§216.191

(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.180(b), a Letter of Authorization may be substantially modified without prior notice and opportunity for public comment. Notification will be published in the Federal Register within 30 days of the action.

§216.191 Designation of Offshore Biologically Important Marine Mammal Areas.

(a) Offshore biologically important areas for marine mammals may be nominated under this paragraph by the National Marine Fisheries Service or by members of the public.

(b) Proponents must petition NMFS by requesting an area be added to the list of offshore biologically important areas in §216.184(f) and submitting the following information:

(1) Geographic region proposed for consideration (including geographic boundaries);

(2) A list of marine mammal species or stocks within the proposed geographic region;

(3) Whether the proposal is for year-round designation or seasonal, and if seasonal, months of years for proposed designation;

(4) Detailed information on the biology of marine mammals within the area, including estimated population size, distribution, density, status, and the principal biological activity during the proposed period of designation sufficient for NMFS to make a preliminary determination that the area is biologically important for marine mammals; and

(5) Detailed information on the area with regard to its importance for feeding, breeding, or migration for those species of marine mammals that have the potential to be affected by low frequency sounds;

(c) Areas within 12 nm (22 km) of any coastline, including offshore islands, or within non-operating areas for SURTASS LFA sonar are not eligible for consideration.

(d) If a petition does not contain sufficient information for the National Marine Fisheries Service to proceed, NMFS will determine whether the nominated area warrants further study. If so, NMFS will begin a scientific review of the area.

(e)(1) If through a petition or independently, NMFS makes a preliminary determination that an offshore area is biologically important for marine mammals and is not located within a previously designated area, NMFS will publish a Federal Register notice proposing to add the area to §216.184(f) and solicit public comment.

(2) The National Marine Fisheries Service will publish its final determination in the Federal Register.

Subpart R [Reserved]

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

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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.
(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) Posidetonation 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.