

§218.107

conducting the activity identified in §218.100(c) (*i.e.*, the Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.107 or a renewal under §218.108.

§218.107 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in §218.108 and the modification conditions in §218.109.

(b) Each Letter of Authorization shall set forth:

(1) Permissible methods of incidental taking;

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

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization shall be based on a 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).

[75 FR 45547, Aug. 3, 2010, as amended at 77 FR 4924, Feb. 1, 2012]

§218.108 Renewal of Letters of Authorization and adaptive management.

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

(1) Notification to NMFS that the activity described in the application submitted under §218.106 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

(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 of this chapter and

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§218.107, were undertaken and will be undertaken during the upcoming 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 contribute 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.

[75 FR 45547, Aug. 3, 2010, as amended at 77 FR 4924, Feb. 1, 2012]

§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 without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart M—Taking and Importing Marine Mammals; U.S. Navy's Northwest Training Range Complex (NWTRC)

SOURCE: 75 FR 69319, Nov. 10, 2010, unless otherwise noted.

EFFECTIVE DATE NOTE: At 75 FR 69319, Nov. 10, 2010, subpart M was added, effective Nov. 9, 2010 through Nov. 9, 2015.

§218.110 Specified activity and specified geographical area.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it oc-

curs within the Offshore area of the Northwest Training Range Complex (NWTRC) (as depicted in Figure ES-1 in the Navy's Draft Environmental Impact Statement for NWTRC), which is bounded by 48°30' N. lat.; 130°00' W. long.; 40°00' N. lat.; and on the east by 124°00' W. long. or by the shoreline where the shoreline extends west of 124°00' W. long. (excluding the Strait of Juan de Fuca (east of 124°40' W. long), which is not included in the Offshore area).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

(i) AN/SQS-53 (hull-mounted active sonar)—up to 215 hours over the course of 5 years (an average of 43 hours per year);

(ii) AN/SQS-56 (hull-mounted active sonar)—up to 325 hours over the course of 5 years (an average of 65 hours per year);

(iii) SSQ-62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 4430 sonobuoys over the course of 5 years (an average of 886 sonobuoys per year)

(iv) MK-48 (heavyweight torpedoes)—up to 10 torpedoes over the course of 5 years (an average of 2 torpedoes per year);

(v) AN/BQS-15 (mine detection and submarine navigational sonar)—up to 210 hours over the course of 5 years (an average of 42 hours per year);

(vi) AN/SSQ-125 (AEER)—up to 745 buoys deployed over the course of 5 years (total combined with the AN/SSQ-110A (IEER)) (an average of 149 per year);

(vii) Range Pingers—up to 900 hours over the course of 5 years (an average of 180 hours per year); and

(viii) PUTR Uplink—up to 750 hours over the course of 5 years (an average of 150 hours per year).

(2) The detonation of the underwater explosives indicated in paragraph