

presented to show that this rescission will not interfere”.

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BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 79

Registration of Fuels and Fuel Additives

CFR Correction

In title 40 of the Code of Federal Regulations, parts 72 to 80, revised as of July 1, 2007, on page 604, in § 79.68, paragraph (f)(5)(vii) is reinstated to read as follows:

§ 79.68 *Salmonella typhimurium* reverse mutation assay.

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(f) * * *

(5) * * *

(vii) Dose-response relationship, if applicable.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 080302357-8703-01; I.D. 030905A]

RIN 0648-AT79

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: Final rule.

SUMMARY: NMFS, upon application from the Minerals Management Service (MMS), is issuing regulations to govern the unintentional takings of small numbers of marine mammals incidental to explosive severance activities at offshore oil and gas structures in the Gulf of Mexico (GoM). Issuance of regulations, and Letters of Authorization (LOAs) under those regulations, governing the unintentional incidental takes of marine mammals in connection with particular activities is required by

the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the affected species or stocks of marine mammals and will not have an unmitigable adverse impact on their availability for taking for subsistence uses, and if the Secretary sets forth the permissible methods of taking and other means of effecting the least practicable adverse impact on affected marine mammal species or stocks and their habitat, and on the availability of such species or stocks for subsistence uses.

These regulations do not authorize offshore structure removal activities as such authorization is not within the jurisdiction of the Secretary. Rather, NMFS' regulations together with LOAs authorize the unintentional incidental take of marine mammals in connection with this activity.

DATES: Effective from July 21, 2008 through July 19, 2013.

ADDRESSES: A copy of the MMS application containing a list of the references used in this document may be obtained by writing to Mr. P. Michael Payne, Chief Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning one of the contacts listed under **FOR FURTHER INFORMATION CONTACT**, or at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

Documents cited in this final rule may also be viewed, by appointment, during regular business hours (M-F, 8 a.m. until 4:30 p.m., except Federal holidays) at this address. A copy of MMS' Programmatic Environmental Assessment (PEA) is available on-line at: <http://www.gomr.mms.gov/homepg/regulate/enviro/nepa/2005-013.pdf>.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to NMFS via the means stated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503, David_Rostker@eap.omb.gov.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, NMFS, at 301-713-2289, ext 128 or Ken.Hollingshead@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs 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 will be granted for periods of 5 years or less if the Secretary 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 taking for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and other means of effecting the least practicable adverse impact (i.e., mitigation) the requirements pertaining to the monitoring and reporting of such taking.

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.”

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 MMPA to take marine mammals by harassment incidental to explosive severance activities at offshore oil and gas structures in the GoM outer continental shelf (OCS). Except for certain categories of activities not pertinent here, the MMPA, 16 USC 1362(18)(A), 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].

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