

Subpart S—Taking of Marine Mammals Incidental to Explosive Severance Activities Conducted During Offshore Structure Removal Operations on the Outer Continental Shelf in the U.S. Gulf of Mexico

SOURCE: 73 FR 34889, June 19, 2008, unless otherwise noted.

EFFECTIVE DATE NOTE: At 73 FR 34889, June 19, 2008, subpart S, consisting of §§216.211 through 216.219 were added, effective July 21, 2008 through July 19, 2013.

§216.211 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in explosive severance activities conducted during offshore oil and gas structure removal activities in areas within state and Federal waters in the U.S. Gulf of Mexico adjacent to the coasts of Texas, Mississippi, Louisiana, Alabama, and Florida. The incidental, but not intentional, taking of marine mammals by U.S. citizens holding a Letter of Authorization issued pursuant to §216.218 is permitted during the course of severing pilings, well conductors, and related supporting structures, and other activities related to the removal of the oil and gas structure.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to a total of 5 bottlenose dolphin, one Atlantic spotted dolphin, and one pantropical spotted dolphin by Level A harassment over the period of validity of these regulations; and Level B harassment of the following species annually: 227 bottlenose dolphins, 65 Atlantic spotted dolphins, 77 pantropical spotted dolphins, 27 Clymene dolphins, 12 rough-toothed dolphins, 14 striped dolphins, 15 melon-headed whales, 10 pilot whales, 5 spinner dolphins, 3 Risso's dolphins, and 2 sperm whales.

§216.212 Effective dates.

Regulations in this subpart are effective from July 21, 2008 until July 19, 2013.

§216.213 Permissible methods of taking.

The Holder of a Letter of Authorization issued pursuant to §216.218, may incidentally, but not intentionally, take marine mammals by harassment within the area described in §216.211(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

§216.214 Prohibitions.

No person in connection with the activities described in §216.211(a) shall:

(a) Take any marine mammal not specified in §216.211(b);

(b) Take any marine mammal specified in §216.211(b) in a manner or amount greater than described therein;

(c) Take any marine mammal specified in §216.211(b) if NMFS determines that the taking of marine mammals incidental to the activities described in §216.211(a) is having more than a negligible impact on the species or stocks of marine mammals;

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued pursuant to §§216.106 and 216.218;

(e) Take any marine mammal in violation of these regulations by using a charge with a weight greater than 500 lbs (227 kg);

(f) Take any marine mammal when conditions preclude conducting mitigation and monitoring requirements of these regulations or a Letter of Authorization.

§216.215 Definitions, terms, and criteria

(a) *Definitions.* (1) *Below-mud-line or BML* means that the explosives are detonated below the water-mud interface, either inside or outside a pipe, other structure or cable.

(2) *Above-mud-line or AML* means that the explosives are detonated in the water column above the water-mud interface, either inside or outside a pipe, other structure or cable.

(3) *Multiple charge detonation* means any explosive configuration where more than one charge is required in a single detonation event.

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(4) *Scenario* means an alpha-numeric designation provided to describe charge size, activity location, and target design employed in order to determine the appropriate marine mammal mitigation/monitoring measures.

(b) *Terms* (1) *Impact zone (required for all scenarios)* means the area around a decommissioning target measured by the horizontal radius, in which a marine mammal could be affected by the pressure or acoustic energy released during the detonation of an explosive-severance charge.

(2) *Predetonation survey (required for all scenarios)* means any marine mammal monitoring survey (e.g., surface, aerial, or acoustic) conducted prior to the detonation of any explosive severance tool.

(3) *Postdetonation survey (required for all scenarios)* means any marine mammal monitoring survey (e.g., surface, aerial, or post-post-detonation aerial) conducted after the detonation event occurs.

(4) *Waiting period (required for all scenarios)* means the amount of time detonation operations must hold before the requisite monitoring survey(s) can be repeated.

(5) *Company observer (for scenarios A1–A4 only)* means trained company observers authorized to perform marine mammal detection surveys only for “very-small” blasting scenarios A1–A4.

(6) *NMFS observer (for scenarios B1–E4)* means observers trained and approved by an instructor with experience as a NMFS Platform Removal Observer Program trainer. NMFS observers are required to perform marine mammal detection surveys for all detonation scenarios with the exception of scenarios A1–A4. Two NMFS observers will be assigned to each operation for detection survey duties, except mitigation-scenarios C2, C4, D2, D4, E2, and E4 require a minimum of three NMFS observers for the simultaneous surface, aerial, and acoustic surveys.

(c) *Criteria*—(1) *Blasting category parameters and associated severance scenarios*. To determine the appropriate marine mammal mitigation and monitoring requirements in §§216.218 and 216.219, holders of Letters of Authorization for activities described in §216.211(a) of this subpart must deter-

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mine, from Table 1 in §216.217(b)(1), the appropriate explosive severance mitigation/monitoring scenario to follow for the blasting category, species-delineation zone, and charge configuration for their activity.

(2) [Reserved]

§216.216 Mitigation.

(a) The activity identified in §216.211(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.211(a), all mitigation measures contained in this subpart and in the Letter of Authorization issued pursuant to §§216.106 and 216.218 must be implemented. When using explosives, the following mitigation measures must be carried out:

(1)(i) If marine mammals are observed within (or about to enter) the marine mammal impact zone identified in Table 1 in §216.217(b)(1) column 5 for the relevant charge range and configuration (i.e., BML or AML) for the activity, detonation must be delayed until the marine mammal(s) are outside that zone;

(ii) Pre-detonation surveys shall not begin prior to sunrise and detonations shall not occur if the post-detonation survey cannot be concluded prior to sunset;

(iii) Whenever weather or sea conditions preclude adequate aerial, shipboard or subsurface marine mammal monitoring as determined by the trained observer, detonations must be delayed until conditions improve sufficiently for marine mammal monitoring to be undertaken or resumed;

(iv) Whenever the weather or sea conditions prevent implementation of the aerial survey monitoring required under §216.217(c)(2), the aerial survey must be repeated prior to detonation of charges; and

(v) Multiple charge detonations must be staggered at an interval of 0.9 sec (900 msec) between blasts.

(2) [Reserved]

(b) If a marine mammal is found seriously injured, or dead, the explosive severance activity will immediately cease and the holder of the Letter of