



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD816]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Chevron Long Wharf Maintenance and Efficiency Project in San Francisco Bay, California

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 Chevron Products Company (Chevron) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to the Long Wharf Maintenance and Efficiency Project (LWMEP) in San Francisco Bay, California. Chevron's activities will not be completed prior to the IHA's expiration. Pursuant to the Marine Mammal Protection Act (MMPA), 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, National Marine Fisheries Service,

and should be submitted via email to *ITP.clevenstine@noaa.gov*. 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.

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.

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

SUPPLEMENTARY INFORMATION:

Background

The 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 the 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 (88 FR 19247, March 31, 2023), 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; and

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 NAO 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 May 12, 2023, NMFS issued an IHA to Chevron to take marine mammals incidental to the LWMEP in San Francisco Bay, California (88 FR 31703, May 18, 2023), effective from June 1, 2023, through May 31, 2024. On February 23, 2024, 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 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. That report and other supporting materials can be found on the project website:

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-chevron-products-company-long-wharf-maintenance-and-efficiency>.

Description of the Specified Activities and Anticipated Impacts

The Chevron LWMEP consists of construction activities to upgrade Berth 1 of the Refinery Long Wharf in San Francisco Bay, California, in order to meet current safety and efficiency standards. Chevron's planned construction at Berth 1 included: vibratory extraction of two 18-inch concrete piles associated with an existing gangway and catwalk; impact installation of 42 24-inch square concrete piles to construct a mooring dolphin and hook, breasting dolphin and breasting points with standoff fenders, and to replace the catwalk in a different location; vibratory installation of a temporary construction template composed of up to 12 36-inch steel piles; and vibratory extraction of the same temporary steel piles when in-water construction activities were complete. All in-water work was expected to be completed in a seasonal work window from June 1 through November 30, 2023.

Due to unexpected difficulty with pile installation, Chevron was only able to complete vibratory extraction and impact installation of concrete piles, and vibratory installation of temporary steel piles. The applicant initially determined 12 36-inch steel piles would be needed to support the template; however, only 10 steel piles were needed and installed via vibratory hammer. Chevron plans to complete the remaining construction activities, which includes vibratory extraction of the 10 steel piles, in up to 8 non-consecutive days during 1 month during June 1 through November 30, 2024. This renewal request is to cover the subset of activities in the initial IHA that will not be completed during the effective IHA period.

The initial IHA was intended to cover 1 year of a larger project for which Chevron obtained prior IHAs and intends to request take authorization for subsequent facets of the project. The larger 5-year project involves upgrading Long Wharf to satisfy current Marine Oil Terminal Engineering and Maintenance Standards. The Long Wharf has 6 berths for receiving raw materials and shipping products. The project area encompasses the entirety of Berth 1, an area of approximately 470 square meters (m²).

Chevron's proposed activity includes vibratory pile removal, which may result in the incidental take of marine mammals, by harassment only. Due to mitigation measures, no Level A harassment is anticipated to occur, and none is proposed for authorization. The likely or possible impacts of the Chevron's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors and is unchanged from the impacts described in **Federal Register** notices for the initial IHA (88 FR 19247, March 31, 2023; 88 FR 31703, May 18, 2023). Potential non-acoustic stressors could result from the physical presence of the equipment, vessels, and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Sounds resulting from pile extraction may result in the incidental take of marine mammals, by Level B harassment only, in the form of behavioral harassment.

Detailed Description of the Activity

A detailed description of the construction activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial authorization (88 FR 19247, March 31, 2023; 88 FR 31703, May 18, 2023). As previously mentioned, this request is for a subset of the activities considered for the initial IHA that would not be completed prior to its expiration. The location, 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 June 1, 2024, through March 31, 2025.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which 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 (88 FR 19247, March 31, 2023). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports (SARs), information on relevant Unusual Mortality Events (UMEs), and other scientific literature, and determined that neither this nor any other new information 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 (88 FR 31703, May 18, 2023).

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 (88 FR 19247, March 31, 2023). NMFS has reviewed the monitoring data from the initial IHA, recent draft SARs, information on relevant UMEs, 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 (88 FR 19247, March 31, 2023; 88 FR 31703, May 18, 2023). Specifically, the area or space within which harassment is likely to occur and marine mammal occurrence data applicable to this authorization remain unchanged from the initial IHA. Similarly, methods of take, daily take estimates and types of take remain unchanged from

the initial IHA, with the exception of California sea lion and gray whale. The number of takes proposed for authorization in this renewal are a subset of the initial authorized takes that better represent the amount of activity left to complete. These takes, which reflect the lower number of remaining days of work, are indicated below in table 1. Takes are calculated using the same methodology as the initial IHA, and are just a proportion of the initial takes based on up to 8 days of work remaining.

For California sea lions, a maximum of four individuals have been seen in a single day based on previous monitoring reports. To account for this possibility, Chevron estimated 2 days of four individuals entering the project area and one individual for the remaining 6 days of work. Therefore, Chevron requested, and NMFS proposes to authorize, 14 takes of California sea lions by Level B harassment.

The initial IHA authorized 2 takes by Level B harassment of gray whale. No gray whale takes have occurred, and given the already very low number of takes previously authorized (2 animals), NMFS proposes to authorize 2 takes of gray whale in this renewal IHA, rather than a proportion of the initial takes.

Based upon prior occurrences in the Bay, Chevron conservatively estimated, and NMFS concurred, that a maximum of 10 northern fur seals could occur in the project area during the 30 day in-water construction activity period for the initial IHA. Since only 8 days of in-water work are proposed for this renewal IHA, NMFS proposes to authorize 3 takes of northern fur seals by Level B harassment.

Table 1 – Estimated Take by Level B Harassment Proposed for Authorization and Estimated Take as a Percentage of the Population

Species	Expected occurrence	Total estimated take	Estimated take as a percentage of population
Harbor seal	237 seals per day	1,896	<7
California sea lion*	14 over project duration	14	<1
Harbor porpoise	1 porpoise per day	8	<1

Species	Expected occurrence	Total estimated take	Estimated take as a percentage of population
Bottlenose dolphin	Up to 8 dolphins once per month	8	<2
Gray whale**	2 whales over project duration	2	<1
Northern elephant seal	1 seal every 3 days	3	<1
Northern fur seal***	3 seals over project duration	3	<1

* Takes of California sea lion are calculated to account for up to 2 days with a maximum of four individuals per day, based on previous observations, and 6 days of one individual per day.

** The initial IHA authorized 2 takes by Level B harassment of gray whale. No gray whale takes have occurred, and given the already very low number of takes previously authorized (2 animals), NMFS proposes to authorize 2 takes of gray whale in this renewal IHA, rather than a proportion of the initial takes.

*** Takes of northern fur seal are calculated using the same proportions as the initial IHA, which is based on a maximum of 10 individuals per 30 days.

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 **Federal Register** notice announcing the issuance of the initial IHA (88 FR 31703, May 18, 2023), and the discussion of the least practicable adverse impact included in that document remains accurate. Only vibratory pile extraction is proposed for the renewal IHA, so only a subset of mitigation requirements are included as several others (*e.g.*, soft-start procedures, bubble curtain) are specific to impact pile installation and, therefore, unnecessary for the specified activities proposed here.

The following mitigation, monitoring, and reporting measures are proposed for this renewal, Chevron will:

- Employ at least two protected species observers (PSOs) to monitor the full shutdown zones, the Level B harassment zones to the extent practicable, and implement pre- and post-clearance monitoring;
- Implement a minimum shutdown zone of 10 meters for in-water construction activities;

- Shut down if marine mammals come within the designated hearing group-specific shutdown zones;
- Shut down if any species for which take has not been authorized enters the Level B harassment zone;
- Submit a draft monitoring report to NMFS within 90 days of completion of marine mammal monitoring or 60 days prior to issuance of any subsequent IHA for this project, whichever comes first;
- Prepare and submit a final report within thirty days following resolution of comments on the draft report from NMFS;
- Submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above); and
- Report injured or dead marine mammals.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (88 FR 19247, March 31, 2023) and solicited public comments on both our proposal to issue the initial IHA for construction activities associated with LWMEP and on the potential for a renewal IHA, should certain requirements be met. During the 30-day public comment period, NMFS received no comments on either the proposal to issue the initial IHA or the potential for a renewal IHA.

Preliminary Determinations

The proposed renewal request consists of a subset of activities analyzed through the initial authorization described above. In analyzing the effects of the activities for the initial IHA, NMFS determined that Chevron's activities would have a negligible impact on the affected species or stock 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 preliminarily 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) Chevron'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

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this proposed action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to Chevron for conducting pile extraction activities in San Francisco Bay

from June 1, 2024, through May 31, 2025, 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/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. 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: April 8, 2024.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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