



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE620]

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 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 bp Exploration and Production, Inc., (bp) for the taking of marine mammals incidental to geophysical survey activity in the GOM.

DATES: This LOA is effective through March 31, 2025.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: <https://www.fisheries.noaa.gov/marine-mammal-protection/issued-letters-authorization-oil-and-gas-industry-geophysical-survey>. In case of problems accessing these documents, please call the contact listed below (**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, 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.

NMFS subsequently discovered that the 2021 rule was based on erroneous take estimates. We conducted another rulemaking using correct take estimates and other newly available and pertinent information relevant to the analyses supporting some of the findings in the 2021 final rule and the taking allowable under the regulations. We issued a final rule in April 2024, effective May 24, 2024 (89 FR 31488, April 24, 2024).

The 2024 final rule made no changes to the specified activities or the specified geographical region in which those activities would be conducted, nor to the original 5-year period of effectiveness. In consideration of the new information, the 2024 rule presented new analyses supporting affirmance of the negligible impact determinations for all species, and affirmed that the existing regulations, which contain mitigation, monitoring, and reporting requirements, are consistent with the “least practicable adverse impact” standard of the MMPA.

NMFS issued a LOA to bp on September 9, 2024, for the take of marine mammals incidental to a three-dimensional (3D) ocean bottom node (OBN) survey over 325 lease blocks in the Alaminos Canyon, Garden Banks, Keathley Canyon, and East Breaks areas, effective September 9, 2024, through February 14, 2025. Please see the **Federal Register** notice of issuance (89 FR 74921, September 13, 2024) for additional detail regarding the LOA and the survey activity.

Bp has requested that the February 14, 2025, expiration date be extended to March 31, 2025, as they are using only one source vessel instead of the planned two. There are no other changes to the planned survey or our earlier analyses, as described in the previous notice of LOA issuance for this survey (89 FR 74921, September 13, 2024).

Based on the results of our earlier analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See table 1 in this notice and table 6 of the rule (89 FR 31488, April 24, 2024).

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 (89 FR 31535, May 24, 2024). For more information please see NMFS’ discussion of small numbers in the 2021 final rule (86 FR 5438, January 19, 2021).

NMFS made its small numbers determinations in the original notice of LOA issuance for the survey (89 FR 74921, September 13, 2024) based on the information provided in table 1, which has not changed.

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	408	172.5	3,007	5.7
<i>Kogia</i> spp.	287 ³	85.3	980	10.8
Beaked whales	547	55.2	803	6.9
Rough-toothed dolphin	1,017	292.0	4,853	6.0
Bottlenose dolphin	363	103.4	165,125	0.1
Clymene dolphin	1,713	491.7	4,619	10.6
Atlantic spotted dolphin	108	30.9	21,506	0.1
Pantropical spotted dolphin	13,612	3,906.5	67,225	5.8
Spinner dolphin	185	52.8	5,548	1.0
Striped dolphin	4,849	1,391.6	5,634	24.7
Fraser's dolphin	444	127.3	1,665	7.6
Risso's dolphin	210	62.0	1,974	3.1
Blackfish ⁴	3,384	998.4	6,113	16.3
Short-finned pilot whale	142	42.0	2,741	1.5

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

² Best 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 (Garrison *et al.*, 2023). For Rice's whale, Atlantic spotted dolphin, and Risso's dolphin, the larger SAR abundance estimate is used.

³ Includes 19 takes by Level A harassment and 268 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

⁴ The "blackfish" guild includes melon-headed whales, false killer whales, pygmy killer whales, and killer whales.

Authorization

NMFS has changed the expiration date of the LOA from February 14, 2025, to March 31, 2025. There are no other changes to the LOA as described in the September 13, 2024, **Federal Register** notice of issuance (89 FR 74921); the specified survey activity, take estimates, and small numbers analysis and determination remain unchanged and are incorporated here by reference.

Dated: February 10, 2025.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.