

add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9-53A282, dated March 20, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 15, 1996, to all persons except those persons to whom it was made immediately effective by telegraphic AD T96-07-51, issued on March 22, 1996, which contained the requirements of this amendment.

Issued in Renton, Washington, on March 28, 1996.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-8583 Filed 4-9-96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 216 and 228

[Docket No. 950504128-6085-02; I.D. 031095A]

RIN 0648-AG80

Small Takes of Marine Mammals; Harassment Takings Incidental to Specified Activities in Arctic Waters; Regulation Consolidation; Update of Office of Management and Budget (OMB) Approval Numbers

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

ACTION: Interim final rule.

SUMMARY: The Marine Mammal Protection Act (MMPA) Amendments of 1994 established an expedited process by which citizens of the United States can apply for an authorization to take incidentally, but not intentionally, small numbers of marine mammals by harassment. This rule sets forth the process for applying for, and obtaining, an authorization in Arctic waters. This rule also makes minor modifications to the existing regulations that clarify the requirements for petitioning for and obtaining a small take authorization.

This rule also updates OMB approval numbers for application and reports of incidental small takes.

EFFECTIVE DATE: This rule is effective on May 10, 1996.

ADDRESSES: A copy of the Environmental Assessment (EA), and/or the results of a February 8-9, 1994 meeting cited in the preamble may be obtained by writing to the Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226 or by telephoning the person below (see **FOR FURTHER INFORMATION CONTACT**).

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, D.C. 20503.

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

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*), directs the Secretary of Commerce to allow, upon request by U.S. citizens engaged in a specific activity (other than commercial fishing) in a specified geographical region, the incidental, but not intentional, taking of small numbers of marine mammals, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture or kill. Pursuant to part 228 of title 50, permission may be granted for periods up to 5 years if NMFS finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe activity-specific

regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. These regulations must include requirements pertaining to the monitoring and reporting of such taking.

The Marine Mammal Protection Act Amendments of 1994 amended section 101(a)(5) of the MMPA to establish 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. It established specific time limits for public notice and comment on any requests for authorization under this new provision.

The legislative history notes that NMFS should use the general rulemaking authority available under section 112 of the MMPA to establish a process for granting authorization in the case of small takes by harassment in the Arctic Ocean (H.R. Rep. No. 439, 103d Cong., 2d Sess. 29, 30 (Mar. 21, 1994)). As a result of that mandate, NMFS has expedited this rulemaking process in order to have incidental harassment regulations effective for Arctic activities prior to the 1996 open water season in the Beaufort Sea.

This rule will result in a more streamlined and cost-effective method for obtaining small take by incidental harassment authorizations in Arctic waters, without lessening the MMPA's protection of species and stocks of marine mammals. This rule does not cover incidental harassment authorizations for non-Arctic waters. A final rule, which will include an expanded discussion on what constitutes harassment for purposes of issuing authorizations under this subpart, remains under development. Until that final rule is published, NMFS will continue to process and grant incidental harassment authorizations under the statutory provisions and requirements.

Comments and Responses

On May 31, 1995 (60 FR 28379), NMFS issued a proposed rule to modify regulations found at 50 CFR part 228, subpart A to include the simplified process for authorizing the incidental taking of small numbers of marine mammals by harassment without the need to issue specific regulations governing the taking of marine mammals for each and every activity. The proposed rule set forth: (1) The process for obtaining an authorization;

(2) the specific time limits imposed by the statute for NMFS review and publication, and public notice and comment, on any requests for authorization that would be granted under this paragraph; and (3) the requirements for scientific peer review of an applicant's monitoring plans and submission of a plan of cooperation (if the subject activity may affect the availability of a species or stock of marine mammal for taking for subsistence purposes). The proposed rule also made minor changes to the existing regulations to clarify the requirements for petitioning and obtaining a small take authorization under section 101(a)(5)(A) of the MMPA.

Based on a request from the U.S. Navy (Navy), the comment period was extended until October 16, 1995 (60 FR 35891, July 12, 1995). During the comment period, NMFS received eight letters commenting on the proposed rule. An additional 41 letters were received in response to an Internet message but without review of the proposed rule. Comments regarding incidental harassment authorizations in the Arctic are discussed below. Response to comments outside the scope of Arctic activities are reserved for a future rule.

Arctic Subsistence Concerns

Comment: The USCG recommends that § 228.4(a)(7) (revised as § 216.104(a)(7)) be modified to clarify that the only subsistence uses that are at issue are those defined in the MMPA.

Response: The term "subsistence" that applies to this rule, was previously defined in § 216.3; no changes to that definition are considered necessary at this time. That definition makes any additional clarifying language unnecessary.

Arctic Subsistence Concerns-Plans of Cooperation

Comment: The USCG believes that submitting a plan of cooperation is not required by the MMPA, and, while it may be an ideal way to implement the statutory requirements for determining impacts to Arctic subsistence users, such an extensive plan of cooperation is not necessary in every case.

Response: NMFS agrees that a formal plan of cooperation may not be necessary for all activities that might result in the incidental harassment of marine mammal species that are also sought for subsistence purposes. As a result of the comment, NMFS has modified the final rule accordingly. However, in order for NMFS to determine that there will not be an

unmitigable adverse impact on the availability of marine mammals for taking for subsistence purposes, the information items specified in § 216.104(a)(11) (previously § 228.4(a)(11)) will still need to be provided. If neither a plan of cooperation has been submitted nor meetings with subsistence communities have been scheduled, and if during the comment period evidence is provided indicating that an adverse impact to subsistence needs will result from the activity, an authorization may be delayed to resolve this disagreement.

Comment: The AEWC noted that the plan of cooperation submitted by an applicant must be based on mitigation measures that have been approved by the affected communities and their representatives. The MMPA requires NMFS to prescribe, where applicable, the measures NMFS determines are necessary to ensure that there is no unmitigable adverse impact on the availability of the species or stock for subsistence uses. As a result, the commenter believes, NMFS should take a more proactive role in developing plans of cooperation; consult with the subsistence community as directed by the NOAA-AEWC Cooperative Agreement for bowheads; and resolve disagreements between parties.

Response: While it is preferable for a plan of cooperation to contain mitigation measures that are agreed to by the involved parties, a final determination on necessary marine mammal mitigation measures remains with NMFS. It is not mandatory under the MMPA that a plan of cooperation meet with total approval by affected Alaskan communities and their representatives. However, NMFS emphasizes that plans of cooperation should contain more than a simple schedule of meetings with affected communities. With little time provided by the MMPA to make a determination on whether to issue an authorization, unless applicants have either met with Native American groups or have scheduled a meeting with them to discuss the plan of cooperation prior to submission of an application (with its plan of cooperation), processing the application may be delayed. The final rule clarifies this meeting requirement and requires the draft plan of cooperation to be made available to affected communities at the same time the application is submitted to NMFS. However, the MMPA does not, as the commenter suggests, require NMFS to resolve disagreements related to the plan of cooperation prior to issuance of an authorization. Initiation of the NOAA-AEWC Cooperation Agreement

consultation process begins when NMFS forwards a proposed authorization to the AEWC.

Because the rule requires an applicant to submit either a plan of cooperation for any Arctic activities that will have an impact on those species or stocks of marine mammals that are also sought for subsistence uses, or a description of planned mitigation measures, Native Americans (and others) may submit comments to NMFS on the adequacy of a plan of cooperation or planned mitigation measures and any disagreements the two parties may have on necessary mitigation. NMFS will give full consideration to these comments, to any previously agreed measures for the protection of marine mammals, and the success of those measures, when determining appropriate mitigation measures for a new authorization.

Arctic Subsistence Concerns-Monitoring Plans

Comment: The USCG questions the requirement for peer-review of monitoring plans under the provision for activity-specific regulations, since the statute only mentions it under provisions for incidental harassment authorizations.

Response: Paragraph 216.105(b)(3) (previously § 228.5(b)(3)) does not mandate peer-review of monitoring plans; it only notes that under activity-specific regulations a peer-review process may be established, if warranted. The need for peer-review would be determined through notice and comment on the proposed rule for the applicant's activity.

Comment: The USCG believes that § 228.8(d) (previously § 216.108(d)) places NMFS in control of the independent peer-review process called for by the statute. However, they believe that Federal agencies should have the discretion to use the NMFS peer-review process or to develop their own process.

Response: Although NMFS remains responsible for accepting or rejecting a monitoring plan, NMFS does not control the peer-review process but only serves as its facilitator. While NMFS would not object to a different process for peer-review of monitoring plans, applicants should recognize that a peer-review process may take some time to establish independently. As a result, under an independent peer-review process, NMFS could no longer assure the applicant that the statutory time requirements for issuing an authorization would be met.

Comment: The AEWC also noted the need for reliable scientific research on interactions between marine mammals and oil and gas exploration activities. In

the interest of promoting both reliability and consistency in this research, the AEWC recommended that the process for monitoring and reporting agreed to at the February 1994 meeting between NMFS, AEWC, the North Slope Borough and the oil and gas industry, be incorporated into the regulations. In addition, the AEWC wanted to see the results of that meeting discussed in the preamble to the final regulations.

Response: NMFS agrees that, to the extent possible, a prior year's research results should be reviewed by the present-year, peer-review committee. This would provide some consistency in research objectives. However, because the referenced 1994 meeting was specific to Beaufort Sea oil and gas exploration, incorporating those agreements (e.g., number and independence of reviewers) into these regulations would limit flexibility to modify them for different activities and changing conditions, and readers would be unlikely to benefit sufficiently from summarizing the meeting, detailed discussion of the results of that meeting are not warranted in these procedural regulations. A copy of the final minutes to the February 8-9, 1994 meeting is available from NMFS (see ADDRESSES) and will be available for reference for future U.S. Arctic oil and gas activities.

Comment: The North Slope Borough notes that there are species in addition to bowhead whales in Arctic waters and NMFS should more clearly define how the authorization process applies to beluga whales and the seal species found in Arctic waters. The commenter also wants the agency to consult directly with the Alaska Beluga Whale Committee and the Indigenous People's Council for Marine Mammals to establish mechanisms for subsistence user involvement in decisions affecting these species.

Response: When an applicant requests an authorization for the incidental harassment of marine mammals, that person is expected to apply for all marine mammals that can be reasonably expected to be taken by harassment and/or be affecting those species availability for subsistence purposes. The MMPA requires NMFS to announce receipt of an application, issuance of a proposed authorization, and to request public comment in the Federal Register, newspapers of general circulation, appropriate electronic media and to all locally affected communities. NMFS will also provide copies of the proposed authorization for review directly to those organizations that NMFS knows to have an interest.

Discussion

Background and rationale on processing applications for Arctic activities, monitoring and reporting requirements and peer review of monitoring plans, were published on May 31, 1995 (60 FR 28379) and are not repeated here. Reviewers should refer to the notice of proposed rulemaking for additional information.

Changes From the Proposed Rule

1. Based upon comment, a requirement is being added that applicants with activities in the Arctic that might result in a take of species or stocks that are also taken for subsistence purposes, need to either schedule a meeting prior to submitting the application or meet prior to the close of the comment period and provide the affected subsistence community with a draft plan of cooperation.

2. A new definition for the term "Arctic waters" is provided.

3. A new paragraph has been added at § 216.104(a)(5) to include in one location information requested on assessing incidental takes of marine mammals by the applicant's activity.

4. The mandatory provision that applicants affecting Arctic subsistence needs must provide a plan of cooperation has been modified.

5. The interim rule clarifies that reports are required to be submitted, within 90 days of completion of any individual components of the activity (if any), or within 90 days of completion of the activity, but no later than 120 days prior to expiration of the incidental harassment authorization, whichever is earlier.

6. The interim rule clarifies that incidental harassment authorizations will be valid for a period of time not to exceed 1 year but may be renewed for additional periods of time not to exceed 1 year for each reauthorization.

National Environmental Policy Act

The amended regulations in Part 216 subpart I of chapter 50 implement section 101(a)(5)(D) of the MMPA, as it pertains to incidental harassment authorizations in Arctic waters. This rule, mandated by the 1994 Amendments, provides a mechanism to authorize the incidental, but not intentional, taking by harassment of small numbers of marine mammals by U.S. citizens engaged in a specified activity in a specified geographic region. The AA has determined, based upon a programmatic EA prepared for this action under NEPA, that implementation of these general regulations will not have a significant impact on the human environment. As

a result of this determination, an environmental impact statement is not required. A copy of the EA is available upon request (see ADDRESSES).

In addition, while each proposed incidental harassment authorization will be reviewed independently to determine its impact on the human environment, NMFS believes that, because the finding required for incidental harassment authorizations is that the taking (by harassment) would not result in any serious injury or death to a marine mammal, would have no more than a negligible impact on marine mammals and their habitat, and would not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, the majority of the authorizations should be "categorically excluded" (as defined in 40 CFR 1508.4) from the preparation of either environmental impact statements or EAs under NEPA and section 6.02.c.3(i) of NOAA Administrative Order 216-6 for Environmental Review Procedures (published August 6, 1991).

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration at the proposed rule stage that, if adopted, this action would not have a significant economic impact on a substantial number of small entities since it would simply establish an expedited process for the review and issuance of authorizations for the incidental taking of small numbers of marine mammals by harassment while conducting activities (other than commercial fishing) in and near marine waters. Without authorization, the taking of marine mammals, even by harassment, is prohibited.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act and which has been approved by OMB under OMB Control No. 0648-0151.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

The average burden for this collection is estimated to be approximately 214 hours per activity (range 80-483 hours depending upon complexity) for applications and 32.5 hours per activity

(range 16–80 hours) for reporting. These hours include the time for gathering and maintaining the data needed, and completing and reviewing the collection of information including annual reports. It does not include time for monitoring the activity by observers. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see ADDRESSES).

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the Federal Register to the Assistant Administrator for Fisheries, NOAA.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 228

Marine mammals, Reporting and recordkeeping requirements.

Dated: March 28, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and under the authority of 16 U.S.C 1361 *et seq.* 50 CFR chapter II are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C, 3501 *et seq.*

2. In § 902.1, paragraph (b) the table is amended by removing in the left column under 50 CFR, the entries “228.4”, “228.6”, “228.14”, “228.25”, “228.37”, and “228.55”, and in the right column, in corresponding positions, the control numbers “–0151”; and by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
216.104	–0151
216.106	–0151
216.108	–0151
216.114	–0151
216.125	–0151
216.145	–0151
216.155	–0151
* * * *	*

50 CFR Chapter II

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

3. Subpart B (§ 228.11 through § 228.14), subpart C (§ 228.21 through § 228.26), subpart E (§ 228.41 through § 228.48), and subpart F (§ 228.51 through § 228.57) of part 228 are redesignated as subpart J (§ 216.111 through § 216.114), subpart K (§ 216.121 through § 216.126), subpart M (§ 216.141 through § 216.148) and subpart N (§ 216.151 through § 216.157), respectively, in part 216.

PART 228—[REMOVED]

4. Part 228 is removed.

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

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

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

6. In § 216.3, a new definition for “Director, Office of Protected Resources is added, in alphabetical order, to read as follows:

§ 216.3 Definitions.

* * * * *

Director, Office of Protected Resources means Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

* * * * *

7. A new subpart I is added to read as follows:

Subpart I—General Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities

Sec.

- 216.101 Purpose.
- 216.102 Scope.
- 216.103 Definitions.

- 216.104 Submission of requests.
- 216.105 Specific regulations.
- 216.106 Letter of authorization.
- 216.107 Incidental harassment authorization for Arctic waters.
- 216.108 Requirements for monitoring and reporting under incidental harassment authorizations for Arctic waters.

Subpart I—General Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities

§ 216.101 Purpose.

The regulations in this subpart implement section 101(a)(5) (A) through (D) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1371(a)(5), which provides a mechanism for allowing, 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 geographic region.

§ 216.102 Scope.

The taking of small numbers of marine mammals under section 101(a)(5) (A) through (D) of the Marine Mammal Protection Act may be allowed only if the National Marine Fisheries Service:

(a) Finds, based on the best scientific evidence available, that the total taking by the specified activity during the specified time period will have a negligible impact on species or stock of marine mammal(s) and will not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses;

(b) Prescribes either regulations under § 216.106, or requirements and conditions contained within an incidental harassment authorization issued under § 216.107, setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species or stock of marine mammal and its habitat and on the availability of the species or stock of marine mammal for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(c) Prescribes either regulations or requirements and conditions contained within an incidental harassment authorization, as appropriate, pertaining to the monitoring and reporting of such taking. The specific regulations governing certain specified activities are contained in subsequent subparts of this part.

§ 216.103 Definitions.

In addition to definitions contained in the MMPA, and in § 216.3, and unless the context otherwise requires, in subsequent subparts to this part:

Arctic waters means the marine and estuarine waters north of 60° N. lat.

Citizens of the United States and U.S. citizens mean individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13). U.S. Federal, state and local government agencies shall also constitute citizens of the United States for purposes of this part.

Incidental harassment, incidental taking and incidental, but not intentional, taking all mean an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable or accidental. (A complete definition of "take" is contained in § 216.3).

Negligible impact is 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.

Small numbers means a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.

Specified activity means any activity, other than commercial fishing, that takes place in a specified geographical region and potentially involves the taking of small numbers of marine mammals.

Specified geographical region means an area within which a specified activity is conducted and that has certain biogeographic characteristics.

Unmitigable adverse impact means an impact resulting from the specified activity:

(1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by:

(i) Causing the marine mammals to abandon or avoid hunting areas;

(ii) Directly displacing subsistence users; or

(iii) Placing physical barriers between the marine mammals and the subsistence hunters; and

(2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

§ 216.104 Submission of requests.

(a) In order for the National Marine Fisheries Service to consider authorizing the taking by U.S. citizens of small numbers of marine mammals

incidental to a specified activity (other than commercial fishing), or to make a finding that an incidental take is unlikely to occur, a written request must be submitted to the Assistant Administrator. All requests must include the following information for their activity:

(1) A detailed description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals;

(2) The date(s) and duration of such activity and the specific geographical region where it will occur;

(3) The species and numbers of marine mammals likely to be found within the activity area;

(4) A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks of marine mammals likely to be affected by such activities;

(5) The type of incidental taking authorization that is being requested (i.e., takes by harassment only; takes by harassment, injury and/or death) and the method of incidental taking;

(6) By age, sex, and reproductive condition (if possible), the number of marine mammals (by species) that may be taken by each type of taking identified in paragraph (a)(5) of this section, and the number of times such takings by each type of taking are likely to occur;

(7) The anticipated impact of the activity upon the species or stock of marine mammal;

(8) The anticipated impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses;

(9) The anticipated impact of the activity upon the habitat of the marine mammal populations, and the likelihood of restoration of the affected habitat;

(10) The anticipated impact of the loss or modification of the habitat on the marine mammal populations involved;

(11) The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;

(12) Where the proposed activity would take place in or near a traditional Arctic subsistence hunting area and/or may affect the availability of a species or stock of marine mammal for Arctic subsistence uses, the applicant must submit either a plan of cooperation or

information that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(i) A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;

(ii) A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;

(iii) A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and

(iv) What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation;

(13) The suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking or impacts on populations of marine mammals that are expected to be present while conducting activities and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity. Monitoring plans should include a description of the survey techniques that would be used to determine the movement and activity of marine mammals near the activity site(s) including migration and other habitat uses, such as feeding. Guidelines for developing a site-specific monitoring plan may be obtained by writing to the Director, Office of Protected Resources; and

(14) Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects.

(b)(1) The Assistant Administrator shall determine the adequacy and completeness of a request and, if determined to be adequate and complete, will begin the public review process by publishing in the Federal Register either:

(i) A proposed incidental harassment authorization; or

(ii) A notice of receipt of a request for the implementation or reimplementation of regulations governing the incidental taking.

(2) Through notice in the Federal Register, newspapers of general

circulation, and appropriate electronic media in the coastal areas that may be affected by such activity, NMFS will invite information, suggestions, and comments for a period not to exceed 30 days from the date of publication in the Federal Register. All information and suggestions will be considered by the National Marine Fisheries Service in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization or conditions governing the issuance of an incidental harassment authorization.

(3) Applications that are determined to be incomplete or inappropriate for the type of taking requested, will be returned to the applicant with an explanation of why the application is being returned.

(c) The Assistant Administrator shall evaluate each request to determine, based upon the best available scientific evidence, whether the taking by the specified activity within the specified geographic region will have a negligible impact on the species or stock and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. If the Assistant Administrator finds that the mitigating measures would render the impact of the specified activity negligible when it would not otherwise satisfy that requirement, the Assistant Administrator may make a finding of negligible impact subject to such mitigating measures being successfully implemented. Any preliminary findings of "negligible impact" and "no unmitigable adverse impact" shall be proposed for public comment along with either the proposed incidental harassment authorization or the proposed regulations for the specific activity.

(d) If, subsequent to the public review period, the Assistant Administrator finds that the taking by the specified activity would have more than a negligible impact on the species or stock of marine mammal or would have an unmitigable adverse impact on the availability of such species or stock for subsistence uses, the Assistant Administrator shall publish in the Federal Register the negative finding along with the basis for denying the request.

§ 216.105 Specific regulations.

(a) For all petitions for regulations under this paragraph, applicants must provide the information requested in § 216.104(a) on their activity as a whole, which includes, but is not necessarily limited to, an assessment of total

impacts by all persons conducting the activity.

(b) For allowed activities that may result in incidental takings of small numbers of marine mammals by harassment, serious injury, death or a combination thereof, specific regulations shall be established for each allowed activity that set forth:

(1) Permissible methods of taking;

(2) Means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(c) Regulations will be established based on the best available information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review.

§ 216.106 Letter of Authorization.

(a) A Letter of Authorization, which may be issued only to U.S. citizens, is required to conduct activities pursuant to any regulations established under § 216.105. Requests for Letters of Authorization shall be submitted to the Director, Office of Protected Resources. The information to be submitted in a request for an authorization will be specified in the appropriate subpart to this part or may be obtained by writing to the above named person.

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

(c) Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request.

(d) Notice of issuance of all Letters of Authorization will be published in the Federal Register within 30 days of issuance.

(e) Letters of Authorization shall be withdrawn or suspended, either on an individual or class basis, as appropriate, if, after notice and opportunity for public comment, the Assistant Administrator determines that:

(1) The regulations prescribed are not being substantially complied with; or

(2) The taking allowed is having, or may have, more than a negligible impact on the species or stock or, where

relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

(f) The requirement for notice and opportunity for public review in § 216.106(e) shall not apply if the Assistant Administrator determines that an emergency exists that poses a significant risk to the wellbeing of the species or stocks of marine mammals concerned.

(g) A violation of any of the terms and conditions of a Letter of Authorization or of the specific regulations shall subject the Holder and/or any individual who is operating under the authority of the Holder's Letter of Authorization to penalties provided in the MMPA.

§ 216.107 Incidental harassment authorization for Arctic waters.

(a) Except for activities that have the potential to result in serious injury or mortality, which must be authorized under § 216.105, incidental harassment authorizations may be issued, following a 30-day public review period, to allowed activities that may result in only the incidental harassment of a small number of marine mammals. Each such incidental harassment authorization shall set forth:

(1) Permissible methods of taking by harassment;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(b) Issuance of an incidental harassment authorization will be based on a determination that the number of marine mammals taken by harassment will be small, will have a negligible impact on the species or stock of marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses.

(c) An incidental harassment authorization will be either issued or denied within 45 days after the close of the public review period.

(d) Notice of issuance or denial of an incidental harassment authorization will be published in the Federal Register within 30 days of issuance of a determination.

(e) Incidental harassment authorizations will be valid for a period of time not to exceed 1 year but may be

renewed for additional periods of time not to exceed 1 year for each reauthorization.

(f) An incidental harassment authorization shall be modified, withdrawn, or suspended if, after notice and opportunity for public comment, the Assistant Administrator determines that:

(1) The conditions and requirements prescribed in the authorization are not being substantially complied with; or

(2) The authorized taking, either individually or in combination with other authorizations, is having, or may have, more than a negligible impact on the species or stock or, where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

(g) The requirement for notice and opportunity for public review in paragraph (f) of this section shall not apply if the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals concerned.

(h) A violation of any of the terms and conditions of an incidental harassment authorization shall subject the holder and/or any individual who is operating under the authority of the holder's incidental harassment authorization to penalties provided in the MMPA.

§ 216.108 Requirements for monitoring and reporting under incidental harassment authorizations for Arctic waters.

(a) Holders of an incidental harassment authorization in Arctic waters and their employees, agents, and designees must cooperate with the National Marine Fisheries Service and other designated Federal, state, or local agencies to monitor the impacts of their activity on marine mammals. Unless stated otherwise within an incidental harassment authorization, the holder of an incidental harassment authorization effective in Arctic waters must notify the Alaska Regional Director, National Marine Fisheries Service, of any activities that may involve a take by incidental harassment in Arctic waters at least 14 calendar days prior to commencement of the activity.

(b) Holders of incidental harassment authorizations effective in Arctic waters may be required by their authorization to designate at least one qualified biological observer or another appropriately experienced individual to observe and record the effects of activities on marine mammals. The number of observers required for monitoring the impact of the activity on marine mammals will be specified in the incidental harassment authorization.

If observers are required as a condition of the authorization, the observer(s) must be approved in advance by the National Marine Fisheries Service.

(c) The monitoring program must, if appropriate, document the effects (including acoustical) on marine mammals and document or estimate the actual level of take. The requirements for monitoring plans, as specified in the incidental harassment authorization, may vary depending on the activity, the location, and the time.

(d) Where the proposed activity may affect the availability of a species or stock of marine mammal for taking for subsistence purposes, proposed monitoring plans or other research proposals must be independently peer-reviewed prior to issuance of an incidental harassment authorization under this subpart. In order to complete the peer-review process within the time frames mandated by the MMPA for an incidental harassment authorization, a proposed monitoring plan submitted under this paragraph must be submitted to the Assistant Administrator no later than the date of submission of the application for an incidental harassment authorization. Upon receipt of a complete monitoring plan, and at its discretion, the National Marine Fisheries Service will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan. The applicant must submit a final monitoring plan to the Assistant Administrator prior to the issuance of an incidental harassment authorization.

(e) At its discretion, the National Marine Fisheries Service may place an observer aboard vessels, platforms, aircraft, etc., to monitor the impact of activities on marine mammals.

(f)(1) As specified in the incidental harassment authorization, the holder of an incidental harassment authorization for Arctic waters must submit reports to the Assistant Administrator within 90 days of completion of any individual components of the activity (if any), within 90 days of completion of the activity, but no later than 120 days prior to expiration of the incidental harassment authorization, whichever is earlier. This report must include the following information:

- (i) Dates and type(s) of activity;
- (ii) Dates and location(s) of any activities related to monitoring the effects on marine mammals; and
- (iii) Results of the monitoring activities, including an estimate of the actual level and type of take, species name and numbers of each species observed, direction of movement of

species, and any observed changes or modifications in behavior.

(2) Monitoring reports will be reviewed by the Assistant Administrator and, if determined to be incomplete or inaccurate, will be returned to the holder of the authorization with an explanation of why the report is being returned. If the authorization holder disagrees with the findings of the Assistant Administrator, the holder may request an independent peer review of the report. Failure to submit a complete and accurate report may result in a delay in processing future authorization requests.

(g) Results of any behavioral, feeding, or population studies, that are conducted supplemental to the monitoring program, should be made available to the National Marine Fisheries Service before applying for an incidental harassment authorization for the following year.

8. In the list below, for each section indicated in the left column, remove the reference indicated in the middle column from wherever it appears in the section, and add the reference to the section indicated in the right column.

Section	Remove	Add
Subpart J		
§ 216.113	§ 228.13(a)	§ 216.113(a)
§ 216.114	§ 228.14(c)	§ 216.114(c)
Subpart K		
§ 216.123	§ 228.6	§ 216.106
§ 216.123	§ 228.21	§ 216.121
§ 216.124	§ 228.23	§ 216.123
§ 216.124	§ 228.6	§ 216.106
§ 216.124	§ 228.21	§ 216.121
§ 216.125	§ 228.6	§ 216.106
§ 216.125	§ 228.21	§ 216.121
§ 216.126	§ 228.6	§ 216.106
§ 216.126	§ 228.26(b)	§ 216.126(b)
§ 216.126	§ 228.21	§ 216.121
Subpart M		
§ 216.143	§ 228.41	§ 216.141
§ 216.143	§ 228.45(b)(1)	§ 216.145(b)(1)
§ 216.144	§ 228.43	§ 216.143
§ 216.144	§ 228.6	§ 216.106
§ 216.144	§ 228.46	§ 216.146
§ 216.146	§ 228.41	§ 216.141
§ 216.146	§ 228.6	§ 216.106
§ 216.147	§ 228.6	§ 216.106
§ 216.147	§ 228.41	§ 216.141
§ 216.147	§ 228.45(d)	§ 216.145(d)
§ 216.147	§ 228.41(b)	§ 216.141(b)
§ 216.147	§ 228.43(b)	§ 216.143(b)
§ 216.148	§ 228.6	§ 216.106
§ 216.148	§ 228.47	§ 216.147
§ 216.148	§ 228.41(b)	§ 216.141(b)
Subpart N		
§ 216.153	§ 228.6	§ 216.106
§ 216.153	§ 228.51(a)	§ 216.151(a)
§ 216.154	§ 228.53	§ 216.153
§ 216.154	§ 228.6	§ 216.106
§ 216.154	§ 228.56	§ 216.156
§ 216.156	§ 228.6	§ 216.106
§ 216.156	§ 228.51(a)	§ 216.151(a)

Section	Remove	Add
§ 216.156	§ 228.55(f) and (g)	§ 216.155(f) and (g)
§ 216.156	§ 228.51(b)	§ 216.151(b)
§ 216.156	§ 228.53(b)	§ 216.153(b)
§ 216.156	§ 228.55(g)	§ 216.155(g)
§ 216.157	§ 228.6	§ 216.106
§ 216.157	§ 228.46	§ 216.146
§ 216.157	§ 228.51	§ 216.151

9. In part 216, subpart L (§ 216.131 through § 216.138), subpart O (§ 216.161 through § 216.169), subpart P (§ 216.170 through § 216.179), subpart Q (§ 216.180 through § 216.189) and subpart R (§ 216.190 through § 216.199) are added and reserved.

[FR Doc. 96-8494 Filed 4-9-96; 8:45 am]
BILLING CODE 3510-22-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8658]

RIN 1545-AL84

Determination of Interest Expense Deduction of Foreign Corporations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations [TD 8658] which were published in the Federal Register for Friday, March 8, 1996 (61 FR 9326). The final regulations relate to the determination of the interest expense deduction of foreign corporations and apply to foreign corporations engaged in a trade or business within the United States.

EFFECTIVE DATE: June 6, 1996.

FOR FURTHER INFORMATION CONTACT: Ahmad Pirasteh or Richard Hoge (202) 622-3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under sections 882, 864(e), 988(d), and 7701(l) of the Internal Revenue Code.

Need for Correction

As published, the final regulations [TD 8658] contain errors that are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations which are the subject of FR Doc. 96-5262 is corrected as follows:

§ 1.882-0 [Corrected]

1. On page 9329, column 1, § 1.882-0, the section heading entry for § 1.882-1, "§ 1.882-1 Taxation of foreign corporations engaged in U.S. business or of foreign corporations treated as having effectively connected income." is corrected to read

§ 1.882-1 Taxation of foreign corporations engaged in U.S. business or of foreign corporations treated as having effectively connected income.

§ 1.882-5 [Corrected]

2. On page 9330, column 3, § 1.882-5, paragraph (a)(6), line 7 from the bottom of the paragraph, the language "respect to U.S.-booked liabilities that" is corrected to read "respect to U.S. booked liabilities that".

3. On page 9331, column 1, § 1.882-5, paragraph (a)(8), paragraph (ii) of *Example 1*, line 12, the language "(c)(2)(vi), and (d)(2)(vii) or (e)(1)(ii) this" is corrected to read "(c)(2)(vi), and (d)(2)(vii) or (e)(1)(ii) of this".

4. On page 9332, column 2, § 1.882-5, paragraph (b)(3), last four lines of the paragraph, the language "less frequently than monthly by a large bank (as defined in section 585(c)(2)) and semi-annually by any other taxpayer" is corrected to read "less frequently than monthly (beginning of taxable year and monthly thereafter) by a large bank (as defined in section 585(c)(2)) and semi-annually (beginning, middle and end of taxable year) by any other taxpayer".

5. On page 9332, column 2, § 1.882-5, paragraph (c)(2)(i), lines 3 and 2 from the bottom of the paragraph, the language "annually by a large bank (as defined in section 585(c)(2)) and annually by any" is corrected to read "annually (beginning, middle and end of taxable year) by a large bank (as defined in section 585(c)(2)) and annually (beginning and end of taxable year) by any".

6. On page 9334, column 3, § 1.882-5, paragraph (d)(6), paragraph (i) of *Example 1*, the table

	Value	
Asset 1	\$2,000
Asset 2	2,500
Asset 3	5,500
	Amount	Interest
Liability 1	\$800	56
Liability 2	3,200	256
Capital	6,000	0

is corrected to read

	Value	
Asset 1	\$2,000
Asset 2	2,500
Asset 3	5,500

	Value	
	Amount	Interest Expense
Liability 1	\$800	56
Liability 2	3,200	256
Capital	6,000	0

Michael L. Slaughter,
Acting Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 96-8911 Filed 4-9-96; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN-133-FOR; Amendment No. 95-11]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with additional requirements, a proposed amendment to the Indiana regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to the Indiana Surface Coal Mining and Reclamation Act (ISCMRA) as enacted by the Indiana General Assembly (1995) in House Enrolled Act 1575 (HEA 1575). The proposed amendment concerns lands eligible for remining, responsibilities of the director of Indiana Department of Natural Resources (IDNR), and surface and underground tonnage fees. The amendment is intended to revise the Indiana program to be consistent with SMCRA and to incorporate State initiatives. The proposed revisions concerning lands eligible for remining are intended to provide incentives for the remining and reclamation of previously mined and inadequately reclaimed lands eligible for expenditures under section 402(g)(4) or 404 of SMCRA as provided for by the Energy Policy Act of 1992.

EFFECTIVE DATE: April 10, 1996.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania