



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XE634]

#### **Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Proposed Issuance of Permit**

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

**ACTION:** Notice; request for comments.

**SUMMARY:** NMFS is proposing to issue a permit to authorize the incidental, but not intentional, take of specific Endangered Species Act (ESA)-listed marine mammal species or stocks under the Marine Mammal Protection Act (MMPA), in the Category II California (CA) thresher shark/swordfish drift gillnet ( $\geq 14$  inch (in) mesh) fishery and the corresponding high seas component of the fishery as defined on the MMPA List of Fisheries as the Pacific highly migratory species drift gillnet fishery (hereinafter, collectively referred to as the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery.

**DATES:** Comments on this action and supporting documents must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on the proposed permit and the preliminary determination supporting the permit, identified by NOAA-NMFS-2025-0007, through the Federal e-Rulemaking Portal:

1. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2025-0007 in the Search box.
2. Click the “Comment” icon, and complete the required fields.

3. Enter or attach your comments.

*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 on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

The preliminary determination supporting the permit is available on the Internet at <https://www.regulations.gov/docket/NOAA-NMFS-2025-0007>. Other supporting information is available on the Internet including: recovery plans for the ESA-listed marine mammal species, <https://www.fisheries.noaa.gov/national/endangered-species-conservation/recovery-species-under-endangered-species-act>; 2024 MMPA List of Fisheries (LOF), <https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables>; the most recent Marine Mammal Stock Assessment Reports (SAR) by region, <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>, and stock, <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock>; and Take Reduction Teams (TRT) and Plans, <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-take-reduction-plans-and-teams>.

**FOR FURTHER INFORMATION CONTACT:** Dan Lawson, West Coast Region, (206) 526-4740, [Dan.Lawson@noaa.gov](mailto:Dan.Lawson@noaa.gov), or Jaclyn Taylor, NMFS Office of Protected Resources, (301) 427-8402, [Jaclyn.Taylor@noaa.gov](mailto:Jaclyn.Taylor@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

The MMPA requires NMFS to authorize the incidental take of ESA-listed marine mammals in commercial fisheries provided it can make the following determinations: (1) the incidental mortality and serious injury (M/SI) from commercial fisheries will have a negligible impact on the affected species or stocks; (2) a recovery plan for all affected species or stocks of threatened or endangered marine mammals has been developed or is being developed pursuant to the ESA; and (3) where required under MMPA section 118, a take reduction plan (TRP) has been developed or is being developed, a monitoring program is established, and vessels participating in the fishery are registered. We have made a preliminary determination that the Category II CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery meets these three requirements and propose to issue a permit to the fishery to authorize the incidental take of ESA-listed marine mammal species or stocks (Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whale; CA/OR/WA stock of sperm whale) under the MMPA for a period of 3 years. We solicit public comments on the proposed issuance of the permit and the underlying preliminary determination.

## **Background**

The MMPA LOF classifies each commercial fishery as a Category I, II, or III fishery based on the level of mortality and injury of marine mammals occurring incidental to each fishery as defined in 50 CFR 229.2. Section 118(c)(2) of the MMPA requires fishing vessels that operate in Category I and II fisheries to register with NMFS and are subsequently authorized to incidentally take marine mammals during commercial fishing operations. However, that authorization is limited to those marine mammals that are not listed as threatened or endangered under the ESA. Section 118(a)(2) of the MMPA, 16 U.S.C. 1387(a)(2), also requires an additional authorization at section 101(a)(5) of the MMPA, 16 U.S.C. 1371, for incidental taking of ESA-listed marine

mammals. Section 101(a)(5)(E) of the MMPA, 16 U.S.C. 1371, states that NMFS, as delegated by the Secretary of Commerce, for a period of up to 3 consecutive years shall allow the incidental, but not intentional, taking of marine mammal species or stocks designated as depleted because of their listing as an endangered species or threatened species under the ESA, 16 U.S.C. 1531 *et seq.*, by persons using vessels of the United States, while engaging in commercial fishing operations, if NMFS makes certain determinations. NMFS must determine, after notice and opportunity for public comment, that: (1) incidental M/SI from commercial fisheries will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock pursuant to the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a TRP has been developed or is being developed for such species or stock.

The LOF includes a list of marine mammal species or stocks incidentally killed or injured in each commercial fishery. We evaluated ESA-listed stocks or species included on the final 2024 MMPA LOF (89 FR 12257, February 16, 2024) as killed or seriously injured following NMFS' Procedural Directive 02-238 "Process for Distinguishing Serious from Non-Serious Injury of Marine Mammals." Based on this evaluation, we propose to issue a permit under MMPA section 101(a)(5)(E) to vessels registered in the Category II CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery, as classified on the final 2024 MMPA LOF, to incidentally kill or seriously injure individuals from the Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whale and CA/OR/WA stock of sperm whale.

NMFS regularly evaluates commercial fisheries for purposes of making a negligible impact determination (NID) and issuing section 101(a)(5)(E) authorizations

with the annual LOF as new information becomes available. More information about the fisheries is available in the 2024 MMPA LOF (89 FR 12257, February 16, 2024) and on the Internet at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables>.

We reviewed the best available scientific information to determine if the fishery met the three requirements of MMPA section 101(a)(5)(E) for issuing a permit. This information is included in the 2024 MMPA LOF (89 FR 12257, February 16, 2024), the SARs for these species (available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>), recovery plans for these species (available at: <https://www.fisheries.noaa.gov/national/endangered-species-conservation/recovery-species-under-endangered-species-act>), and other relevant information, as detailed further in the document describing the preliminary determination supporting the permit (available at: <https://www.regulations.gov/docket/NOAA-NMFS-2025-0007>).

### **Basis for Determining Negligible Impact**

Prior to issuing a MMPA 101(a)(5)(E) permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if the M/SI incidental to commercial fisheries will have a negligible impact on the affected marine mammal species or stocks. NMFS satisfies this requirement by making a NID. Although the MMPA does not define “negligible impact,” NMFS has issued regulations providing a qualitative definition of “negligible impact,” defined 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.

### **Criteria for Determining Negligible Impact**

NMFS uses a quantitative approach for determining negligible impact detailed in NMFS Procedural Directive 02-204-02 (directive), “Criteria for Determining Negligible Impact under MMPA section 101(a)(5)(E),” which became effective on June 17, 2020 (NMFS 2020). The procedural directive is available online at:

<https://www.fisheries.noaa.gov/national/laws-and-policies/protected-resources-policy-directives>. The directive describes NMFS’ process for determining whether incidental M/SI from commercial fisheries will have a negligible impact on ESA-listed marine mammal species/stocks (the first requirement necessary for issuing a MMPA section 101(a)(5)(E) permit as noted above).

The directive first describes the derivation of two Negligible Impact Thresholds (NIT), which represent levels of removal from a marine mammal species or stock. The first, Total Negligible Impact Threshold ( $NIT_t$ ), represents the total amount of human-caused M/SI that NMFS considers negligible for a given stock. The second, lower threshold, Single NIT ( $NIT_s$ ) represents the level of M/SI from a single commercial fishery that NMFS considers negligible for a stock.  $NIT_s$  was developed in recognition that some stocks may experience non-negligible levels of total human-caused M/SI but one or more individual fisheries may contribute a very small portion of that M/SI, and the effect of an individual fishery may be considered negligible.

The directive describes a detailed process for using these NIT values to conduct a NID analysis for each fishery classified as a Category I or II fishery on the MMPA LOF. The NID process uses a two-tiered analysis. The Tier 1 analysis first compares the total human-caused M/SI for a particular stock to  $NIT_t$ . If  $NIT_t$  is not exceeded, then all commercial fisheries that kill or seriously injure the stock are determined to have a negligible impact on the particular stock. If  $NIT_t$  is exceeded, then the Tier 2 analysis compares each individual commercial fishery’s M/SI for a particular stock to  $NIT_s$ . If  $NIT_s$  is not exceeded, then the commercial fishery is determined to have a negligible

impact on that particular stock. For transboundary, migratory stocks, where the M/SI that occurs outside of U.S. waters is uncertain, we assume that total M/SI exceeds  $NIT_t$  and proceed directly to the Tier 2  $NIT_s$  analysis. If a commercial fishery has a negligible impact across all ESA-listed stocks, then the first of three findings necessary for issuing a MMPA 101(a)(5)(E) permit to the commercial fishery has been met (*i.e.*, a NID). If a commercial fishery has a non-negligible impact on any ESA-listed stock, then NMFS cannot issue a MMPA 101(a)(5)(E) permit for the fishery to incidentally take ESA-listed marine mammals.

These NID criteria rely on the best available scientific information, including estimates of a stock's minimum population size and human-caused M/SI levels, as published in the most recent SARs and other supporting documents, as appropriate. Using these inputs, the quantitative negligible impact thresholds allow for straightforward calculations that lead to clear negligible or non-negligible impact determinations for each commercial fishery analyzed. In rare cases, robust data may be unavailable for a straightforward calculation, and the directive provides instructions for completing alternative calculations or assessments where appropriate.

### **Negligible Impact Determination**

NMFS evaluated the impact of the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery following the directive and based on the best available scientific information, made a preliminary NID. The NID analysis is presented in the accompanying MMPA 101(a)(5)(E) evaluation document that provides summaries of the information used to evaluate each ESA-listed stock documented on the 2024 MMPA LOF as killed or injured incidental to the fishery (available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables>). The draft MMPA 101(a)(5)(E) evaluation document is available at: <https://www.regulations.gov/docket/NOAA-NMFS-2025-0007>.

The Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whale are transboundary stocks. The CA/OR/WA stock of sperm whales is also a transboundary stock based on the description of the stock's geographic range in the 2023 SAR (Carretta *et al.* 2024). A recent study by Wild *et al.* (2024) found that after foraging in the Gulf of Alaska, tagged male sperm whales travelled south, along the west coast of North America, down to Mexican waters. Because the M/SI that occurs outside of U.S. waters for these transboundary stocks is uncertain, we assumed that total M/SI exceeds  $NIT_t$  for these stocks and proceeded directly to the Tier 2  $NIT_s$  analysis.

Based on the criteria outlined in the directive, the most recent SARs, and the best available scientific information, NMFS has determined that the M/SI of Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whale and CA/OR/WA stock of sperm whale incidental to the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery will have a negligible impact on these stocks. Accordingly, this MMPA 101(a)(5)(E) requirement is satisfied for CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery (see draft MMPA 101(a)(5)(E) determination document is available at: <https://www.regulations.gov/docket/NOAA-NMFS-2025-0007>). Summaries of the NID analyses are provided below.

The Category II CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery has documented incidental M/SI of the Central America/Southern Mexico-CA/OR/WA stock of humpback whale. The 2022 SAR includes a mean annual total commercial fishery-related M/SI (8.1) (data from 2016-2020) for the Central America/Southern Mexico-CA/OR/WA stock of humpback whale (Carretta *et al.* 2023). This comprises M/SI from all commercial fisheries,

including the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery, as well as fishery-related M/SI for the stock not assigned to a specific commercial fishery.

A more recent publication, Carretta 2023, includes bycatch data from 1990 through 2022 for the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery. Using M/SI from 2018-2022 from Carretta 2023, estimated M/SI of humpback whales (Central America/Southern Mexico-CA/OR/WA stock) in the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery is 0.170 (Carretta 2023). Since this M/SI (0.170) is less than  $NIT_s$  (0.68), NMFS preliminarily determined that the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery has a negligible impact on the Central America/Southern Mexico-CA/OR/WA stock of humpback whale (see accompanying MMPA 101(a)(5)(E) evaluation document).

The Category II CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery has documented incidental M/SI of the Mainland Mexico-CA/OR/WA stock of humpback whale. The 2022 SAR includes a mean annual total commercial fishery-related M/SI (11.4) (data from 2016-2020) for the Mainland Mexico-CA/OR/WA stock of humpback whale (Carretta *et al.* 2023). This comprises M/SI from all commercial fisheries, including the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery, as well as fishery-related M/SI for the stock not assigned to a specific commercial fishery.

A more recent publication, Carretta 2023, includes bycatch data from 1990 through 2022 for the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery. Using M/SI from 2018-2022, estimated M/SI of humpback whales (Mainland Mexico-CA/OR/WA stock) in the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet

fishery is 0.231 (Carretta 2023). Since this M/SI (0.231) is less than  $NIT_s$  (1.70), NMFS preliminarily determined that the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery has a negligible impact on the Mainland Mexico-CA/OR/WA stock of humpback whale (see accompanying MMPA 101(a)(5)(E) evaluation document).

The Category II CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery has documented incidental M/SI of the CA/OR/WA stock of sperm whale in the 2023 SAR. Mean annual total commercial fishery-related M/SI for the CA/OR/WA stock of sperm whales from 2017-2021 is 0.52 (Carretta *et al.* 2024). This comprises M/SI from all commercial fisheries, including the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery, as well as fishery-related M/SI for the stock not assigned to a specific commercial fishery.

Carretta 2023, includes bycatch data from 1990 through 2022 for the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery. Using M/SI from 2018-2022, estimated M/SI of sperm whales (CA/OR/WA stock) in the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery is 0.00 (Carretta 2023). Since this M/SI (0.00) is less than  $NIT_s$  (0.523), NMFS preliminarily determined that the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery has a negligible impact on the CA/OR/WA stock of sperm whale (see accompanying MMPA 101(a)(5)(E) evaluation document).

The most recent SARs for the Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whale and CA/OR/WA stock of sperm whale include fishery-related M/SI not assigned to a specific commercial fishery. This unattributed fishery-related M/SI could be from any number of commercial,

recreational, or tribal fisheries. However, because this fishery is observed (~20 percent observer coverage) we are confident that any unobserved humpback or sperm whale M/SI in the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery is accounted for in the model-based M/SI estimates for these stocks (Carretta 2023). Given this, any unattributed fishery-related M/SI that may be incidental to this specific commercial fishery is already accounted for, and we did not include unattributed mortality in the calculations for NID Tier 2 analyses (described above). NMFS is actively monitoring the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery through a fishery observer program. If additional fishery-related M/SI is documented through the observer program and required reporting that indicates additional M/SI of the Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whale or CA/OR/WA stock of sperm whale is occurring, then NMFS will re-evaluate the NIDs and the permit.

### **Recovery Plans**

A recovery plan for sperm whales has been developed (see <https://www.fisheries.noaa.gov/national/endangered-species-conservation/recovery-species-under-endangered-species-act>).

A recovery plan for the globally ESA-listed humpback whale species was developed in 1991. In 2016, NMFS revised the listing status of the humpback whale under the ESA. The globally listed endangered species was divided into 14 distinct population segments (DPSs), the species-level listing was removed, and NMFS listed four DPSs as endangered and one DPS as threatened (81 FR 62260, September 8, 2016). In June 2022, NMFS published a recovery outline for the Central America, Mexico, and Western North Pacific DPSs of humpback whales (<https://www.fisheries.noaa.gov/resource/document/recovery-outline-central-america->

*mexico-and-western-north-pacific-distinct*). The recovery outline serves as an interim guidance document and, with the existing species-wide recovery plan, directs recovery efforts, including recovery planning, for the Central America and Mexico DPSs of humpback whales. These DPSs correspond with the Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whales, respectively. Once finalized, the new recovery plan will replace the species-wide recovery plan.

Accordingly, the requirement that a recovery plan has been developed pursuant to the ESA is satisfied.

### **Take Reduction Plan**

The MMPA section 118 requires the development and implementation of a TRP for each strategic stock that interacts with a Category I or II fishery. Subject to available funding, the Secretary shall give highest priority to the development of TRPs for species or stocks whose M/SI exceeds potential biological removal level, have a small population size, and which are declining most rapidly. The stocks considered for these permits are designated as strategic stocks under the MMPA because the stocks or a component of the stocks are listed as threatened species or endangered species under the ESA (MMPA section 3(19)(C)). A TRP for the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery and the affected marine mammal species or stocks (Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whale and CA/OR/WA stock of sperm whale) has been developed (*see* Pacific Offshore Cetacean Take Reduction Plan).

Accordingly, the requirement under MMPA section 118 to have a TRP in place or in development is satisfied (see preliminary determination supporting the permit available on the Internet at <https://www.regulations.gov/docket/NOAA-NMFS-2025-0007>).

### **Monitoring Program**

Under MMPA section 118(d), NMFS is to establish a program for monitoring incidental M/SI of marine mammals from commercial fishing operations. The CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery is monitored by a NMFS fishery observer program. Accordingly, the requirement under MMPA section 118 to have a monitoring program in place is satisfied.

### **Vessel Registration**

MMPA section 118(c) requires that vessels participating in Category I and II fisheries register to obtain an authorization to take marine mammals incidental to fishing activities. NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program, with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Therefore, the requirement for vessel registration is satisfied.

### **Conclusions for Proposed Permit**

Based on the above evaluation for the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery as it relates to the three requirements of MMPA section 101(a)(5)(E), we propose to issue a MMPA 101(a)(5)(E) permit to the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery to authorize the incidental take of ESA-listed species or stocks during commercial fishing operations. If, during the 3-year authorization, there is a significant change in the information or conditions used to support any of these determinations, NMFS will re-evaluate whether to amend or modify the authorization, after notice and opportunity for public comment. NMFS solicits public comments on the proposed permit and the preliminary determinations supporting the permit.

### **ESA Section 7 and National Environmental Policy Act (NEPA) Requirements**

ESA section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out do not jeopardize the continued existence of any species listed under the ESA, or destroy or adversely modify designated critical habitat of any ESA-listed species. The effects of CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery on ESA-listed marine mammals for which a permit is proposed here, were analyzed in the appropriate ESA section 7 Biological Opinion on the commercial fishery (see <https://repository.library.noaa.gov/view/noaa/51058>), and incidental take was exempted for those ESA-listed marine mammals for the CA thresher shark/swordfish drift gillnet ( $\geq 14$  in mesh)/Pacific highly migratory species drift gillnet fishery in accordance with the Biological Opinions' incidental take statement. Under section 7 of the ESA, Biological Opinions quantify the effects of the proposed action on ESA-listed species and their critical habitat and, where appropriate, exempt take of ESA-listed species that is reasonably certain to occur, as specified in the incidental take statement.

Under MMPA section 101(a)(5)(E), NMFS analyzes previously documented M/SI incidental to commercial fisheries through the NID process, and when the necessary findings can be made, issues a MMPA section 101(a)(5)(E) permit that allows for an unspecified amount of incidental taking of specific ESA-listed marine mammal stocks while engaging in commercial fishing operations. Thus, the applicable standards and resulting analyses under the MMPA and ESA differ, and as such, do not always align.

NEPA requires Federal agencies to evaluate the impacts of alternatives for their actions on the human environment. Because the proposed permit would not modify any fishery operation and the effects of the fishery operations have been evaluated in accordance with NEPA, no additional NEPA analysis beyond that conducted for the associated Fishery Management Plans is required for the permit. Issuing the proposed

permit would have no additional impact on the human environment or effects on threatened or endangered species beyond those analyzed in these documents.

## **References**

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*<https://www.fisheries.noaa.gov/national/laws-and-policies/protected-resources-policy-directives>.*

Dated: March 10, 2025.

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