APPENDIX A–II TO PART 541—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED IN-PART FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturers	Subject lines	Parts to be marked
GENERAL MOTORS	Cadillac Eldorado	Engine, Transmission.
	Cadillac Sixty Special [1]	Engine, Transmission.
	Oldsmobile Ninety-Eight	Engine, Transmission.
	Pontiac Firebird	Engine, Transmission.
	Chevrolet Camaro	Engine, Transmission.
	Oldsmobile Eighty-Eight	Engine, Transmission.

[1] Renamed the Cadillac Concours beginning with MY 1994.

APPENDIX B—PASSENGER MOTOR VEHICLE LINES (EXCEPT LIGHT-DUTY TRUCKS) WITH THEFT RATES BELOW THE 1990/91 MEDIAN THEFT RATE, SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

Manufacturer	Subject lines
Ford	Crown Victoria.
	Mercury Grand Marquis.
	Mercury Sable.
General Motors	Chevrolet Astro (MPV).
	GMC Safari (MPV).
Honda	Civic.

Issued on May 18, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 970703165–9117–03; I.D. 062397A]

RIN 0648–AK00

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, upon application from North Atlantic Energy Service Corporation (North Atlantic), issues regulations to govern the unintentional take of small numbers of seals incidental to routine operations of the Seabrook Station nuclear power plant, Seabrook, NH (Seabrook Station). Issuance of regulations governing unintentional incidental takes in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. This rulemaking does not authorize this activity; such authorization is under the jurisdiction of the Nuclear Regulatory Commission and is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of affecting the least practicable adverse impact on the species, and its habitat, and on the availability of the species for subsistence uses.

DATES: Effective from July 1, 1999, through June 30, 2004.

ADDRESSES: A copy of the application, Environmental Assessment (EA) and other available documents may be obtained by writing to Donna Wieting, Acting Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring MD 20910–3226, or by telephoning the contacts listed below (see **FOR FURTHER INFORMATION CONTACT:** NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055, or Scott Sandorf, Northeast Regional Office, NMFS, (978) 281–9388.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking 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 issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s) of marine mammals, will not have an unmitigable adverse impact on the availability of these species for subsistence uses, and if regulations are prescribed setting forth the permissible method of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On June 16, 1997, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from North Atlantic to take marine mammals incidental to routine operations of the Seabrook Station. Seabrook Station is a single unit, 1,150 megawatt nuclear power generating facility located in Seabrook, NH. Cooling water for plant operations is supplied by three intake structures approximately 1 mile (1.6 km) offshore in about 60 feet (18.3 m) of water. During normal power operations, about 469,000 gallons per minute are drawn through the intakes to a 19–foot (5.8 m) diameter, 3–mile long (4.8 km) tunnel beneath the seafloor and into large holding bays (called forebays) at the power plant. Lethal takes of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) are known to have occurred and are expected to continue to occur as the animals enter the cooling water intake structures and apparently drown enroute to the forebays.

Each of the three seawater intake structures consists of a velocity cap that is connected to the subterranean intake tunnel by vertical risers. The velocity intake caps are 30 feet (9.1 m) in diameter and rest, mushroom-like, on top of 9–foot (2.7 m) diameter risers that vertically descend 110 feet (33.5 m) to connect with the horizontal intake tunnel. The bottom of the horizontal intake cap opening is 10 feet (3.05 m) above the ocean bottom, and the intake openings are covered by vertical bars that are spaced 16 in. (40.6 cm) apart. The intent of the vertical bars is to reduce the amount of large debris that can enter the intake. The purpose of the

cooling water intake design is to minimize the rate of water flow at the entrance to the intakes and thereby minimize the entrainment of marine organisms. The rate of water flow at the edge of the velocity intake caps during normal, continuous power operations is about 0.5 feet per second (0.15 m/sec; 0.3 knots).

Because the structures are offshore and submerged, seals have not been observed entering the intakes, but they are discovered in the forebays of the station. It is not believed that the horizontal flow rate at the entrance to the intakes is strong enough to sweep seals into the intakes. The animals may swim into the structures in pursuit of prey or by curiosity. Once inside the velocity cap, the rate of water flow increases in the risers and intake tunnel. The accelerating, downward turning flow and the low-light conditions may disorient the seals and may inhibit their escape from the intakes. For an object traveling passively with the water flow, the minimum transit time from the offshore intake velocity cap to the forebay is approximately 80 minutes. A seal that enters the intakes and is unable to find its way out would not be able to survive the transit through the intake tunnel to the plant.

Though Seabrook Station has been in commercial operation since August 1990, no seal takes were known to have occurred prior to 1993 when the remains of two seals were discovered. In 1994, the remains of seven seals were found and, in 1995, the remains of six to seven were found. In 1996, 12 to 17 animals were taken and, in 1997, 10 seals were taken at the facility. Lethal takes for 1998 totaled 13 seals. Given that the local abundance of harbor seals is known to be increasing and that plant operations are scheduled to continue, as yet unmodified, takes are likely to continue to occur in the coming years. The expected number of takes cannot be estimated at this point, but an examination of past years' takes may illustrate a trend for upcoming years.

Description of the Habitat and Marine Mammals Affected by the Activity

A description of the U.S. Atlantic coast environment, including marine mammal abundance, distribution, and habitat can be found in the EA on this rule. Additional information on Atlantic coast marine mammals can be found in Waring *et al.* (1998). These documents are available upon request (see ADDRESSES).

Summary of Potential Impacts

From the initial report of a take in 1993 through 1998, the remains of 50 to 56 seals have been discovered in Seabrook Station's forebays or on the devices used to clean the forebays' condenser intake screens. Human access to the forebays is restricted and visibility is poor. Consequently, intact animals occasionally go undetected in the forebay, and pieces of hide and bones are recovered in the screen washings as the animals decompose, causing uncertainty in the total number of animals taken to date. The remains are turned over to authorized members of the Northeast Marine Mammal Stranding Network for analysis and disposal. Through 1998, the remains of four gray seals, and skull fragments of two harp seals and of one hooded seal have been identified. Thirty-seven of the seals have been positively identified as harbor seals. For the harbor seals whose ages could be determined, the majority have been young-of-the-year. Where possible, examination has shown that 11 of the seals were males and 16 were females. To summarize, 44 of the seals taken have been identified to species and 27 have been identified to sex.

The regulations limit the annual incidental take for the operation of Seabrook Station to 20 harbor seals and four of any combination of gray, harp and hooded seals. Harbor seals have constituted the majority of animals taken; consequently, that species has been allocated a separate annual authorization. These limits are considered very conservative because they are well within the Potential Biological Removal (PBR) level for those species whose PBR levels have been calculated. The PBR level for the western North Atlantic harbor seals is 1,859 and the minimum population estimate is 30,990. The gray seal's regional population is not as large as that of the harbor seal. The PBR level is 122 and has a minimum population estimate of 2,010 in U.S. waters. Harp and hooded seals do not have a calculated PBR level because the minimum population in U.S. waters is unknown. While there is no PBR level calculated for the harp or hooded seals, the minimum population estimates for these species are 4.8 million and 400,000, respectively.

Mitigation

North Atlantic is presently investigating a number of measures to prevent or reduce the lethal taking of seals at Seabrook Station. To date, no preventative measures have been implemented, but some alternatives seem to warrant further study. Designs of a physical barrier system and an acoustical deterrence array are still being evaluated. These alternatives are being reviewed for practicability with regard to nuclear power safety, costs, and ability to withstand the high energy offshore environment.

It should be recognized that, due to inherent difficulties in designing, constructing, and maintaining a structure or device in the offshore high energy environment of the intakes, only a reliable and durable mitigation system is feasible. Any chosen mitigation measure must also be economically and technologically feasible as a means to effect ''the least practicable adverse impact'' on the described pinniped species. To ensure that any mitigation method that may be employed is feasible, NMFS is allowing North Atlantic to use this authorization period to fully explore any feasible mitigation methods. If a method or combination of methods is found to be feasible, it must also be tested, constructed, deployed, and be operational during the defined schedule that occurs within the 5-year authorization.

If, after North Atlantic conducts the appropriate feasibility studies, it is determined that no mitigation measure is proven to be feasible due to technological, economic, or safety reasons, then at the next renewal of the authorization, NMFS and North Atlantic must further explore and undertake steps to promote the conservation of the population of Gulf of Maine seals as a whole. These measures may take the form of studies that examine population trends, migration patterns, or enhancement of the survival of young-of-the-year seals.

Monitoring

This final rule requires North Atlantic personnel to continue their efforts to monitor the station for the presence of entrapped seals. Timely awareness of a take allows for a more comprehensive evaluation on the level of takes and on the characteristics of each seal. Seals that go undetected in the intake circulating system may decompose and be missed during examination of screen wash debris.

Monitoring under the final rule must include: (1) twice daily visual inspection of the circulating water and service water forebays, (2) daily inspections of the intake transition structure from April 1 through December 1, unless weather conditions prevent safe access to the structure, (3) screen washings once per day during the peak months of seal takes and twice a week during non-peak months of seal takes, and (4) examination of the screen wash debris to determine if any seal remains are present.

Reporting Requirements

Seal takes must be reported to NMFS through both oral and written notification. NMFS must be notified via telephone by the close of business on the next day following the discovery of any marine mammal or marine mammal parts. Written notification to NMFS must be made within 30 days. The written notification must also contain the results of any examinations conducted by qualified members of the Marine Mammal Stranding Network as well as any other information relating to the take.

Comments and Responses

On August 25, 1998, NMFS published a proposed rule for this action in the *Federal Register* (63 FR 45213). During the 45-day comment period, NMFS received comments from a number of organizations. The comments received are addressed here.

Compliance with the MMPA

Comment 1: In Seabrook's application, it states that no takes of gray seals have occurred. Takes of this species have occurred at the station, and this fact should be corrected in an amendment to the application.

Response: At the time that the application was submitted by North Atlantic, no takes of gray seals had yet been reported. However, the application did request an exemption for takes of gray seals due to the potential for takes, and the proposed rule also described an authorization for this species. Therefore, no amendment is necessary.

Comment 2: Mitigation measures should be attempted prior to any exemption being issued.

Response: Incidental taking of seals due to this activity requires an authorization under the MMPA. An authorization under the MMPA is required by the applicant to continue taking these seals incidental to its activity. If the issuance of an authorization is delayed, the applicant could continue to be in violation of the take prohibitions of the MMPA. As part of this rulemaking, North Atlantic will have to investigate mitigation alternatives. Morever, the MMPA does not require as a condition of granting incidental take authorizations, that mitigation measures be in place before the granting of the authorization.

Comment 3: Plant officials should be held accountable for the deaths of all seals that are taken prior to any authorization being issued.

Response: The taking of marine mammals is prohibited under the MMPA unless exempted by the MMPA or authorized by permit. While seal takes at Seabrook Station in the past constitute a violation of the MMPA, NOAA has discretion on whether to enforce the provisions of the MMPA. Because North Atlantic has fully cooperated with NMFS by preparing an application for a small take exemption and has promptly notified NMFS of each take, NOAA has determined that no benefit would be gained by issuing notices of violation at this time.

Comment 4: The proposed rule is against the spirit of the MMPA because it justifies the killing of four species of seals by assuming that the hardiest seal species is doing fine and that harbor seals best lend themselves to evaluating future trends in the regional seal population. The proposed rule does not reflect this conclusion nor reflect the fact that marine mammal populations fluctuate and can not be predicted with certainty.

Response: Section 101(a)(5)(A) of the MMPA directs NMFS to allow, upon request, the incidental taking, including lethal taking, of marine mammals by U.S. citizens who engage in an otherwise lawful activity (other than commercial fishing) within a specified geographical region if certain findings are met and regulations issued. One of these findings is that the taking must have no more than a negligible impact upon the species in question. While marine mammal populations may fluctuate, harbor seal surveys have been conducted in this region since 1981. Since that date, the estimated average population increase was 4.2 percent for harbor seals. In addition, the Western North Atlantic populations of gray, harp, and hooded seals appear to be increasing (Waring *et al.*, 1998). While the exact numbers of a particular marine mammal population may be difficult to identify, NMFS is able to determine relative trends for these particular species in U.S. waters. However, based upon comments received, the final rule has been revised and will have an authorized annual take limit of twenty harbor seals and four of any combination of gray, harp, and hooded seals.

Comment 5: If optimum sustainable population (OSP) has not been determined for some of the species, no authorization can be issued under the MMPA. Since there is no PBR level established for harp and hooded seals, the OSP cannot be determined. Therefore, the negligible impact can not be determined. As in *Kokechik Fisherman's Association v. Secretary of Commerce*, the proposed rule violates the MMPA.

Response: NMFS had determined that the *Kokechik* case does not bar issuance of a section 101(a)(5)(A) authorization in this case. Takings under section 101(a)(5)(A) of the MMPA, which authorizes the taking of small numbers of marine mammals by activities other than commercial fishing, are allowed if certain conditions are satisfied and the taking is having no more than a negligible inpact. Since these activities are having no more than a negligible impact on species and stocks, they are clearly exempt from the requirements of sections 103 and 104 with respect to making OSP determinations for each affected stock prior to any take authorization (section 101(a)(5)(C)(ii)).

As described in detail in the joint NMFS/U.S. Fish and Wildlife Service 1989 final rulemaking implementing the 1988 MMPA Amendments to the small take authorization section (see 54 FR 40338, September 29, 1989), a formal OSP determination is not required to make a negligible impact determination. Instead, as in this case, NMFS can make judgements on a case by case basis on how the anticipated incidental taking will affect the status and population trends of the species or stocks concerned.

Comment 6: In addressing the level of impacts, the MMPA and Clean Water Act (CWA), section 316(b), are in conflict. The standards under the MMPA are in conflict with the CWA when examining the technology available and the requirements for utilizing what is considered appropriate technology under both the MMPA and the CWA. Accordingly, in reconciling these two statutory schemes, the emphasis should be on the greatest level of protection possible. The Environmental Protection Agency (EPA) and NMFS should also engage in active consultation and coordination on this matter to ensure that NMFS and EPA exercise their respective authorities in a coordinated fashion.

Response: NMFS has been discussing, and will continue to discuss, this action with the EPA with respect to the MMPA and EPA's authority under the CWA. Nothing in this MMPA rulemaking prohibits the EPA from taking any other independent action under its authorities under the CWA. This regulation applies only to NMFS and its authority to issue regulations under the MMPA.

Comment 7: Why was 5 years chosen as the maximum duration of the authorization when a duration of lesser time could have been selected?

Response: Since Seabrook will likely remain in operation until at least 2026, North Atlantic could conceivably require a number of authorizations

under the MMPA. By choosing 5 years as the duration of the authorization, NMFS is attempting to take a farsighted approach to any regulatory requirements. Also, during this initial authorization period, North Atlantic will be undertaking a number of steps to attempt to mitigate the seal takes, and this process may require the majority of this initial authorization period. However, the Letter of Authorization (LOA) must be renewed annually and if North Atlantic is not complying with the conditions of the LOA, or, if other information becomes available about the level of impact of the taking of seals, then NMFS may revoke the authorization.

Marine Mammal Concerns

Comment 8: From the information presented by NMFS, it appears that the taking that would be authorized over the 5-year period would have a negligible impact on the affected populations.

Response: NMFS concurs with this assessment.

Comment 9: Species accounts in the draft EA and the application should be corrected to match the most recent stock assessments.

Response: The final EA will contain the information from the most recent NMFS marine mammal stock assessments. However, the application does not need to be corrected because it used the stock assessment information that was most current at the time of its submission.

Comment 10: The draft EA has no discussion of other sources of mortality to these marine mammal species such as mortality related to fishery interactions.

Response: The final EA contains information on other sources of mortality, such as mortality from commercial fishery interactions.

Comment 11: Any takes of harp seals when combined with the total allowable catch in Canada and the directed fishery in Greenland approaches or exceeds what would be the PBR level when calculated using the United States PBR level formula.

Response: For a take of a species to be authorized under this process, the incidental take of that species must have no more than a negligible impact on the species or stock of marine mammal. 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.'' To date, there have been two reported takes of harp seals at Seabrook Station (one in 1995 and one in 1997). NMFS stated in its 1998 Stock Assessment Report that harp seals are primarily a Canadian stock with an estimated minimum population of 4.8 million. This final rule establishes a maximum take of four harp seal per year if no takes of gray or hooded seals occur. Therefore, incidental takes of harp seals by North Atlantic have, and will continue to have, no more than a negligible impact.

Comment 12: Given that no PBR level exists for harp and hooded seals, should North Atlantic be required to initiate a population study of these species in order to determine whether its operation will really have a negligible impact?

Response: Although there are no established PBR levels for harp and hooded seals, there is sufficient information for these species that allows for an estimate of their population sizes and trends in abundance. Both stocks indicate an increasing population size in U.S. waters. Considering these increasing U.S. and Western North Atlantic stock sizes, and given that the location of the major portion of harp and hooded seal populations is in Canadian waters, population studies of these species is unnecessary. For this rulemaking, NMFS considered the best scientific information available relative to pinniped populations, in addition, there is no actual requirement in the MMPA for the applicant to fund or conduct additional research.

Comment 13: A proposed annual authorization of 34 seals seems unnecessarily high, given the annual takes in previous years.

Response: A conservative number was proposed as the limit for authorized annual takes to ensure, in part, that North Atlantic would have the ability to pursue mitigation options without the risk of reaching their annual authorization limit and thereby invalidating their authorization under the MMPA for the remainder of the year. However, due to the more stable incidental take levels that occurred in 1997 (10 seals) and 1998 (13 seals) and based upon comments received, the final rule lowers the annual take authorization to 20 harbor seals and 4 of any combination of gray, harp, and hooded seals. Lowering the annual authorization to 24 seals from the previous limit of approximately 34 animals more closely parallels the current observed trends in takes.

Comment 14: Could the rule employ a graduated take limit that increases over the length of the authorization to account for range expansion and population increases?

Response: While the comment has merit, an increasing quota is unnecessary (see response to comment 13). The maximum length of time for the small take authorization under the MMPA to North Atlantic is 5 years. At the time of any future rulemaking for reauthorization of an exemption under the MMPA, revised conservative take limits may be set that would reflect recent knowledge of the respective pinniped populations and the takes documented during the authorization. Any revised take limit would also reflect the utilization of any mitigation measures that are in effect at the intake cooling water structures.

Comment 15: Is the annual authorized take allowed to increase with increasing PBR level?

Response: As mentioned previously, based upon comments received, the final rule uses a different method of establishing the total annual authorized takes than that originally proposed. For each year of this authorization, a maximum of 20 harbor seals may be taken as well as a maximum of 4 of any combination of gray, harp, and hooded seals per year. Those levels are not proposed to increase during this 5-year authorization. Depending upon the success of implemented mitigation, future authorizations may propose increased or decreased levels of take whether or not individual PBRs increase.

Comment 16: The draft EA erroneously states that the New Hampshire coastal area is not in the primary range of the gray seal.

Response: The New Hampshire coastal region is not a known breeding or pupping area for the gray seal. While colonies do exist in the Nantucket area, the New Hampshire coastal area is at the edge of the range for the species and is not considered a concentration area for gray seals.

Mitigation Concerns

Comment 17: Further testing and design of barriers should be undertaken, and this should be a condition of any temporarily granted small take authorization.

Response: If a mitigation measure such as barriers is determined, by NMFS, to be feasible with respect to such factors as nuclear power safety, available technology, economics, and the ability of the measure to withstand the high energy offshore environment, a pilot program must be implemented to test any alternative that is chosen as a mitigation design. Any testing of a mitigation alternative will take place after an authorization is initially issued.

Comment 18: The use of Acoustic Harassment Devices (AHDs) is opposed as a deterrence option at Seabrook Station. They displace cetaceans as

demonstrated in the Olesiuk *et al.* (1995) paper relating to harbor porpoise in British Colombia. Harbor porpoise were displaced up to 3.5 kilometers from the source of the AHDs.

Response: The evidence being presented that AHDs displace cetaceans, specifically harbor porpoise, is based only on the single cited study which was conducted in a very different physical environment from that which occurs at Seabrook Station. Around aquaculture facilities in Maine, harbor porpoise have been observed among pens with active AHDs. Therefore, it is unknown whether or not AHDs would displace harbor porpoise in this case. In determining whether AHDs are practicable mitigation measures NMFS will consider all of the pros and cons of such devices and their impact on pinnipeds and other marine mammals.

Comment 19: The use of AHDs as a deterrent option would likely constitute a form of intentional taking not allowed under Section 101(a)(5)(A) of the MMPA.

Response: Section 101(a)(5)(A) requires NMFS to implement ''regulations setting forth * * * permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat * * *.'' Therefore, when mitigation measures have been identified to lower the potential for marine mammals to be seriously injured or killed, those measures, including intentional harassment measures would need to be authorized under the appropriate provision of the MMPA.

Comment 20: Why is NMFS allowing a delay in implementing possible mitigation measures after it has received the required report of possible mitigation measures?

Response: The delay is necessary to allow the applicant the time necessary to conduct a pilot study at the site of the intakes as well as to possibly install a more permanent mitigation measure following that study. The applicant could implement measures in a shorter period of time than was determined to be feasible.

Comment 21: Commenters were concerned over the time period for implementation of a chosen mitigation alternative once a method was determined feasible. Comments suggested that flexibility be given to North Atlantic to take advantage of outages (periods when the intakes are shut down) when, implementing alternatives, both before and after the 42-month period.

Response: NMFS has determined that the 42 months is a practicable and reasonable requirement for have North Atlantic to implement its mitigation measures. If an outage is required to complete any necessary installation, then North Atlantic will have to utilize an outage period prior to the 42-month period. Moreover, North Atlantic is free to use any outage before the end of the 42-month period to implement mitigation measures.

Monitoring Concerns

Comment 22: The increased visual inspections of the forebays are identifying seals in the forebay before they significantly decompose.

Response: NMFS agrees that the increased visual inspections are identifying seals more frequently than in the past. However, seal remains are still being recovered in the screen wash assessments, so the visual inspections are not completely effective in discovering seals.

Comment 23: North Atlantic has been using high powered searchlights to inspect the forebays for the past year which has made the visibility adequate to identify seal carcasses during the twice-daily visual inspections.

Response: The use of searchlights may contribute to an increase in the ability of inspectors to observe any animals in the forebay. However, occasionally water conditions prevent observation of seals beneath the surface of the water, regardless of the tools currently being used by inspectors.

Comment 24: In the unlikely event that a seal is not observed visually and decomposes, any seal fragments will be noticed during the screen wash assessment.

Response: While seal remains are observed during screen wash assessments that were not previously visually observed, there is no conclusive proof that current methods of inspection are able to observe all seals taken. However, the majority of seals are likely discovered under current practices.

Comment 25: In months in which seal mortality has been the greatest, screen cleanings (in the forebays) should occur twice a day rather than twice a week.

Response: NMFS agrees in part. At present, North Atlantic conducts twice-a-week screen washings, as well as visual inspections of both forebays at least twice per day. However, given that seals are being occassionally missed by visual inspections of the forebays, requiring one screen washing per day during the peak months of seal takes is considered by NMFS to be adequate to better monitor and record seal takes. During non-peak months of seal takes, screen washings will be required twice a week.

Comment 26: The requirement for the frequency of inspection of the intake transition structure should be changed to two inspections per week between June 1 and October 31 of each year as opposed to the proposed rule requirement for year-round daily inspections.

Response: To make the monitoring more effective, the requirement for the inspection of the intake transition structure is changed from the proposed rule to daily inspections from April 1 through December 1 of each year unless weather conditions prevent safe access to the structure.

Comment 27: The personnel inspecting the intake circulating water system and screen wash debris should be determined to be qualified, based on their having a sufficient knowledge of pinniped identification, rather than by a determination of the NMFS Regional Administrator to approve inspecting personnel.

Response: The final rule reflects this comment by allowing North Atlantic to designate inspection personnel based on a determination that they have the ability to accurately identify pinniped and marine mammal individuals and marine mammal parts that occur as a result of the inspections and assessments.

Comment 28: Is the nearfield monitoring (as described in Seabrook's application) sufficient to document migration, habitat use, and foraging behavior of the species? Would this monitoring be required only if it is determined that no mitigation measure is feasible?

Response: Monitoring sufficient to documenting habitat and foraging behavior is not necessary for this authorization. However, as was stated in the proposed rule, if no mitigation is found to be feasible, then studies that explore components of pinniped ecology in the region may be required. Therefore, at the present time, the studies that North Atlantic currently undertakes for nearfield monitoring of seals are considered sufficient.

Reporting Concerns

Comment 29: In the report that North Atlantic will have to submit describing potential mitigation measures, North Atlantic should also be required to fully describe those measures that it had previously considered, but determined would not be feasible.

Response: NMFS concurs and the final rule includes this change.

Comment 30: Oral reports made upon the discovery of a seal or seal parts should be allowed to be made by the close of business on the next day

following the finding of any seals or seal parts or other marine mammal parts.

Response: NMFS concurs and has modified the rule accordingly.

Comment 31: A request was made to change the requirement for the submission of any necropsy reports to NMFS from 15 business days to 30 days to better accommodate the staff from the New England Aquarium who perform the examinations.

Response: NMFS concurs and has modified the rule accordingly.

Changes From the Proposed Rule

NMFS has modified the final rule as follows:

1. The annual authorized take in § 216.130(b) is limited to a maximum of 20 harbor seals and four of any combination of gray, harp, and hooded seals. These numbers more closely parallel observed takes in recent years but still provide the applicant a conservative limit with which to pursue a mitigation alternative.

2. The effective dates of the rule stated in § 216.131 is effective from July 1, 1999, through June 30, 2004.

3. The report required by § 216.134 to be submitted within 6 months from the issuance of the final rule must include a full description of any mitigation measures that were previously considered, but determined not to be feasible. This will allow NMFS to conduct a more thorough review of any mitigation alternatives prior to any implementation of a measure at the intakes.

4. The date § 216.134 requires for any chosen mitigation measure to be implemented by is no later than 42 months after the date of issuance of the final rule. The elimination of the option to have any chosen mitigation alternative implemented by 42 months or at the closest scheduled plant outage before or after that date will allow the applicant sufficient time to study and implement a mitigation alternative yet establishes a definitive deadline for work to be completed.

5. Section 216.135(b) requires that personnel performing inspections have sufficient knowledge of pinniped identification to discover seal or seal parts during the required inspections and assessments. This removes the burden of the NMFS Regional Administrator to review each individual who is assigned inspection duties by North Atlantic.

6. Section 216.135(d) requires that the intake transition structure be inspected daily from April 1 through December 1 unless weather conditions prevent safe access to the structure. NMFS believes that given the weather conditions at the intake transition structure and the periodic nature of the majority of seal takes, there would be no added benefit gained from year-round daily inspections.

7. Section 216.135(e) requires one screen washing per day during the peak months of seal takes as specified in the LOA. During non-peak months of seal takes, screen washings are required twice a week. Increasing the frequency of screen washings during the peak months of seal takes may allow for a greater opportunity to observe any seals that have been transported to the forebays that were not otherwise observed visually during the regular forebay inspections.

8. Section 216.135(f) requires oral notification to NMFS to occur within one business day following the discovery of any seal or seal parts, or other marine mammal or marine mammal parts. This change provides prompt notification to NMFS of any seal takes but accounts for the work schedule of NMFS personnel who receive the reports.

9. Section 216.135(h) requires that NMFS receives written notification of the discovery of any seal or seal parts, or other marine mammal or marine mammal part, within 30 days from the time. This change will allow the staff at the New England Aquarium more time to conduct the required necropsies and examinations of any seal carcasses recovered.

Conclusions

Based upon the information contained in North Atlantic's application, in the EA prepared for this action, and in this document, NMFS has determined that the taking of up to 20 harbor seals and four of any combination of gray, harp, and hooded seals, annually during the next five years, would have no more than a negligible impact (as defined in § 216.3) on these stocks of marine mammals. The best scientific information available indicates that the harbor seal stocks are increasing at about 4.2 percent annually. In addition, the Western North Atlantic populations of gray, harp, and hooded seal stocks also appear to be increasing in abundance (Waring *et al.*, 1998). The small number of takes by Seabrook is unlikely to reduce the rate of reproduction of these animals.

National Environmental Policy Act

In conjunction with the notice of proposed authorization, NMFS released a draft EA that addressed the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. Comments received on the draft EA during the comment period have been addressed in this document. As a result of the findings made in the revised EA, NMFS has concluded that implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. As a result of that finding, an Environmental Impact Statement will not be prepared. A copy of the EA is available upon request (see **ADDRESSES**).

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 Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that, if adopted, it would not have a significant economic impact on a substantial number of small entities in the meaning of the Regulatory Flexibility Act. No comments were received on the certification and the basis for it has not changed. Accordingly, a regulatory flexibility analysis was not prepared.

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 (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the provisions of the PRA and which has been approved by the OMB under control number 0648–0151. This is the requirement for an annual report. Requirements for reporting on seals and seal parts found, and on mitigation measures taken are not subject to the PRA since they apply only to a single respondent and are not in a rule of general applicability.

The reporting burden for this collection is estimated to be approximately 80 hours, including the time for gathering and maintaining the data needed and for completing and reviewing the collection of information. 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**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties,

Reporting and recording requirements, Seafood, Transportation.

Dated: May 18, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth 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. In § 216.3 a new definition for ''Administrator, Northeast Region'' is added in alphabetical order to read as follows:

§ 216.3 Definitions.

* * * * *

Administrator, Northeast Region means Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298

* * * * *

3. Subpart L is added to read as follows:

Subpart L—Taking of Marine Mammals Incidental to Power Plant Operations

Sec.

216.130 Specified activity, specified geographical region, and incidental take levels.
216.131 Effective dates.
216.132 Permissible methods of taking.
216.133 Prohibitions.
216.134 Mitigation requirements.
216.135 Monitoring and reporting.
216.136 Renewal of the Letter of Authorization.
216.137 Modifications to the Letter of Authorization.
216.138—216.140 [Reserved]

Subpart L—Taking of Marine Mammals Incidental to Power Plant Operations

§ 216.130 Specified activity, specified geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) by U.S. citizens engaged in power plant operations at the Seabrook Station nuclear power plant, Seabrook, NH.

(b) The incidental take of harbor, gray, harp, and hooded seals under the activity identified in this section is limited to 20 harbor seals and 4 of any combination of gray, harp, and hooded seals for each year of the authorization.

§ 216.131 Effective dates.

Regulations in this subpart are effective from July 1, 1999 through June 30, 2004.

§ 216.132 Permissible methods of taking.

Under a Letter of Authorization issued to North Atlantic Energy Services Corporation for Seabrook Station, the North Atlantic Energy Services Corporation may incidentally, but not intentionally, take marine mammals specified in § 216.130 in the course of operating the station's intake cooling water system.

§ 216.133 Prohibitions.

Notwithstanding takings authorized by § 216.130(a) and by the Letter of Authorization, issued under § 216.106, the following activities are prohibited:

(a) The taking of harbor seals, gray seals, harp seals, and hooded seals that is other than incidental.

(b) The taking of any marine mammal not authorized in this applicable subpart or by any other law or regulation.

(c) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

§ 216.134 Mitigation requirements.

The holder of the Letter of Authorization is required to 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 impact on the seals specified in § 216.130. The report shall also include a recommendation of which measures, if any, the holder could feasibly implement. A description of any mitigation measures that Seabrook Station has considered, but determined would not be feasible, must be included as well. After submission of such report, NMFS shall determine whether the holder of the Letter of Authorization must implement measures to effect the least practicable adverse impact on the seals. If NMFS determines that such measures must be implemented then NMFS shall specify, after consultation with the holder of the Letter of Authorization, the schedule and other conditions for implementation of the measures. Implementation of such measures must be completed no later than 42 months after the date of issuance of the final rule. Failure of the holder of the Letter of Authorization to implement such measures in accordance with the NMFS specifications may be grounds to invalidate the Letter of Authorization.

§ 216.135 Monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with NMFS and any other Federal, state, or local agency monitoring the impacts of the activity on harbor, gray, harp, or hooded seals.

(b) The holder of the Letter of Authorization must designate a qualified individual or individuals capable of identifying any seal or seal parts or marine mammal or marine mammal parts, that occur in the intake circulating system, including the intake transition structure, both forebays, and any marine mammal or marine mammal parts observed as a result of screen washings conducted.

(c) The holder of the Letter of Authorization must conduct at least two daily visual inspections of the circulating water and service water forebays during the period specified in the Letter of Authorization.

(d) The holder of the Letter of Authorization must conduct at least daily inspections of the intake transition structure from April 1 through December, unless weather conditions prevent safe access to the structure.

(e) The holder of the Letter of Authorization must conduct screen washings at least daily during the months of higher incidents of observed takes and this period will be specified in the Letter of Authorization. During the months not specified in the LOA, screen washings will be conducted twice a week. Examination of the debris must be conducted to determine if any seal remains are present.

(f) The holder of the Letter of Authorization must report orally to the Northeast Regional Administrator, NMFS, by telephone or other acceptable means, any marine mammals or marine mammal parts found in the locations specified in § 216.135(b) through (e). Such oral reports must be made by the close of the next business day following the finding of any marine mammal or marine mammal parts.

(g) The holder of the Letter of Authorization must arrange to have a necropsy examination performed by qualified individuals on any marine mammal or marine mammal parts recovered through monitoring as specified under § 216.135(b) through (e).

(h) The holder of the Letter of Authorization must also provide written notification to the Administrator, Northeast Region, NMFS, of such marine mammal or marine mammal parts found within 30 days from the time of the discovery. This report must

contain the results of any examinations or necropsies of the marine mammals in addition to any other information relating to the circumstances of the take.

(i) An annual report, identifying mitigation measures implemented to effect the least practicable adverse impact on the seals and/or are being considered for implementation pursuant to the requirements specified at § 216.134, must be submitted to the Administrator, Northeast Region, NMFS, within 30 days prior to the expiration date of the issuance of the Letter of Authorization.

§ 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;

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

(3) A determination that research on mitigation measures required under § 216.134(a) and the Letter of Authorization have been undertaken.

(b) If a species' annual incidental take authorization is exceeded, NMFS will review the documentation submitted under § 216.135, to determine whether or not the taking is having more than a negligible impact on the species or stock involved. The Letter of Authorization may be renewed provided a negligible impact determination is made and other conditions and requirements specified in § 216.136(a) are satisfied, and provided that any modifications of the Letter of Authorization that may be required are done pursuant to § 216.137.

(c) Notice of issuance of a renewal of the Letter of Authorization will be published in the **Federal Register** within 30 days of issuance.

§ 216.137 Modifications to the Letter of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under § 216.136, without modification, is not considered a substantive modification.

(b) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.130, the Letter of Authorization issued pursuant to this section may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

§§ 216.138—216.140 [Reserved]

[FR Doc. 99–13205 Filed 5–24–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 960318084–8274–04; I.D. 071596C]

RIN 0648–AG55

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities; Correction

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

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rulemaking, which was published on December 1, 1998, regarding an incidental small take exemption under the Marine Mammal Protection Act (MMPA) to take a small number of marine mammals incidental to shock testing the USS SEAWOLF submarine in the offshore waters of the U.S. Atlantic coast.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1998 (63 FR 66069), NMFS published the final rulemaking governing the taking of marine mammals incidental to shock testing the USS SEAWOLF. The taking of marine mammals incidental to legitimate activities is authorized by section

101(a)(5)(A) of the MMPA, provided the takings are small and having no more than a negligible impact on affected marine mammal stocks. In order to mitigate takings of marine mammals to the lowest level practicable as required by the MMPA, NMFS limited the taking of marine mammals to a period between May 1 through September 30 of any single year within the 5-year period of authorization.

Need for Correction

As published, the DATES section in the final rule is in error and in need of correction. While the effective dates for the authorization to conduct a shock trial on the USS SEAWOLF found in 50 CFR 216.162. will remain effective from May 1 through September 1 of any single year between the years 2000 and 2004, in order for the document to be published in the upcoming Code of Federal Regulations, the DATES contained in the preamble to the rule will need to be changed. This change is necessary to reflect that the period of validity for the regulations will run from the end of the delayed effectiveness period required by the Administrative Procedure Act through the last day of the period of authorization under the 5-year MMPA authorization.

Correction

In the **Federal Register** of December 1, 1998, in FR Doc.98–31933, on page 66070, in the first column, correct the ''DATES'' caption to read:

DATES: Effective from January 1, 1999, through September 30, 2004.

Dated: May 17, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–13204 Filed 5–24–99; 8:45 am]

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