

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

§§ 217.258–217.259

under these regulations were implemented.

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

(A) Results from Navy's monitoring from previous years.

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

(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 a LOA issued

50 CFR Ch. II (10–1–21 Edition)

pursuant to §216.106 of this chapter and §217.256, a LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within thirty days of the action.

§§ 217.258–217.259 [Reserved]

Subpart AA—XXX [Reserved]

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Subpart A—Taking and Importing Marine Mammals Incidental to U.S. Navy Construction at Naval Station Norfolk in Norfolk, Virginia

Sec.

218.1 Specified activity and geographical region.

218.2 Effective dates.

218.3 Permissible methods of taking.

218.4 Prohibitions.

218.5 Mitigation requirements.

218.6 Requirements for monitoring and reporting.

218.7 Letters of Authorization.

218.8 Renewals and modifications of Letters of Authorization.

218.9 [Reserved]

Subpart B [Reserved]

Subpart C—Taking Marine Mammals Incidental to U.S. Navy Marine Structure Maintenance and Pile Replacement in Washington

218.20 Specified activity and specified geographical region.

218.21 Effective dates.

218.22 Permissible methods of taking.

218.23 Prohibitions.

218.24 Mitigation requirements.

218.25 Requirements for monitoring and reporting.

218.26 Letters of Authorization.

218.27 Renewals and modifications of Letters of Authorization.

218.28–218.29 [Reserved]

Subpart D—Taking Marine Mammals Incidental to U.S. Navy Construction Activities at Naval Weapons Station Seal Beach, California

218.30 Specified activity and specified geographical region.

218.31 Effective dates.

218.32 Permissible methods of taking.