

TABLE 6—PROPOSED UPDATED SHUTDOWN ZONES—Continued

Pile type and method	Shutdown zone for all species (m)	Change from initial IHA
Steel Shell Pile 36 inch, Vibratory	40	Increased 10 m.
Sediment Pins		
14- to 16-inch Timber, Vibratory	30	No change.
14- to 16-inch Timber, Impact	20	No change.
14- to 16-inch Composite, Vibratory	10	No change.
14- to 16-inch Composite, Impact	20	No change.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (88 FR 82836, November 27, 2023) and solicited public comments on both our proposal to issue the initial IHA for PG&E’s sediment remediation project and on the potential for a renewal IHA, should certain requirements be met.

All public comments were addressed in the notice announcing the issuance of the initial IHA (89 FR 5865, January 30, 2024) and none of the comments specifically pertained to the renewal IHA.

Preliminary Determinations

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of the Eastern stock of the Steller sea lion decreasing, updated analysis reflecting the 2024 Technical Guidance, and corresponding updates to required shutdown zones. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) PG&E’s activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

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 insure 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.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to PG&E for conducting pile driving activities associated with the Sediment Remediation Project in San Francisco Bay, California from May 1, 2025, to April 30, 2026, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-pacific-gas-electric-sediment-remediation-project-san>. We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: October 9, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE351]

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 Murphy Exploration and Production Company (Murphy) for the take of marine mammals incidental to geophysical survey activity in the GOM. **DATES:** This LOA is effective through January 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: 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, sheltering, nursing, breeding, feeding, or shattering (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” (LPAI) standard of the MMPA.

NMFS issued a LOA to Murphy on March 20, 2024, for the take of marine mammals incidental to a three-dimensional (3D) ocean bottom node survey in the Green Canyon protraction areas, including approximately 44 lease blocks, effective April 1, 2024, through October 31, 2024. Please see the **Federal Register** notice of issuance (89 FR 20946, March 26, 2024) for additional detail regarding the LOA and the survey activity.

Murphy has requested that the October 31, 2024, expiration date be extended to January 31, 2025, due to survey delays (the survey has not begun). Since we issued the LOA to Murphy, we have updated the final rule to include corrected take estimates and new information as discussed above; therefore, we have updated the authorized take numbers accordingly based on this new information. There are no changes to the planned survey, as described in the previous notice of issuance (89 FR 20946, March 26, 2024),

including the planned location and duration of the survey.

As discussed in the previous notice of issuance (89 FR 20946, March 26, 2024), no 3D OBN surveys were included in the modeled survey types, thus the coil proxy was selected. Murphy plans to cover approximately 25.6 square kilometers (km²) per day compared to the 144 km² in the coil proxy, and although Murphy is not proposing to perform a survey using the coil geometry, the coil proxy is most representative of the effort planned by Murphy in terms of predicted Level B harassment exposures. Additionally, Murphy plans to use a 28-element, 5,230 cubic inch (in³) airgun array and therefore the 5,110 in³ proxy was selected.

The survey will take place over approximately 44 days with 40 days of sound source operation, all planned in Zone 5. The monthly distribution of survey days is not known in advance, though we assume that the planned 40 days of source operation would occur contiguously. Take estimates for each species are based on the time period that produces the greatest value. There are no other changes to Murphy’s planned activity.

For the Rice’s whale, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, the rule acknowledged that other information could be considered (see, e.g., 86 FR 5442, January 19, 2021, discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate may produce results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates as described below.

NMFS’ 2024 final rule provided detailed discussion regarding Rice’s whale habitat (see, e.g., 89 FR 31508, 31519). In summary, recent survey data, sightings, and acoustic data support Rice’s whale occurrence in waters throughout the GOM between approximately 100 m and 400 m depth along the continental shelf break, and associated habitat-based density modeling has identified similar habitat (i.e., approximately 100 to 400 m water depths along the continental shelf break) as being Rice’s whale habitat (Garrison *et al.*, 2023; Soldevilla *et al.*, 2022, 2024).

Although Rice’s whales may occur outside of the general depth range expected to provide suitable habitat, we expect that any such occurrence would be rare. Murphy’s planned activities will occur in water depths of approximately 914 to 3,372 m in the central GOM. Thus, NMFS does not expect there to be the reasonable potential for take of Rice’s whale in association with this survey and, accordingly, does not authorize take of Rice’s whale through the LOA.

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 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 (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 are determined as described above. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a

derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than 1 day (see 86 FR 5404, January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS’ small numbers determinations, as depicted in table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 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 ANALYSIS

Species	Authorized take	Scaled take ¹	Abundance ²	Percent abundance
Rice’s whale	0	n/a	51	0
Sperm whale	366	155	3,007	5.2
<i>Kogia spp</i>	³ 117	36	980	4.3
Beaked whales	1,271	128	803	16.0
Rough-toothed dolphin	932	268	4,853	5.5
Bottlenose dolphin	1,156	332	165,125	0.2
Clymene dolphin	583	168	4,619	3.6
Atlantic spotted dolphin	345	99	21,506	0.5
Pantropical spotted dolphin	8,022	2,302	67,225	3.4
Spinner dolphin	185	53	5,548	1.0
Striped dolphin	1,667	478	5,634	8.5
Fraser’s dolphin	342	98	1,665	5.9
Risso’s dolphin	311	92	1,974	4.6
Blackfish ⁴	2,009	593	6,113	9.7
Short-finned pilot whale	470	139	2,741	5.1

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 6 takes by Level A harassment and 111 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 October 30, 2024, to January 31, 2025 and updated authorized take numbers based on the corrected information in the updated rule. There are no other changes to the LOA as described in the March 26, 2024, **Federal Register** notice of

issuance (89 FR 20946): the specified survey activity, and small numbers analysis and determination remain unchanged and are incorporated here by reference.

Dated: October 10, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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