

§216.191

(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:

bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), beluga whale (*Delphinapterus leucas*), ringed seal (*Phoca hispida*), spotted seal (*Phoca largha*) and bearded seal (*Erignathus barbatus*).

§ 216.201 Effective dates.

Regulations in this subpart are effective from April 6, 2006 through April 6, 2011.

§ 216.202 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.208, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment and mortality within the area described in § 216.200(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.200 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and on the availability of marine mammals for subsistence uses.

§ 216.203 Prohibitions.

Notwithstanding takings contemplated in § 216.200 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.208, no person in connection with the activities described in § 216.200 shall:

(a) Take any marine mammal not specified in § 216.200(b);

(b) Take any marine mammal specified in § 216.200(b) other than by incidental, unintentional Level A or Level B harassment or mortality;

(c) Take a marine mammal specified in § 216.200(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under § 216.106.

§ 216.204 Mitigation.

The activity identified in § 216.200(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.200, the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.208 must be utilized.

§ 216.205 Measures to ensure availability of species for subsistence uses.

When applying for a Letter of Authorization pursuant to § 216.207, or a renewal of a Letter of Authorization pursuant to § 216.209, the applicant must submit a Plan of Cooperation that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(a) A statement that the applicant has notified and met with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding timing and methods of operation;

(b) A description of what measures the applicant has taken and/or will take to ensure that oil development activities will not interfere with subsistence whaling or sealing;

(c) What plans the applicant has to continue to meet with the affected communities to notify the communities of any changes in operation.

§ 216.206 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.208 for activities described in § 216.200 are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, National Marine Fisheries Service, or his/her designee, by letter or telephone, at least 2 weeks prior to initiating new activities