

with §216.104(b) and, if adequate and complete, issue a Letter of Authorization.

§216.188 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked will be valid for a period of time not to exceed one year, but may be renewed annually subject to annual renewal conditions in §216.189.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic areas for incidental takings;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking, their habitat, and the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting incidental takes.

(c) Issuance of each Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity specified in §216.180 as a whole will have no more than a negligible impact on the species or stocks 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 taking 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.

§216.189 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued for the activity identified in §216.180 may be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §216.187 will be undertaken and that there will not be a substantial modification to the described activity, mitigation or monitoring undertaken during the upcoming season;

(2) Notification to NMFS of the information identified in §216.187(c), including the planned geographic area(s), and anticipated duration of each SURTASS LFA sonar operation;

(3) Timely receipt of the monitoring reports required under §216.185, which have been reviewed by NMFS and determined to be acceptable;

(4) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§216.184 and 216.185 and the previous Letter of Authorization were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(5) A determination by NMFS that the number of marine mammals taken by the activity as a whole 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 taking for subsistence uses.

(b) If a request for a renewal of a Letter of Authorization indicates that a substantial modification to the described work, mitigation or monitoring will occur, or if NMFS proposes a substantial modification to the Letter of Authorization, NMFS will provide a period of 30 days for public review and comment on the proposed modification. Amending the areas for upcoming SURTASS LFA sonar operations is not considered a substantial modification to the Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§216.190 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantial modification (including withdrawal or suspension) to a Letter of Authorization subject to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization, without modification, except for the period of validity and a listing of planned operating areas, or for moving the authorized SURTASS LFA sonar system from one ship to another, is not considered a substantial modification.

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(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.180(b), a Letter of Authorization may be substantially modified without prior notice and opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days of the action.

§216.191 Designation of Offshore Biologically Important Marine Mammal Areas.

(a) Offshore biologically important areas for marine mammals may be nominated under this paragraph by the National Marine Fisheries Service or by members of the public.

(b) Proponents must petition NMFS by requesting an area be added to the list of offshore biologically important areas in §216.184(f) and submitting the following information:

(1) Geographic region proposed for consideration (including geographic boundaries);

(2) A list of marine mammal species or stocks within the proposed geographic region;

(3) Whether the proposal is for year-round designation or seasonal, and if seasonal, months of years for proposed designation;

(4) Detailed information on the biology of marine mammals within the area, including estimated population size, distribution, density, status, and the principal biological activity during the proposed period of designation sufficient for NMFS to make a preliminary determination that the area is biologically important for marine mammals; and

(5) Detailed information on the area with regard to its importance for feeding, breeding, or migration for those species of marine mammals that have the potential to be affected by low frequency sounds;

(c) Areas within 12 nm (22 km) of any coastline, including offshore islands, or within non-operating areas for SURTASS LFA sonar are not eligible for consideration.

(d) If a petition does not contain sufficient information for the National Marine Fisheries Service to proceed,

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NMFS will determine whether the nominated area warrants further study. If so, NMFS will begin a scientific review of the area.

(e)(1) If through a petition or independently, NMFS makes a preliminary determination that an offshore area is biologically important for marine mammals and is not located within a previously designated area, NMFS will publish a FEDERAL REGISTER notice proposing to add the area to §216.184(f) and solicit public comment.

(2) The National Marine Fisheries Service will publish its final determination in the FEDERAL REGISTER.

Subpart R—Taking of Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the U.S. Beaufort Sea

SOURCE: 71 FR 11322, Mar. 7, 2006, unless otherwise noted.

EFFECTIVE DATE NOTE: At 71 FR 11322, Mar. 7, 2006, subpart R, consisting of §§216.200 through 216.210 were added, effective Apr. 6, 2006 through Apr. 6, 2011.

§216.200 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in oil and gas development activities in areas within state and/or Federal waters in the U.S. Beaufort Sea specified in paragraph (a) of this section. The authorized activities as specified in a Letter of Authorization issued under §§216.106 and 216.208 include, but may not be limited to, site construction, including ice road and pipeline construction, vessel and helicopter activity; and oil production activities, including ice road construction, and vessel and helicopter activity, but excluding seismic operations.

(a)(1) Northstar Oil and Gas Development; and

(2) [Reserved]

(b) The incidental take by Level A harassment, Level B harassment or mortality of marine mammals under the activity identified in this section is limited to the following species: