

and beluga whales, NPS must avoid operation of a motor vessel within ¼ nautical mile of these cetaceans. If accidentally positioned within ¼ nautical mile of these cetaceans, NPS must slow the vessel speed to 10 knots or less and maintain course away from the marine mammal until at least ¼ nautical mile of separation exists;

(b) *Glacier Bay gull and climate monitoring.* (1) On an annual basis, NPS may conduct a maximum of five days of gull monitoring for each survey location listed in the LOA;

(2) On an annual basis, the NPS may conduct a maximum of three days of activities related to climate monitoring on Lone Island;

(3) NPS is required to conduct pre-survey monitoring before deciding to access a study site;

(4) Prior to deciding to land onshore, NPS must use high-powered image stabilizing binoculars before approaching at distances of greater than 500 m (1,640 ft) to determine and document the number, species, and location of hauled-out marine mammals;

(5) During pre-survey monitoring, vessels must maintain a distance of 328 to 1,640 ft (100 to 500 m) from the shoreline;

(6) If a harbor seal pup less than one week of age (neonate) is present within or near a study site or a path to a study site, NPS must not access the site nor conduct the study at that time. In addition, if during the activity, a pup less than one week of age is observed, all research activities must conclude for the day;

(7) NPS must maintain a distance of at least 100 m from any Steller sea lion;

(8) NPS must perform controlled and slow ingress to islands where harbor seals are present;

(9) NPS must monitor for offshore predators at the study sites during pre-survey monitoring and must avoid research activities when killer whales (*Orcinus orca*) or other predators are observed within a 1 mile radius; and

(10) NPS must maintain a quiet working atmosphere, avoid loud noises, and must use hushed voices in the presence of hauled-out pinnipeds; and

(c) *SWAN marine bird surveys.* (1) On an annual basis, NPS may conduct one

summer survey at each location listed in the LOA;

(2) On an annual basis, the NPS may conduct one winter survey at each location listed in the LOA;

(3) NPS must maintain a minimum vessel distance of 100 meters from the shoreline at all times while surveying; and

(4) If hauled out Steller sea lions or harbor seals are observed, NPS must maintain the vessel speed and minimum distance. If survey conditions allow, the survey must be attempted from a distance greater than 150 meters.

§ 217.25 Requirements for monitoring and reporting.

NPS is required to conduct marine mammal monitoring during research and monitoring activities. NPS and/or its designees must record the following for the designated monitoring activity:

(a) *Glacier Bay gull and climate monitoring.* (1) Species counts (with numbers of adults/juveniles); and numbers of disturbances, by species and age, according to a three-point scale of intensity;

(2) Information on the weather, including the tidal state and horizontal visibility;

(3) The observer will note the presence of any offshore predators (date, time, number, and species); and

(4) The observer must note unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; marked or tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies; and any rare or unusual species of marine mammal for agency follow-up. The observer must report that information to NMFS's Alaska Fisheries Science Center and/or the Alaska Department of Fish and Game Marine Mammal Program.

(b) *SWAN marine bird surveying.* (1) Species counts and numbers of type 3, flushing, disturbances;

(2) Information on the weather, including the tidal state and horizontal visibility; and

(3) The observer must note unusual behaviors, numbers, or distributions of

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pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; marked or tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies; and any rare or unusual species of marine mammal for agency follow-up. The observer must report that information to NMFS's Alaska Fisheries Science Center and/or the Alaska Department of Fish and Game Marine Mammal Program.

(c) *Annual reporting.* NPS must submit separate annual draft reports for GLBA NP and SWAN on all monitoring conducted within ninety calendar days of the completion of annual research and monitoring activities. Final reports for both GLBA NP and SWAN must be prepared and submitted within thirty days following resolution of comments on each draft report from NMFS. This report must contain:

(1) A summary and table of the dates, times, and weather during all research activities;

(2) Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities;

(3) An estimate of the number (by species) of marine mammals exposed to acoustic or visual stimuli associated with the research activities; and

(4) A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

(d) *Comprehensive reporting.* NPS must submit a comprehensive 5-year report covering all activities conducted under the incidental take regulations at least 90 days prior to expiration of these regulations if new regulations are sought or 90 days after expiration of regulations.

(e) *Reporting of injured or dead marine mammals.* (1) In the unanticipated event that the activity defined in § 219.20(a) clearly causes the take of a marine mammal in a prohibited manner such as an injury (Level A harassment), serious injury, or mortality, NPS must immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and

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the Alaska Regional Stranding Coordinator, NMFS. The report must include the following information:

(i) Time and date of the incident;

(ii) Description of the incident;

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

(iv) Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;

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

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

(vii) Photographs or video footage of the animal(s);

(2) Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with NPS to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. NPS must not resume their activities until notified by NMFS;

(3) In the event that NPS discovers an injured or dead marine mammal, and the lead observer 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), NPS must immediately report the incident to the Office of Protected Resources, NMFS, and the Alaska Stranding Coordinator, NMFS. The report must include the same information identified in paragraph (e)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with NPS to determine whether additional mitigation measures or modifications to the activities are appropriate;

(4) In the event that NPS discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 217.20(a) (e.g., previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), NPS must report the incident to OPR and the Alaska Stranding Coordinator, NMFS, within 24 hours of the discovery. NPS must provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

NPS can continue their research activities; and

(5) Pursuant to paragraphs (e)(2) through (4) of this section, NPS may use discretion in determining what injuries (*i.e.*, nature and severity) are appropriate for reporting. At minimum, NPS must report those injuries considered to be serious (*i.e.*, will likely result in death) or that are likely caused by human interaction (e.g., entanglement, gunshot). Also pursuant to paragraphs (e)(3) and (4) of this section, NPS may use discretion in determining the appropriate vantage point for obtaining photographs of injured/dead marine mammals.

§ 217.26 Letters of Authorization.

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

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, NPS must apply for and obtain a modification of the LOA as described in § 217.27.

(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 30 days of a determination.

§ 217.27 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.26 for the activity identified in § 217.20(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed 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 an 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 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 §§ 216.106 of this chapter and 217.26 for the activity identified in § 217.20(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 NPS 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 NPS's monitoring from the previous year(s).