



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XE956]

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey off Western Mexico in the Eastern Tropical Pacific Ocean**

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

**ACTION:** Notice; issuance of incidental harassment authorization.

**SUMMARY:** In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Lamont-Doherty Earth Observatory (L-DEO) for authorization to take marine mammals incidental to a marine geophysical survey off Western Mexico in the Eastern Tropical Pacific Ocean (ETP).

**DATES:** This authorization is effective for one year from the date of notification by the IHA-holder, not to exceed one year from the date of issuance (November 25, 2025).

**ADDRESSES:** Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at:

*<https://www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatorys-marine-geophysical-survey-1>*. 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:**

## **MMPA Background and Determinations**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Among the exceptions is section 101(a)(5)(D) of the MMPA (16 U.S.C. 1361 *et seq.*) which directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking by harassment 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 the public has an opportunity to comment on the proposed IHA.

Specifically, NMFS will issue an IHA if it 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”). 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 the NMFS' implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

On May 5, 2025, a notice of NMFS' proposal to issue an IHA to L-DEO for take of marine mammals incidental to a marine geophysical survey off Western Mexico in the ETP was published in the **Federal Register** (90 FR 19090, May 5, 2025). In that notice, NMFS indicated the estimated numbers, type, and methods of incidental take proposed for each species or stock and the mitigation, monitoring, and reporting measures that would be required should the IHA be issued. The **Federal Register** notice also included analysis to support NMFS' preliminary conclusions and determinations that the IHA, if

issued, would satisfy the requirements of section 101(a)(5)(D) of the MMPA for issuance of the IHA. The **Federal Register** notice included web links to a draft IHA for review and other supporting documents.

NMFS' consideration of public comments, which we respond to below, did not result in changes to the analysis or findings in the Federal Register notice of proposed IHA or the required mitigation, monitoring, or reporting measures set forth in the proposed IHA. With the exception of the minor updates discussed below, there are no changes to the specified activity, the species taken, type, or methods of take, or the monitoring, or reporting measures in the proposed IHA notice. There are minor changes to the take numbers and mitigation requirements. No new information that would change any of the preliminary analyses, conclusions, or determinations in the proposed IHA notice has become available since that notice was published, and, therefore, the preliminary analyses, conclusions, and determinations included in the proposed IHA are considered final.

During the 30-day public comment period, NMFS received one substantive comment submission, from a member of the public. NMFS' response to the comment is provided below.

*Comment 1:* A commenter suggests a net be put at the center of the study location and extend out to the needed radius of the action area. The commenter states the nets would be the most effective at keeping out larger animals, and minimize killing of protected species. They also state that this would help the project comply with the Endangered Species Act.

*Response 1:* NMFS disagrees with the commenter's suggestion of putting a net in the action area to reduce impacts to marine mammals. In fact, a net would introduce new increased risk to marine mammals through entanglement that could potentially lead to serious injury or mortality, which is not a potential risk from the action as proposed.

Large whales entangled in gear or nets are impacted at both the individual and population level. Entanglement can result in the restriction of their movement and has been documented to cause mild to severe injuries to whales, and additionally, if not removed, could lead to drowning or suffocation. Injuries to these marine animals can affect their ability to reproduce and feed (Saez *et al.*, 2020).

Both the National Science Foundation and this MMPA IHA are Federal actions that are being consulted under Section 7 of the Endangered Species Act to ensure the continued existence of threatened and endangered species. The required mitigation measures are intended to be protective of marine mammals including those that are ESA-listed.

NMFS expects that all potential take would be Level B harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), responses that are considered to be of low severity, and with no lasting biological consequences (*e.g.*, Southall *et al.*, 2007, 2021). These low-level impacts of behavioral harassment are not likely to impact the overall fitness of any individual or lead to population level effects of any species. Additionally, this survey is very small related to the ranges of all marine mammals that could be found in the action area and is limited to only 7 days, further reducing population level impacts to species. As described in the proposed notice, Level A harassment is not expected to occur and we don't expect any serious injury or mortality. Therefore, NMFS disagrees with the commenter that the use of a net would be a suitable mitigation measure reducing impacts to marine mammals.

Minor changes have been made between publication of the notice of proposed IHA and this notice of final IHA, including changes to take and mitigation. For this survey, 4.7 percent of the effort would occur in waters 1,000-2,000 meters deep where Guadalupe fur seal density is zero. Based on this update, take of Guadalupe fur seal is reduced from 13 to 12. Additionally, since the majority of pinniped takes are Guadalupe

fur seal we have decided to remove pinnipeds from the shutdown waiver in the shutdown requirement of the mitigation section.

### **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) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs 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 has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

### **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 ensures 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.

The NMFS Office of Protected Resources (OPR) ESA Interagency Cooperation Division has issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to L-DEO under section 101(a)(5)(D) of the MMPA by the NMFS OPR Permits and Conservation Division. The Biological Opinion concluded that the action is not likely

to jeopardize the continued existence of ESA-listed humpback whales (Central America DPS), fin whales, sei whales, sperm whales and Guadalupe fur seals.

**Authorization**

Accordingly, consistent with the requirements of section 101(a)(5)(D) of the MMPA, NMFS has issued an IHA to L-DEO for authorization to take marine mammals incidental to a marine geophysical survey off Western Mexico in the ETP.

Dated: November 26, 2025.

**Kimberly Damon-Randall,**

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*National Marine Fisheries Service.*

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