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defined as the union of the areas defined by:

- (i) A 16-km (10-mile) buffer of the Beluga River thalweg seaward of the mean lower low water (MLLW) line;
- (ii) A 16-km (10-mile) buffer of the Little Susitna River thalweg seaward of the MLLW line; and
- (iii) A 16-km (10-mile) seaward buffer of the MLLW line between the Beluga River and Little Susitna River.
- (iv) The buffer extends landward along the thalweg to include intertidal waters within rivers and streams up to their mean higher high water line (MHHW). The seaward boundary has been simplified so that it is defined by lines connecting readily discernable landmarks.

(5) For vessels operating in the Susitna Delta Exclusion Zone, the following must be implemented:

- (i) All project vessels operating within the designated Susitna Delta area must maintain a speed over ground below 4 knots. PSOs must note the numbers, date, time, coordinates, and proximity to vessels of all belugas observed during operations, and report these observations to NMFS in monthly PSO reports.
- (ii) Vessel crew must be trained to monitor for Endangered Species Act (ESA)-listed species prior to and during all vessel movements within the Susitna Delta Exclusion Zone. The vessel crew must report sightings to the PSO team for inclusion in the overall sighting database and reports.
- (iii) Vessel operators must not move their vessels when they are unable to adequately observe the 100-m zone around vessels under power (in gear) due to darkness, fog, or other conditions, unless necessary for ensuring human safety.

§217.95 Requirements for monitoring and reporting.

(a) *Marine mammal visual monitoring—*  
(1) *Protected species observers.* AGDC must employ trained protected species observers (PSO) to conduct marine mammal monitoring for its LNG facilities construction projects.

(i) The PSOs must observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after

all construction work. PSOs must have no other assigned tasks during monitoring periods, and must be placed at appropriate and safe vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures, when applicable, through communication with the equipment operator.

(ii) [Reserved]

(2) *Protected species observer qualifications.* AGDC must adhere to the following observer qualifications:

- (i) Independent PSOs (*i.e.*, not construction personnel) who have no other assigned tasks during monitoring periods must be used;
- (ii) Where a team of three or more PSOs are required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction;
- (iii) Other PSOs may substitute education (degree in biological science or related field) or training for experience;
- (iv) AGDC must submit PSO CVs for approval by NMFS prior to the onset of pile driving;
- (v) The PSOs must have the ability to conduct field observations and collect data according to assigned protocols;
- (vi) The PSOs must have the experience or training in the field identification of marine mammals, including the identification of behaviors;
- (vii) The PSOs must have sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- (viii) The PSOs must have writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- (ix) The PSOs must have the ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine

mammals observed in the area as necessary.

(3) *Marine mammal monitoring protocols.* AGDC must adhere to the following marine mammal monitoring protocols:

(i) For pile driving activities, a minimum of two PSOs must be on duty at all times;

(ii) For pile driving activities, PSOs must be stationed on a bluff with minimum height 500 feet above sea level immediately above the construction site;

(iii) For marine mammal monitoring during pipe laying activities, at least one PSO must be on the barge and on watch;

(iv) PSOs may not exceed 4 consecutive watch hours; must have a minimum two-hour break between watches; and may not exceed a combined watch schedule of more than 12 hours in a 24-hour period;

(v) PSOs must have no other construction-related tasks while conducting monitoring;

(vi) Monitoring must be conducted from 30 minutes prior to commencement of pile driving, throughout the time required to drive a pile, and for 30 minutes following the conclusion of pile driving;

(vii) Monitoring must be conducted from 30 minutes prior to commencement of pipe laying activity, throughout the time of pipe laying, and for 30 minutes following the conclusion of pipe laying for the segment;

(viii) During all observation periods, PSOs must use high-magnification (25X), as well as standard handheld (7X) binoculars, and the naked eye to search continuously for marine mammals;

(ix) Monitoring distances must be measured with range finders. Distances to animals must be based on the best estimate of the PSO, relative to known distances to objects in the vicinity of the PSO; and

(x) Bearings to animals must be determined using a compass.

(4) *Marine mammal monitoring data collection.* PSOs must collect the following information during marine mammal monitoring:

(i) Date and time that monitored activity begins and ends for each day conducted (monitoring period);

(ii) Construction activities occurring during each daily observation period, including how many and what type of piles driven and distances covered during pipe laying;

(iii) Deviation from initial proposal in pile numbers, pile types, average driving times, and pipe laying distances, etc.;

(iv) Weather parameters in each monitoring period (*e.g.*, wind speed, percent cloud cover, visibility);

(v) Water conditions in each monitoring period (*e.g.*, sea state, tide state);

(vi) For each marine mammal sighting:

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

(B) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving and pipe laying activities, and notable changes in patterns;

(C) Location and distance from pile driving and pipe laying activities to marine mammals and distance from the marine mammals to the observation point; and

(D) Estimated amount of time that the animals remained in the Level A and/or Level B harassment zones;

(vii) Description of implementation of mitigation measures within each monitoring period (*e.g.*, shutdown or delay); and

(viii) Other human activity in the area within each monitoring period.

(b) *Acoustic monitoring.* AGDC must conduct a sound source verification (SSV) in accordance with the requirements in the LOA, at the beginning of the pile driving to characterize the sound levels associated with different pile and hammer types, as well as to establish the marine mammal monitoring and mitigation zones.

(1) A minimum of 2 piles of each type and size must be measured.

(2) The following data, at minimum, shall be collected during acoustic monitoring and reported:

(i) Hydrophone equipment and methods: Recording device, sampling rate, distance from the pile where recordings were made; depth of recording device(s);

(ii) Type of pile being driven and method of driving during recordings; and

(iii) Mean, median, and maximum sound levels (dB re: 1 $\mu$ Pa): Cumulative sound exposure level (SEL<sub>cum</sub>), peak sound pressure level (SPL<sub>peak</sub>), root mean square sound pressure level (SPL<sub>rms</sub>), and single-strike sound exposure level (SEL<sub>s-s</sub>).

(3) An SSV report must be submitted to NMFS within 72 hours after field measurements for approval of the results.

(4) The results of the SSV report may be used to adjust the extent of Level A and Level B harassment zones in-water pile driving.

(c) *Reporting measures*—(1) *Notification*. AGDC must notify NMFS 48 hours prior to the start of each activity in Cook Inlet that may cause harassment of marine mammals. If there is a delay in activity, AGDC must also notify NMFS as soon as practicable.

(2) *Monthly report*. AGDC must submit monthly reports via email to NMFS Office of Protected Resources (OPR) and Alaska Regional Office (AKRO) for all months with project activities by the 15th of the month following the monthly reporting period. The monthly report must contain and summarize the following information:

(i) Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and a list of all in-water sound-producing activities occurring concurrent with marine mammal observations;

(ii) Species, number, location, distance from the vessel, and behavior of all observed marine mammals, as well as associated project activity (e.g., number of power-downs and shut-downs), observed throughout all monitoring activities;

(iii) Observation data in paragraphs (a) and (b) of this section must be provided in digital spreadsheet format that can be queried;

(iv) An estimate of the number of animals (by species) exposed to sound at received levels greater than or equal to either the Level A or Level B harassment thresholds, with a discussion the time spent above those received levels and of any specific behaviors those individuals exhibited;

(v) If the extent of Level B harassment zone is beyond visual observation, AGDC must also include an appropriate adjustment to estimate the total numbers of marine mammals taken based on the portion of the areas that are monitored; and

(vi) A description of the implementation and effectiveness of the terms and conditions of the Biological Opinion's Incidental Take Statement and mitigation and monitoring measures of the LOA.

(3) *Marine mammal tally numbers*. (i) AGDC must keep a tally of the estimated number of marine mammals that are taken, based on the number of marine mammals observed within the applicable harassment zones, and alert NMFS when the authorized limit is close to being met based on prescribed monitoring measured in the final rule; and

(ii) AGDC must keep a tally of the number of marine mammal that are sighted during the pile driving and pipe laying activities.

(4) *Beluga whale takes*. AGDC must immediately notify NMFS if the number of Cook Inlet beluga estimated as taken (based on observed exposures above thresholds) reaches 80% of the authorized takes in any given calendar year during which take is authorized.

(5) *Annual report*. (i) AGDC must submit a comprehensive annual report to NMFS within 90 calendar days of the cessation of in-water work each year for review. The report must synthesize all sighting data and effort during each activity for each year.

(ii) NMFS will provide comments within 30 days after receiving annual reports, and AGDC must address the comments and submit revisions within 30 days after receiving NMFS comments.

(iii) If no comments are received from the NMFS within 30 days, the annual report is considered completed.

(iv) The report must include the following information:

(A) Summaries of monitoring effort including total hours, observation rate by species and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals.

(B) Analyses of the effects of various factors that may have influenced detectability of marine mammals (*e.g.*, sea state, number of observers, fog/glare, and other factors as determined by the PSOs).

(C) Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover.

(D) Marine mammal observation data with a digital record of observation data provided in digital spreadsheet format that can be queried.

(E) Summary of implemented mitigation measures (*i.e.*, shutdowns and delays).

(F) Number of marine mammals during periods with and without project activities (and other variables that could affect detectability), such as:

(1) Initial sighting distances versus project activity at the time of sighting;

(2) Closest point of approach versus project activity;

(3) Observed behaviors and types of movements versus project activity;

(4) Numbers of sightings/individuals seen versus project activity;

(5) Distribution around the source vessels versus project activity; and

(6) Numbers of animals detected in the exclusion zone.

(G) Analyses of the effects of project activities on listed marine mammals.

(6) *Final report.* (i) AGDC must provide NMFS, within 90 days of project completion at the end of the five-year period, a report of all parameters listed in the monthly and annual report requirements in paragraph (c) of this section, noting also all operational shutdowns or delays necessitated due to the proximity of marine mammals.

(ii) NMFS will provide comments within 30 days after receiving this report, and AGDC must address the comments and submit revisions within 30 days after receiving NMFS comments.

(iii) If no comments are received from the NMFS within 30 days, the final report is considered as final.

(7) *Reporting of injured or dead marine mammals.* (i) In the unanticipated event that the construction or demolition activities clearly cause the take of a marine mammal in a prohibited manner,

such as an injury, serious injury, or mortality, AGDC must immediately cease operations with the potential to impact marine mammals in the vicinity and immediately report the incident to the NMFS Office of Protected Resources, NMFS Alaska Regional Office, and the Alaska Region Stranding Coordinators. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) Description of the incident;

(C) Status of all sound source use in the 24 hours preceding the incident;

(D) Environmental conditions (*e.g.*, wind speed and direction, sea state, cloud cover, visibility, and water depth);

(E) Description of marine mammal observations in the 24 hours preceding the incident;

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

(G) The fate of the animal(s); and

(H) Photographs or video footage of the animal (if equipment is available).

(ii) Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS must work with AGDC to determine what is necessary to minimize the likelihood of further prohibited take and ensure Marine Mammal Protection Act (MMPA) compliance. AGDC may not resume its activities until notified by NMFS via letter, email, or telephone.

(iii) In the event that AGDC discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as described in paragraph (c)(7)(iv) of this section), AGDC must immediately report the incident to the NMFS Office of Protected Resources, NMFS Alaska Regional Office, and the Alaska Regional Stranding Coordinators. The report must include the same information identified in paragraph (b)(3)(i) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with AGDC to determine whether modifications in the activities are appropriate.

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(iv) In the event that AGDC discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the LOA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), AGDC must report the incident to the NMFS Office of Protected Resources, NMFS Alaska Regional Office, and the Alaska Regional Stranding Coordinators, within 48 hours of the discovery. AGDC must provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. AGDC may continue its operations under such a case.

### § 217.46 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, AGDC must apply for and obtain (LOAs) in accordance with § 216.106 of this chapter for conducting the activity identified in § 217.40(c).

(b) LOAs, unless suspended or revoked, may be effective for a period of time not to extend beyond the expiration date of the regulations in this subpart.

(c) If an LOA(s) expires prior to the expiration date of the regulations in this subpart, AGDC may apply for and obtain a renewal of the LOA(s).

(d) In the event of projected changes to the activity or to mitigation, monitoring, reporting (excluding changes made pursuant to the adaptive management provision of § 217.47(c)(1)) required by an LOA, AGDC must apply for and obtain a modification of LOAs as described in § 217.47.

(e) Each LOA must set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, their habitat, and the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA(s) must be based on a determination that the level of taking must be consistent with the findings made for the total taking al-

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lowable under the regulations in this subpart.

(g) Notice of issuance or denial of the LOA(s) must be published in the FEDERAL REGISTER within 30 days of a determination.

### § 217.47 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.46 for the activity identified in § 217.40(c) must 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 the regulations in this subpart (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(s) under the regulations in this subpart were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting measures (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 in this subpart 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 217.46 for the activity identified in § 217.40(c) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* After consulting with AGDC regarding the practicability of the modifications, NMFS may modify (including by adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation