

Authorization must notify the Administrator, Alaska Region, NMFS, by letter, e-mail, or telephone, at least 2 weeks prior to commencement of seasonal activities and dock demolition possibly involving the taking of marine mammals. If the activity identified in §217.200(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in §217.202(b), the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by e-mail or telephone (301-713-2289), within 24 hours of the discovery of the injured or dead animal.

(b) The Holder of a Letter of Authorization must designate qualified, on-site marine mammal observers (MMOs), approved in advance by NMFS, as specified in the Letter of Authorization, to:

(1) Conduct visual marine mammal monitoring at the Port of Anchorage beginning 30 minutes prior to and during all in-water pile driving or chipping and out-of-water blasting.

(2) Record the following information on NMFS-approved marine mammal sighting sheets whenever a marine mammal is detected:

(i) Date and time of initial sighting to end of sighting, tidal stage, and weather conditions (including Beaufort Sea State);

(ii) Species, number, group composition, initial and closest distance to pile driving hammer, and behavior (e.g., activity, group cohesiveness, direction and speed of travel, etc.) of animals throughout duration of sighting;

(iii) Any discrete behavioral reactions to in-water work;

(iv) The number (by species) of marine mammals that have been taken;

(v) Pile driving, chipping, or out of water blasting activities occurring at the time of sighting and if and why shut down was or was not implemented.

(3) Employ a scientific marine mammal monitoring team separate from the on-site MMOs to characterize beluga whale abundance, movements, behavior, and habitat use around the Port of Anchorage and observe, analyze, and document potential changes in behavior in response to in-water

construction work. This monitoring team is not required to be present during all in-water pile driving operations but will continue monitoring one-year post in-water construction. The on-site MMOs and this marine mammal monitoring team shall remain in contact to alert each other to marine mammal presence when both teams are working.

(c) The Holder of a Letter of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) The Holder of a Letter of Authorization shall submit a monthly report to NMFS' Headquarters Permits, Education and Conservation Division and the Alaska Region, Anchorage for all months in-water pile driving or chipping takes place. This report must contain the information listed in paragraph (b)(2) of this section.

(e) An annual report must be submitted at the time of application for renewal of a Letter of Authorization. This report will summarize all in-water construction activities and marine mammal monitoring from January 1-December 31, annually, and any discernable short or long term impacts from the Marine Terminal Expansion Project.

(f) A final report must be submitted to NMFS upon application for a subsequent incidental take authorization or, if no future authorization is requested, no later than 90 days post expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports;

(2) Assess the impacts to marine mammals from the port expansion project; and

(3) Assess the cumulative impacts on marine mammals.

§217.206 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103 of this chapter) conducting the activity identified in §217.200(a) (the Port of Anchorage and MARAD) must apply for and obtain either an initial Letter of Authorization in accordance with §217.207 or a renewal under §217.208.

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(b) The application must be submitted to NMFS at least 60 days before the expiration of the initial or current Letter of Authorization.

(c) Applications for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) The date(s), duration, and the specified geographic region where the activities specified in §217.200 will occur; and

(3) The most current population estimate of Cook Inlet beluga whales and the estimated percentage of marine mammal populations potentially affected for the 12-month period of effectiveness of the Letter of Authorization;

(4) A summary of take levels, monitoring efforts and findings at the Port of Anchorage to date.

(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with this section and, if adequate and complete, issue a Letter of Authorization.

§ 217.207 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §217.208.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking; and

(2) Requirements for mitigation, monitoring and reporting, including, but not limited to, means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses.

(c) Issuance of a Letter of Authorization will be based on the determination that the number of marine mammals taken during the period the Letter of Authorization is valid will be small, that the total taking of marine mammals by the activities specified in §217.200(a) will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have

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an unmitigable adverse impact on the availability of species or stocks of marine mammals for subsistence uses.

(d) Notice of issuance or denial of an application for a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§ 217.208 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §216.106 of this chapter and §217.207 for the activity identified in §217.200(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §217.206 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §217.205(d) and (e), and the Letter of Authorization issued under §217.207, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§217.204 and 217.205 and the Letter of Authorization issued under §216.106 of this chapter and §217.207, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(4) A determination by NMFS that the number of marine mammals taken during the period of the Letter of Authorization will be small, that the total taking of marine mammals by the activities specified in §217.200(a) will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for subsistence uses.

(b) If a request for a renewal of a Letter of Authorization issued under §216.106 of this chapter and this section indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days