Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
163	5–1–07	6–1–07	3.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 163, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
163	5–1–07	6–1–07	3.00	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for May 2007, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*		*
May 2007	.0520	1–20	.0487	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of April 2007.

Vincent K. Snowbarger,

Interim Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7–7071 Filed 4–12–07; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AD10

Oil, Gas, and Sulphur Operations in the Outer Continental Shelf (OCS)—Plans and Information—Protection of Marine Mammals and Threatened and Endangered Species

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule requires lessees of Federal oil and gas leases in the OCS to provide information on how they will conduct their proposed activities in a manner consistent with provisions of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). It identifies environmental, monitoring, and mitigation information that lessees must submit with plans for exploration and development and production. This final rulemaking specifies what information the MMS needs to ensure compliance with the OCSLA, the ESA, and the MMPA. The final rule will help assure that lessees conduct their activities in a manner consistent with the provisions of the ESA and the MMPA.

DATES: *Effective Date:* This regulation is effective as of May 14, 2007.

FOR FURTHER INFORMATION CONTACT: Judy Wilson, Chief, Environmental Compliance Unit, Environmental Division, (703) 787–1075.

SUPPLEMENTARY INFORMATION: The OCS Lands Act (OCSLA) at 43 U.S.C. 1333, mandates ''The Constitution and laws and civil and political jurisdiction of the United States (U.S.) are extended to the subsoil and seabed of the OCS and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources * * *'' Those laws include the ESA and the MMPA. Every lease the MMS issues contains a requirement that the lessee must comply with applicable laws. The OCSLA at 43 U.S.C. 1332, requires ''* * * expeditious and orderly development, subject to environmental safeguards * * *''

The MMS, as a Federal agency, has a duty to carry out agency actions and authorizations in a manner that is not likely to jeopardize species listed under the ESA or result in the destruction or adverse modification of designated critical habitat, or have more than a negligible impact on marine mammals or the availability of marine mammals for subsistence use under the MMPA.

Section 7(a)(1) of the ESA, 16 U.S.C. 1536(a)(1), mandates that the ''Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.'' Therefore, based on all of the above, it is the responsibility of the MMS to require that lessees and operators conduct their activities in a manner that is consistent with the provisions of the ESA and the MMPA.

For these reasons, the MMS is amending 30 CFR part 250, subpart B—Plans and Information, to specify that lessees must provide specific environmental information concerning threatened or endangered species listed under the ESA and marine mammals protected under the MMPA. Information in the form of impact-monitoring data will be required when submitting plans for approval, and also while operating on the OCS. The MMS must often require mitigation measures and monitoring by lessees operating on the OCS. Mitigation and monitoring must be non-discretionary if the operations we permit may result in an incidental take. If incidental take were to occur, the Services would not consider incidental take prohibited under the ESA providing the take is in compliance with the terms and conditions of the incidental take statement. The ESA defines the term ''take'' as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.''

In order to monitor the incidental take of listed species, the ESA section 7 regulations require reporting. Monitoring programs resulting from the ESA section 7 (interagency) consultations are designed to:

(a) Detect adverse effects resulting from a proposed action;

(b) Assess the actual level of incidental take in comparison with the level of anticipated incidental take documented in the biological opinion;

(c) Detect when the level of anticipated incidental take is exceeded; and

(d) Determine the effectiveness of reasonable and prudent measures and their implementing terms and conditions.

In addition, there can be no relief from the ESA section 9 prohibitions regarding listed marine mammals until take of marine mammals has been authorized under the MMPA and its 1994 amendments. The MMPA defines take as ''to harass (injure or disturb), hunt, capture, kill, or attempt to harass, hunt, capture or kill any marine mammal.'' The MMPA has mitigation, monitoring and reporting requirements similar to the ESA.

The MMS has been required by the National Oceanic and Atmospheric Administration (NOAA) through several ESA section 7 consultations to adopt mitigation, monitoring, and reporting requirements. These non-discretionary requirements are related to mitigating the effects of noise, vessel traffic, and marine trash and debris (specific measures have been included in Alaska OCS Region project specific permits or Gulf of Mexico OCS Region lease stipulations and Notices to Lessees (NTLs), such as: Vessel Strike Avoidance and Injured/Dead Protected Species, Marine Trash and Debris Awareness and Elimination, Structure Removal Operations, and Implementation of Seismic Survey Mitigation). The ESA implementing regulations at 50 CFR 402.14(i)(3) state that, ''In order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement.'' The MMS must have the Office of Management and Budget (OMB) Information Collection (IC) approval before collecting and using the information required by the ESA section 7 consultations. The MMS has received the OMB IC approval for the non-discretionary requirements identified above (see the Paperwork Reduction Act (PRA) discussion under Procedural Matters).

These regulatory changes to subpart B will incorporate the general ESA information requirements. The revisions to subpart B require industry to comply with specific environmental laws in a general way. The final rule will assure that lessees mitigate for potential takes of protected species and monitor for potential takes of protected species to aid in assessing the actual level of take and the effectiveness of the mitigation.

The information requirement under this final rule will not substitute for a Letter of Authorization or Incidental Harassment Authorization. The MMS does not have authority through the reporting requirements to authorize the taking of any marine mammal under the MMPA. This final rule does not enable the MMS to make determinations under the ESA or the MMPA on the level or significance of takings that could occur or otherwise substitute the MMS judgment for the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) of the NOAA. The purpose of this final rule is to require that lessees describe how they will mitigate the potential for takes to occur, monitor for potential takes, and report any takes, should they occur.

Changes to Subpart B Regulations

The requirements concerning the contents of the Exploration Plans (EP) are amended in the following sections:

- § 250.216(a)—biological environmental reports must address federally listed species and designated critical habitat as well as marine mammals;
- § 250.221(b)—monitoring systems must address federally listed species and marine mammals if there is reason to believe the exploration activities may result in an incidental take;
- § 250.223—mitigation measures must address federally listed species and marine mammals if there is reason to believe the exploration activities may result in an incidental take; and
- § 250.227—environmental impact analysis information must be as detailed as necessary to support the MMS's effort to comply with the ESA and the MMPA by analyzing the potential direct and indirect impacts of exploration activities on federally listed species and marine mammals.

The requirements concerning the contents of the Development and Production Plans (DPP) and the Development Operations Coordination Documents (DOCD) are amended in the following sections:

- § 250.247(a)—biological environmental reports must address federally listed species and designated critical habitat as well as marine mammals;
- § 250.252(b)—monitoring systems must address federally listed species and marine mammals if there is reason to believe the development and production activities may result in an incidental take;
- § 250.254—mitigation measures must address federally listed species and marine mammals if there is reason to believe the development and

production activities may result in an incidental take;

• § 250.261—environmental impact analysis information must be as detailed as necessary to support our effort to comply with the ESA and the MMPA by analyzing the potential direct and indirect impacts of development and production activities on federally listed species and marine mammals;

• § 250.270—correcting the citation at § 250.270(a)(1)(i) that currently reads ''267(a)(1),'' to ''250.267(a)(1),''; and

• § 250.282—the post-approval requirements for the EP, the DPP, and the DOCD are amended to require that post-approval monitoring programs must include monitoring in accordance with the ESA and the MMPA requirements.

Discussion and Analysis of Comments to the Proposed Rule

The MMS published a proposed rule on September 6, 2005 (70 FR 52953). The public comment period ended November 7, 2005. On October 25, 2005, we published notice of a 60-day extension to the comment period (January 6, 2006) because of the damage and subsequent flooding in the Gulf of Mexico (GOM) area caused by Hurricanes Katrina and Rita (70 FR 61589). The extension provided additional time to the oil and gas industry for reviewing and preparing comments to the rule. Comments on the proposed rule came from the FWS, the Humane Society of the United States, the Alaska Eskimo Whaling Commission, the Center for Regulatory Effectiveness, ConocoPhillips Alaska Inc., and ExxonMobil. All comments were posted on the MMS Internet Web site. A summary of the comments received on the proposed rule and our responses to the comments follow:

Comment: The FWS supports the proposed amendments as they will benefit the MMS and lessees by expediting the ESA section 7 consultation process and assist lessees in complying with the ESA and the MMPA.

Response: The regulatory changes will lead to a common understanding of how MMS is implementing, and will implement in the future, the terms and conditions of incidental take statements under the ESA and the MMPA.

Comment: The FWS recommended expanding the proposed amendments to include information for proposed species and proposed critical habitat to expedite formal consultation following an eventual listing or designation of critical habitat. In such circumstances, the FWS could prepare a conference opinion that can be quickly converted to a biological opinion, thereby preventing or reducing disruption to a lessee's ongoing operations.

Response: The MMS agrees that having information on proposed species and proposed critical habitat would expedite the FWS and the NMFS preparing a biological opinion when a species is listed or critical habitat designated. However, we will not require operators and lessees to include monitoring or mitigation information for proposed or candidate listings or candidate designations in their plans. An ESA conference is required only when a proposed action is likely to jeopardize the continued existence of a proposed species or destroy or adversely modify proposed critical habitat.

When a new species is listed or critical habitat designated, and it is necessary to reinitiate a formal consultation, the existing opinion remains valid until revised or reissued. Therefore, while including a candidate species (petitioned species that are actively being considered for listing as threatened or endangered under the ESA) in a formal consultation is not required by law, we believe the existing ESA consultation process is flexible and can respond to proposed species listings or proposed critical habitat designations. We also believe the administrative process associated with listing species or designating critical habitat would allow sufficient time for the MMS, the FWS, and the NMFS to address the information available.

Comment: The FWS recommended including critical habitat in the monitoring and reporting requirements, if applicable, to assist the MMS in knowing whether it was necessary to reinitiate an ESA section 7 consultation (50 CFR 402.16(b)).

Response: If a formal consultation results in specific reasonable and prudent alternatives to avoid adverse modification of a designated critical habitat, then the Regional Supervisor has discretion under § 250.282 to direct the lessee/operator to conduct post-approval monitoring programs in accordance with the ESA. All data from the monitoring programs must be made available to the MMS upon request. No change to the rule is necessary.

Comment: The FWS recommended extending the requirement for mitigating measures to include critical habitat, where applicable, since it is possible that future designations and biological opinions could include conservation measures to ensure critical habitat is not adversely modified or destroyed.

Response: Regulations at 30 CFR 250.227(b)(4) and 250.261 require lessees to provide impact analysis information on ''Threatened or endangered species and their critical habitat'' and at 30 CFR 250.227(c)(4) to ''Describe potential measures to minimize or mitigate these potential impacts.'' In addition, should measures to prevent habitat degradation be included in lease stipulations, 30 CFR 250.222 and 250.253 require lessees to provide ''A description of the measures you took, or will take, to satisfy the conditions of lease stipulations.'' No change to the rule is necessary.

Comment: The FWS recommended an editorial correction in **SUPPLEMENTARY INFORMATION** to change ''reasonable and prudent alternatives'' to ''reasonable and prudent measures,'' which have implementing terms and conditions.

Response: The **SUPPLEMENTARY INFORMATION** has been changed accordingly.

Comment: The Humane Society supports the MMS acknowledging the importance of complete information regarding potential impacts of leasing activities on protected species and post-activity monitoring.

Response: No change required.

Comment: The Humane Society expressed concern that there is no requirement in the proposed rule for applicants to provide information on baseline conditions or to conduct baseline monitoring. The Humane Society further commented that the lack of baseline information makes impossible reasonable statements about the consequences of activities, thus negating the utility of post-activity monitoring.

Response: The MMS believes the existing requirements in § 250.227(b)(3) and (4) (What environmental impact analysis (EIA) information must accompany the EP and § 250.261(b)(3) and (4) (What environmental impact analysis (EIA) information must accompany the DPP or DOCD) address this concern. The information in the EIA, which must accompany plans, requires the lessee to describe those resources (identified as marine mammals and threatened and endangered species and their critical habitat) and conditions that could be affected by proposed exploration, or development and production activities. No change to the rule is necessary.

Comment: The Humane Society expressed concern that the requirement for lessees to submit plans for mitigation measures would allow lessees to suggest measures ad hoc and rely on previous assertions of the effectiveness of mitigation measures without fully considering evidence that questions efficacy. This limits the MMS's ability to assess the potential cumulative

impacts from a number of projects taking place along the range of marine mammal species, and identify the most meaningful mitigation measures for similar activities.

Response: The MMS's ability to assess potential cumulative impacts is not limited to the OCSLA and subpart B regulations. We assess activities, mitigation measures, and cumulative impacts through the CZMA, the NEPA, and the ESA. The MMS believes §§ 250.231 through 235 and §§ 250.266 through 273 address this concern. We must review all plans and determine if the information is sufficient and accurate. After review, we may request the lessee to revise or modify a plan as necessary. Plans must also be submitted to the States for consistency review and determination under the Coastal Zone Management Act (CZMA). We also evaluate the environmental impact of exploration, development, and production activities, including mitigation measures, and prepare environmental documentation under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and the implementing regulations (40 CFR parts 1500 through 1508). In addition, the ESA consultation process also allows for a meaningful analysis of mitigation for threatened and endangered species. The results of consultation are included in the biological opinion and associated incidental take statements. No changes to the final rule are necessary.

Comment: The Center for Regulatory Effectiveness commented that the MMS should comply with the PRA before proceeding further with the rulemaking. They asserted that the proposed rule contains new IC requirements that were not reviewed and approved by OMB under 1010–0151.

Response: The MMS disagrees that the proposed rule does not comply with the PRA. This proposed rule clarifies information requirements for plans and accompanying information in subpart B already approved under the OMB Control Number 1010–0151. Section 250.202 in subpart B clearly states, ''Your EP, DPP, or DOCD must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that: (a) Conforms to the OCSLA as amended, applicable implementing regulations, lease provisions and stipulations, and other Federal laws * * *'' We also have the OMB approval for all the requirements associated with trash and debris, vessel collisions, and seismic survey mitigation and monitoring activities (NTLs) required through the ESA section 7 consultation with the NMFS (OMB Control Number 1010–0154, 22,305 burden hours). When this rule becomes effective, we will consolidate the requirements and burdens from 1010–0154 into the primary collection for 30 CFR part 250 subpart B, 1010–0151.

Comment: ConocoPhillips Alaska Inc., recommended the MMS withdraw the rule as unnecessary or revise and reissue the rule to clarify: how lessees should develop monitoring, mitigation, and reporting programs for listed species prior to completion of the ESA section 7 consultation; and the manner in which lessees should determine if take under the ESA or the MMPA is reasonably certain to occur.

Response: In general, the agency will not require lessees to develop additional monitoring, mitigation, or reporting plans for listed species prior to completion of ESA Section 7 consultations. We intend that lessees rely on the conditions provided in the completed relevant Section 7 consultations to determine the appropriate mitigation, monitoring, and reporting requirements that should be part of Exploration Plans. The MMS consults under the ESA with the FWS and the NMFS on every lease sale and all activities associated with exploration, development, production, and decommissioning before a lease sale occurs. Therefore, activities associated with a lease already require a determination as to whether the activities are likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. That determination is the subject of the biological opinion. If take of a listed species is anticipated, an associated incidental take statement describes the reasonable and prudent measures and implementing terms and conditions. Should we reinitiate a consultation and the reasonable and prudent measures and implementing terms and conditions change, we would notify lessees and operators. The FWS or the NMFS clarify in the biological opinion and incidental take statements the manner and extent of anticipated take, as well as any mitigation, monitoring, and reporting requirements associated with minimizing such take.

Section 7(a)(2) of ESA requires each Federal Agency to consult with the Secretary to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. In fulfilling these requirements, each agency is to use the best scientific and commercial data available. The ESA section 7 consultation process is a cooperative process. The Services do not have all the answers and actively seek the views of the action agency and its designated representatives in preparing the biological opinion, developing reasonable and prudent alternatives, reasonable and prudent measures, terms and conditions to minimize the impacts of incidental take, and conservation recommendations. Whenever incidental take of a marine mammal is anticipated, the Services may not issue an incidental take statement under the ESA for the marine mammal until such take is authorized under section 101(a)(5) of the MMPA. Following the MMPA authorization, the Service may amend the biological opinion to include the incidental take statement for marine mammals, as appropriate.

The MMPA implementing regulations specify that incidental take authorizations will set forth permissible methods of taking, and requirements or conditions pertaining to monitoring and reporting after citizens engaged in the specific activity provide a detailed description of the activity, the manner and extent of incidental take and the means of effecting the least practicable impact upon the marine mammal. In such cases when incidental take of listed marine mammal requires MMPA authorization, the Secretary will set forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified in the incidental take statement. Lessees and operators must decide whether a take is reasonably likely to occur in deciding whether to file a petition with the FWS or the NMFS for incidental take under the MMPA. By statute and regulation, notice of petitions and authorizations for incidental take must be published in the **Federal Register**. Specific examples would include petitions involving activities such as pile driving, seismic surveys, and structure removals using explosives. In addition, under the MMPA implementing regulations (50 CFR 216.104), in order for the NMFS to consider authorizing take by U.S. citizens, or to make a finding that an incidental take is unlikely to occur, a written request must be submitted to the Assistant Administrator. The information required in the request is specified in the same section. No changes to the rule are necessary.

Comment: ConocoPhillips Alaska Inc., disagrees with the position reflected in the proposed rule that the ESA or the MMPA expand the MMS's existing statutory authority. The MMS may not impose the ESA- or the MMPA-

related requirements upon lessees or operators unless such requirements are necessary and authorized under the MMS's enabling legislation.

Response: This final rule is consistent with our mandate under the OCSLA. Under §§ 1333 and 1334 of the OCSLA, the MMS must ensure that the proposed activities will comply with other applicable Federal laws and regulations, which may include the Clean Air Act (CAA), the ESA, the MMPA, the National Historic Preservation Act, the CZMA, and the Clean Water Act. Section 25(c) of the OCSLA (43 U.S.C. 1351(c)) mandates the scope and content of oil and gas development and production plans include ''environmental safeguards to be implemented.'' In addition, section 11 of the OCSLA (43 U.S.C. 1340) states that any permits for geological explorations shall be issued only if the Secretary determines ''such exploration will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archaeological significance.'' The regulations at 30 CFR part 250 subpart B are intended to enable the MMS to carry out these responsibilities under the OCSLA. No changes to the rule are necessary.

Comment: ConocoPhillips Alaska Inc., disagrees that the MMS, and by extension, lessees or operators are somehow obligated to monitor and report take under the ESA in the absence of an affirmative finding that a proposed action is either likely to adversely affect a listed species, or adversely modify designated critical habitat.

Response: This rule intends to apply to lessees' activities that have been the subject of ESA Section 7 consultations where the consultations resulted in specific terms and conditions requiring mitigation, monitoring, and reporting. The MMS consults under section 7 of the ESA with the FWS or the NMFS on every lease sale and all activities associated with exploration, development, production, and decommissioning. Section 7 consultation is required for any proposed action that ''may affect'' listed species or designated critical habitat. No formal consultation is required if a proposed action ''may affect, but is not likely to adversely affect'' listed species or critical habitat. Therefore, every activity associated with a lease already requires a determination as to whether an activity is likely to adversely affect listed species or designated critical habitat. If adverse effects are likely, MMS will enter into a formal consultation during which a biological opinion on whether listed species would likely be jeopardized or critical habitat destroyed or adversely modified would be prepared. There are documents prepared by Federal agencies or those responsible for conducting activities during such consultations that describe adverse effects to listed species and critical habitat. In those cases where the Services provide a statement of incidental take with a biological opinion, the ESA specifies the Secretary must set forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified in the incidental take statement. No changes to the rule are appropriate.

Comment: ConocoPhillips Alaska Inc., expressed concern that the proposed rule does not address the potential impact of proposed Threatened and Endangered Species Recovery Act (TESRA) legislation (H.R. 3824), and therefore, should be delayed until Congress takes action on H.R. 3824.

Response: The MMS disagrees that we should wait for Congress to act on the TESRA, H.R. 3824. It cannot be known when and in what form such legislation may be passed. The MMS has reviewed the H.R. 3824. None of the proposed amendments to the ESA would change the information requirements for plans submitted by lessees to the MMS. The MMS still has a responsibility under the OCSLA to review and approve plans before activities may be conducted and to ensure that activities will comply with other applicable Federal laws and regulations currently in effect.

Comment: ConocoPhillips Alaska Inc., expressed concern that the proposed rule uses ''take'' interchangeably under the ESA and the MMPA and does not explain the statutory differences between take under the ESA and the MMPA.

Response: ''Take'' has been defined by statute and implementing regulations for both the ESA and the MMPA. The MMS need not repeat those definitions in our regulations. Every person has a responsibility to comply with those laws and understand their meaning. The term ''take'' is defined by the ESA to mean ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.'' Harass has further been defined by FWS regulations to mean ''an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to breeding, feeding, or sheltering.'' Harm means ''an act which actually kills or injures wildlife.''

The MMPA defines take to mean ''to harass, hunt, capture, collect, kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal.'' The Act further defines Level A and Level B harassment as ''any act of pursuit, torment or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild'' or any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild * * *''

Comment: ConocoPhillips Alaska Inc., disagrees that the proposed rule will result in ''no additional costs'' because it merely clarifies requirements that already exist.

Response: The MMS disagrees that this rule results in additional costs. Whether we list the specific ESA or MMPA provisions in the regulations or not, current subpart B still requires lessees to provide the appropriate biological information with their plans. The amendments to subpart B do not add any additional information requirements, nor do the amendments require any additional information beyond what is already required under the ESA or the MMPA. Putting these specific provisions in the 250 regulations specifies what information is needed to ensure compliance with subpart B, the ESA, and the MMPA.

Comment: The Alaska Eskimo Whaling Commission commented that the proposed rule does not state the MMPA standard that incidental take of marine mammals ''will not have an unmitigable adverse impact on the availability [of marine mammals] for taking for subsistence uses.'' The final rule should reflect this standard.

Response: Stating the MMPA standards is beyond the scope of this rule. The scope of this rule is limited to existing regulatory information requirements for plans submitted by lessees/operators. Our Alaska Region offers to meet with the Alaska Eskimo Whaling Commission and the NMFS to further discuss this standard and other MMPA-related issues. Such discussions have begun informally at the open water meeting forum and MMS hopes to expand those discussions as they begin the Multisale process for 2007–2012 lease sales.

Comment: The Alaska Eskimo Whaling Commission commented that the proposed rule gives the MMS the opportunity to issue clear guidance to

applicants proposing activities in the Alaskan OCS. Specifically, applicants must demonstrate their ability to meet the MMPA's ''no unmitigable adverse impact'' standard; and the MMS should use §§ 250.220 and 250.251 to inform its Alaskan OCS applicants of the information requirements relevant to the protection of subsistence species. They suggested specific wording for programs currently in operation, such as conflict avoidance agreements and good neighbor agreements.

Response: As offered in the previous response, the proposals are beyond the scope of this rulemaking. The MMS Alaska Region offers to meet with the Alaska Eskimo Whaling Commission to further discuss the suggestion.

Comment: The Alaska Eskimo Whaling Commission commented that the MMS should clarify its requirements for information from applicants in the sections on Environmental Impact Analysis. The MMS should clarify that it will independently verify and evaluate all analyses submitted by applicants. The MMS should also avoid requiring analyses or assessments in favor of requiring applicants to ''identify'' or ''describe'' potential impacts that will assist the MMS in its environmental reviews under the NEPA, the ESA, and the MMPA. Finally, we should adopt the NEPA definition of ''cumulative impacts'' to encourage applicants to provide the most comprehensive information to the MMS.

Response: Sections 250.227 and 250.261 are specific in stating that the information must be as detailed as necessary to assist us in complying with the NEPA and other Federal laws. Further, under 40 CFR 1506.5, the MMS must independently evaluate the information submitted and be responsible for its accuracy. Cumulative impacts are defined under the ESA (50 CFR 402.02) and the NEPA (40 CFR 1508.7). It is not necessary to repeat those requirements or definitions in our regulations.

Comment: ExxonMobil expressed concern that the proposed rule assumes that offshore oil and gas activities will result in ''takes'' of marine mammals and endangered species rather than basing the rule on a sound scientific assessment of risk. Further, it places a burden on industry to define what a ''take'' is for the purposes of the ESA and the MMPA.

Response: The rule does not assume offshore oil and gas activities will result in ''takes.'' Through Agency to Agency consultations, the FWS or the NMFS clarifies in the biological opinion and incidental take statements the manner and extent of anticipated take. The rule clearly specifies information regarding monitoring and mitigation measures would only be necessary in those cases where there is ''reason to believe that protected species may be incidentally taken.'' ''Reason to believe'' is an objective standard whereby a reasonable person is looking at all the available facts and factors, it does not pre-determine take. This is also why §§ 250.221, 250.223, 250.252, and 250.254 each contain wording indicating that the required action in the case of marine mammals applies only ''as appropriate'' and ''as may be necessary.'' The language of the final rule does not pre-determine any activity will result in an incidental take. Take under the ESA and the MMPA is defined by statute and regulation.

Under the ESA, Federal action agencies must determine if a proposed action ''may affect'' listed species or designated critical habitat, using the best scientific and commercial data available. The biological assessment is a tool used to identify impacts to listed species or designated critical habitat so that a decision can be made as to whether a proposed action is likely to adversely affect listed species or designated critical habitat.

The MMPA places responsibilities on the entity conducting a specific activity (and who wishes an incidental take of a marine mammal to be allowed and not prohibited) to take the initiative in identifying actions that could result in a taking in order to avoid sanctions should a take occur. Under the implementing regulations (50 CFR 216.104), in order for the NMFS to consider authorizing take by U.S. citizens, or to make a finding that an incidental take is unlikely to occur, a written request must be submitted to the Assistant Administrator by the requester providing, ''A detailed description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals,'' ''the types of incidental take authorization that is being requested,'' and ''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 * * * and the number of times such takings by each type of taking are likely to occur.'' No changes to the rule are necessary.

Comment: ExxonMobil suggested that rather than requiring lessees and operators to implement monitoring and mitigation measures ''as appropriate,'' the MMS and industry should work together to obtain the promulgation of the incidental take regulations and then determine what further actions, if any, need to be taken with respect to the MMS regulatory program in connection with the MMPA and the ESA.

Response: The MMS petitioned for regulations under the MMPA for both seismic survey activities conducted in the GOM and for decommissioning offshore structures in the GOM. Both the MMS and industry will have an opportunity to comment on both sets of the proposed MMPA regulations and the Environmental Impact Statement (EIS) the NMFS intends to prepare to support their rulemaking process for seismic survey activities. In the meantime, while the NMFS continues its regulatory process for those two specific activities in the GOM, the MMS still has a responsibility under the OCSLA to review and approve plans before activities may be conducted to ensure the proposed activities are environmentally sound and will be conducted in a manner consistent with applicable Federal laws and regulations. We also require this information in plans to assist the Regional Supervisor in complying with the NEPA, the ESA, and the MMPA as stated in §§ 250.227 and 250.261. No changes to the rule will be made.

Comment: ExxonMobil pointed out that the rule would require the lessees and operators to describe how mitigation would reduce the potential for takes under the ESA and the MMPA. This in turn would affect how the MMS and industry interact with other agencies because the lessee or operator will not know how to comply with the proposed rule without interacting with the ESA/MMPA regulatory agencies.

Response: With respect to the ESA, when the Services believe the Agency or the applicant may take actions to avoid incidental take of a listed species the opinion will contain a thorough explanation of how reasonable and prudent alternatives will minimize or avoid incidental takes. MMS has always communicated directly with the lessee/operators through various means regarding non-discretionary mitigation measures specified in an incidental take statement. We would continue this communication. In addition, industry may take the role of an applicant under the ESA and participate in the consultation process as they have done in the past. The MMS and other MMPA/ESA regulatory agencies have provided those opportunities in the past and would continue this process.

With respect to the MMPA, the implementing regulations are very clear. If an operator or lessee has reason to believe their activities may result in incidental take of marine mammals and they wish the Secretary to allow the

incidental take, then the operator or lessee must request the authorization. The MMPA implementing regulations spell out the process necessary to receive an incidental take authorization. Nothing in the final rule changes that process or how industry would interact with other agencies. No changes to the final rule are necessary.

Comment: ExxonMobil commented that the proposed rule does not address the time required for interaction with other regulatory agencies. Additionally, if the proposed rule results in additional workload on another agency, it could delay industry exploring for and developing oil and natural gas supplies in waters of the U.S. while interaction occurs.

Response: The final rule does nothing to change the statutory and regulatory timeframes associated with the ESA and the MMPA processes for allowing or authorizing incidental take of protected species, which otherwise would be prohibited by the Acts. This final rule does not change the level of interaction with or workload for the FWS or the NMFS. The level of interaction and workload issues are defined by the quality of the interaction, the responsiveness to regulatory requirements of the ESA and the MMPA, and the potential for activities to adversely affect or to take protected species as defined by the ESA and the MMPA. This final rule is designed to facilitate environmentally sound operations on the OCS as mandated under the OCSLA. No changes to the final rule are necessary.

Comment: ExxonMobil suggested that the NTLs MMS has issued are a proper response to the MMPA and the ESA requirements pending NOAA's promulgation of incidental take regulations and that the MMS, along with industry, should focus its efforts on the development of incidental take regulations requested from the NOAA and clarifying the respective roles of the NOAA and the MMS with respect to offshore activities.

Response: MMS has decided to utilize regulations rather than NTLs to impose general requirements like these, in contrast to the NTLs previously issued that addressed a particular biological opinion. This rule addresses any activity that may incidentally take a protected species in any planning area of the OCS. Under the OCSLA, we must ensure that the proposed activities will comply with other applicable Federal laws and regulations as referenced above. Both the MMS and industry will have an opportunity to comment on the proposed MMPA regulations and the EIS that the NMFS intends to prepare to support their regulations for seismic survey activities in the GOM. Promulgating regulations defining the role of the NOAA under the MMPA is not within the authority of the Department of the Interior (DOI). No changes to the final rule are necessary.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

The Office of Management and Budget (OMB) has determined that this is a significant rule for OMB review under Executive Order 12866.

(1) This final rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The final rule is necessary for us to implement nondiscretionary terms and conditions to be exempt from prohibition at section 9 of the ESA, of the taking of listed species. There are no new costs associated with this rulemaking and it will not cause an annual effect on the economy of $100 million or more.

(2) This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The MMS consulted with the FWS and the NOAA. These agencies agree that the final rule is consistent with their authorities and implementing regulations. The final rule does not affect how lessees or operators interact with other agencies. Nor does the final rule affect how the MMS will interact with other agencies.

(3) This final rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) The OMB has determined that this rule raises novel legal or policy issues. The rule specifies that lessees must provide information to MMS on how they will conduct their proposed activities in a manner consistent with provisions of ESA and MMPA to ensure compliance with the OCSLA.

Regulatory Flexibility Act (RFA)

The DOI certifies that this final rule does not have a significant economic effect on a substantial number of small entities as defined under the RFA (5 U.S.C. 601 *et seq.*). No additional costs are associated with this final rule because it clarifies requirements that already exist. This final rule reduces the ambiguity in our regulations. Accordingly, a Small Entity Compliance Guide is not required.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of the MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a major rule under the SBREFA, (5 U.S.C. 804(2)). This final rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because the final rule incorporates monitoring, mitigation and reporting requirements specified in current NTLs and lease stipulations.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises. All lessees and operators, regardless of nationality, must comply with the requirements of this final rule. The final rule will not affect competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The final rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. There are no mandates for State, local, or tribal governments.

Takings Implication Assessment (Executive Order 12630)

The final rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, MMS did not need to

prepare a Takings Implication Assessment according to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Federalism (Executive Order 13132)

With respect to E.O. 13132, this final rule would not have federalism implications. This final rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role.

Civil Justice Reform (Executive Order 12988)

With respect to E.O. 12988 the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (PRA)

The revisions to 30 CFR part 250, subpart B, refer to, but do not change the IC requirements in current regulations. The final rule contains no new reporting or recordkeeping requirements, and therefore, an IC request has not been submitted to the OMB under the PRA. The MMS received two comments that related to the PRA. One was a comment from the Center for Regulatory Effectiveness that felt the MMS was not complying with the PRA. They asserted that this rule contained new IC requirements that were not reviewed and approved by OMB under 1010–0151. There are no new IC requirements in this rule. All requirements are covered under OMB Control Numbers 1010–0151 (exp. 7/31/08, 320,815 hours) and 1010–0154 (exp. 12/31/06, 22,305 hours). The second comment was from ConocoPhillips Alaska Inc., and they disagreed that the rule would result in ''no additional costs.'' The MMS disagrees that this rule results in additional costs. The rule contains new language but does not contain new requirements or new costs. Current subpart B requires lessees to provide the appropriate biological information with their plans. The rulemaking adds no new IC beyond what is already required under the ESA or the MMPA. By putting these provisions in 30 CFR 250 regulations, it clarifies what information is needed to ensure compliance with subpart B, the ESA, and the MMPA. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The OMB approved the referenced IC requirements under the OMB control number 1010–0151, expiration 7/31/08.

National Environmental Policy Act (NEPA) of 1969

The MMS has determined that this final rule qualifies for a categorical exclusion under 516 Department Manual (DM) Chapter 2, Appendix 1.10. The rule is procedural in nature, it clarifies existing requirements concerning the contents of Exploration Plans, Development and Production Plans, and Development Operation Coordination Documents. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the NEPA, pursuant to 516 DM, Chapter 2, Appendix 1. In addition, the final rule does not involve any of the 10 extraordinary circumstances listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the DOI, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. This final rule is not a significant energy action, and therefore would not require a Statement of Energy Effects because it:

a. Is not a significant regulatory action under E.O. 12866,

b. Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and

c. Has not been designated by the Administrator of the Office of Information and Regulatory Affairs, OMB, as a significant energy action.

Consultation with Indian Tribes (Executive Order 13175)

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands on the OCS.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur.

Dated: December 8, 2006.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

This document was received at the Office of the **Federal Register** on April 10, 2007.

■ For the reasons stated in the preamble, the Minerals Management Service amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*; 31 U.S.C. 9701.

■ 2. Revise § 250.216 paragraph (a) to read as follows:

§ 250.216 What biological, physical, and socioeconomic information must accompany the EP?

* * * * *

(a) *Biological environment reports.* Site-specific information on chemosynthetic communities, federally listed threatened or endangered species, marine mammals protected under the Marine Mammal Protection Act (MMPA), sensitive underwater features, marine sanctuaries, critical habitat designated under the Endangered Species Act (ESA), or other areas of biological concern.

* * * * *

■ 3. In § 250.221, redesignate paragraph (b) as paragraph (c) and add paragraph (b) to read as follows:

§ 250.221 What environmental monitoring information must accompany the EP?

* * * * *

(b) *Incidental takes.* If there is reason to believe that protected species may be incidentally taken by planned exploration activities, you must describe how you will monitor for incidental take of:

(1) Threatened and endangered species listed under the ESA and

(2) Marine mammals, as appropriate, if you have not already received authorization for incidental take as may be necessary under the MMPA.

* * * * *

■ 4. Revise § 250.223 to read as follows:

§ 250.223 What mitigation measures information must accompany the EP?

(a) If you propose to use any measures beyond those required by the regulations in this part to minimize or mitigate environmental impacts from your proposed exploration activities, a description of the measures you will use must accompany your EP.

(b) If there is reason to believe that protected species may be incidentally taken by planned exploration activities, you must include mitigation measures designed to avoid or minimize the incidental take of:

(1) Threatened and endangered species listed under the ESA and

(2) Marine mammals, as appropriate, if you have not already received authorization for incidental take as may be necessary under the MMPA.

■ 5. Revise paragraphs (a)(3) and (c)(1) in § 250.227 to read as follows:

§ 250.227 What environmental impact analysis (EIA) information must accompany the EP?

* * * * *

(a) * * *

(3) Be as detailed as necessary to assist the Regional Supervisor in complying with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and other relevant Federal laws such as the ESA and the MMPA.

* * * * *

(c) * * *

(1) Analyze the potential direct and indirect impacts (including those from accidents, cooling water intake structures, and those identified in relevant ESA biological opinions such as, but not limited to, those from noise, vessel collisions, and marine trash and debris) that your proposed exploration activities will have on the identified resources, conditions, and activities;

* * * * *

■ 6. Revise § 250.247 (a) to read as follows:

§ 250.247 What biological, physical, and socioeconomic information must accompany the DPP or DOCD?

* * * * *

(a) *Biological environment reports.* Site-specific information on chemosynthetic communities, federally listed threatened or endangered species, marine mammals protected under the MMPA, sensitive underwater features, marine sanctuaries, critical habitat designated under the ESA, or other areas of biological concern.

* * * * *

■ 7. In § 250.252, redesignate paragraph (b) as paragraph (c) and add paragraph (b) to read as follows:

§ 250.252 What environmental monitoring information must accompany the DPP or DOCD?

* * * * *

(b) *Incidental takes.* If there is reason to believe that protected species may be incidentally taken by planned development and production activities, you must describe how you will monitor for incidental take of:

(1) Threatened and endangered species listed under the ESA and

(2) Marine mammals, as appropriate, if you have not already received authorization for incidental take of marine mammals as may be necessary under the MMPA.

* * * * *

■ 8. Revise § 250.254 to read as follows:

§ 250.254 What mitigation measures information must accompany the DPP or DOCD?

(a) If you propose to use any measures beyond those required by the regulations in this part to minimize or mitigate environmental impacts from your proposed development and production activities, a description of the measures you will use must accompany your DPP or DOCD.

(b) If there is reason to believe that protected species may be incidentally taken by planned development and production activities, you must include mitigation measures designed to avoid or minimize that incidental take of:

(1) Threatened and endangered species listed under the ESA and

(2) Marine mammals, as appropriate, if you have not already received authorization for incidental take as may be necessary under the MMPA.

■ 9. Revise paragraphs (a)(3) and (c)(1) in § 250.261 to read as follows:

§ 250.261 What environmental impact analysis (EIA) information must accompany the DPP or DOCD?

* * * * *

(a) * * *

(3) Be as detailed as necessary to assist the Regional Supervisor in complying with the NEPA of 1969 (42 U.S.C. 4321 *et seq.*) and other relevant Federal laws such as the ESA and the MMPA.

* * * * *

(c) * * *

(1) Analyze the potential direct and indirect impacts (including those from accidents, cooling water intake structures, and those identified in relevant ESA biological opinions such as, but not limited to, those from noise, vessel collisions, and marine trash and debris) that your proposed development and production activities will have on the identified resources, conditions, and activities;

* * * * *

■ 10. Revise paragraph (a)(1)(i) of § 250.270 to read as follows:

§ 250.270 What decisions will MMS make on the DPP or DOCD and within what timeframe?

(a) *Timeframe.* * * *

(1) * * *

(i) The comment period provided in § 250.267(a)(1), (a)(2), and (b) closes;

* * * * *

■ 11. Revise the introductory paragraph in § 250.282 to read as follows:

§ 250.282 Do I have to conduct post-approval monitoring?

After approving your EP, DPP, or DOCD, the Regional Supervisor may direct you to conduct monitoring programs, including monitoring in accordance with the ESA and the MMPA. You must retain copies of all monitoring data obtained or derived from your monitoring programs and make them available to the MMS upon request. The Regional Supervisor may require you to:

* * * * *

[FR Doc. E7–7028 Filed 4–12–07; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Sector St. Petersburg 07–048]

RIN 1625–AA00

Safety Zone; Intracoastal Waterway, Treasure Island, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Intracoastal Waterway at Treasure Island, Florida, in the vicinity of the Treasure Island Causeway Bascule Bridge, while the bridge leaf sections are installed. This rule is necessary to ensure the safety of the workers and mariners on the navigable waters of the United States.

DATES: This rule is effective from 8 a.m. on March 21 through 6 p.m. on April 18, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the