

§ 216.27

50 CFR Ch. II (10–1–98 Edition)

if consistent with the provisions at § 216.37(d) under subpart D.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994; 61 FR 21933, May 10, 1996]

§ 216.27 Release, non-releasability, and disposition under special exception permits for rehabilitated marine mammals.

(a) *Release requirements.* (1) Any marine mammal held for rehabilitation must be released within six months of capture or import unless the attending veterinarian determines that:

(i) The marine mammal might adversely affect marine mammals in the wild;

(ii) Release of the marine mammal to the wild will not likely be successful given the physical condition and behavior of the marine mammal; or

(iii) More time is needed to determine whether the release of the marine mammal to the wild will likely be successful. Releasability must be reevaluated at intervals of no less than six months until 24 months from capture or import, at which time there will be a rebuttable presumption that release into the wild is not feasible.

(2) The custodian of the rehabilitated marine mammal shall provide written notification prior to any release into the wild.

(i) Notification shall be provided to:

(A) The NMFS Regional Director at least 15 days in advance of releasing any beached or stranded marine mammal, unless advance notice is waived in writing by the Regional Director; or

(B) The Office Director at least 30 days in advance of releasing any imported marine mammal.

(ii) Notification shall include the following:

(A) A description of the marine mammal, including its physical condition and estimated age;

(B) The date and location of release; and

(C) The method and duration of transport prior to release.

(3) The Regional Director, or the Office Director as appropriate, may:

(i) Require additional information prior to any release;

(ii) Change the date or location of release, or the method or duration of transport prior to release;

(iii) Impose additional conditions to improve the likelihood of success or to monitor the success of the release; or

(iv) Require other disposition of the marine mammal.

(4) All marine mammals must be released near wild populations of the same species, and stock if known, unless a waiver is granted by the Regional Director or the Office Director.

(5) All marine mammals released must be tagged or marked in a manner acceptable to the Regional Director or the Office Director. The tag number or description of the marking must be reported to the Regional Director or Office Director following release.

(b) *Non-releasability and postponed determinations.* (1) The attending veterinarian shall provide the Regional Director or Office Director with a written report setting forth the basis of any determination under paragraphs (a)(1)(i) through (iii) of this section.

(2) Upon receipt of a report under paragraph (b)(1) of this section, the Regional Director or Office Director, in their sole discretion, may:

(i) Order the release of the marine mammal;

(ii) Order continued rehabilitation for an additional 6 months; or

(iii) Order other disposition as authorized.

(3) No later than 30 days after a marine mammal is determined unreleasable in accordance with paragraphs (a)(1)(i) through (iii) of this section, the person with authorized custody must:

(i) Request authorization to retain or transfer custody of the marine mammal in accordance with paragraph (c) of this section, or;

(ii) Humanely euthanize the marine mammal or arrange any other disposition of the marine mammal authorized by the Regional Director or Office Director.

(4) Notwithstanding any of the provisions of this section, the Office Director may require use of a rehabilitated marine mammal for any activity authorized under subpart D in lieu of animals taken from the wild.

(5) Any rehabilitated beached or stranded marine mammal placed on public display following a non-releasability determination under paragraph (a)(1) of this section and pending disposition under paragraph (c) of this section, or any marine mammal imported for medical treatment otherwise unavailable and placed on public display pending disposition after such medical treatment is concluded, must be held in captive maintenance consistent with all requirements for public display.

(c) *Disposition for a special exception purpose.* (1) Upon receipt of an authorization request made under paragraph (b)(3)(i) of this section, or release notification under (a)(2), the Office Director may authorize the retention or transfer of custody of the marine mammal for a special exception purpose authorized under subpart D.

(2) The Office Director will first consider requests from a person authorized to hold the marine mammal for rehabilitation. The Office Director may authorize such person to retain or transfer custody of the marine mammal for scientific research, enhancement, or public display purposes.

(3) The Office Director may authorize retention or transfer of custody of the marine mammal only if:

(i) Documentation has been submitted to the Office Director that the person retaining the subject animal or the person receiving custody of the subject animal by transfer, hereinafter referred to as the recipient, complies with public display requirements of 16 U.S.C. 1374(c)(2)(A) or, for purposes of scientific research and enhancement, holds an applicable permit, or an application for such a special exception permit under §216.33 or a request for a major amendment under §216.39 has been submitted to the Office Director and has been found complete;

(ii) The recipient agrees to hold the marine mammal in conformance with all applicable requirements and standards; and

(iii) The recipient acknowledges that the marine mammal is subject to seizure by the Office Director:

(A) If, at any time pending issuance of the major amendment or permit, the Office Director determines that seizure

is necessary in the interest of the health or welfare of the marine mammal;

(B) If the major amendment or permit is denied; or

(C) If the recipient is issued a notice of violation and assessment, or is subject to permit sanctions, in accordance with 15 CFR part 904.

(4) There shall be no remuneration associated with any transfer, provided that, the transferee may reimburse the transferor for any and all costs associated with the rehabilitation and transport of the marine mammal.

(5) Marine mammals undergoing rehabilitation or pending disposition under this section shall not be subject to public display, unless such activities are specifically authorized by the Regional Director or the Office Director, and conducted consistent with the requirements applicable to public display. Such marine mammals shall not be trained for performance or be included in any aspect of a program involving interaction with the public; and

(6) Marine mammals undergoing rehabilitation shall not be subject to intrusive research, unless such activities are specifically authorized by the Office Director in consultation with the Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals, and are conducted pursuant to a scientific research permit.

(d) *Reporting.* In addition to the report required under §216.22(b), the person authorized to hold marine mammals for rehabilitation must submit reports to the Regional Director or Office Director regarding release or other disposition. These reports must be provided in the form and frequency specified by the Regional Director or Office Director.

[61 FR 21933, May 10, 1996]

Subpart D—Special Exceptions

§216.30 [Reserved]

§216.31 Definitions.

For the purpose of this subpart, the definitions set forth in 50 CFR part 217 shall apply to all threatened and endangered marine mammals, unless a