

**PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 223A at Chino Valley.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Channel 228A at Arkadelphia.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Aspermont, Channel 226C2, Channel 289A at Cotulla, and Channel 292A at Junction.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 02–29579 Filed 11–20–02; 8:45 am]

**BILLING CODE 6712–01–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 216**

[Docket No. 021107268–2268–01; I.D. 102402A]

**RIN 0648–AQ54**

**Taking and Importing Marine Mammals; Taking of Marine Mammals Incidental to Power Plant Operations**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is amending the regulations governing the unintentional take of small numbers of seals incidental to routine operations of the Seabrook Station nuclear power plant, Seabrook, NH. The purpose of this amendment is to replace the power plant's official owner/operator's name with a generic owner/operator designation. The technical amendment will also remove mitigation measures that are no longer applicable to the owner/operator of the Seabrook Station nuclear power plant.

**DATES:** Effective November 21, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, NMFS, 301–713–2055, ext 128, or David Gouveia, Northeast Regional Office, NMFS, 978–281–9280.

**SUPPLEMENTARY INFORMATION:****Background**

A final rule authorizing the unintentional take of small numbers of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) incidental to the routine operation of the Seabrook Station nuclear power plant was issued for the North Atlantic Energy Services Corporation (NAESC) on May 25, 1999 (64 FR 28114). That final rule put in place the regulations found at § 216.132, which state that under a Letter of Authorization (LOA) the NAESC, specifically, may incidentally but not intentionally, take marine mammals in the course of operating the station's intake cooling water system while in possession of a valid LOA issued by NMFS. The regulations also require that the LOA holder report, within 6 months from the issuance of a final rule, to the Administrator, Northeast Region, NMFS on possible mitigation measures effecting the least practicable adverse impacts on seals.

**Need for Correction**

Subsequent to the publication of the final rule, a tentative sale agreement was reached between the NAESC and the FPL Energy Seabrook, LLC, for the Seabrook Station nuclear power plant. The closing date for the sale of the Seabrook Station nuclear power plant is tentatively scheduled for the fall of 2002. As noted above, the regulations authorizing the unintentional take of seals specifically names the NAESC as the owner. Since the sale of the power plant is imminent, this action will change the regulatory language regarding the power plant ownership to a generic owner/operator designation.

In addition, the final rule contains a reporting requirement and a schedule for implementation of mitigation measures, which are no longer applicable to the owner/operator of the Seabrook Station nuclear power plant. Specifically, § 216.134 requires NAESC to issue a report to NMFS by January 2000 regarding possible mitigation measures to address any adverse impacts on seals. The report was generated and the recommended mitigation measure (installation of seal deterrent barriers on all three cooling water system intakes) was completed prior to January 2000; therefore, this amendment will remove this reporting requirement and implementation schedule since NAESC has already complied with this requirement. Consequently, this final rule corrects the regulatory language to reflect the fact

that this reporting requirement and schedule are no longer applicable, by reserving § 216.134 and removing cross-references to that section in § 216.135(i) and § 216.136(a)(3).

**Classification**

The Assistant Administrator for Fisheries (AA) finds that providing prior notice and opportunity to comment on this final rule is unnecessary, because the rule merely removes the specific name of the power plant's owner/operator, inserts a generic designation in its place, removes the requirement that has already been complied with and has no future effect, and removes cross-references to that former section. This action does not change the number of regulated entities, nor does it create new requirements or relieve any current restrictions. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive requirements for prior notice and opportunity for comment. Also, because this final rule does not impose any new requirements on entities subject to these regulations, it is not a substantive rule subject to a 30-day delay in effective date under 5 U.S.C. 553(d).

This final rule is exempt from review under Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Dated: November 16, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

**PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

1. The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.132 is revised to read as follows:

**§ 216.132 Permissible methods of taking.**

Under a Letter of Authorization issued to the owner/operator of Seabrook Station nuclear power plant, the owner/operator may incidentally but not intentionally, take marine mammals specified in § 216.130 in the course of operating the station's intake cooling water system.

**§ 216.134 [Reserved]**

3. Section 216.134 is removed and reserved.

**§ 216.135 [Amended]**

4. In § 216.135, paragraph (i) is removed.

5. In § 216.136, paragraph (a) is revised.

**§ 216.136 Renewal of the Letter of Authorization.**

(a) A Letter of Authorization issued under § 216.106 for the activity identified in § 216.130(a) may be renewed annually provided the following conditions and requirements are satisfied:

(1) Timely receipt of the reports required under § 216.135, which have

been reviewed by the Administrator, Northeast Region, NMFS, and determined to be acceptable; and

(2) A determination that the maximum incidental take authorizations in § 216.130(b) will not be exceeded.

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[FR Doc. 02-29683 Filed 11-20-02; 8:45 am]

**BILLING CODE 3510-22-S**