

Dated: July 14, 2022.

Scot Fullerton,

*Associate Deputy Assistant Secretary for
Antidumping and Countervailing Duty
Operations.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC186]

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 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 Mexico,
notification is hereby given that a Letter
of Authorization (LOA) has been issued
to TGS–NOPEC Geophysical Company
(TGS) for the take of marine mammals
incidental to geophysical survey activity
in the Gulf of Mexico.

DATES: The LOA is effective from
September 15, 2022, through September
14, 2023.

ADDRESSES: The LOA, LOA request, and
supporting documentation are available
online at: [www.fisheries.noaa.gov/
action/incidental-take-authorization-oil-
and-gas-industry-geophysical-survey-
activity-gulf-mexico](http://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: Ben
Laws, 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 Federal waters of the
U.S. Gulf of Mexico (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.

Summary of Request and Analysis

TGS plans to conduct a 3D ocean
bottom node (OBN) survey in the
Mississippi Canyon, Atwater Valley,
Green Canyon, Ewing Bank, and South
Timbalier lease areas, with approximate
water depths ranging from 130 to 2,000
meters (m). See Figure 1 of the LOA
application for a map of the area.

TGS anticipates using two triple
source vessels, towing airgun array
sources consisting of 28 elements, with
a total volume of 5,200 cubic inches
(in³). Please see TGS's application for
additional detail.

Consistent with the preamble to the
final rule, the survey effort proposed by
TGS in its LOA request was used to
develop LOA-specific take estimates
based on the acoustic exposure
modeling results described in the
preamble (86 FR 5322, 5398; January 19,
2021). In order to generate the
appropriate take number for
authorization, the following information
was considered: (1) survey type; (2)
location (by modeling zone¹); (3)
number of days; and (4) season.² The
acoustic exposure modeling performed
in support of the rule provides 24-hour
exposure estimates for each species,
specific to each modeled survey type in
each zone and season.

No 3D OBN surveys were included in
the modeled survey types, and use of
existing proxies (*i.e.*, 2D, 3D NAZ, 3D
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 descriptions of these modeled
survey geometries are available in the
preamble to the proposed rule (83 FR
29212, 29220; June 22, 2018). Coil was
selected as the best available proxy
survey type in this case, because the
spatial coverage of the planned survey
is most similar to the coil survey
pattern. The planned 3D OBN survey
will involve two source vessels sailing
along survey lines approximately 75 km

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

² For purposes of acoustic exposure modeling,
seasons include Winter (December–March) and
Summer (April–November).

in length. The coil survey pattern was assumed to cover approximately 144 kilometers squared (km²) per day (compared with approximately 795 km², 199 km², and 845 km² per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (e.g., area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although TGS is not proposing to perform a survey using the coil geometry, its planned 3D OBN survey is expected to cover approximately 120–140 km² per day, meaning that the coil proxy is most representative of the effort planned by TGS in terms of predicted Level B harassment exposures.

In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in³ array. Thus, estimated take numbers for this LOA are considered conservative due to differences between the airgun array planned for use (28 elements, 5,200 in³) and the proxy array modeled for the rule.

The survey will take place over approximately 119 days, including 65 days of sound source operation, all within Zone 5. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that produces the greater value.

Additionally, for some species, 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. This can result in unrealistic projections regarding the likelihood of encountering particularly rare species and/or species not expected to occur outside particular habitats. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, e.g., 86 FR 5322, 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 for certain marine mammal species produces results that are inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

Rice's whales (formerly known as GOM Bryde's whales)³ are mostly found in a "core habitat area" located in the northeastern GOM in waters between 100–400 m depth along the continental shelf break (Rosel *et al.*, 2016). (Note that this core habitat area is outside the scope of the rule.) However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.*, 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling identified similar habitat (i.e., approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.*, 2016), although the core habitat area contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, e.g., 83 FR 29212, 29228, 29280 (June 22, 2018); 86 FR 5322, 5418 (January 19, 2021).

There are few data on Rice's whale occurrence outside of the northeastern GOM core habitat area. There were two sightings of unidentified large baleen whales (recorded as *Balaenoptera* sp. or Bryde's/sei whale) in 1992 in the western GOM during systematic survey effort and, more recently, a NOAA survey reported observation of a Rice's whale in the western GOM in 2017 (NMFS, 2018). There were five potential sightings of Rice's whales by protected species observers (PSOs) aboard industry geophysical survey vessels west of New Orleans from 2010–2014, all within the 200–400 m isobaths (Rosel *et al.*, 2021). In addition, sporadic, year-round recordings of Rice's whale calls were made south of Louisiana within approximately the same depth range between 2016 and 2017 (Soldevilla *et al.*, in press).

Although Rice's whales may occur outside of the core habitat area, we

expect that any such occurrence would be limited to the narrow band of suitable habitat described above (i.e., 100–400 m) and that, based on the few available records, these occurrences would be rare. TGS's planned activities will overlap this depth range, with approximately 18 percent of the area expected to be ensonified by the survey above root-mean-squared pressure received levels (RMS SPL) of 160 dB (referenced to 1 micropascal (re 1 μ Pa)) overlapping the 100–400 m isobaths. Therefore, while we expect take of Rice's whale to be unlikely, there is some reasonable potential for take of Rice's whale to occur in association with this survey. However, NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for Rice's whales would result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected Rice's whale take (86 FR 5322, 5403; January 19, 2021).

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.*, 2015; Maze-Foley and Mullin, 2006). As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.*, 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species and expressed that, due to the limited data available to inform the model, it "should be viewed cautiously" (Roberts *et al.*, 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional three encounters during more recent survey effort from 2017–18 (Waring *et al.*, 2013; www.boem.gov/gommapps). Two other species were also observed on less than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale⁴). However,

³ The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.*, 2021).

⁴ However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

observational data collected by PSOs on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives to 1–30 m depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated

with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. In addition, as noted above in relation to the general take estimation methodology, the assumed proxy source (72-element, 8,000-in³ array) results in a significant overestimate of the actual potential for take to occur. NMFS' determination in reflection of the information discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales for this survey would result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403; January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as Rice's whales or killer whales in the GOM through authorization of take of a single group of average size (*i.e.*, representing a single potential encounter). See 83 FR 63268; December 7, 2018. See also 86 FR 29090; May 28, 2021 and 85 FR 55645; September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of Rice's whales or killer whales is more likely than the model-generated estimates and has authorized take associated with a single group encounter (*i.e.*, up to 2 and 7 animals, respectively).

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations for the affected species or stocks of marine mammals. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

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. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. 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 one day (see 86 FR 5322, 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 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; 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/>). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.*, 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the 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	2	n/a	51	3.9
Sperm whale	1,710	723.2	2,207	32.8
<i>Kogia</i> spp.	646 ³	196.5	4,373	5.3
Beaked whales	7,546	762.1	3,768	20.2
Rough-toothed dolphin	1,297	372.4	4,853	7.7
Bottlenose dolphin	6,148	1,764.4	176,108	1.0

TABLE 1—TAKE ANALYSIS—Continued

Species	Authorized take	Scaled take ¹	Abundance ²	Percent abundance
Clymene dolphin	3,651	1,047.8	11,895	8.8
Atlantic spotted dolphin	2,456	704.8	74,785	0.9
Pantropical spotted dolphin	16,568	4,755.0	102,361	4.6
Spinner dolphin	4,439	1,274.1	25,114	5.1
Striped dolphin	1,426	409.3	5,229	7.8
Fraser's dolphin	410	117.7	1,665	7.1
Risso's dolphin	1,073	316.4	3,764	8.4
Melon-headed whale	2,399	707.6	7,003	10.1
Pygmy killer whale	565	166.5	2,126	7.8
False killer whale	898	264.9	3,204	8.3
Killer whale	7	n/a	267	2.6
Short-finned pilot whale	694	204.7	1,981	10.3

¹ Scalar ratios were applied to "Authorized Take" values as described at 86 FR 5322, 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 (Roberts *et al.*, 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and killer whale, the larger estimated SAR abundance estimate is used.

³ Includes 34 takes by Level A harassment and 612 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.

Based on the analysis contained herein of TGS'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 and therefore 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 TGS authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: July 14, 2022.

Catherine G. Marzin,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC183]

Request for Information on Research in Dedicated Habitat Research Areas; Fisheries of the Northeastern United States; Essential Fish Habitat

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for information.

SUMMARY: NMFS is requesting information about ongoing and proposed research in the Stellwagen and Georges Bank Dedicated Habitat Research Areas, which were established in 2018. The regulations require the NMFS Regional Administrator to initiate a review, consult with the New England Fishery Management Council about, and evaluate the use of the Dedicated Habitat Research Areas 3 years after their establishment. This action is intended to collect information to support the review of the Dedicated Habitat Research Areas and to determine whether they should be maintained. Response to this request for information is voluntary.

DATES: Interested persons are invited to submit comments on or before August 19, 2022.

ADDRESSES: You may submit written comments by the following method:

- *Email:* Laura.Deighan@noaa.gov. Include in the subject line "DHRA Research."

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, Laura.Deighan@noaa.gov, (978) 281-9184.

SUPPLEMENTARY INFORMATION: In Omnibus Essential Fish Habitat Amendment 2 (OHA2), the New England Fishery Management Council adopted the Stellwagen and Georges Bank Dedicated Habitat Research Areas (DHRA) to better understand how habitat management measures influence stock productivity and to allow for the

design of more effective conservation measures in future actions (83 FR 15240; April 9, 2018). The regulations at 50 CFR 648.371 codify the Stellwagen DHRA, which prohibits fishing with bottom-tending mobile gear, sink gillnet gear, or demersal longline gear, unless otherwise exempted, and the Georges Bank DHRA, which prohibits bottom-tending mobile gear, unless otherwise exempted.

The regulations require the NMFS Regional Administrator to initiate a review, consult with the New England Fishery Management Council about, and evaluate the use of the DRHAs beginning 3 years after their establishment to determine if they should be maintained. Criteria used to evaluate whether the DHRA may continue include documented active and ongoing research in the form of data records, cruise reports, or inventory of samples, approved research proposals, or funding requests for pending research. The review is intended to evaluate whether appropriate research activities are ongoing or imminent, or if these designated areas are unused for their intended purpose of improving habitat science. Specific questions NMFS will consider in the evaluation include:

- Is there active research being conducted in the DHRA?
- Is it anticipated that it will continue beyond this fishing year?
- Is there potential research currently in the permitting process at the Greater Atlantic Regional Fisheries Office or other entities, *e.g.*, Stellwagen Bank National Marine Sanctuary?
- Is there potential research currently in the funding process?