

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 WA/OR/CA sablefish pot 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) is under development.

On September 29, 2023, NMFS published a notice (*Scoping for a Marine Mammal Take Reduction Team to Address Incidental Mortality and Serious Injury of Humpback Whale Stocks in the Pacific*, 88 FR 67254) expressing NMFS' intent to establish a TRT to develop a TRP to address the incidental mortality and serious injury of the Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whales in the WA/OR/CA sablefish pot fishery and seeking input on whether other Category I or II fisheries that incidentally kill or seriously injure these stocks of humpback whales should be addressed by the Team. For more information, please see <https://www.fisheries.noaa.gov/west-coast/marine-mammal-protection/west-coast-take-reduction-team>.

Accordingly, the requirement under MMPA section 118 to have TRPs 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-2024-0087>).

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 WA/OR/CA sablefish pot 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 WA/OR/CA sablefish pot 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 WA/OR/CA sablefish pot 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 WA/OR/CA sablefish pot commercial fishery on ESA-listed marine mammals for which a permit is proposed here, were analyzed in the appropriate ESA section 7 Biological Opinions on the commercial fishery (see https://s3.amazonaws.com/media.fisheries.noaa.gov/2020-10/Opinion-26OCT2020_Groundfish%20biop-humpback_supplement_102320_GR.pdf?null), and incidental take was exempted for those ESA-listed marine mammals for the WA/OR/CA sablefish pot 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

- Carretta, J.W., E.M. Oleson, K.A. Forney, M.M. Muto, D.W. Weller, A.R. Lang, J. Baker, B. Hanson, A.J. Orr, J. Barlow, J.E. Moore, and R.L. Brownell. 2023. U.S. Pacific Marine Mammal Stock Assessments: 2022. U.S. Department of Commerce. NOAA Technical Memorandum NMFS-SWFSC-684. 409 p.
- National Marine Fisheries Service (NMFS). 2020. National Marine Fisheries Service Procedure 02-204-02: Criteria for Determining Negligible Impact under MMPA Section 101(a)(5)(E). 20 p. Available online: <https://www.fisheries.noaa.gov/national/laws-and-policies/protected-resources-policy-directives>

Dated: September 4, 2024.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE275]

Marine Mammals; File No. 28223

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Steven Emslie, Ph.D., University of

North Carolina Wilmington, Department of Biology and Marine Biology, 601 S. College Road, Wilmington, North Carolina 284003, has applied in due form for a permit to collect, import, and export marine mammal parts for scientific research.

DATES: Written comments must be received on or before October 10, 2024.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 28223 from the list of available applications. These documents are also available upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include File No. 28223 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT:

Jennifer Skidmore or Shasta McClenahan, Ph.D., (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to collect, import, and export mummified remains of seals from the Ross Sea, Antarctica to study virology and evolutionary biology. These parts are estimated to be hundreds to thousands of years old and from the following species: crabeater (*Lobodon carcinophagus*), Weddell (*Leptonychotes weddellii*), leopard (*Hydrurga leptonyx*), and southern elephant (*Mirounga leonine*) seals. Parts from up to 10 individuals from each species will be collected, imported, and exported for analysis annually. The permit would be valid for 3 years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the

application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 5, 2024.

Julia M. Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE196]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferndale Pier Maintenance Activities in Ferndale, Washington

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Petrogas Pacific, LLC (Petrogas) to incidentally harass marine mammals during construction activities associated with Ferndale Pier Maintenance Activities in Ferndale, Washington.

DATES: The authorization is effective from August 1, 2025 to July 31, 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/action/incidental-take-authorization-petrogas-pacific-llcs-ferndale-pier-maintenance-activities>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT:

Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the "take" of marine mammals, with certain exceptions. 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 proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS 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 the species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation"); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On January 3, 2024 we received a request from Petrogas for an IHA to take marine mammals incidental to Ferndale Pier Maintenance Activities in Ferndale, Washington. Following NMFS' review of the application, Petrogas submitted a revised version on March 26, 2024. The application was deemed adequate and complete on April 25, 2024. The notice of proposed IHA published for public comment on June 4, 2024 (89 FR 47903). Petrogas requested authorization of take of harbor seal, California sea lion, Steller sea lion and harbor porpoise by Level B harassment and, for harbor seal and harbor porpoise only, take by Level A harassment. Neither Petrogas nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of the Specified Activity

Petrogas is planning to remove the existing timber Pier that has served as a loading facility since 1965 and replace it with a new structure that meets current industry best practices. The activity includes vibratory removal of existing timber piles and installation of steel piles by both vibratory and impact driving. Due to in-water work timing restrictions to protect Endangered Species Act (ESA)-listed salmonids, all planned in-water construction in this area is limited to a work window