



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XF044]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of America (formerly Gulf of Mexico)

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

ACTION: Notice; 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 America, originally published as "Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico," notification is hereby given that NMFS has modified the Letter of Authorization (LOA) issued to Fugro USA Marine, Inc. (Fugro) for the take of marine mammals incidental to geophysical survey activity in the Gulf of America (GOA).

DATES: The LOA is effective from July 23, 2025 through August 31, 2025.

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: Jenna Harlacher, 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 GOA¹ 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, and became effective on April 19, 2021.

The 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

¹ Pursuant to Executive Order 14172, “Restoring Names That Honor American Greatness,” and Department of the Interior Secretarial Order 3423, “The Gulf of America,” the body of water formerly known as the Gulf of Mexico is now called the Gulf of America. Accordingly, this **Federal Register** Notice hereafter refers to the Gulf of America.

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.

Summary of Request and Analysis

Fugro plans to conduct a three-dimensional (3D) ocean bottom node (OBN) survey in the West Delta Area Block 124, with water depths ranging from approximately 60 to 90 meters (m). See section F of the LOA application for a map of the area. Fugro anticipates using two source vessels each with a 160 cubic inch (in³) single airgun, operating in tandem from the vessels in a flip flop operation. Please see the LOA application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Fugro in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (89 FR 31488, April 24, 2024). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone²); (3) number of days; (4) source; and (5) month.³ The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled source and survey type in each zone and month.

No 3D OBN surveys were included in the modeled survey types, and use of existing proxies (*i.e.*, two-dimensional (2D), 3D narrow-azimuth (NAZ), 3D wide-azimuth (WAZ), Coil) is generally conservative for use in evaluation of 3D OBN survey effort, largely due to the greater area covered by the modeled proxies. Summary

² For purposes of acoustic exposure modeling, the GOA was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

³ Acoustic propagation modeling was performed for two seasons: Winter (December-March) and Summer (April-November). Marine mammal density data is generally available on a monthly basis, and therefore further refines take estimates temporally.

descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220, June 22, 2018). In Fugro's case, these proxies are overly conservative and therefore exposure modeling results were generated using the single airgun proxy. Because these results assume use of a 90-in³ airgun, the take numbers authorized through this LOA are considered the most similar to the sound source planned for use by Fugro, as compared to the other proxies modeled for the rule. All other proxies would likely overestimate take due to Fugro's total daily survey area, short total survey duration, and size of the airgun array proposed for use.

The survey will take place over approximately 4 days with all days planned in Zone 2. The monthly distribution of survey days is not known in advance, though we assume that the planned 4 days of source operation would occur contiguously. Take estimates for each species are based on the time period that produces the greatest 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 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 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 (see 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).

The take numbers for authorization, determined as described above in the Summary of Request and Analysis section, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 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/>). Information supporting the small numbers determinations is provided in table 1.

Table 1 -- Take Analysis¹

| Species | Authorized take | Abundance ² | Percent abundance |
|-----------------------------|-----------------|------------------------|-------------------|
| Rice's whale | 0 | 51 | n/a |
| Sperm whale | 0 | 2,451 | n/a |
| <i>Kogia</i> spp. | 0 | 1,385 | n/a |
| Beaked whales | 0 | 1,038 | n/a |
| Rough-toothed dolphin | 14 ³ | 4,853 | 0.3 |
| Bottlenose dolphin | 109 | 166,538 | 0.1 |
| Clymene dolphin | 0 | 6,136 | n/a |
| Atlantic spotted dolphin | 26 ⁴ | 21,506 | 0.1 |
| Pantropical spotted dolphin | 0 | 50,209 | n/a |
| Spinner dolphin | 0 | 2,991 | n/a |
| Striped dolphin | 0 | 16,102 | n/a |
| Fraser's dolphin | 0 | 1,665 | n/a |
| Risso's dolphin | 0 | 1,974 | n/a |
| Blackfish ⁵ | 0 | 9,535 | n/a |
| Short-finned pilot whale | 0 | 3,277 | n/a |

¹Scalar ratios were not applied in this case due to brief survey duration.

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

³Modeled take of two increased to account for potential encounter with a group of average size (Maze-Foley and Mullin, 2006)

⁴Modeled take of 24 increased to account for potential encounter with a group of average size (Maze-Foley and Mullin, 2006)

⁵The “blackfish” guild includes melon-headed whales, false killer whales, pygmy killer whales, and killer whales.

Based on the analysis contained herein of Fugro’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 Fugro authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: July 23, 2025.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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