

(4) Except in cases of emergency involving danger to life or property, no vessel engaged in commercial fishing or shrimping shall anchor in any of the channels, harbors or lagoons in the vicinity of Garden Key, Bush Key, or the surrounding shoals outside of Bird Key Harbor. Emergencies may include, but are not limited to, adverse weather conditions, mechanical failure, medical emergencies or other public safety situations.

(f) *What vessel operations are prohibited?* The following vessel operations are prohibited:

(1) Operating a vessel in the Fort Jefferson Moat;

(2) Operating a vessel above a flat wake speed in the Garden Key and Bird Key Harbor areas.

(g) *What are the regulations regarding the discharge of materials in park waters?* (1) The discharge or deposit of materials or substances of any kind within the boundaries of the park is prohibited, except for the following:

- (i) Fish, fish parts, chumming material, or bait used or produced incidental to and while conducting recreational fishing activities;
- (ii) Graywater from sinks, consisting of only water and food particles;
- (iii) Vessel cooling water, engine exhaust, or bilge water when not contaminated by oil or other substances.

(2) The superintendent may impose further restrictions as necessary to protect park resources, visitors, or employees. The public will be notified of any such requirements through one or more methods listed in § 1.7 of this chapter.

(h) *What are the permit requirements in the park?* (1) A permit, issued by the superintendent, is required for all non-commercial vessels for which occupants are engaged in recreational activities, including all activities in the RNA. Permitted recreational activities include but are not limited to use of mooring buoys, snorkeling, diving, wildlife viewing, and photography.

(2) A permit, issued by the superintendent, is required for a person, group, institution, or organization conducting research activities in the park.

(3) Vessels transiting the park without interruption shall not require a permit.

(i) *How are corals and other underwater natural features protected in the park?* (1) Taking, possessing, removing, damaging, touching, handling, harvesting, disturbing, standing on, or otherwise injuring coral, coral formation, seagrass or other living or dead organisms, including marine invertebrates, live rock, and shells, is prohibited.

(2) Vessel operators are prohibited from allowing their vessel to strike, injure, or damage coral, seagrass, or any other immobile organism attached to the seabed.

(3) Vessel operators are prohibited from allowing an anchor, chain, rope or other mooring device to be cast, dragged, or placed so as to strike, break, abrade, or otherwise cause damage to coral formations, sea grass, or submerged cultural resources.

(j) *What restrictions do I need to know when on or near shipwrecks found in the park?* No person may destroy, molest, remove, deface, displace, or tamper with wrecked or abandoned vessels of any type or condition, or any cargo pertaining thereto; and, the survey, inventory, dismantling, or recovery of any such wreck or cargo within the boundaries of the park is prohibited unless permitted in writing by the superintendent.

(k) *How are aircraft operations restricted in the park?* (1) Landing an aircraft in Dry Tortugas National Park may occur only in accordance with a permit issued by the superintendent pursuant to § 1.6 of this chapter.

(2) When landing is authorized by permit, the following requirements also apply:

(i) Aircraft may be landed on the waters within a radius of 1 mile of Garden Key, but a landing or takeoff may not be made within 500 feet of Garden Key, or within 500 feet of Bush Key when Bush Key is closed to the public to protect nesting wildlife. The operation of aircraft is also subject to § 2.17, except that seaplanes may be taxed closer than 500 feet to the Garden Dock while enroute to or from the designated ramp, north of the dock.

(ii) Seaplanes may be moored or brought up on land only on the designated beach, north of the Garden Key dock.

**Matthew J. Hogan,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 06-3295 Filed 4-6-06; 8:45 am]

**BILLING CODE 4310-70-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[WT Docket No. 96-86; FCC 06-34]

#### Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In the *Eighth Notice of Proposed Rulemaking (Eighth NPRM)*, the FCC seeks comment on proposals to create broadband channels in the 700 MHz public safety band. Specifically, the *Eighth NPRM* seeks comment on proposals to accommodate broadband and/or wideband operations on the current wideband spectrum (twelve megahertz) of the current 700 MHz public safety spectrum allocation. This *Eighth NPRM* is another step in the FCC's ongoing efforts to develop a regulatory framework in which to meet current and future public safety communications needs.

**DATES:** Written comments are due on or before June 6, 2006, and reply comments are due on or before July 6, 2006.

**ADDRESSES:** You may submit comments, identified by WT Docket 96-86 and FCC 06-34, by any of the identified methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission Web Site: <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting comments.
- E-mail: [ecfs@fcc.gov](mailto:ecfs@fcc.gov). Include WT Docket No. 96-86 in the subject line of the message.

- Mail: Paper submissions.
- (Hand or Messenger Delivered accepted between 8 a.m. to 7 p.m. only) Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, c/o Natek, Inc., Inc., 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- (Commercial overnight mail, EXCEPT United States Postal Service) Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743,

- (All other mail, including United States Postal Service Express Mail, Priority Mail, and First Class Mail) Marlene H. Dortch, Secretary, Federal Communications Commission, Office of

the Secretary, 445 12th Street, SW., Washington, DC 20554.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.fcc.gov/cgb/ecfs>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.fcc.gov/cgb/ecfs> or in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY-A257, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:**

Legal Information: John Evanoff, Esq., [John.Evanoff@FCC.gov](mailto:John.Evanoff@FCC.gov), Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418-0680, or TTY (202) 418-7233. Technical Information: Tim Maguire, [Tim.Maguire@FCC.gov](mailto:Tim.Maguire@FCC.gov), Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418-0680, or TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Eighth Notice of Proposed Rulemaking (Eighth NPRM)*, FCC 06-34, adopted March 17, 2006 and released on March 21, 2006. In the *Eighth NPRM* the FCC seeks comment on proposals to create broadband channels in the 700 MHz public safety band. Specifically, the *Eighth NPRM* seeks comment on proposals to accommodate broadband and/or wideband operations on the current wideband spectrum (twelve megahertz) of the current 700 MHz public safety spectrum allocation. The *Eighth NPRM* also seeks to update the record on wideband interoperability matters raised in the *Seventh Notice of Proposed Rulemaking* in this proceeding (70 FR 21726, April 27, 2005).

**I. Procedural Matters**

*A. Ex Parte Rules—Permit-But-Disclose Proceeding*

2. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's Rules.

*B. Comment Dates*

3. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before June 6, 2006, and reply comments on or before July 6, 2006. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S.

Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

*C. Paperwork Reduction Act*

4. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506 (c)(4).

**II. Initial Regulatory Flexibility Analysis**

5. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Eighth Notice of Proposed Rule Making (Eighth NPRM)*. Written public comments are requested regarding this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Eighth Notice* provided in the first page of the document. The Commission will send a copy of the *Eighth Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

*A. Need for, and Objectives of, the Proposed Rules*

6. The *Eighth NPRM* seeks to promote effective public safety communications and innovation in wireless services in support of public safety and homeland security. Pursuant to Congressional directive, the Commission reallocated twenty-four megahertz of spectrum in the Upper 700 MHz Band to meet the communications needs of public safety. In many areas of the United States this public safety spectrum is encumbered by incumbent television stations. In January 1999 the Commission chartered a federal advisory committee, the Public Safety National Coordination Committee (NCC), to advise the Commission on service rules for the 700 MHz Public Safety Band, which the Commission had divided into narrowband voice and data channels and wideband data channels,

with designated interoperability channels in each of these band segments. Pursuant to the NCC's recommendations, the Commission adopted the ANSI 102 (Project 25 Phase I) suite of standards for the narrowband interoperability channels. In July 2003, the NCC concluded its work with a final set of recommendations, including the ANSI 102 Scalable Adaptive Modulation (SAM) wideband data interoperability standard. On January 5, 2005, the Commission adopted a *Seventh Notice of Proposed Rulemaking* (70 FR 21726, April 27, 2005) in this proceeding which sought comment on the NCC's recommendation of the SAM standard and inquired whether all wideband radios should be capable of using the SAM standard on the wideband interoperability channels, independent of the technical standards used by such radios on the non-interoperability wideband data channels.

7. *The Eighth NPRM* seeks comment on advanced data transmission technologies which may not have been fully developed and commercially viable at the time that the NCC made its final recommendations, and which may prove more suitable to public safety's data transmission requirements. The potential benefits of these broadband technologies were raised in a November 18, 2005 filing by the National Public Safety Telecommunications Council (NPSTC) which urged "the Commission to review through a notice of proposed rulemaking, how [the 700 MHz wideband and reserve channels] could be used to promote broadband access." The use of broadband applications in the 700 MHz Public Safety Band was subsequently addressed by the Chairman of the FCC in a December 19, 2005 Report to Congress pursuant to Section 7502 of the Intelligence Reform Act. Therein, it was stated that "the Commission will expeditiously examine and analyze whether certain channels within the current allocation of twenty-four megahertz of public safety spectrum in the 700 MHz band could be modified to accommodate broadband communications."

8. Consistent with national priorities focusing on homeland security and broadband, and the Commission's commitment to ensure that emergency first responders have access to reliable and interoperable communications, the *Eighth NPRM* will allow the Commission to compile a record with up-to-date information regarding the state of today's broadband technologies in an effort to determine whether there is a need for changes to the current 700 MHz public safety band plan. The

*Eighth NPRM* is intended to explore opportunities to promote spectrum access for a variety of new broadband applications while ensuring reliable, interference-free, and interoperable communications. The *Eighth Notice* also seeks to promote flexibility by seeking comment on providing a regulatory framework in which public safety entities can pursue broadband and/or wideband options in support of homeland security and protection of life and property. Further, the *Eighth Notice* seeks to refresh the record developed in response to the *Seventh Notice of Proposed Rulemaking* in this proceeding, which addressed the issue of whether there is a continuing need for wideband data interoperability. Finally, the Commission seeks comment on whether to adopt the SAM wideband data interoperability standard.

9. The first option is to modify the band plan to combine the wideband general use, interoperability and reserve channels, channelize these channels at 50 kHz, allow Regional Planning Committees (RPCs) to combine these channels to provide wideband or broadband operations in order to meet regional needs, and establish guard bands to protect narrowband operations from interference. Under this proposal, Motorola suggests that a total of 3.1 MHz of spectrum could be deployed for broadband operations and that a total of two megahertz (1 MHz paired) be dedicated as guard bands while maintaining eighteen 50 kHz wideband interoperability channels. Motorola recommends that all wideband interoperability and broadband radios support the SAM standard.

10. Under the second option, NPSTC suggests that RPCs should have the flexibility of combining 50 kHz channels to create one to three 1.25 MHz broadband channels (3.75 MHz total). NPSTC also suggests a smaller guard band allocation of 1.95 megahertz (two .950 MHz guard bands paired) and that RPCs have flexibility in managing wideband interoperability channels.

11. The third option, offered by Lucent, involves combining the wideband general use, interoperability and reserve channels to create three 1.25 MHz broadband channels (3.75 MHz total) and two 1.125 MHz guard bands (2.25 MHz total). Lucent suggests the Commission abandon the concept of wideband interoperability.

#### *B. Legal Basis for Proposed Rules*

12. The potential actions on which comment is sought in this Notice would be authorized under Sections 1, 4(i), 7, 301, 302, 303, and 337 of the Communications Act of 1934, as

amended, 47 U.S.C. 151, 154(i), 157, 301, 302, 303, 337.

#### *C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.

#### *D. Governmental Entities*

14. The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

#### *E. Public Safety Radio Licensees*

15. As a general matter, Public Safety Radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompass business entities engaged in radiotelephone communications employing no more than 1,500 persons. There is a total of approximately 127,540 licensees within these services. With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public

safety services the number of government entities affected.

#### *F. Wireless Communications Equipment Manufacturers*

16. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small businesses.

#### *G. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

17. The *Eighth NPRM* does not propose a rule that will entail reporting, recordkeeping, and/or third-party consultation.

#### *H. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

19. To assist the Commission in its analysis, commenters are requested to provide information regarding which public safety entities and manufacturers would be affected by the proposed changes to the 700 MHz public safety band plan as described in the *Eighth NPRM*. In particular, we seek estimates of how many small entities might be affected and whether any of the proposals under consideration would be too burdensome to public safety.

20. In the *Eighth NPRM*, we seek data demonstrating the costs and benefits of modifying the 700 MHz band to accommodate public safety broadband operations. We have received three proposals for modifying the 700 MHz

wideband segment to accommodate broadband. Under our current rules, wideband general use and interoperability channels may be aggregated to 150 kHz channels and conform to a data rate of 384 kilo bits per second (kbps). Public safety entities wish to explore aggregation above 150 kHz in order to achieve applications requiring higher data rates. Pursuant to the proposed band plans, the wideband channels would be combined to permit aggregation up to 1.25 MHz. Some proponents of broadband advocate allowing public safety Regional Planning Committees increased flexibility to administer the wideband spectrum to meet communications needs on a regional basis. Increasing bandwidth, however, decreases the number of channels that can be used and may also impact public safety communications coverage, reliability and infrastructure costs as well as increase the risk of interference to narrowband voice operations. Accordingly, we seek comment on the costs and benefits of modifying the existing wideband plan to accommodate broadband communications and ask commenters to identify public safety broadband applications that can be deployed in a modified 700 MHz wideband band plan.

21. Commenters are asked to address to what extent the proposed SAM wideband data interoperability standard would affect the ability of small entities to acquire wideband and/or broadband radios, as well as serve the objectives of interoperability in a broadband environment. Under the current rules, the wideband interoperability channels are not available for licensing, and wideband general use radios are not required to operate on the wideband interoperability channels. In the *Seventh Notice of Proposed Rulemaking*, the Commission sought comment on adopting a wideband data interoperability standard known as "SAM" (TIA-902, Scalable Adaptive Modulation), and requiring wideband general use radios have the capability of operating on the wideband interoperability channels using SAM. The possible adoption of a wideband data interoperability standard would potentially require all public safety 700 MHz wideband and broadband radios to incorporate the SAM standard for use on the wideband data interoperability channels. Thus we seek comment on the technical, operational and cost factors associated with such a requirement. However if we decline to adopt the SAM standard, manufacturers would be free to implement other technologies,

incompatible with the SAM standard, which arguably would be a lesser regulatory burden on governmental entities and manufacturers, but which may impact data interoperability. One commenter suggests we abandon the concept of wideband interoperability, while another suggests adopting the SAM standard on a permissive basis. Accordingly, we ask commenters to address the objectives of interoperability in a modified band plan and what measures, if any, should be taken to promote interoperability in a broadband environment, as well as refresh the record regarding the SAM standard.

22. We have also sought comment on proposals to minimize the burdens of interference management on public safety entities while promoting efficient use of the spectrum. Under the proposed broadband plans, approximately two megahertz of wideband spectrum would be dedicated to guard bands in an effort to protect public safety narrowband voice operations. We seek comment on this proposal and ask commenters to identify alternative means to protect narrowband voice operations while making efficient use of the proposed guard band spectrum. We also ask commenters to address whether the SAM standard could be modified to permit efficient use of the proposed guard band spectrum.

23. We also seek comment on our tentative conclusion not to modify the 700 MHz narrowband voice segment in light of the significant efforts made by public safety in planning for use of this spectrum. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. We seek comment on significant alternatives commenters believe we should adopt.

#### *Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

24. None.

### **III. Ordering Clauses**

25. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Eighth Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. E6-5108 Filed 4-6-06; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 060314068-6068-01; I.D. 030905A]

RIN 0648-AT79

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS has received a request from the Minerals Management Service (MMS), for authorization to “take” by harassment small numbers of marine mammals incidental to explosive severance activities at offshore oil and gas structures in the Gulf of Mexico (GOM) outer continental shelf (OCS). By this document, NMFS is proposing regulations to govern that take. In order to issue Letters of Authorization (LOAs) and final regulations governing the take, NMFS must determine that the total taking will have a negligible impact on the affected species and stocks of marine mammals, will be at the lowest level practicable, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. NMFS invites comment on the application and the proposed rule.

**DATES:** Comments and information must be postmarked no later than May 22, 2006.

**ADDRESSES:** You may submit comments on the application and proposed rule, using the identifier 030905A, by any of the following methods:

- E-mail: [PR1.030905A@noaa.gov](mailto:PR1.030905A@noaa.gov).

Please include the identifier 030905A in the subject line of the message. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Hand-delivery or mailing of paper, disk, or CD-ROM comments should be

addressed to: Stephen L. Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

A copy of the MMS application, under section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA), containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha>. A copy of MMS’ Programmatic Environmental Assessment (PEA) is available on-line at: <http://www.gomr.mms.gov/homepg/regulate/environ/nepa/2005-013.pdf>. Documents cited in this proposed rule, that are not available through standard public library access, may be viewed, by appointment, during regular business hours at the mailing address previously specified. To help us process and review comments more efficiently, please use only one method for commenting.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this proposed rule should be sent to NMFS via the means stated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503, [David\\_Rostker@eap.omb.gov](mailto:David_Rostker@eap.omb.gov).

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, NMFS, at 301-713-2055, ext 128 or [Ken.Hollingshead@noaa.gov](mailto:Ken.Hollingshead@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct 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) within a specified geographical region if certain findings are made and regulations are issued.

An authorization will 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 if the permissible methods of taking and requirements pertaining to the mitigation, 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.”

#### Summary of Request

On February 28, 2005, NMFS received an application from MMS (MMS, 2005a) requesting, on behalf of the offshore oil and gas industry, authorization under section 101(a)(5)(A) of the MMPA to take marine mammals by harassment incidental to explosive severance activities at offshore oil and gas structures in the GOM OCS. Except for certain categories of 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].

#### Description of the Activity

During exploration, development, and production operations for mineral extraction in the GOM OCS, the seafloor around activity areas becomes the repository of temporary and permanent equipment and structures. In compliance with OCS Lands Act (OCSLA) regulations and MMS guidelines, operators are required to remove or “decommission” seafloor obstructions from their leases within one year of lease termination or after a structure has been deemed obsolete or unusable. To accomplish these removals, a host of activities is required to (1) mobilize necessary equipment and service vessels, (2) prepare the decommissioning targets (e.g., piles, jackets, conductors, bracings, wells, pipelines, etc.), (3) sever the target from the seabed and/or sever it into manageable components, (4) salvage the severed portion(s), and (5) conduct final site-clearance verification work.

There are two primary methodologies used in the GOM for cutting decommissioning targets; nonexplosive and explosive severance. Nonexplosive methods include abrasive cutters (sand and abrasive-water jets), mechanical cutters (e.g., carbide or rotary), diamond wire cutting devices, and cutting facilitated by commercial divers using arc/gas torches. Though relatively time-consuming and potentially harmful to