

The biological opinion includes an incidental take statement that exempts the Navy from the prohibitions contained in section 9 of the ESA during the ship shock trial of the USS MESA VERDE. Receipt of the final biological opinion completed the ESA consultation process.

Secondly, NMFS has a regulatory role under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*). The Navy submitted a request to NMFS for an "incidental take authorization" under section 101(a)(5)(A) of the MMPA. NMFS published a Proposed Rule in the **Federal Register** on April 11, 2008 (73 FR 71 [19789–19795]) specifying protective measures and reporting requirements for the shock trial. A Final Rule was signed by NMFS on July 18, 2008, which became effective upon its submission by NMFS to the **Federal Register** for publication, and the Letter of Authorization (LOA) for the test was issued on July 22, 2008. Based on the scientific analyses detailed in the Navy's application and further supported by information and data contained in the Navy's Final EIS for the USS MESA VERDE shock trial, NMFS has determined that the incidental taking of marine mammals resulting from conducting an FSST on USS MESA VERDE in the waters offshore of Mayport, Florida during the summer months would have a negligible impact on the affected marine mammal species or stocks. The Final Rule states that NMFS concurs with the Navy, as provided in its request for incidental take authorization and the Final EIS, that impacts from the shock trial can be mitigated by implementing the protective measures as described in the Final EIS and summarized in this Record of Decision [Protective (Mitigation) Measures section] which mandate a conservative safety range for marine mammal exclusion, incorporating aerial and shipboard monitoring efforts in the program both prior to and after detonation of explosives, and provided detonations are not conducted whenever marine mammals are either detected within the 3.5-nm (6.5-km) Safety Range (or may enter the Safety Range at the time of detonation), or if weather and sea conditions preclude adequate aerial surveillance. With issuance of the Final Rule, NMFS has determined that the requirements of section 101(a)(5)(A) of the MMPA have been met.

Comments Received on the Final EIS: After the Final EIS was distributed to the public for a 30-day review period ending on June 30, 2008, the Navy received three comments: one from the Virginia Department of Environmental

Quality, one from U.S. Environmental Protection Agency (EPA) Region 4, and one from Georgia Department of Natural Resources (DNR) Coastal Resources Division. The Virginia Department of Environmental Quality recommended that the shock trial test be conducted at the Mayport location. Conducting the shock trial at this offshore location is identified as the preferred alternative. EPA Region 4 recommended the distribution of post-test monitoring results to federal and state natural resource agencies for review and analysis to assess the success of the proposed protective (mitigation) measures. The regulator of the resources addressed in the Final EIS is NMFS. Therefore, the Navy will adhere to the terms and conditions in the MMPA Final Rule and LOA provided to the Navy by NMFS. In accordance with the Final EIS and the LOA, the Navy will conduct an after action report which will include a summary of post-test monitoring results. The report will be provided to NMFS as required by the LOA. The Georgia DNR concurred with the findings in the Final EIS.

Conclusion: After careful consideration of the purpose and need for the proposed action, the analysis contained in the Final EIS, and the comments received from federal, state, and local agencies, non-governmental organizations, and individual members of the public, the Principal Deputy Assistant Secretary of the Navy for Research, Development, and Acquisition, on behalf of the Navy has decided to proceed with the Preferred Alternative. Conducting USS MESA VERDE shock trial in an area offshore of Mayport, Florida is the alternative that best meets the project purpose and need, satisfies operational criteria, and minimizes environmental impacts. Potentially significant direct impacts resulting from the shock trial include mortality, injury, and disruption of hearing-based behavior (harassment) of marine mammals and sea turtles. While modeling has been conducted to define the potential lethal, injurious, and harassment takes that might occur, it is expected that implementation of protective (mitigation) measures will minimize the risk to marine mammals and sea turtles.

Consistent with this decision and the Proposed Action and analyses described in the Final EIS at the test location and season identified in the Preferred Alternative, the Navy will implement the Preferred Alternative and all protective (mitigation) measures.

Dated: July 22, 2008.

David Architzel,

Vice Admiral, U.S. Navy, Principal Deputy Assistant Secretary of the Navy (Research, Development & Acquisition).

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DEPARTMENT OF ENERGY

Bonneville Power Administration

Shepherds Flat Wind Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: The Bonneville Power Administration (BPA) has decided to offer contract terms for the electrical interconnection into the Federal Columbia River Transmission System (FCRTS) of up to 846 megawatts of power to be generated by the proposed Shepherds Flat Wind Project (Wind Project). Caithness Shepherds Flat LLC proposes to construct and operate the proposed Wind Project in Gilliam and Morrow Counties, Oregon, and has requested interconnection to the FCRTS at BPA's Slatt Substation in Gilliam County, Oregon. BPA will construct a new 230-kV yard at the Slatt Substation to accommodate this additional power in the FCRTS. This decision to interconnect the Wind Project is consistent with and tiered to BPA's Business Plan Final Environmental Impact Statement (DOE/EIS–0183, June 1995), and Business Plan ROD (August 1995).

ADDRESSES: Copies of this tiered ROD and the Business Plan EIS and ROD may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The RODs and EIS are also available on our Web site, <http://www.efw.bpa.gov>.

FOR FURTHER INFORMATION, CONTACT:

Doug Corkran, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone number: 1–800–622–4519; fax number: 503–230–5699; or e-mail: dfcorkran@bpa.gov.

Issued in Portland, Oregon, on July 18, 2008.

Stephen J. Wright,

Administrator and Chief Executive Officer.

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