



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XF156]

#### **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 application for Letter of Authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the EnerGeo Alliance (EnerGeo) for the development of regulations governing the taking of marine mammals incidental to geophysical survey activity conducted in the Gulf of America (GOA) over a period of 5 years. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of EnerGeo's request. NMFS invites the public to provide information, suggestions, and comments on EnerGeo's application.

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

**ADDRESSES:** Comments on the application should be addressed to the Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to [ITP.Harlacher@noaa.gov](mailto:ITP.Harlacher@noaa.gov).

*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 online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil->

*and-gas-industry-geophysical-survey-activity-gulf-america* 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. Do not submit confidential business information or otherwise sensitive or protected information.

A copy of the EnerGeo request may be obtained online at:

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-america>. 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**

Section 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).

On January 19, 2021, we issued a final rule with incidental take regulations (ITRs) 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 the statutory maximum 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 to reassess the statutorily required findings for issuance of the 2021 ITRs 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 affirming those findings in April 2024, effective through April 19, 2026 (89 FR 31488, April 24, 2024). The 2024 rule did not result in any changes to the existing ITRs, which provide a framework for authorization of incidental take through Letters of Authorization (LOAs) upon request from individual applicants planning specific geophysical survey activities. The existing ITRs are in effect through April 19, 2026.

### **Summary of Request**

On March 25, 2025, NMFS received an application from EnerGeo requesting development of ITRs governing the taking of marine mammals incidental to geophysical survey activity conducted in the GOA over the course of five years following the date of issuance. EnerGeo submitted revised versions of the application on July 14, August 8, and August 12, 2025, and NMFS determined the last of these to be adequate and complete. As with the existing ITRs for geophysical survey activity in the GOA, which will expire in April 2026, the requested ITRs would establish a framework for authorization of incidental take, by harassment only, through LOAs. Under the requested ITRs, if issued, individual applicants planning specific geophysical survey activities would be able to request and receive LOAs.

Readers are advised that on September 3, 2025 (90 FR 42569), NMFS published a Notice of Receipt of a request from the NMFS' Office of Policy for reimplementation of the current ITRs governing the incidental taking of marine mammals during geophysical survey activity conducted in the GOA. 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 ITRs on the basis of the same specified activity defined in the 2021 final rule and associated estimates of incidental take evaluated for 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." If issued, the requested regulations would continue the established current framework from the previous rulemaking for authorization of incidental take through LOAs unless and until superseded by a rulemaking and issuance of the ITRs requested by EnerGeo.

### **Specified Activities**

EnerGeo's application describes geophysical survey activity, conducted by industry operators in the western and central GOA. The geographic scope of the request

excludes the eastern GOA area placed under a Congressional leasing moratorium through 2022 under the Gulf of Mexico Energy Security Act (GOMESA) (Pub. L. 109-432, § 104). On September 8, 2020, President Trump effectively extended this moratorium through withdrawal under the Outer Continental Shelf Lands Act (OCSLA) of the same area covered by the GOMESA moratorium from disposition by leasing for 10 years, beginning on July 1, 2022, and ending on June 30, 2032. Geophysical activities are essential to oil and gas exploration, development, and production, and are used to characterize the shallow and deep structure of the shelf, slope, and deepwater environments. Geophysical surveys are conducted to obtain information on hydrocarbon production; identify and delineate new areas for hydrocarbon and mineral exploration; aid in siting offshore structures (facilities and pipelines); locate seafloor geologic hazards, archeological resources, and benthic habitats of interest. Geophysical surveys may occur before (pre) or after (post) leasing. Data collected through geophysical surveys may also inform leasing sale prices and business decisions by lessees.

### **Information Solicited**

Interested persons may submit information, suggestions, and comments concerning EnerGeo's 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: September 19, 2025.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

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