



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XF333]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy Ice Exercise Activities 2026 in the Arctic Ocean

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the U.S. Department of the Navy (hereafter Navy) for authorization to take marine mammals incidental to Ice Exercise Activities 2026 (ICEX26) in the Arctic Ocean. The Navy's activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (2004 NDAA).

DATES: This authorization is effective from February 18, 2026, through April 30, 2026.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Alyssa Clevestine, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

MMPA Background and Determinations

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Among the exceptions is section 101(a)(5)(D) of the MMPA (16 U.S.C. 1361 *et seq.*) which directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking by harassment 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 the public has an opportunity to comment on the proposed IHA.

Specifically, NMFS will issue an IHA if it finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least [practicable] adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation”). NMFS must also prescribe requirements pertaining to the monitoring and reporting of such takings. The definitions of key terms, such as “take,” “harassment,” and “negligible impact,” can be found in the MMPA and the NMFS' implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

The 2004 NDAA (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as applied to a “military readiness activity.” The activity for which incidental take of marine mammals is being requested qualifies as a military readiness activity.

On November 14, 2025, a notice of NMFS' proposal to issue an IHA to the Navy for take of marine mammals incidental to submarine training and testing activities in the Arctic Ocean was published in the **Federal Register** (90 FR 51043). In that notice,

NMFS indicated the estimated numbers, type, and methods of incidental take proposed for each species or stock, as well as the mitigation, monitoring, and reporting measures that would be required should the IHA be issued. The **Federal Register** notice also included analysis to support NMFS' preliminary conclusions and determinations that the IHA, if issued, would satisfy the requirements of section 101(a)(5)(D) of the MMPA for issuance of the IHA. The **Federal Register** notice included web links to a draft IHA for review, as well as other supporting documents.

During the 30-day public comment period, NMFS received one comment letter from a private citizen. NMFS' consideration of public comments, which we respond to below, did not result in changes to the analysis or findings in the **Federal Register** notice of proposed IHA or the required mitigation, monitoring, or reporting measures set forth in the proposed IHA. There are no changes to the specified activity, the species taken, the proposed numbers, type, or methods of take, or the mitigation, monitoring, or reporting measures in the proposed IHA notice. No new information that would change any of the preliminary analyses, conclusions, or determinations in the proposed IHA notice has become available since that notice was published, and therefore, the preliminary analyses, conclusions, and determinations included in the proposed IHA are considered final.

Comment 1: The commenter asserted that Level A harassment cannot be wholly ruled out given the difficulty of detecting seals beneath ice and snow, and stated that this necessitates additional precautionary mitigation measures. The commenter provided five recommendations to enhance mitigation, monitoring, and reporting: seasonal restrictions on "high-intensity sound sources," expanded shutdown and monitoring zones, implementation of passive acoustic monitoring (PAM), avoidance of ringed seal lair-rich areas, and enhanced reporting requirements.

Response: As discussed in the notice of the proposed IHA, Level A harassment is not likely to occur as a result of the specified activity, and the commenter provided no

information that would invalidate this determination. Modeling for three previous ICEXs (2018, 2020, and 2022), which employed similar acoustic sources, did not result in any estimated takes by permanent threshold shift (PTS) (Level A harassment), and NMFS anticipates that the density of ringed seals is actually much lower than estimated in those previous analyses, further reducing the likelihood of Level A harassment. In addition, at close ranges and high sound levels approaching those that could cause auditory injury, seals would likely avoid the area immediately around the sound source. In consideration of the fact that total takes were likely overestimated for previous ICEX activities given the density information used in the analyses and the similarity between those activities and the activities planned for ICEX26, NMFS does not expect, and did not authorize, take by Level A harassment of ringed seal.

Regarding the recommendation to seasonally restrict sound sources, as described in the notice of proposed IHA, the dates and duration of the planned activity, along with the seasonal mitigation to minimize impacts to ringed seal lair construction and use of lairs, are expected to reduce potential acoustic impacts to ringed seals in the Study Area. As such, NMFS disagrees with the commenter that limiting acoustic transmissions during periods when seals rely most heavily on lairs would substantially reduce disturbance.

Regarding the other four recommendations from the commenter, two of these were included as proposed measures and are required by the IHA: implementation of PAM and avoidance of lair-rich areas; therefore, these measures are not discussed further.

The commenter recommended expanded shutdown and monitoring zones but did not provide specific recommendations for zone sizes or provide any information that could be used to assess expansion of shutdown and monitoring zones. The proposed IHA and this final IHA require that Navy personnel must conduct PAM during all active sonar use, and must delay or shut down active acoustic transmissions and exercise torpedo launches if a marine mammal is detected. The IHA does not specify a distance for

delaying or shutting down active acoustic sources following a marine mammal detection; any marine mammal detected with PAM would result in a shutdown of the active sonar source. As such, it is not possible to expand shutdown and monitoring zones as recommended by the commenter as these zones already extend to the farthest distance that marine mammals can be detected visually or acoustically.

Finally, the commenter did not provide specific reporting details that it considers to be enhanced from what was proposed and is required under the IHA. Therefore, we cannot further consider the recommendation. The monitoring and reporting measures required by the IHA satisfy the requirements of the MMPA.

Comment 2: The commenter stated the potential impacts from ICEX26 must also be considered alongside cumulative effects as part of the negligible impact determination required by the MMPA. Separately, the commenter also stated that NMFS should explicitly disclose how it interprets “small numbers” in this context and justify how the proposed take aligns with the requirement that take must be negligible relative to overall population size.

Response: NMFS has defined negligible impact 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the

mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status.

Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on marine mammal populations. The preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.*, as reflected in the density, distribution, and status of the species, population size and growth rate, and other relevant stressors. The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There, NMFS stated that such effects are not considered in making findings under MMPA section 101(a)(5) concerning negligible impact.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a “specified activity” will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations 50 CFR 216.104(a)(1) require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. Thus, the “specified activity” for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, the Navy was the applicant for the IHA, and we are responding to the specified activity as described in that application and making the necessary findings on that basis.

Regarding the “small numbers” interpretation, as stated in the Background section of the **Federal Register** notice of proposed IHA, the 2004 NDAA amended section 101(a)(5) of the MMPA for military readiness activities to remove the “small numbers” provision. ICEX26 qualifies as a military readiness activity and, as such, the “small numbers” provision does not apply.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of this IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensures that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with NMFS’ Alaska Regional Office (AKR).

There is one marine mammal species (Alaska stock of ringed seals) with confirmed occurrence in the project area that is listed under the ESA. The NMFS AKR issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to the Navy under section 101(a)(5)(D) of the MMPA by the NMFS Office of Protected Resources. The Biological Opinion concluded that the proposed action is not likely to jeopardize the continued existence of ringed seals.

Authorization

Accordingly, consistent with the requirements of section 101(a)(5)(D) of the MMPA, NMFS has issued an IHA to the Navy for authorization to take marine mammals incidental to submarine training and testing activities in the Arctic Ocean.

Dated: January 28, 2026.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.