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VIA ELECTRONIC MAIL TO: [martyn.willsher@amplifyenergy.com](mailto:martyn.willsher@amplifyenergy.com)

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Dear Mr. Martyn Willsher,

It was tragic that the San Pedro Bay oil pipeline from Platform Elly spilled oil, harming sensitive marine and coastal habitat and wildlife. But oil spills are an inevitable reality of continued offshore drilling. Offshore oil and gas activities are unwelcome off California's coast. We urge Amplify Energy to decommission the pipeline — which has outlived its intended lifespan — and to rapidly begin decommissioning the entire Beta Unit.

If Amplify Energy does not do so, and chooses instead to seek to repair the San Pedro Bay oil pipeline, Pipeline 00547, it must apply to the National Marine Fisheries Service for authorization to take marine mammals incidental to its proposed repair activities. The construction activities will take marine mammals and therefore are prohibited under the Marine Mammal Protection Act (MMPA) absent federal authorization.

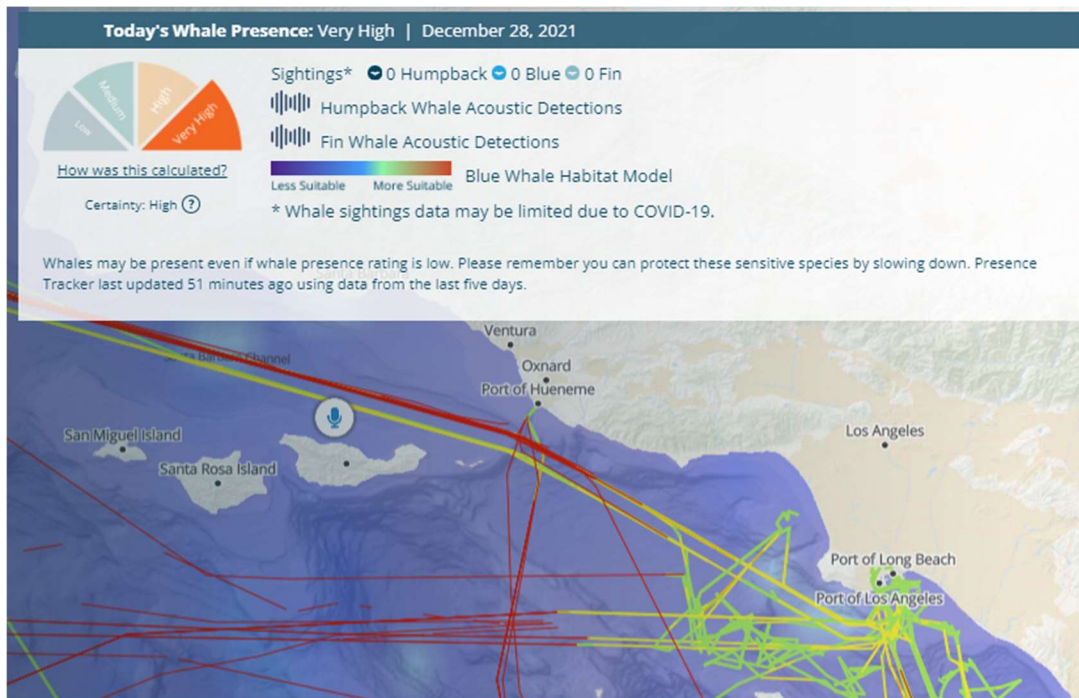
Congress enacted the MMPA 50 years ago to address the concern that “certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man’s activities,” and to help “protect[] and encourage[]” marine mammals “to develop to the greatest extent feasible.” 16 U.S.C. § 1361(1), (6). “The interest in maintaining healthy populations of marine mammals comes first” under the statute. *Kokechik Fishermen’s Ass’n v. Sec’y of Comm.*, 839 F.2d 795, 800, 802 (D.C. Cir. 1988).

To accomplish these objectives, the MMPA establishes a complete moratorium on the “taking” of marine mammals. 16 U.S.C. §§ 1371(a), 1372(a); *see also id.* § 1362(8). Under the MMPA, the term “take” is broadly defined to mean “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.” *Id.* § 1362(13). “Harassment” is further defined to include acts of “torment” or “annoyance” that have the “potential” to injure a marine mammal or marine mammal stock in the wild or have the potential to “disturb” them “by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.” *Id.* § 1362(18); *see also* 50 C.F.R. § 216.3.

The MMPA provides narrow exceptions to the moratorium on take. For activities less than one year in duration resulting in harassment only, Amplify Energy must apply for an Incidental Harassment Authorization. 16 U.S.C. § 1371(a)(5)(D)(i). Undertaking activities that may also result in serious injury or mortality of marine mammals require Incidental Take Regulations, and the applicant must obtain a Letter of Authorization. 16 U.S.C. § 1371(a)(5)(A)(i). Any authorization to take marine mammals must result in the incidental take of only “small numbers of marine mammals of a species or population stock,” and can have no more than a “negligible impact” on species and stocks. *See id.* § 1371(a)(5)(D)(i).

The oil pipeline construction and related activities will harass and may injure protected marine mammals, and thus may not proceed lawfully without an MMPA incidental take authorization. Moreover, authorizations to take marine mammals protected under the Endangered Species Act (ESA), such as whales and Guadalupe fur seals, are also dependent on MMPA authorization. Take of these species without the requisite take authorizations under both the MMPA and ESA would constitute a violation of section 9 of the ESA. *See* 16 U.S.C. § 1538(a).

The pipeline is in waters that are an ecologically important area for California. The waters off the coast of Long Beach, Seal Beach, and Huntington Beach are biologically significant and provide habitat for several marine mammals. Blue, fin, sei, humpback, and sperm whales, as well as other marine mammals like Guadalupe fur seals and dolphins, use these southern California seawaters. At the time of this letter, whale presence is very high in the region according to WhaleSafe, a tool designed by the Benioff Ocean Initiative and University of California Santa Barbara that uses acoustic and visual detections and modeling to report whale presence. *See image below:*



Amplify Energy's proposed vessel and barge activities to support the construction and repair activities will harass and disturb marine mammals. Vessels are one of the key threats to threatened and endangered whales because of the threat of collision that may result in death or injury. Moreover, mooring system and cables for the derrick barge pose an entanglement risk to marine mammals.

In addition, noise can disrupt key behaviors such as feeding, breeding and communication. Noise from vessels, generators, pipecutting, wet welding, and air jetting among other activities will take marine mammals and their prey. Noise pollution masks important communication among whales, and it can interfere with echolocation used for navigation and feeding. To the extent that the construction work displaces marine mammals from their preferred habitat, these animals would be at increased risk of vessel collision in the busy Long Beach Port area.

Seafloor construction activities such as sand air jetting and placement and burying concrete mats will cause turbidity and resuspension of contaminants. Poor water quality conditions can harm and harass marine mammals. The plume of suspended materials can spread for vast distances depending on water currents, conditions, and methods. The water quality impacts from construction activities may harm marine mammals and the prey they depend upon. Moreover, dredging can stir up contaminants from the sea floor and suspend them in the water column. The proposed repair activities also risk additional oil spills. The ruptured pipeline may still have residual oil and oily mixtures in it that may be released into the water when repairs are undertaken. This can expose marine mammals and their prey to toxins—which are a key threat and bioaccumulate in marine mammals.

In conclusion, we respectfully urge Amplify Energy to move quickly toward decommissioning the aging Beta Unit infrastructure. However, to the extent Amplify Energy proceeds with further repair or replacement of the San Pedro Bay oil pipeline it should comply with federal environmental laws. Not only is MMPA authorization required for the proposed construction activities, but it will also safeguard marine mammals from unnecessary harm and harassment and ensure proper mitigation, monitoring, and reporting. Information on how to apply for a MMPA authorization is available from the National Marine Fisheries Service website at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Sincerely,

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