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Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 970703165-7165-01; I.D. 062397A]

RIN 0648-AK00

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

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

ACTION: Notice of receipt of a petition for regulations and an application for a small take exemption; request for comment and information.

SUMMARY: NMFS has received an application for a small take exemption and implementing regulations from North Atlantic Energy Service Corporation for a small take of marine mammals incidental to routine operations of the Seabrook Station nuclear power plant, Seabrook, NH. As a result of that application, NMFS is considering whether to propose regulations that would authorize the incidental taking of a small number of marine mammals. In order to promulgate these regulations, NMFS must determine that these takings will

have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and suggestions on the structure and content of regulations if the application is accepted.

DATES: Comments and information must be postmarked no later than August 25, 1997.

ADDRESSES: Comments should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226. A copy of the application may be obtained by writing to the above address, or by telephoning one of the persons below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713-2055 or Eric Hutchins (508) 281-9313.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce (Secretary) 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 are issued.

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

Summary of Application

On June 16, 1997, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from the North Atlantic Energy Service Corporation (North Atlantic) to take marine mammals incidental to routine operations of its Seabrook Station nuclear power plant. 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 one mile offshore in 60 ft of water. About 469,000 gallons per minute are drawn through the intakes to a 19-ft diameter, 3 mile long tunnel beneath the seafloor and into large holding bays (called forebays) at the power plant. Lethal takes of seals are

known to have occurred and are expected to continue to occur as the animals enter the cooling water intake structures and apparently drown en route to the forebays.

Each of the three seawater intakes structures consists of a velocity intake cap that is connected to the subterranean intake tunnel by vertical risers. The velocity intake caps are 30 ft in diameter and rest, mushroom-like, on top of the 9-ft diameter risers. The bottom of each cap is 10 ft above the seafloor, and water enters the cap through 7-ft tall openings around its perimeter. The purpose of this design is to minimize the rate of water flow at the mouth of the intakes and thereby minimize entrainment of marine organisms. The rate of water flow at the edge of velocity intake caps during full power is about 0.5 ft per second (0.3 knots).

Because the structures are offshore and submerged, seals have not been observed entering the intakes but are discovered in the forebays. The horizontal flow rate at the intakes is not believed to be strong enough to sweep seals into the intakes. The animals probably swim into the structures, perhaps in pursuit of prey. Once inside the velocity cap, the rate of water flow increases in the risers and intake tunnel. The accelerating, downward-turning flow, and the absence of light may disorient the seals and may inhibit their escape from the intakes. For an object traveling passively with the flow, the minimum transit time from the intake structures 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.

Since 1993, the remains of 27 to 33 seals have been discovered in Seabrook Station's forebays or on the device used to clean the forebays' condenser intake screens. Eighteen of the animals have been removed intact from the forebays, either manually or through screen washings. Human access to the forebays is restricted and visibility is poor. Consequently, intact animals occasionally go undetected in the forebays and pieces of hide and bones are recovered in the screen washings as the animals deteriorate, thus the uncertainty in the tally of animals taken to date. The remains are turned over to the authorized members of the Northeast Marine Mammal Stranding Network for analysis and disposal. Skull fragments from two harp seals and one hooded seal have been identified amongst the remains. Twenty of the seals have been identified as harbor

seals, including all 18 of the animals that have been recovered intact. Of the 12 whose ages have been determined, 10 were young-of-the-year harbor seals, divided equally between males and females.

North Atlantic is presently investigating a number of measures to prevent the lethal taking of seals at Seabrook Station. To date, no preventive measures have been implemented, but certain alternatives hold promise. These alternatives are being reviewed for their practicability with regard to nuclear power safety, costs, and their ability to withstand the high energy offshore environment. North Atlantic's application for a small take exemption authorization will be updated as determinations regarding preventive measures are made.

Though Seabrook Station has been in commercial operation since August 1990, no seals takes are 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 1995, the remains of six or seven were found. In 1996, ten intact harbor seals and the bone fragments of two to seven additional seals were recovered. Given that the local abundance of harbor seals and harp seals is known to be increasing and given that plant operations are scheduled to continue, as yet, unmodified; takes are likely to continue to occur in coming years. The expected number of takes per year cannot be estimated at this point but the order of magnitude might be suggested by the findings of 1996, 12 to 17 animals, mostly harbor seals.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the application for a small take exemption and the structure and content of regulations if the application is accepted. NMFS will consider this information in developing proposed regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be given ample time and opportunity to comment.

Dated: July 18, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
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