



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE895]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys in the Gulf of America

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

ACTION: Notice; receipt of request for reimplementation of incidental take regulations (ITRs); request for comments and information.

SUMMARY: NMFS' Office of Protected Resources has received a request from the NMFS' Office of Policy for the reimplementation of ITRs governing the incidental taking of marine mammals during geophysical survey activity conducted in the Gulf of America (GOA). Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of this request and invites the public to provide information, suggestions, and comments on the request.

DATES: Comments and information must be received no later than [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2025-0638, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA-NMFS-2025-0638 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

- Mail: Submit written comments to the Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

A copy of the NMFS Office of Policy request may be obtained online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-oil-and-gas>. 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

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 issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization 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. The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

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).

Summary of Request

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 in U.S. waters of the GOA over the course of 5 years (86 FR 5322, January 19, 2021). 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 through April 19, 2026 (89 FR 31488, April 24, 2024). The existing ITR provides a framework for authorization of incidental

take through Letters of Authorization (LOAs) upon request from individual applicants planning specific geophysical survey activities.

On August 28, 2025, NMFS Office of Protected Resources received a request from the NMFS Office of Policy for reimplementation of the current ITR. The request notes that the pending April 2026 expiration of the current ITR would affect regulatory certainty with loss of an efficient permitting framework, and that reimplementation of the existing ITR on the basis of the same specified activity defined in the initial 2021 final rule and associated estimates of incidental take evaluated in the 2024 corrective rulemaking is consistent with the MMPA and appropriate pursuant to Executive Orders 14156 “Declaring a National Energy Emergency” and 14154 “Unleashing American Energy.” NMFS has received multiple requests from industry survey operators relating to specific survey activities that would extend beyond the current expiration date, establishing the need and ongoing basis for the ITR. The requested regulations would continue the established framework from the previous regulations for authorization of incidental take through LOAs until superseded by a new ITR promulgated on the basis of a separate request.

Specified Activities

The specified activity underlying the request for ITR reimplementation would remain unchanged from the generic program of geophysical survey activity in the central and western GOA described in the 2021 final rule. Geophysical survey activities typically involve a vessel or vessels towing an airgun or array of airguns, or other acoustic source that emits acoustic energy through the overlying water and into the seafloor. The 2021 final rule, as updated via the 2024 final rule, would be reimplemented without change, including all mitigation, monitoring, and reporting requirements.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals, if appropriate.

Dated: August 28, 2025.

Shannon Bettridge,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.

[FR Doc. 2025-16864 Filed: 9/2/2025 8:45 am; Publication Date: 9/3/2025]