



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD269]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice; modification to expiration date of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico (GOM), notification is hereby given that NMFS has modified the expiration date of a Letter of Authorization (LOA) issued to Shell Offshore Inc. (Shell) for the take of marine mammals incidental to geophysical survey activity in the GOM.

DATES: This LOA is effective through September 15, 2023.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS 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 (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively “industry operators”), in U.S. waters of the GOM over the course of 5 years (86 FR 5322). The rule was based on our findings that the total

taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of affecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under section 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

NMFS issued an LOA to Shell on October 1, 2022, for the take of marine mammals incidental to a 3-dimensional (3D) ocean bottom node (OBN) survey in Garden Banks Lease Block GB555 and GB556 and the surrounding 414 lease blocks effective through August 31, 2023. Please see the **Federal Register** notification of issuance (87 FR 55790, September 12, 2022) for additional detail regarding the LOA and the survey activity.

Shell initially anticipated that the activity would occur at some point between October 1, 2022 and August 31, 2023. Shell subsequently conveyed to NMFS that the survey would not be able to be completed by the original end date. Shell has requested modification to the expiration date of the LOA (from August 31, 2023, to September 15, 2023) to accommodate the survey delays.

Authorization

NMFS has changed the expiration date of the LOA from August 31, 2023 to September 15, 2023. There are no other changes to the LOA as described in the September 12, 2023, **Federal Register** notice of issuance (87 FR 55790): the specified survey activity; estimated take by incidental harassment; and small numbers analysis and determination remain unchanged.

Dated: August 28, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

[FR Doc. 2023-19184 Filed: 9/5/2023 8:45 am; Publication Date: 9/6/2023]