



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-BM93

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Alaska Fisheries Science Center Fisheries and Ecosystem Research

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

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

SUMMARY: NMFS has received a request from the NMFS Alaska Fisheries Science Center (AFSC) for authorization to take marine mammals incidental to conducting fisheries and ecosystem research in the Pacific and Arctic Oceans over the course of 5 years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of AFSC'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 the AFSC'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 applications should be addressed to Jolie Harrison, Chief, Permits and should be submitted via e-mail to *ITP.Jacobus@noaa.gov*. An electronic copy of AFSC's application may be obtained online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kristy Jacobus, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the AFSC's application may be obtained online at: *<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>*. In case of problems accessing these documents, please call the contact listed above.

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 (as delegated to NMFS) 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 incidental take authorization 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.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

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 November 13, 2023, NMFS received an application from the AFSC requesting authorization for take of marine mammals incidental to fisheries and ecosystem research conducted by AFSC and the International Pacific Halibut Commission (IPHC) in the Pacific and Arctic Oceans. Following NMFS' review of the application, AFSC provided responses to our questions and submitted a revised application on March 19, 2024, and the application was deemed adequate and complete on March 20, 2024. The requested regulations would be valid for 5 years, from October 7, 2024 through October 6, 2029. AFSC plans to conduct fisheries research surveys in multiple geographic regions, including the Gulf of Alaska, Bering Sea, and Arctic Ocean. The IPHC operates in the Bering Sea, Gulf of Alaska, and waters off the U.S west coast. It is possible that marine mammals may interact with fishing gear (*e.g.*, trawl nets, longline, gillnets) used in AFSC's and IPHC's fisheries research projects, resulting in injury, serious injury, or mortality. In addition, Level B harassment takes due to physical disturbance of pinnipeds at haulouts due to the presence of research vessels, gear, or humans is possible. Therefore, AFSC requests authorization to incidentally take marine mammals.

AFSC has determined it appropriate to incorporate the fisheries research activities of the IPHC into their specified activity. The IPHC, established by a Convention between the government of Canada and the U.S., is an international fisheries organization mandated to conduct research on and manage the stock of Pacific halibut (*Hippoglossus*

stenolepis) within the Convention waters of both nations. Although operating in U.S. waters (and, therefore, subject to the MMPA prohibition on “take” of marine mammals), the IPHC is not appropriately considered to be a U.S. citizen (as defined by the MMPA) and cannot be issued an incidental take authorization. IPHC activity and requested take authorization is described in AFSC’s application.

The requested regulations would be the second incidental take regulations issued to AFSC, following regulations in place from 2019-2024. Monitoring reports submitted by AFSC are available online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-afsc-fisheries-and-ecosystem-research>.

Specified Activities

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. federal waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based, Federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The AFSC is the research arm of NMFS in U.S. waters off of Alaska.

As noted above, the IPHC is an international organization dedicated to conducting research in support of increasing and maintaining knowledge of halibut biology and stock assessment.

Research is aimed at monitoring fish stock recruitment, survival and biological rates, abundance and geographic distribution of species and stocks, and providing other scientific information needed to improve our understanding of complex marine ecological processes. The AFSC and IPHC propose to administer and conduct these survey programs over the 5-year period.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning AFSC'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 AFSC, if appropriate.

Dated: March 26, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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