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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF065

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys in the Gulf of Mexico

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

ACTION: Notice; receipt of revised application for marine mammal incidental take regulations (ITRs); request for comments and information; extension of public comment period.

SUMMARY: NMFS has received a revised application for ITRs from the Bureau of Ocean Energy Management (BOEM), on behalf of oil and gas industry operators. The specified activity considered in the application is geophysical survey activity conducted in the Gulf of Mexico (GOM), over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of BOEM's request for the development of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on BOEM's application.

The original notice announcing receipt of the revised application (81 FR 88664; December 8, 2016) indicated that comments and information must be received no later than January 9, 2017, which allowed 30 days for public input. We subsequently received

a request to extend the comment period by a period of 14 days and have granted that request.

DATES: Comments and information must be received no later than January 23, 2017.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Availability

Electronic copies of the application and supporting documents may be obtained online at: www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm. BOEM has separately released a draft Programmatic Environmental Impact Statement (EIS) for public review (September 30, 2016; 81 FR 67380). This draft EIS was prepared in order to evaluate the potential significant effects of multiple geological and geophysical activities on the GOM Outer Continental Shelf (OCS) pursuant to the National Environmental Policy Act. The document is available online at: www.boem.gov/GOM-G-G-PEIS/.

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) if certain findings are made and regulations are issued.

Incidental taking shall be allowed if NMFS finds that the taking will have a negligible impact on the species or stock(s) affected and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking 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 with respect to certain 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).”

The use of sound sources such as those described in the application (*e.g.*, airgun arrays) may result in the disturbance of marine mammals through disruption of behavioral patterns or may cause auditory injury of marine mammals. Therefore, incidental take authorization under the MMPA is warranted.

Summary

BOEM was formerly known as the Minerals Management Service (MMS) and, later, the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE). On December 20, 2002, MMS petitioned NMFS for rulemaking under Section 101(a)(5)(A) of the MMPA to authorize take of sperm whales (*Physeter macrocephalus*) incidental to conducting geophysical surveys during oil and gas exploration activities in the GOM. On March 3, 2003, NMFS published a notice of receipt of MMS’s application and requested comments and information from the public (68 FR 9991). This comment period was later extended to April 16, 2003 (68 FR 16263). MMS subsequently submitted a revised petition on September 30, 2004, to include a request for incidental take authorization of additional species of marine mammals. On April 18, 2011, BOEMRE submitted a revision to the petition, which incorporated updated information and analyses. NMFS published a notice of receipt of this revised

petition on June 14, 2011 (76 FR 34656). In order to incorporate the best available information, BOEM submitted another revision to the petition on March 28, 2016, which was followed on October 17, 2016, by a revised version that we have deemed adequate and complete based on our implementing regulations at 50 CFR 216.104.

The requested regulations would establish a framework for authorization of incidental take by Level A and Level B harassment through Letters of Authorization (LOAs). Following development of the ITRs, implementation could occur via issuance of LOAs upon request from individual industry applicants planning specific geophysical survey activities.

Specified Activities

The application describes geophysical survey activity, conducted by industry operators in OCS waters of the GOM within BOEM's GOM planning areas (*i.e.*, the Western, Central, and Eastern Planning Areas). Geophysical surveys are conducted by industry operators to characterize the shallow and deep structure of the OCS, including the shelf, slope, and deepwater ocean environment, in order to obtain data for hydrocarbon exploration and production, aid in siting oil and gas structures and facilities, identify possible seafloor or shallow-depth geologic hazards, and locate potential archaeological resources and benthic habitats that should be avoided.

Deep penetration seismic surveys, used largely for oil and gas exploration and development and involving a vessel or vessels towing an airgun or array of airguns that emit acoustic energy pulses through the overlying water and into the seafloor, are one of the most extensive survey types and are expected to carry the greatest potential for effects to marine mammals. Non-airgun high resolution geophysical surveys are used to detect

and monitor geohazards, archaeological resources, and certain types of benthic communities.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning BOEM's request (see **ADDRESSES**). NMFS will consider all relevant information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals, as appropriate.

Dated: December 14, 2016.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.

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