

support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 7, 2003); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the 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: May 23, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 03-13572 Filed 5-29-03; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031703A]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Seismic Testing in the Northern Gulf of Mexico

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting calibration measurements of its seismic array in the northern Gulf of Mexico (GOM) has been issued to Lamont-Doherty Earth Observatory (LDEO).

DATES: Effective from May 27, 2003 through May 26, 2004.

ADDRESSES: The application and/or authorization are available by writing to the Chief, Marine Mammal Conservation 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.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking 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 either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission 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 that 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."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 18(A), 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].

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On February 24, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting calibration measurements of its seismic array in the northern GOM.

The LDEO plans to measure sound levels from each of the airgun arrays that will be used during their seismic survey programs during future studies. These measurements will be made in shallow, shelf slope, and deep waters in the GOM during late May and/or June 2003, but may also be held at some other time during the next 12 months. The purpose of these measurements is to verify estimates of sound fields around the airgun arrays that have been made using LDEO acoustical models. Verification of the output from these models is needed to confirm the distances from the airguns (safety radii) within which mitigation may be necessary to avoid exposing marine mammals to airgun sounds at received levels exceeding established limits for preventing injury to marine mammals, e.g. the 180 and 190 dB re 1 μ Pa (rms) limits set for cetaceans and pinnipeds, respectively. The measurements will also verify the distances at which the sounds diminish below other lower levels that may be assumed to characterize the zone where disturbance is possible or likely.

The data to be collected during this project can be used to develop a better understanding of the impact of man-made acoustic sources on marine mammals. The planned project will obtain the first calibrated measurements of the *R/V Maurice Ewing's* (Ewing) acoustic sources across a broad range of frequencies from 1 Hz to 25 kHz, and for various configurations of the Ewing's airgun array. Calibration experiments will be conducted in the shallow, shelf slope, and deep water of the GOM to quantify the differences in sound attenuation in relation to water depth. Once calibration measurements have been made, they will be used to model the full propagation field of the Ewing in varying geographical settings. This modeling will provide data needed to help minimize any potential risk to marine mammals during future seismic surveys.

A notice of receipt of the LDEO application and proposed IHA was published in the **Federal Register** on April 11, 2003 (68 FR 17773). That notice described, in detail, the proposed activity and the characteristic of the Ewing's acoustic sources, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. That information is not repeated here.

Comments and Responses

A notice of receipt and request for 30-day public comment on the application and proposed authorization was published on April 11, 2003 (68 FR