

the last day of pile driving operations. The annual report shall include summaries of the information described in paragraph (b)(1) of this section.

(2) The Corps shall submit a final annual report to the Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft report.

(d) *Notification of dead or injured marine mammals.* (1) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury, serious injury, or mortality, The Corps shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS.

(i) The report must include the following information:

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

(B) Description of the incident;

(C) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);

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

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

(F) Status of all sound source use in the 24 hours preceding the incident;

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

(H) Photographs or video footage of the animal(s). Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with the Corps to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Corps may not resume their activities until notified by NMFS.

(ii) In the event that the Corps discovers an injured or dead marine mammal, and the lead MMO 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), the Corps shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must

include the same information identified in this paragraph (d). If the observed marine mammal is dead, activities may continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described in this paragraph (d) must be implemented. NMFS will work with the Corps to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that the Corps discovers an injured or dead marine mammal, and the lead MMO determines that the injury or death is not associated with or related to the activities authorized in the LOA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), the Corps shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. The Corps shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. If the observed marine mammal is dead, activities may continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described in this paragraph (d) must be implemented. In this case, NMFS will notify the Corps when activities may resume.

§217.236 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the Corps 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, the Corps may apply for and obtain a renewal of the Letter of Authorization.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the Corps must apply for and obtain a modification of the Letter of Authorization as described in §217.237.

(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 thirty days of a determination.

§217.237 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §216.106 of this chapter and §217.236 for the activity identified in §217.230(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 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 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 §217.247(c)(1)) 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 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 §217.236 for the activity identified in §217.230(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 the Corps regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations;

(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 Corps' 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; and

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

(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 §217.236, an LOA may be modified without prior notice or opportunity for public comment. Notice will be published in the FEDERAL REGISTER within thirty days of the action.

Subpart Y [Reserved]

EFFECTIVE DATE NOTE: At 82 FR 26373, June 7, 2017, subpart Y was added, effective July 12, 2017, through July 11, 2022.

Subpart Z—Taking Marine Mammals Incidental to Navy Waterfront Construction Activities at Naval Submarine Base Kings Bay

SOURCE: 82 FR 26373, June 7, 2017, unless otherwise noted.