



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD429]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Geophysical Survey in the Ross Sea, Antarctica

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

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from the United States National Science Foundation (NSF) for the renewal of their currently active incidental harassment authorization (IHA) (hereinafter, the “initial IHA”) to take marine mammals incidental to a geophysical survey in the Ross Sea, Antarctica because NSF’s activities will not be completed prior to the IHA’s expiration. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources (OPR), NMFS, and should be submitted via email to ITP.harlacher@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size.

Attachments to comments will be accepted in Microsoft Word, Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed below.

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

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) 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 promulgated or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definition of key terms such as “take,” “harassment,” and “negligible impact” can be found in the MMPA and NMFS’s implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial IHA, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal of an IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the

activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA);
2. The request for renewal must include the following:
 - An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and
 - A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized;
3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals>. Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to

applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On December 15, 2022, NMFS issued an IHA to NSF to take marine mammals incidental to conducting a low energy seismic survey and icebreaking in the Ross Sea (87 FR 77,796, December 20, 2022), effective from December 15, 2022 through December 14, 2023. On September 7, 2023, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take authorization is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report, which confirms that the

applicant has implemented the required mitigation and monitoring and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

NSF initially described their activities as including two main survey areas (*i.e.*, the Ross Bank and the Drygalski Trough). The purpose of the survey was to collect low energy 2D seismic reflection data, along with oceanographic and sediment samples to understand if, how, when, and why the Ross Ice Shelf unpinned from the Ross Bank in the recent geologic past.

The initial planned survey involved one source vessel, RVIB *Palmer*, using an airgun array cluster consisting of two 105 cubic inches (in³) GI guns, with a total discharge volume of 210 in³, deployed at a depth of approximately 1–4 meters (m) below the surface to conduct both of the survey segments. During the Ross Bank survey, ~1920 kilometers (km) of seismic data was planned to be collected and during the Drygalski Trough survey, ~1800 km of seismic acquisition was planned to occur, for a total of 3720 line km. During the Drygalski Trough survey portion, 2 deployments of 10 Ocean Bottom Seismometers (OBS) were planned to occur along 2 different seismic refraction lines.

The seismic surveys would occur within the Ross Sea in water depths ranging from ~150 to 1100 m. The initial survey was expected to consist of 31 days at sea, including approximately 19 days of seismic operations (including 2 days of sea trials and/or contingency), 1 day of OBS deployment/recovery, and approximately 11 days of transit.

Due to logistical challenges, the initial survey was not successfully completed. There was a long delay in leaving New Zealand due to an enforced quarantine after survey members tested positive for COVID-19 and only a subset of the survey activities

in the initial IHA were completed. Specifically, under the initial IHA, the NSF completed surveys within the Ross Bank Area but not the Drygalski Trough area.

This renewal request is to cover a subset of the activities covered in the initial IHA that will not be completed during the effective period of the initial IHA due to the aforementioned logistical challenges. The remaining survey activities would include the survey within the Dygalski Trough area and icebreaking and are expected to occur during February 2024 (11 days of transit, 9 days of seismic surveys, and 1 day of OBS deployment and retrieval).

The potential impacts of the NSF's proposed activity on marine mammals could involve acoustic stressors and are unchanged from the impacts described in the initial IHA. Acoustic stressors include effects of the airgun array from the low-energy seismic surveys and icebreaking. The effects of underwater disturbance from the NSF's proposed activities have the potential to result in Level B harassment of marine mammals in the specified geographic region.

Detailed Description of the Activity

A detailed description of the survey activities for which incidental take is proposed here may be found in the notices of the proposed and final IHAs for the initial authorization (87 FR 59204, September 29, 2022; 87 FR 77796, December 20, 2022). As previously mentioned, this request is for a subset of the activities analyzed for the initial IHA that would not be completed prior to its expiration due to logistical challenges. The timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notice for the initial IHA. The proposed renewal IHA would be effective from December 15, 2023 through December 14, 2024.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which renewal authorization of take is proposed here, including information on abundance,

status, distribution, and hearing, may be found in the notice of the proposed IHA for the initial authorization (87 FR 59204, September 29, 2022). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature and determined there is no new information that affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA (87 FR 59204, September 29, 2022).

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which an authorization of incidental take is proposed here may be found in the notice of the proposed IHA for the initial authorization (87 FR 59204, September 29, 2022). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature and determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed and final IHAs for the initial authorization (87 FR 59204, September 29, 2022; 87 FR 77796, December 20, 2022). Specifically, the number of survey days, specified geographic region, specified activities and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, take estimates and type of take (*i.e.*, Level B harassment) remain unchanged from the previously issued IHA. The number of takes proposed for authorization in this renewal

IHA are a subset of the initial authorized takes that better represent the amount of activity NSF has left to complete. These estimated takes, which reflect the remaining survey days and icebreaking activities, are indicated below in Table 1.

Table 1—Proposed Number of Takes by Level B Harassment by Species and Stock and Percent of Take by Stock

Species	Level B Take		Total Take Proposed	Population Abundance	Percent of Population
	Drygalski Survey	Icebreaking			
Humpback whale	159	266	425	42,000	1.0
Fin whale	152	254	405	38,200	1.1
Blue whale	32	54	86	1,700	5.1
Sei whale	23	38	61	10,000	0.6
Antarctic minke whale	418	700	1,118	515,000	0.2
Sperm whale	49	82	131	12,069	1.1
Southern bottlenose whale	58	98	156	599,300	<0.1
Arnoux's beaked whale	66	111	178	599,300	<0.1
Strap-toothed beaked whale	22	37	59	599,300	<0.1
Killer whale	103	173	276	25,000	1.1
Long-finned pilot whale	198	331	529	200,000	0.3
Hourglass dolphin	94	157	251	144,300	0.2
Crabeater seal	3,361	5,629	8,990	1,700,000	0.5
Leopard seal	132	221	353	220,000	0.2
Ross seal	82	138	220	250,000	0.1
Weddell seal	527	883	1,410	1,000,000	0.1
Southern elephant seal	1	1	2	750,000	<0.1

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the initial IHA and the discussion of the least practicable adverse impact determination included in **Federal Register** notice announcing the issuance of the initial IHA remains applicable and accurate (87 FR 77796, December 20, 2022). The following mitigation, monitoring, and reporting measures are proposed for this renewal:

- Mitigation measures that would be adopted during the planned survey include, but are not limited to: (1) Vessel speed or course alteration, provided that doing so would not compromise operation safety requirements. (2) GI-airgun shut down

within shutdown zones, and (3) ramp-up procedures;

- During survey operations (*e.g.*, any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of one protected species observer (PSO) must be on duty and conducting visual observations at all times during daylight hours (*i.e.*, from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during ramp-up of the airgun array. Visual monitoring of the exclusion and buffer zones must begin no less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs must coordinate to ensure 360 degree visual coverage around the vessel from the most appropriate observation posts, and must conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner;
- The PSOs would establish a minimum exclusion zone (EZ) with a 100 m radius with an additional 100 m buffer zone (total of 200 m). The 200 m zone would be based on radial distance from the edge of the airgun array (rather than being based on the center of the array or around the vessel itself);
- An extended 500 m EZ must be established for beaked whales, large whales with a calf (defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult), and an aggregation of six or more whales during all survey effort. No buffer zone is required;
- Ramp-up is the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up would begin with one GI airgun 45 cu in first being activated, followed by the second after 5 minutes. The intent of pre-clearance observation (30 minutes) is to ensure no marine mammals are observed within the buffer zone prior to the beginning of ramp-up. During pre-clearance is the only

time observations of marine mammals in the buffer zone would prevent operations (*i.e.*, the beginning of ramp-up). The intent of ramp-up is to warn protected species of pending seismic operations and to allow sufficient time for those animals to leave the immediate vicinity. A ramp-up procedure, involving a stepwise increase in the number of airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source;

- The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will have the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable exclusion zone. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When the airgun array is active (*i.e.*, anytime one or more airguns is active, including during ramp-up) and a marine mammal appears within or enters the applicable EZ, the acoustic source will be shut down. When shutdown is called for by a PSO, the acoustic source will be immediately deactivated and any dispute resolved only following deactivation;
- Following a shutdown, airgun activity would not resume until the marine mammal has cleared the EZ. The animal would be considered to have cleared the EZ if it is visually observed to have departed the EZ, or it has not been seen within the EZ for 15 minutes in the case of small odontocetes and pinnipeds, and 30 minutes for mysticetes and all other odontocetes, including sperm and beaked whales, with no further observation of the marine mammal(s);
- The NSF must deploy vessel strike avoidance measures;
- The NSF must submit a draft report detailing all activities and monitoring results

within 90 calendar days of the completion of the survey or expiration of the IHA, whichever comes sooner;

- The NSF must submit a final report within 30 days following resolution of comments on the draft report from NMFS; and
- The NSF must report injured or dead marine mammals.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (87 FR 59204, September 29, 2022) and solicited public comments on both our proposal to issue the initial IHA for geophysical survey in the Ross Sea and on the potential for a renewal IHA, should certain requirements be met. During the 30-day public comment period, NMFS received no substantive comments on either the proposal to issue the initial IHA for the NSF's survey activities or on the potential for a renewal IHA.

Preliminary Determinations

NSF's proposed activities consist of a subset of activities analyzed in the initial IHA. In analyzing the effects of the activities for the initial IHA, NMFS determined that NSF's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or

stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) NSF's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

The NMFS OPR Endangered Species Act (ESA) Interagency Cooperation Division issued a Biological Opinion under section 7 of the ESA (16 U.S.C. 1531 *et seq.*) on the issuance of an IHA and potential renewal IHA to NSF under section 101(a)(5)(D) of the MMPA by the NMFS OPR Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of ESA-listed blue whales, fin whales, sei whales, and sperm whales.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to NSF for conducting geophysical survey and icebreaking activities in the Ross Sea in the February 2024, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: October 12, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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