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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XE268**

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research**

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

**ACTION:** Notice of issuance of Letters of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that Letters of Authorization (LOA) have been issued to the NMFS Southwest Fisheries Science Center (SWFSC) for the take of marine mammals incidental to fisheries research conducted in multiple specified geographical regions.

**DATES:** Effective from October 30, 2015, through October 29, 2020.

**ADDRESSES:** The LOAs and supporting documentation are available on the Internet at: [www.nmfs.noaa.gov/pr/permits/incidental/research.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm). In case of problems accessing these documents, please call the contact listed above (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].

### **Summary of Request**

On April 25, 2013, we received an adequate and complete request from SWFSC for authorization to take marine mammals incidental to fisheries research activities. On February 13,

2015 (80 FR 8166), we published a notice of proposed rulemaking in the **Federal Register**, requesting comments and information related to the SWFSC request for thirty days. The final rule was published in the **Federal Register** on September 30, 2015 (80 FR 58982). For detailed information on this action, please refer to those documents. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during fisheries research activities in three separate specified geographic regions.

SWFSC conducts fisheries research using pelagic trawl gear used at various levels in the water column, pelagic longlines with multiple hooks, bottom-contact trawls, and other gear. If a marine mammal interacts with gear deployed by SWFSC, the outcome could potentially be Level A harassment, serious injury (i.e., any injury that will likely result in mortality), or mortality. We pooled the estimated number of incidents of take resulting from gear interactions and assessed the potential impacts accordingly. SWFSC also uses various active acoustic devices in the conduct of fisheries research, and use of these devices has the potential to result in Level B harassment of marine mammals. Level B harassment of pinnipeds hauled out on ice may also occur, in the Antarctic only, as a result of visual disturbance from vessels conducting SWFSC research.

The SWFSC conducts fisheries research surveys in the California Current Ecosystem (CCE), the Eastern Tropical Pacific (ETP), and the Antarctic Marine Living Resources Ecosystem (AMLR). As required by the MMPA, SWFSC's request was considered separately for each specified geographical region, and three separate LOAs have been issued. In the CCE, SWFSC is authorized to take individuals of seventeen species by Level A harassment, serious injury, or mortality (M/SI + Level A) and of 34 species by Level B harassment. In the ETP, SWFSC is authorized to take individuals of eleven species by M/SI + Level A and of 31 species

by Level B harassment. In the AMLR, SWFSC is authorized to take individuals of seventeen species by Level B harassment. No takes by M/SI + Level A are anticipated in the AMLR.

### **Authorization**

We have issued LOAs to SWFSC authorizing the take of marine mammals incidental to fishery research activities, as described above. Take of marine mammals will be minimized through implementation of the following mitigation measures: (1) implementation of a “move-on” rule in certain circumstances that is expected to reduce the potential for physical interaction with marine mammals; (2) use of a marine mammal excluder device in certain trawl nets; and (3) use of acoustic deterrent devices on certain trawl nets. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The SWFSC will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described under these LOAs will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: November 2, 2015.

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