investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 18, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 05–16769 Filed 8–23–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030905A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for an incidental take authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Minerals Management Service (MMS), for authorization to harass small numbers of marine mammals incidental to explosive severance activities at offshore oil and gas structures in the Gulf of Mexico (GOM) outer continental shelf (OCS). As a result of this request, NMFS is considering whether to promulgate rulemaking, that if implemented, would govern the incidental taking of marine mammals under individual Letters of Authorization (LOAs) issued to participants in this industry to take marine mammals by Level A and Level B harassment. In order to promulgate regulations and issue LOAs thereunder, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on MMS' application, and suggestions on the content of the regulations.

DATES: Comments and information must be received no later than September 23, 2005.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailbox address for providing email comments is *PR1.030905A@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/protlres/PR2/SmallTake/smalltakelinfo.htm#applications.*

A copy of MMS' Programmatic Environmental Assessment (PEA) is available on-line at:*http://www.gomr.mms.gov/homepg/regulate/environ/nepa/2005–013.pdf*

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)(MMPA) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

An authorization may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except for certain categories of activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which

(i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On February 28, 2005, NMFS received an application from MMS (MMS, 2005a) requesting, on behalf of the offshore oil and gas industry, authorization under section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) to harass marine mammals incidental to explosive severance activities at offshore oil and gas structures in the GOM OCS.

Description of the Activity

During exploration, development, and production operations for mineral extraction in the GOM OCS, the seafloor around activity areas becomes the repository of temporary and permanent equipment and structures. In compliance with OCS Lands Act (OCSLA) regulations and MMS guidelines, operators are required to remove or ''decommission'' seafloor obstructions from their leases within one year of lease termination or after a structure has been deemed obsolete or unusable. To accomplish these removals, a host of activities is required to (1) mobilize necessary equipment and service vessels, (2) prepare the decommissioning targets (e.g., piles, jackets, conductors, bracings, wells, pipelines, etc.), (3) sever the target from the seabed and/or sever it into manageable components, (4) salvage the severed portion(s), and (5) conduct final site-clearance verification work.

There are two primary methodologies used in the GOM for cutting decommissioning targets; nonexplosive and explosive severance. Nonexplosive methods include abrasive cutters (sand and abrasive-water jets), mechanical cutters (e.g., carbide or rotary), diamond wire cutting devices, and cutting facilitated by commercial divers using arc/gas torches. Though relatively time-consuming and potentially harmful to human health and safety (primarily for diver severances), nonexplosive-severance activities have little or no impact on the marine environment and would not result in an incidental take of marine mammals (MMS, 2005b-Programmatic Environmental Assessment (PEA)). A description of non-explosive severing tools and methods can be found in MMS' application and the PEA (section 1.4.7.1)(see **ADDRESSES**).

Explosive-severance activities use specialized charges to achieve target severance. Severance charges can be deployed on multiple targets and detonated nearly-simultaneously (i.e., staggered at an interval of 900 msec) effecting rapid severances. Coupled with safe-handling practices, the

reduced ''exposure time'' and omission of diver cutting also makes explosive severance safer for offshore workers. However, since the underwater detonation of cutting charges generates damaging pressure waves and acoustic energy, explosive-severance activities have the potential to result in an incidental take of nearby marine mammals. For this reason, MMS has requested an incidental take authorization governing explosive-severance activities that could be conducted under OCSLA structure decommissionings. Decommissioning operations conducted under OCSLA authority can occur on any day of a given year. Operators often schedule most of their decommissionings from June to December (approximately 80 percent) to take advantage of the often calm seas and good weather and the time period when structure installations tend to decrease since both commissioning and decommissioning operations compete for the same management groups, equipment, vessels, and labor force (TSB and CES, LSU, 2004).

Depending upon the target, a complete decommissioning operation may span several days or weeks; however, the explosive-severance activity or ''detonation event'' for most removal targets (even those with multiple severances) last for only several seconds because of charge staggering. For complex targets or in instances where the initial explosive-severance attempts are unsuccessful, more than one detonation event may be necessary per decommissioning operation. Even though hours or days may pass to allow for necessary mitigation measures and redeployment of new charges, each detonation event would similarly last only for a few seconds.

During the past 10 years (1994–2003), there has been an average of 156 platform decommissionings per year, with over 60 percent involving explosive-severance activities (see Table 4 in MMS (2005a)). In addition to historical activity averages, many of the older, nominally-producing structures in the mature GOM oil fields are nearing decommissioning age; this will result in an increase in removal operations in future years. Despite advancements in nonexplosive-severance methods and the additional requisite marine protected species mitigations, MMS expects explosive-severance activities to continue in at least 63 percent of all platform removals for the foreseeable future. (See Appendix A of MMS (2005b)) for additional forecasting information).

In addition to platform removals, based upon a review of the historical trends, industry projections, and recent forecast modeling, MMS estimates that between 170 and 273 explosive well-severance activities would occur annually over the next 5 years (see Table 7 in MMS, 2005a).

Description of Habitat and Marine Mammals Affected by the Activity

The proposed explosive severance activities could occur in all water depths of the offshore areas designated by MMS as the GOM Central and Western Planning Areas (CPA and WPA) and a portion of the Eastern Planning Area (EPA) offered under Lease Sale 181/189 (see Figure 2 or 3 in MMS, 2005a). Water depths in the areas of the proposed action range from 4 to 3,400 m (13–11,155 ft), with the majority of existing facilities and wells found within the CPA, concentrated on the upper shelf waters (greater than 200 m (656 ft) water depth) off of Louisiana. A detailed description of the northern GOM area and its associated marine mammals can be found in the MMS application and PEA and in a number of documents referenced in the application. Detailed information on the marine mammals in the GOM can also be found in the NMFS status of stocks reports (Waring et al., 2004) which is available for downloading or reading at: *http://www.nefsc.noaa.gov/nefsc/publications/tm/tm182/*

A total of 21 cetacean species and one species of sirenian (West Indian manatee) are known to occur in the GOM. These species are the sperm whale, pygmy sperm whale, dwarf sperm whale, Cuvier's beaked whale, Sowerby's beaked whale (extralimital), Gervais' beaked whale, Blainville's beaked whale, rough-toothed dolphin, bottlenose dolphin, pantropical spotted dolphin, Atlantic spotted dolphin, spinner dolphin, Clymene dolphin, striped dolphin, Fraser's dolphin, Risso's dolphin, melon-headed whale, pygmy killer whale, false killer whale, killer whale, short-finned pilot whale, North Atlantic right whale (extralimital), humpback whale (rare), minke whale (rare), Bryde's whale, sei whale (rare), fin whale (rare), and the blue whale (extralimital).

A description of the status, distribution, and seasonal distribution of the affected species and stocks of marine mammals that might be affected by explosive severance activities is provided in MMS' application.

Potential Impacts to Marine Mammals

Underwater explosions are the strongest manmade point sources of sound in the sea (Richardson *et al.*, 1995). The underwater pressure signature of a detonating explosion is composed of an initial shock wave, followed by a succession of oscillating bubble pulses (if the explosion is deep enough not to vent through the surface) (Richardson *et al.*, 1995). The shock wave is a compression wave that expands radially out from the detonation point of an explosion. Although the wave is initially supersonic, it is quickly reduced to a normal acoustic wave. The broadband source levels of charges weighing 0.5–20 kg (1.1–44 lb) are in the range of 267–280 dB re 1 microPa (at a nominal 1–m distance), with dominant frequencies below 50 Hz (Richardson *et al.*, 1995; CSA, 2004). The following sections discuss the potential impacts of underwater explosions on marine mammals, including mortality, injury, hearing effects, and behavioral effects.

Mortality or Injury

It has been demonstrated that nearby underwater blasts can injure or kill marine mammals (Richardson *et al.*, 1995). Injuries from high-velocity underwater explosions result from two factors: (1) The very rapid rise time of the shock wave; and (2) the negative pressure wave generated by the collapsing bubble, which is followed by a series of decreasing positive and negative pressure pulses (CSA, 2004). The extent of injury largely depends on the intensity of the shock wave and the size and depth of the animal (Yelverton *et al.*, 1973; Craig, 2001).

The greatest damage occurs at boundaries between tissues of different densities because different velocities are imparted that can lead to their physical disruption; effects are generally greatest at the gas-liquid interface (Landsberg, 2000; CSA, 2004). Gas-containing organs, especially the lungs and gastrointestinal tract, are the most susceptible to this type of damage. Lung injuries (including lacerations and the rupture of the alveoli and blood vessels) can lead to hemorrhage, air embolisms, and breathing difficulties. The lungs and other gas-containing organs (nasal sacs, larynx, pharynx, and trachea) may also be damaged by compression/expansion caused by oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Intestinal walls can bruise or rupture, which may lead to hemorrhage and the release of gut contents. Less severe injuries include contusions, slight hemorrhaging, and petechia (Yelverton *et al.*, 1973; CSA, 2004). Ears are the organs most sensitive to pressure and, therefore, to injury (Ketten, 2000; CSA, 2004). Severe

damage to the ears can include rupture of the tympanic membrane, fracture of the ossicles, cochlear damage, hemorrhage, and cerebrospinal fluid leakage into the middle ear. By themselves, tympanic membrane rupture and blood in the middle ear can result in partial, permanent hearing loss. Permanent hearing loss can also occur when the hair cells are damaged by loud noises (ranging from single, very loud events to chronic exposure).

Hearing Effects

Mammalian hearing functions over a wide range of sound intensities, or loudness. The sensation of loudness increases approximately as the logarithm of sound intensity (Richardson and Malme, 1993). Sound intensity is usually expressed in decibels (dB), units for expressing the relative intensity of sounds on a logarithmic scale. Because sound pressure is easier to measure than intensity and intensity is proportional to the square of sound pressure, sound pressure level is usually reported in units of decibels relative to a standard reference pressure.

Temporary Threshold Shift

The mildest form of hearing damage, temporary threshold shift (TTS), is defined as the temporary elevation of the minimum hearing sensitivity threshold at particular frequency(s) (Kryter, 1985; CSA, 2004). TTS may last from minutes to days. Although few data exist on the effects of underwater sound on marine mammal hearing, in terrestrial mammals, and presumably in marine mammals, received levels must exceed an animal's hearing threshold (i.e., maximum sensitivity) for TTS to occur (Richardson *et al.*, 1995; Kastak *et al.*, 1999; Wartzok and Ketten, 1999).

Most studies involving marine mammals have measured exposure to noise in terms of sound pressure level (SPL), measured in dB_{rms} or dB_{peak} pressure re 1 microPa. Exposure to underwater sound can also be expressed in terms of energy, also called sound exposure level (SEL), or acoustic energy (measured in dB re 1 μPa^2–s), which considers both intensity and duration of the sound. There appears to be a linear relationship between energy and the level of TTS, with duration and frequency seemingly unimportant (CSA, 2004). If TTS is defined as a measurable threshold shift of 6 dB or more (Finneran *et al.*, 2000, 2002), the onset of TTS (for white whales and bottlenose dolphins) was associated with an energy level of about 184 dB re 1 μPa^2–s (CSA, 2004). However, the data are very limited, and Finneran (2003) has noted that they should be interpreted with caution (CSA, 2004).

Permanent Threshold Shift (PTS)

PTS is a permanent decrease in the functional sensitivity of an animal's hearing system at some or all frequencies (CSA, 2004). The principal factors involved in determining whether PTS will occur include sound impulse duration, peak amplitude, and rise time. The criteria are location and species-specific (Ketten, 1995) and are also influenced by the health of the receiver's ear.

At least in terrestrial animals, it has been demonstrated that the received level from a single exposure must be far above the TTS threshold for there to be a risk of PTS (Kryter, 1985, Richardson *et al.*, 1995; CSA, 2004). Sound signals with sharp rise times (e.g., from explosions) produce PTS at lower intensities than do other types of sound (Gisiner, 1998; CSA, 2004).

For explosives, Ketten (1995) estimated that greater than 50–percent PTS would occur at peak pressures of 237–248 dB re 1 microPa and that TTS would occur at 211–220 dB re 1 microPa. The ''safe'' peak pressure level to avoid physical injury recommended by Ketten (1995) is 100 psi (237 dB re 1 µPa, or about 212 dB re 1 μPa^2–s). PTS is assumed to occur at received levels 30 dB above TTS-inducing levels. Studies have shown that injuries at this level involve the loss of sensory hair cells (Ahroon *et al.*, 1996; CSA, 2004).

Behavioral Effects

Based on the information presented in Richardson et al. (1995), the possible behavioral effects of noise from underwater explosions on marine mammals may be categorized as follows:

(1)The noise may be too weak to be heard at the location of the animal (i.e., below the local ambient noise level, below the hearing threshold of the animal at the relevant frequencies, or both);

(2)The noise may be audible, but not loud enough to elicit an overt behavioral reaction;

(3)The noise may elicit behavioral reactions, which may vary from subtle effects on respiration or other behaviors (detectable only statistically) to active avoidance behavior;

(4)With repeated exposure, habituation (diminishing responsiveness) to the noise may occur. Continued disturbance effects are most likely with sounds that are highly variable in their characteristics, unpredictable in occurrence, and associated with situations perceived by the animal as threatening;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise.

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Behavioral reactions of marine mammals to sounds such as those produced by underwater explosives are difficult to predict. Whether and how an animal reacts to a given sound depends on factors such as the species, hearing acuity, state of maturity, experience, current activity, reproductive state, time of day, and weather. If a marine mammal reacts to a sound by changing its behavior or moving a short distance, the impacts may not be significant to the individual, stock, or species as a whole. However, if a sound displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts could be significant (CSA, 2004).

Richardson *et al.* (1995) summarized available information on the reported behavioral reactions of marine mammals to underwater explosions. Observations following the use of seal bombs as scare charges indicate that pinnipeds rapidly habituate to and, in general, appear quite tolerant of noise pulses from explosives. Klima *et al.* (1988) reported that small charges were not consistently effective in moving bottlenose dolphins away from blast sites in the GOM. Since

dolphins may be attracted to the fish killed by such a charge, rather than repelled, scare charges are not used in the GOM platform removal program (G. Gitschlag, personal communication, in Richardson *et al.*, 1995).

There are few data on the reactions of baleen whales to underwater explosions. Gray whales were apparently unaffected by 9– to 36–kg (20– to 97–lb) charges used for seismic exploration (Fitch and Young, 1948). However, Gilmore (1978) felt that similar underwater blasts within a few kilometers of the gray whale migration corridor did ''sometimes'' interrupt migration.

Humpback whales have generally not been observed to exhibit behavioral reactions (including vocal ones) to explosions, even when close enough to suffer injury (hearing or other) (Payne and McVay, 1971; Ketten *et al.*, 1993; Lien *et al.*, 1993; Ketten, 1995; Todd *et al.*, 1996). In Newfoundland, humpbacks displayed no overt reactions within about 2 km of 200– to 2,000–kg explosions. Whether habituation and/or hearing damage occurred was unknown, but at least two whales were injured (and probably killed) (Ketten *et al.*, 1993). Other humpback whales in Newfoundland, foraging in an area of explosive activity, showed little behavioral reaction to the detonations in terms of decreased residency, overall movements, or general behavior, although orientation ability appeared to be affected (Todd *et al.*, 1996). Todd *et al.* (1996) suggested caution in interpretation of the lack of visible reactions as indication that whales are not affected or harmed by an intense acoustic stimulus; both long- and short-term behavior as well as anatomical evidence should be examined. The researchers interpreted increased entrapment rate of humpback whales in nets as the whales being influenced by the long-term effects of exposure to deleterious levels of sound.

As mentioned previously, Finneran*et al.* (2000) exposed captive bottlenose dolphins and belugas to single, simulated sounds of distant explosions. The broad-band received levels were 155–206 dB; pulse durations were 5.4–13 ms. This was equivalent to a maximum spectral density of 102–142 dB re 1 μPa^2/Hz at a 6.1 Hz bandwidth. Although pulse durations differed, the source levels required to induce these reactions were similar to those found by Ridgway *et al.* (1997) and Schlundt *et al.* (2000).

Estimates of Take by Harassment During Explosive Severance Activities in the GOM

The MMS has requested NMFS to issue authorizations, under section 101(a)(5)(A) of the MMPA, to cover any potential take by Level A or Level B harassment for the 21 species of marine mammals listed previously in this document, incidental to the oil and gas industry conducting explosive-severance operations regulated by the MMS. Explosive severance operations have the potential to take marine mammals by contact with shock wave and acoustic energy released from underwater detonations and the resultant injury, hearing damage, and behavioral effects as defined by NMFS. For this activity, MMS has adopted, without modification, NMFS' take thresholds and criteria for explosives used in the incidental take authorization for shock trials for the U.S. Navy's *Winston Churchill* (USDON, 2001). While these criteria remain a subject for discussion (see 69 FR 21816, April 22, 2004), the *Churchill* criteria (12 pounds/in^2 (psi) peak-pressure and 182 dB (re 1 μPa^2–sec)) remain conservative because Finneran *et al.* (2003) did not find masked TTS in the single bottlenose dolphin tested at the highest exposure conditions: peak pressure of 207 kPa (30 psi), 228 dB re 1 microPa pk-pk pressure, and 188 dB re 1 $microPa^2$–s total energy flux.

The criteria for nonlethal, injurious impacts (Level A harassment) are currently defined as the incidence of 50–percent tympanic-membrane (TM) rupture and the onset of slight lung hemorrhage for a 12.2–kg (27 lb) dolphin calf. Level A harassment take is assumed to occur:

1. At an energy flux density value of 1.17 in-lb/in^2 (which is about 205 dB re 1 μPa^2–s); and

2. If the peak pressure exceeds 100 psi for an explosive source; i.e., the ''safe'' peak pressure level to avoid physical injury recommended by Ketten (1995).

The horizontal distance from the explosive to each threshold is determined and the maximum distance at which either is exceeded is considered to be the distance at which Level A harassment would occur (USDON, 2001).

NMFS recognizes two levels of noninjurious acoustical impacts (Level B harassment). One criterion for Level B harassment is defined by the onset of TTS. Two thresholds are applied. TTS is assumed to be induced:

1. At received energies greater than 182 dB re 1 μPa^2–s within any 1/3–octave band; and

2. If, for an explosive source, the peak pressure at the animal exceeds 12 psi.

As with Level A harassment, the horizontal distance to each threshold is determined and the maximum distance at which either is exceeded is considered the distance at which Level B harassment (TTS) would occur (USDON, 1998 and 2001; CSA, 2004).

Sub-TTS behavioral effects may also be considered to constitute a take by Level B harassment if a marine mammal reacts to an activity in a manner that would disrupt some behavioral pattern in a biologically significant way. NMFS does not believe that single, minor reactions (such as startle or ''heads-up'' alert displays, short-term changes in breathing rates, or modified single dive sequences) that have no biological context qualify as takes (66 FR 22450, May 4, 2001). This would include minor or momentary strictly behavioral responses to single events such as underwater explosions. Since explosive severance activities result in single, almost instantaneous detonations, with no repetitive detonations, NMFS does not believe that marine mammals would be subject to behavioral harassment other than behavioral modifications incurred as a result of TTS.

In order to obtain potential incidental-take numbers for explosive severance activities, fundamental modeling components require: (1) predictive modeling of detonation pressure/energy propagation, (2) propagation model verification and utilization, (3) predictive modeling of marine mammal take estimates, and (4) take-estimate calculation. These calculations are explained in detail in MMS' application and PEA.

Based on MMS calculations for all explosive severance scenarios, Level A harassment takes would be limited to less than one bottlenose dolphin and between three and five bottlenose dolphins, one Atlantic spotted, and one pantropical spotted dolphins over the five-year period of the proposed regulations.

Based on MMS calculations for all explosive severance scenarios, Level B harassment takes would be limited 148–227 bottlenose dolphins, 35–65 Atlantic spotted dolphins, 33–77 pantropical spotted dolphins, 11–27 Clymene dolphins, 8–12 rough-toothed dolphins, 6–14 striped dolphins, 6–15 melon-headed whales, 4–10 pilot whales, 2–5 spinner dolphins, 1–3 Risso's dolphins, and 1–2 sperm whales. It should be noted that these estimates are made without consideration of the implementation of mitigation measures to protect marine mammals, so actual harassment numbers would likely be

lower. Post-activity monitoring conducted by NMFS observers since about 1989 has not resulted in any sightings of distressed marine mammals.

Mitigation and Monitoring

Based upon the analysis found in the Structure-Removal PEA, MMS believes that implementation of the mitigation measures listed in this section will prevent any significant impacts from occurring.

Charge Criteria

The charge criteria discussed here (e.g., charge size, detonation staggering, and explosive material) are applicable for all of the explosive-severance scenarios conducted under the proposed action.

Charge Size

The options available under the multiple explosive-severance scenarios allow for the development of any size charge between 0 and 500 lb (226.8 kg). Most often determined in the early planning stages, the final/actual charge weight establishes the specific mitigation scenario that must be adhered to as a permit condition. However, increasing charge size results in increasing levels of mitigation/monitoring. Using explosives greater than 500 lb (226.8 kg) are not proposed to be authorized for taking marine mammals under the MMPA. Use of explosives greater than 500 lb (226.8 kg) would require additional National Environmental Policy Act (NEPA) analyses, Endangered Species Act (ESA) consultations and MMPA authorization prior to usage. As a result, no marine mammal takings will be authorized for charge weights greater than 500 lbs (226.8 kg).

Detonation Staggering

Multiple-charge detonations will be staggered at an interval of 0.9 sec (900 msec) between blasts to prevent an additive pressure event. For decommissioning purposes, a ''multiple-charge detonation'' refers to any configuration where more than one charge is required in a single detonation ''event.''

Explosive Material

There are many important properties (i.e., velocity, brisance, specific-energy, etc.) related to the explosive material(s) used in developing severance charges. Material needs vary widely depending upon target characteristics, marine conditions, and charge placement. Since specific material and personnel safety requirements must be established and followed, MMS believes that all decisions on explosive composition, configuration, and usage should be made by the qualified (i.e., licensed and permitted) explosive contractors in accordance with the applicable explosive-related laws and regulations.

Specific Mitigation/Monitoring Requirements

Explosive-severance activities, as described in the MMS application and PEA, have been grouped into five blasting categories (very small, small, standard, large, and specialty). Since the level of detonation pressure and energy is primarily related to the amount of the explosives used, these categories were developed cooperatively by MMS, NMFS and industry based upon the specific range of charge weights needed to conduct current and future GOM OCS decommissionings. Depending on the design of the target and other variable marine conditions, the severance charges developed under each of these categories could be designed for use in either a below-mudline (BML) or above mudline (AML) configuration. These factors, combined with an activity location within either the shelf (less than 200 m (656 ft)) or slope (greater than 200 m (656 ft)) species-delineation zone, result in 20 separate severance scenarios, as shown in Table 1.

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Table 1. Blasting Category Parameters and Associated Severance Scenario Numbers (MMS, 2005b)

Blasting Category	Charge Range	Configuration	Species-Delineation Zone	Scenario
Very-Small	0-10 lb	BML	Shelf (<200 m)	A1
		BML	Slope (>200 m)	A2
	0-5 lb	AML	Shelf (<200 m)	A3
		AML	Slope (>200 m)	A4
Small	>10-20 lb	BML	Shelf (<200 m)	B1
		BML	Slope (>200 m)	B2
	>5-10 lb	AML	Shelf (<200 m)	B3
		AML	Slope (>200 m)	B4
Standard	>20-80 lb	BML	Shelf (<200 m)	C1
		BML	Slope (>200 m)	C2
	>20-80 lb	AML	Shelf (<200 m)	C3
		AML	Slope (>200 m)	C4
Large	>80-200 lb	BML	Shelf (<200 m)	D1
		BML	Slope (>200 m)	D2
	>80-200 lb	AML	Shelf (<200 m)	D3
		AML	Slope (>200 m)	D4
Specialty	>200-500 lb	BML	Shelf (<200 m)	E1
		BML	Slope (>200 m)	E2
	>200-500 lb	AML	Shelf (<200 m)	E3
		AML	Slope (>200 m)	E4

The charge criteria listed previously will be standard for all decommissionings employing explosive-severance activities. However, depending upon the severance scenario, there are six different types of marine mammal/sea turtle monitoring surveys that could be conducted before and after all detonation events. The specific monitoring requirements, survey times, and impact zone radii for all explosive-severance scenarios are summarized in Table 2.

Table 2
Survey and Time Requisite Summary for All Explosive-Severance Scenarios

Blasting Category	Impact Zone Radius	Scenario	Pre-Det Surface Survey (min)	Pre-Det Aerial Survey (min)	Pre-Det Acoustic Survey (min)	Post-Det Surface Survey (min)	Post-Det Aerial Survey (min)	Post-Post-Det Aerial Survey (Yes/No)
Very Small	261 m (856 ft)	A1	60	N/A	N/A	30	N/A	No
		A2	90	N/A	N/A	30	N/A	No
	293 m (961 ft)	A3	60	N/A	N/A	30	N/A	No
		A4	90	N/A	N/A	30	N/A	No
Small	373 m (1,224 ft)	B1	90	30	N/A	N/A	30	No
		B2	90	30	N/A	N/A	30	No
	522 m (1,714 ft)	B3	90	30	N/A	N/A	30	No
		B4	90	30	N/A	N/A	30	No
Standard	631 m (2,069 ft)	C1	90	30	N/A	N/A	30	No
		C2	90	30	120	N/A	30	No
	829 m (2721 ft)	C3	90	45	N/A	N/A	30	No
		C4	90	60	150	N/A	30	Yes
Large	941 m (3,086 ft)	D1	120	45	N/A	N/A	30	No
		D2	120	60	180	N/A	30	Yes
	1,126m (3,693 ft)	D3	120	60	N/A	N/A	30	No
		D4	150	60	210	N/A	30	Yes
Specialty	1,500 m (4,916 ft)	E1	150	90	N/A	N/A	45	No
		E2	180	90	270	N/A	45	Yes
	1,528 m (5,012 ft)	E3	150	90	N/A	N/A	45	No
		E4	180	90	270	N/A	45	Yes

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Use of Table 2 is illustrated using the Standard Blasting Category for shelf and slope waters as an example:

Shelf Waters (<200 m): Scenarios C1 and C3

An operator proposing shelf-based, explosive-severance activities conducted under the standard blasting category will be limited to 80–lb charge sizes (BML or AML) and will be required to conduct all requisite monitoring during daylight hours out to the associated impact-zone radii listed here:

C1–631 m (2,069 ft)
C3–829 m (2,721 ft)

Required Observers

Generally, two NMFS observers are required to perform marine mammal/sea turtle detection surveys for standard-blasting under shelf scenarios C1 and C3. If necessary, the site coordinator will determine if additional observers are required to compensate for the complexity of severance activities and or structure configuration. In addition to meeting all reporting requirements, the NMFS observers will:

(1) Brief affected crew and severance contractors on the monitoring requirements and notify topsides personnel to immediately report any sighted marine mammal/sea turtles to the observer or company representative;

(2) Establish an active line of communication (i.e., 2–way radio, visual signals, etc.) with company and blasting personnel; and

(3) Devote the entire, uninterrupted survey time to marine mammal/sea turtle monitoring.

Pre-Detonation Monitoring

Before severance charge detonation, the NMFS observers will conduct a 90–min surface monitoring survey of the impact zone. The monitoring will be conducted from the highest vantage point available from either the decommissioning target or proximal surface vessels. Once the surface monitoring is complete (i.e., the impact zone cleared of marine mammal/sea turtles), one of the NMFS observers will transfer to a helicopter to conduct a 30–min (Scenario C1) or 45–min (Scenario C3) aerial monitoring survey. As per approved guidelines, the helicopter will transverse the impact zone at low speed/altitude in a specified grid pattern. If during the aerial survey a marine mammal/sea turtle is:

(1) Not sighted, proceed with the detonation;

(2) Sighted outbound and continuously tracked clearing the impact zone, proceed with the detonation after the monitoring time is complete to ensure no reentry;

(3) Sighted outbound and the marine mammal/sea turtle track is lost (e.g., the animal dives below the surface),

- Halt the detonation,
- Wait 30 min, and
- Reconduct the 30 min (C1) or 45 min (C3) aerial monitoring survey; or

(4) Sighted inbound,

- Halt the detonation,
- Wait 30 minutes, and
- Reconduct the 30–min (C1) or 45–min (C3) aerial monitoring survey.

Post-Detonation Monitoring

After severance charge detonation, the NMFS observer will conduct a 30–min aerial monitoring survey of the impact zone to look for impacted marine mammal/sea turtles. If a marine mammal/sea turtle is found shocked, seriously injured, or dead, the operations will cease, attempts will be made, under the direction of the NMFS observer, to collect/resuscitate the animal, and the Southeast Region, NMFS will be contacted for additional instruction. If no marine mammal/sea turtles are observed to be impacted by the detonation, the NMFS observer will record all of the necessary information as required in MMS's permit approval letter and guidelines for the preparation of a trip report.

If unforeseen conditions or events occur during a standard-blasting operation that may necessitate additional monitoring, the NMFS observer will contact the NMFS Platform Removal Observer Program (PROP) Coordinator in Galveston, TX and/or MMS for additional guidance. A flowchart of the monitoring process and associated survey times for standard severance-scenarios C1 and C3 is provided in Figure 6 in MMS, 2005a.

Slope Waters (>200 m): Scenarios C2 and C4

An operator proposing slope-based, explosive-severance activities conduced under the standard blasting category will be limited to 80–lb charge sizes (BML or AML) and conduct all requisite monitoring during daylight hours out to the associated impact-zone radii listed below:

C2–631 m (2,069 ft)
C4–829 m (2,721 ft)

Required Observers

Slope water scenarios propose to require a minimum of three NMFS observers for the coordinated surface, aerial, and acoustic monitoring surveys, therefore, at least two ''teams'' of observers will be required. The PROP Coordinator will determine each ''team'' size depending upon the complexity of severance activities and or structure configuration. In addition to meeting all reporting requirements, the NMFS observers would perform the same functions as the observers in the Shelf Water Scenarios C1 and C3.

Pre-Detonation Monitoring

Before severance charge detonation, NMFS observers will begin a 90–min surface monitoring survey and a 120–min (Scenario C2) or 150–min (Scenario C4) passive-acoustic monitoring survey of the impact zone. The surface monitoring will be conducted in the same manner as the C1 and C3 scenarios. Once the surface monitoring is complete (i.e., the impact zone cleared of marine mammal/sea turtles), the acoustic survey will continue while one of the NMFS observers transfers to a helicopter to conduct a 30–min (Scenario C2) or 60–min (Scenario C4) aerial monitoring survey. As per approved guidelines, the helicopter will transverse the impact zone at low speed/altitude in a specified grid pattern.

The proposed requirements on marine mammal and sea turtle sighting for the C1 and C3 scenarios would apply here except that the wait times and aeries survey times differ (see Table 2).

Post-Detonation Monitoring

Scenarios C2 and C4 both would require the same post-detonation monitoring explained for the C1 and C3 scenarios. , or

Scenario C4 also requires a post-post-detonation aerial monitoring survey to be conducted within 2–7 days after detonation activities conclude. Conducted by helicopter or fixed-wing aircraft, observations are to start at the removal site and proceed leeward and outward of wind and current movement. Any injured or killed marine mammal/sea turtle must be recorded, and if possible, tracked after notifying NMFS. If no marine mammal/sea turtles are observed to be impacted during either aerial survey, the NMFS observers will record all of the necessary information as detailed in MMS's permit approval letter and guidelines for the preparation of a trip report.

If unforeseen conditions or events occur during a standard-blasting operation that may necessitate additional monitoring, the NMFS observer will contact the coordinator and/or MMS for additional guidance. A flowchart of the monitoring process and associated survey times for standard severance- scenarios C2 and C4 is

provided in Figure 7 in the MMS application (MMS, 2005a).

Reporting Requirements

All explosive-severance activities in the GOM would be mandated to abide by the reporting requirements listed in this section. The information collected will be used by MMS and NMFS to continually assess mitigation effectiveness and the level of marine mammal/sea turtle impacts.

The reporting responsibilities will be undertaken by the NMFS' marine mammal/sea turtle observer for scenarios B1–E4 (Table 2) and the collected data will be prepared and routed in accordance with previously established guidelines for filing times and distribution.

For very-small blasting scenarios A1–A4, the company observer will be responsible for recording the data and preparing a trip report for submittal within 30–days of completion of the severance activities. Trip reports for scenarios A1–A4 will be sent to MMS and NMFS Gulf/Southeast regional offices.

In addition to basic operational data (i.e., area and block, water depth, company/platform information, etc.), the trip reports must contain all of the applicable information listed in Table 10 in MMS' application. In the event that a marine mammal or sea turtle is shocked, injured, or killed during the severance activities, the operations will cease and the observer will contact MMS and NMFS' Southeast Regional Office. If the animal does not revive, efforts should be made to recover it for necropsy in consultation with the appropriate NMFS' Stranding Coordinator.

Conclusions

MMS has concluded that impacts to marine mammals from explosive-severance activities conducted under the proposed action are potentially adverse but not significant. The projected Level A harassment takes are very unlikely and, would be limited to 3 species. No deaths or serious injuries to marine mammals or sea turtles are projected. If any marine mammals are displaced from preferred grounds, it will be for the short term, and no critical habitat is involved. Level B harassment takes may disrupt behavioral patterns in a few individuals of a few species, but no effect is projected on annual recruitment or survival. With proposed mitigation measures in place, the potential impacts on marine mammals are expected to be negligible.

ESA

Under section 7 of the ESA, MMS has begun consultation on the proposed explosive severance activtiy. NMFS will also consult on the issuance of regulations and LOAs under section 101(a)(5)(A) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of regulations.

NEPA

MMS completed and released its PEA to the public on February 28, 2005. That document is available for review (see **ADDRESSES**).

NMFS is reviewing the PEA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of regulations and LOAs for this activity.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**). NMFS requests commenters also read the MMS application and PEA on this action prior to submitting comments.

Dated: August 18, 2005.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081905A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day Council meeting in September, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, September 13 through Thursday, September 15, 2005, beginning at 9 a.m. on Tuesday and 8:30 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Holiday Inn Express, 110 Middle Street High Street, Fairhaven, MA; telephone: (508) 997–1281.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, September 13, 2005

Following introductions, the Council will review and approve a revised policy concerning the election of new officers and conduct elections for 2005–06 officers. Reports will follow from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. There also will be an update on the New England Fleet Visioning Project. During the morning session, the Council also will receive a briefing on a proposed rule that will address issues related to the management of Atlantic tunas, swordfish, shark and billfish fisheries. The Magnuson-Stevens Act Committee will provide recommendations for Council approval concerning positions on changes to the Act. The remainder the day will be spent on habitat and ecosystem-related issues. There will be a summary of the most recent activities currently underway and associated with development of essential fish habitat (EFH) Omnibus Amendment 2, as well as consideration and approval of a Council policy on Marine Protected Areas. There also will be an update on the Habitat/Marine Protected Area (MPA)/Ecosystem Committee's progress to develop and recommend alternatives for Habitat Areas of Particular Concern in the EFH Omnibus Amendment. The day will conclude with a report on jurisdictional issues related to wind farm, liquified natural gas and aquaculture projects in the Northeast and an update on the Council's ecosystem project.

Wednesday, September 14, 2005

During the Wednesday morning session, the Council receive a presentation on the Data Quality Act. This will be followed by an open public comment period to address items not listed on the agenda. The Scallop Committee will then present its recommendations for measures to be included in Framework Adjustment 18 to the Sea Scallop Fishery Management