

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).

(B) Results from other marine mammal 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 shall 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 LOAs issued pursuant to §§216.106 of this chapter and 217.26, an 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.

§§ 217.28–217.29 [Reserved]

**Subpart D—Taking Marine Mammals Incidental to Construction and Operation of the Liberty Drilling and Production Island**

SOURCE: 84 FR 70322, Dec. 20, 2019, unless otherwise noted.

EFFECTIVE DATE NOTE: At 84 FR 70322, Dec. 20, 2019, subpart D was added, effective Dec. 1, 2021, through Nov. 30 2026.

**§ 217.30 Specified activity and specified geographical region.**

(a) Regulations in this subpart apply only to Hilcorp LLC (Hilcorp) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to construction, maintenance, and operation of the Liberty Drilling and Production Island (LDPI) and associated infrastructure.

(b) The taking of marine mammals by Hilcorp may be authorized in a Letter of Authorization (LOA) only if it occurs within the Beaufort Sea, Alaska.

**§ 217.31 Effective dates.**

Regulations in this subpart are effective from December 1, 2021, through November 30, 2026.

**§ 217.32 Permissible methods of taking.**

Under LOAs issued pursuant to §§216.106 of this chapter and 217.36, the Holder of the LOA (hereinafter “Hilcorp”) may incidentally, but not intentionally, take marine mammals within the area described in §217.30(b) by mortality, serious injury, Level A harassment, or Level B harassment associated with the LDPI construction and operation activities, including associated infrastructure, provided the activities are in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

**§ 217.33 Prohibitions.**

Notwithstanding takings contemplated in §217.32 and authorized by an LOA issued under §§216.106 of this chapter and 217.36, no person in connection with the activities described in §217.30 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§216.106 of this chapter and 217.36;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if the National Marine Fisheries Service (NMFS) determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

**§ 217.34 Mitigation requirements.**

When conducting the activities identified in §217.30(a), the mitigation measures contained in any LOA issued under §216.106 of this chapter must be