual monitoring report.

(c) A draft comprehensive monitoring report on all marine mammal monitoring conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, NMFS at least 120 days prior to expiration of these regulations. A final comprehensive monitoring report must be submitted to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final comprehensive monitoring report.

§ 217.17 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the MBNMS 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) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the MBNMS must apply for and obtain a modification of the LOA as described in § 217.18.

(d) The LOA shall set forth:

(1) The number of marine mammals, by species, authorized to be taken;

(2) Permissible methods of incidental taking;

(3) 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

(4) Requirements for monitoring and reporting.

(e) 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.

(f) Notice of issuance or denial of an LOA shall be published in the FEDERAL REGISTER within 30 days of a determination.

§ 217.18 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 217.17 for the activity identified in § 217.11(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (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 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

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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 §§ 217.106 and 217.17 for the activity identified in § 217.11(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 with MBNMS regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the MBNMS's monitoring from the previous year(s);

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

(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) *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 an LOA issued pursuant to § 216.106 of this chapter and § 217.17, an LOA may be modified without prior notice or opportunity for public comment. The Notice would be published in the FEDERAL REGISTER within 30 days of the action.

Subpart C—Taking Marine Mammals Incidental to Research and Monitoring in Southern Alaska National Parks

SOURCE: 84 FR 8274, Mar. 7, 2019, unless otherwise noted.

50 CFR Ch. II (10–1–21 Edition)

EFFECTIVE DATE NOTE: At 84 FR 8274, Mar. 7, 2019, subpart C was added, effective Mar. 7, 2019, through Feb. 29, 2024.

§ 217.20 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Park Service (NPS) and those persons it authorizes or funds 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 the NPS's research and monitoring activities listed in the Letters of Authorization (LOA).

(b) The taking of marine mammals by NPS may be authorized in an LOA only if it occurs at Glacier Bay National Park (GLBA NP) or in the NPS's Southwest Alaska Inventory and Monitoring Network (SWAN) sites.

§ 217.21 Effective dates.

Regulations in this subpart are effective from March 7, 2019 through February 29, 2024.

§ 217.22 Permissible methods of taking.

Under LOAs issued pursuant to §§ 216.106 of this chapter and 217.26, the Holder of the LOA (hereinafter "NPS") may incidentally, but not intentionally, take marine mammals within the area described in § 217.20(b) by Level B harassment associated with research and monitoring activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 217.23 Prohibitions.

Notwithstanding takings contemplated in § 217.20 and authorized by an LOA issued under §§ 216.106 of this chapter and 217.26, no person in connection with the activities described in § 217.20 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 217.26;

(b) Take any marine mammal not specified in such LOAs;