

§ 218.108

50 CFR Ch. II (10–1–10 Edition)

determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.108 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 and § 218.107 of this chapter for the activity identified in § 218.100(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.206 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) Receipt of the monitoring reports and notifications within the timeframes indicated in the previous LOA; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.104 and the Letter of Authorization issued under §§ 216.106 and 218.107 of this chapter, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 218.208 indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER.

(d) *Adaptive Management.* NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could con-

tribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from the MIRC Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011.

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the Integrated Comprehensive Monitoring Plan).

(4) Results from specific stranding investigations (either from the MIRC Study Area or other locations, and involving coincident MFAS/HFAS or explosives training or not involving coincident use).

(5) Results from the Long Term Prospective Study described in the preamble to these regulations.

(6) Results from general marine mammal and sound research.

(7) Any information which reveals that marine mammals may have been taken in a manner, extent or number not anticipated by these regulations or subsequent Letters of Authorization.

§ 218.109 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 218.107 of this chapter and subject to the provisions of this subpart, shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.108 without modification (except for the period of validity) is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.100(b), a Letter of Authorization issued pursuant to §§ 216.106 and 218.107 of this chapter may be substantively modified