



**BILLING CODE: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XF107**

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fishery-Independent Monitoring Activities**

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

**ACTION:** Notice; receipt of application for Letters of Authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the Texas Parks and Wildlife Department (TPWD) for authorization to take marine mammals incidental to conducting fishery-independent monitoring activities in estuarine waters of Texas, over the course of five years. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of TPWD's request for the development and implementation of regulations governing the incidental taking of marine mammals.

NMFS invites the public to provide information, suggestions, and comments on TPWD's application and request.

**DATES:** Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West

Highway, Silver Spring, MD 20910 and electronic comments should be sent to  
*ITP.Laws@noaa.gov*.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing online at [www.nmfs.noaa.gov/pr/permits/incidental/research.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm) without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Availability**

Electronic copies of TPWD's application may be obtained online 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.

**Background**

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) 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) if certain findings are made and regulations are issued.

Incidental taking shall be allowed if NMFS finds that the taking will have a negligible impact on the species or stock(s) affected and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking 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 July 29, 2015, NMFS received an adequate and complete application from TPWD requesting authorization for take of marine mammals incidental to fishery-independent monitoring activities in Texas. The requested regulations would be valid for five years from the date of issuance. The proposed action requires the use of gillnets in Texas bays. Use of gillnets in Texas bays presents a reasonable likelihood of interaction

with bottlenose dolphins (*Tursiops truncatus*). Therefore, TPWD requests authorization to incidentally take bottlenose dolphins.

### **Specified Activities**

TPWD conducts a long-term standardized fishery-independent monitoring program to assess the relative abundance and size of finfish and shellfish in Texas bays. This program uses gillnets deployed according to a stratified random sample design, with each Texas bay system as an independent stratum. Gillnets are set overnight during ten-week spring and fall sampling seasons, with gillnets set perpendicularly to shore.

### **Information Solicited**

Interested persons may submit information, suggestions, and comments concerning TPWD's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by TPWD, if appropriate.

Dated: December 27, 2016.

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Donna S. Wieting,  
Director,  
Office of Protected Resources,  
National Marine Fisheries Service.

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