



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD920]

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; issuance of renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a renewal incidental harassment authorization (IHA) to Chevron Products Company (Chevron) to incidentally harass marine mammals incidental to the Long Wharf Maintenance and Efficiency Project (LWMEP) in San Francisco Bay, California.

DATES: This renewal IHA is valid from June 1, 2024, through May 31, 2025.

ADDRESSES: 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: Alyssa Clevestine, 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 IHA 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 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).

- 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>.

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, 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. The notice of the proposed renewal IHA was published on April 11, 2024 (89 FR 25573).

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 over 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 planned 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 authorized. The likely or possible impacts of Chevron's planned 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 authorized 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). The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. This renewal IHA is effective for a period of 1 year from June 1, 2024, through May 30, 2025.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take is authorized, 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 preliminary 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 take is authorized here may be found in the **Federal Register** notices 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 authorized through 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 has authorized, 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 has authorized 2 takes of gray whale by Level B harassment 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 planned for this renewal IHA, NMFS has authorized 3 takes of northern fur seals by Level B harassment.

Table 1 – Authorized Take by Level B Harassment and 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
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 has authorized 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 Mitigation, Monitoring, and Reporting Measures

The 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, and the discussion of the least practicable adverse impact included in that document and the notice of the proposed IHA remains accurate. The following measures are included in the renewal IHA, 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

A notice of NMFS' proposal to issue a renewal IHA to Chevron was published in the **Federal Register** on April 11, 2024 (89 FR 25573). That notice either described, or referenced descriptions of, Chevron's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received no public comments.

Determinations

The 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 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) 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.

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 determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

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 authorized 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 action.

Renewal

NMFS has issued a renewal IHA to Chevron for the take of marine mammals incidental to conducting pile extraction activities in San Francisco Bay from June 1, 2024, through May 31, 2025.

Dated: May 21, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.