

(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.