



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD377]

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 of issuance 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, notification is hereby given that a Letter of Authorization (LOA) has been issued to Cantium, LLC (Cantium) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from October 1, 2023 through December 31, 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 Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). 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 effecting 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 50 CFR 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.

Summary of Request and Analysis

Cantium plans to conduct a 3-Dimensional (3D) ocean bottom node (OBN) survey as part of ancillary activities associated with Cantium's Federal lease blocks in the Bay Marchand area. See Section G of the LOA application for a map of the area.

Cantium anticipates using a single source vessel, towing two airguns with a total volume of 300 cubic inches (in³). Please see Cantium's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Cantium in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5398, January 19, 2021). In order to generate the appropriate take numbers for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone¹);

¹ For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

(3) number of days; and (4) season.² The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

Summary descriptions of modeled survey geometries (*i.e.*, 2D, 3D NAZ, 3D WAZ, Coil) are available in the preamble to the proposed rule (83 FR 29220, June 22, 2018). Surveys using a single (90 in³) airgun and high-resolution geophysical sources were also modeled. The single airgun was selected as the best available proxy survey type for Cantium's survey effort. Although Cantium is using two airguns, the take numbers authorized in the LOA based on use of the single airgun proxy are substantially similar to those anticipated to occur through use of the planned sound source (two airguns, 300 in³) in the planned survey location. The acoustic exposure modeling necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. As the survey will take place in very shallow water (30-50 feet (ft); 9-15 meters (m)) compared to the acoustic exposure modeling, where few species are likely to occur, we have determined that the single airgun proxy is most representative of the effort planned by Cantium in terms of predicted Level B harassment exposures.

The survey will take place over approximately 45 days, within Zone 2 and adjacent state waters. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that produces the greater value.

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings

² For purposes of acoustic exposure modeling, seasons include Winter (December-March) and Summer (April-November).

made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed “small numbers.” In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS’ discussion of the MMPA’s small numbers requirement provided in the final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the **Summary of Request and Analysis** section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than 1 day (see 86 FR 5404, January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS’ small numbers determinations, as depicted in Table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5391, January 19, 2021). For this comparison, NMFS’ approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and model-predicted abundance

information (<https://seamap.env.duke.edu/models/Duke/GOM/>). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.*, 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

Table 1 - Take Analysis

Species	Authorized take	Scaled take ¹	Abundance ²	Percent abundance
Rice's whale	0	n/a	51	n/a
Sperm whale	0	n/a	2,207	n/a
<i>Kogia</i> spp.	0 ³	n/a	4,373	n/a
Beaked whales	0	n/a	3,768	n/a
Rough-toothed dolphin	23	6.7	4,853	0.1
Bottlenose dolphin	1,389	398.7	176,108	0.2
Clymene dolphin	0	n/a	11,895	n/a
Atlantic spotted dolphin	301	86.3	74,785	0.1
Pantropical spotted dolphin	0	n/a	102,361	n/a
Spinner dolphin	0	n/a	25,114	n/a
Striped dolphin	0	n/a	5,229	n/a
Fraser's dolphin	0	n/a	1,665	n/a
Risso's dolphin	0	n/a	3,764	n/a
Melon-headed whale	0	n/a	7,003	n/a
Pygmy killer whale	0	n/a	2,126	n/a
False killer whale	0 ³	n/a	3,204	n/a
Killer whale	0	n/a	267	n/a
Short-finned pilot whale	0	n/a	1,981	n/a

¹Scalar ratios were applied to "Authorized Take" values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

²Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.*, 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and the killer whale, the larger estimated SAR abundance estimate is used.

³Modeled take of two decreased to zero. For false killer whales, use of the exposure modeling produces results that are smaller than the average GOM group size (*i.e.*, estimated exposure value of 2, relative to assumed average group size of 28) (Maze-Foley and Mullin, 2006). NMFS' typical practice is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, given the depth of the survey area (9-15 m) in relation to the depths this species is normally sighted (>200 m), NMFS has determined that is unlikely the species would be encountered at all. As a result, in this case NMFS has not authorized take for this species.

Based on the analysis contained herein of Cantium's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.*, less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Cantium authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: October 2, 2023.

Catherine Marzin,

Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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