

(e) The Navy shall deploy marine mammal observers as indicated in the final Marine Mammal Monitoring Plan and as described in § 217.255 of this chapter.

(1) For all pile driving activities, a minimum of one observer shall be stationed at the active pile driving rig or within reasonable proximity of the rig in order to monitor the shutdown zone.

(2) Monitoring shall take place from 15 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for 15 minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.*, must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The entire shutdown zone must be visible before it can be deemed clear of marine mammals.

(3) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal.

(4) Monitoring shall be conducted by trained observers, who shall have no other assigned tasks during monitoring periods. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator.

(f) The Navy shall use soft start techniques for impact pile driving. Soft start for impact drivers requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then

two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(g) Pile driving shall only be conducted during daylight hours.

§ 217.255 Requirements for monitoring and reporting.

(a) Trained observers shall complete applicable portions of the Navy's Marine Species Awareness Training, as well as a general environmental awareness briefing conducted by Navy staff. At minimum, training shall include identification of bottlenose dolphins and relevant mitigation and monitoring requirements. All observers shall have no other construction-related tasks while conducting monitoring.

(b) For shutdown zone monitoring, the Navy shall report on implementation of shutdown or delay procedures, including whether the procedures were not implemented and why (when relevant).

(c) The Navy shall deploy additional observers to monitor disturbance zones according to the minimum requirements defined in this chapter. These observers shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity, and shall communicate with the shutdown zone observer as appropriate with regard to the presence of marine mammals. All observers shall be trained in identification and reporting of marine mammal behaviors.

(1) During Project 1A (Tug Pier), Navy shall deploy a minimum of three additional marine mammal monitoring observers on a minimum of ten days of vibratory pile driving activity.

(2) During Project 2 (UMC Layberth (P-661)), Navy shall deploy a minimum of two additional marine mammal monitoring observers on a minimum of three days of impact pile driving activity.

(3) During the fiscal year 2022 phase of Project 3A (Explosives Handling

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Wharf #2), Navy shall deploy a minimum of three additional marine mammal monitoring observers on a minimum of three days of vibratory pile driving activity.

(4) During Project 3B ((Dry Dock) Interface Wharf), Navy shall deploy a minimum of three additional marine mammal monitoring observers on a minimum of five days of vibratory pile driving activity.

(5) During Projects 3C, 3D, and 3E (Refit Wharves #1–3), Navy shall deploy a minimum of two additional marine mammal monitoring observers on all days of pile driving activity.

(6) During Project 3F (Warping Wharf with Capstan), Navy shall deploy a minimum of three additional marine mammal monitoring observers on a minimum of two days of vibratory pile driving activity.

(7) During Project 3G (Tug Pier), Navy shall deploy a minimum of three additional marine mammal monitoring observers on a minimum of four days of vibratory pile driving activity.

(8) During Project 4A (Transit Protection System (TPS) Pier), Navy shall deploy a minimum of four additional marine mammal monitoring observers on a minimum of eight days of vibratory pile driving activity.

(9) During Project 4B (Small Craft Berth Site VI), Navy shall deploy a minimum of four additional marine mammal monitoring observers on a minimum of three days of vibratory pile driving activity.

(10) During Project 5 (Magnetic Silencing Facility Repairs), Navy shall deploy a minimum of four additional marine mammal monitoring observers on a minimum of three days of vibratory pile driving activity.

(11) During Projects 6A (Demolition of TPS Pier) and 6B (Demolition of North Trestle), Navy shall deploy a minimum of five additional marine mammal monitoring observers on a minimum of twelve days of vibratory pile driving activity.

(d) The Navy shall conduct acoustic data collection (sound source verification and propagation loss), in accordance with NMFS's guidelines, in conjunction with Project 1A (Tug Pier), Project 2 (Unspecified Minor Construction Layberth Fender Pile

Modification), Project 4A (TPS Pier), and Project 5 (Magnetic Silencing Facility).

(e) Reporting:

(1) Annual reporting:

(i) Navy shall submit an annual summary report to NMFS not later than ninety days following the end of in-water work for each project. Navy shall provide a final report within thirty days following resolution of comments on the draft report.

(ii) These reports shall contain, at minimum, the following:

(A) Date and time that monitored activity begins or ends;

(B) Construction activities occurring during each observation period;

(C) Weather parameters (*e.g.*, wind speed, percent cloud cover, visibility);

(D) Water conditions (*e.g.*, sea state, tide state);

(E) Species, numbers, and, if possible, sex and age class of marine mammals;

(F) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

(G) Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(H) Description of implementation of mitigation measures (*e.g.*, shutdown or delay);

(I) Locations of all marine mammal observations; and

(J) Other human activity in the area.

(2) Navy shall submit a comprehensive summary report to NMFS no later than 90 days following the conclusion of marine mammal monitoring efforts described in this chapter.

(3) Navy shall submit acoustic monitoring reports as necessary pursuant to §217.255(d).

(f) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the activity defined in §217.250 clearly causes the take of a marine mammal in a prohibited manner, Navy shall immediately cease such activity and report the incident to the Office of Protected Resources (OPR), NMFS, and to the Southeast Regional Stranding Coordinator, NMFS. Activities shall not resume until NMFS is able to review the circumstances of the prohibited take.

NMFS will work with Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Navy may not resume their activities until notified by NMFS. The report must include the following information:

- (i) Time, date, and location (latitude/longitude) of the incident;
- (ii) Description of the incident;
- (iii) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility);
- (iv) Description of all marine mammal observations 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). Photographs may be taken once the animal has been moved from the waterfront area.

(2) In the event that Navy discovers an injured or dead marine mammal and 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), Navy shall immediately report the incident to OPR and the Southeast Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (f)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that Navy 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 §217.250 (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Navy shall report the incident to OPR and the Southeast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. Photographs may be taken once the animal has been moved from the waterfront area.

§217.256 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Navy must apply for and obtain a LOA.

(b) A LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If a LOA expires prior to the expiration date of these regulations, Navy 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 a LOA, Navy must apply for and obtain a modification of the LOA as described in §217.257.

(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 a LOA shall be published in the FEDERAL REGISTER within thirty days of a determination.

§217.257 Renewals and modifications of Letters of Authorization.

(a) A LOA issued under §216.106 of this chapter and §217.256 for the activity identified in §217.250 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