

**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 [www.regulations.gov](http://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).

**FOR FURTHER INFORMATION CONTACT:**

Jaclyn Taylor, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; [jaclyn.taylor@noaa.gov](mailto:jaclyn.taylor@noaa.gov).

**SUPPLEMENTARY INFORMATION:** On February 14, 2005, NMFS received a request from the Makah Indian Tribe for a waiver of the MMPA moratorium on the take of marine mammals to allow for take of ENP gray whales (*Eschrichtius robustus*). The Tribe requested that NMFS authorize a tribal hunt for ENP gray whales in the coastal portion of the Tribe's usual and accustomed fishing area for ceremonial and subsistence purposes and the making and sale of handicrafts. The MMPA imposes a general moratorium on the taking of marine mammals but authorizes the Secretary of Commerce to waive the moratorium and issue regulations governing the take if certain statutory criteria are met.

On April 5, 2019, NMFS published a Notice of Hearing and the associated proposed regulations in the **Federal Register** (84 FR 13639 and 84 FR 13604). Pursuant to an interagency agreement, a Coast Guard Administrative Law Judge was assigned to conduct the hearing and issue a recommended decision in this matter under the procedures set forth at 50 CFR part 228.

On November 14, 2019, Judge George J. Jordan (the presiding officer) commenced the hearing in this matter, which took place over 6 days. Six parties participated in the hearing, including NMFS. The hearing was publicly conducted and reported verbatim by an official reporter. All filings associated with the hearing, including a full transcript of the hearing, have been made available for public viewing and inspection at <https://www.uscg.mil/Resources/Administrative-Law-Judges/Decisions/ALJ-Decisions-2016/NOAA-Formal->

*Rulemaking-Makah-Tribe/*. Information pertaining to this hearing is also available at the NMFS website: <https://www.fisheries.noaa.gov/action/formal-rulemaking-proposed-mmpa-waiver-and-hunt-regulations-governing-gray-whale-hunts-makah>.

Consistent with the regulations governing this proceeding, at the close of the hearing Judge Jordan established a public comment period on the proposed waiver and regulations, including the opportunity to submit proposed findings and conclusions and written arguments and briefs. NMFS published notice of this public comment period in the **Federal Register** on January 29, 2020 (85 FR 5196). 50 CFR 228.19(b). That comment period ended on March 16, 2020 and the comments submitted are posted at the Federal e-Rulemaking Portal at [www.regulations.gov/docket?D=NOAA-NMFS-2019-0037](http://www.regulations.gov/docket?D=NOAA-NMFS-2019-0037).

On September 23, 2021, the presiding officer transmitted his recommended decision to the NMFS Assistant Administrator for Fisheries, including (1) a statement containing a description of the history of the proceedings; (2) findings on the issues of fact with the reasons therefor; and (3) rulings on issues of law. The recommended decision is also posted on the NMFS website: <https://www.fisheries.noaa.gov/action/formal-rulemaking-proposed-mmpa-waiver-and-hunt-regulations-governing-gray-whale-hunts-makah>.

As required by our regulations at 50 CFR 228.20(c)–(d), NMFS provided copies of the presiding officer's recommended decision to the parties to the hearing and now announces a 20-day period for the parties and other interested persons to submit written comments on the presiding officer's recommended decision. Please note that the recommended decision is being made available for copying and review online only due to the ongoing COVID-19 pandemic. After considering these comments, the Assistant Administrator will issue a final decision on the proposed waiver and regulations. That decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions, and decision of the presiding officer. The Assistant Administrator may also remand the hearing record to the presiding officer for a fuller development of the record. 50 CFR 228.21.

*Authority:* 16 U.S.C. 1371 *et seq.*

Dated: September 24, 2021.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[RTID 0648–XB457]

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Russian River Estuary Management Activities**

**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 Sonoma County Water Agency (SCWA) for authorization to take marine mammals incidental to conducting estuary management activities in the Russian River, CA, over the course of five years. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of SCWA'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 SCWA's application and request.

**DATES:** Comments and information must be received no later than October 29, 2021.

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to [ITP.Laws@noaa.gov](mailto:ITP.Laws@noaa.gov).

**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. All comments received are a part of the public record and will generally be posted online at [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-)

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

**SUPPLEMENTARY INFORMATION:**

**Availability**

Electronic copies of SCWA's application and separate monitoring plan may be obtained online at [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities). In case of problems accessing these documents, please call the contact listed above.

**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 authorization for incidental takings 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 September 2, 2021, NMFS received an adequate and complete application from SCWA requesting authorization for take of marine mammals incidental to Russian River estuary management activities in Sonoma County, California. The requested regulations would be valid for five years, from April 21, 2022, through April 20, 2027. The proposed action requires the use of heavy equipment (e.g., bulldozer, excavator) and increased human presence, as well as the use of small boats. As a result, pinnipeds hauled out on the beach or at peripheral haul-outs in the estuary may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Therefore, SCWA requests authorization to incidentally take marine mammals.

NMFS has previously issued incidental take regulations and a subsequent Letter of Authorization (LOA) to SCWA for take of marine mammals incidental to similar specified activities (82 FR 13765; March 15, 2017). Prior to issuing the 5-year LOA, NMFS issued multiple one-year incidental harassment authorizations (IHA) to SCWA, for take of marine mammals incidental to similar specified activities. Monitoring reports submitted to NMFS as a condition of previously-issued incidental take authorizations are available online at: [www.fisheries.noaa.gov/action/incidental-take-authorization-sonoma-county-water-agencys-estuary-management-activities](http://www.fisheries.noaa.gov/action/incidental-take-authorization-sonoma-county-water-agencys-estuary-management-activities).

**Specified Activities**

SCWA plans to manage the naturally-formed barrier beach at the mouth of the Russian River in order to minimize potential for flooding adjacent to the estuary and to enhance habitat for juvenile salmonids, as well as to conduct biological and physical monitoring of the barrier beach and estuary. Flood control-related breaching of barrier beach at the mouth of the river may include artificial breaches, as well as construction and maintenance of a lagoon outlet channel. The latter activity, an alternative management technique conducted to mitigate impacts of flood control on rearing habitat for Endangered Species Act (ESA)-listed salmonids, occurs only

from May 15 through October 15 (the "lagoon management period"). Artificial breaching and monitoring activities may occur at any time during the period of validity of the proposed regulations.

**Information Solicited**

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

Dated: September 24, 2021.

**Kimberly Damon-Randall,**

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

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**DEPARTMENT OF EDUCATION**

[Docket No.: ED-2021-SCC-0099]

**Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; ESEA Fiscal Waiver Requests**

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

**DATES:** Interested persons are invited to submit comments on or before October 29, 2021.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this information collection request by selecting "Department of Education" under "Currently Under Review," then check "Only Show ICR for Public Comment" checkbox. Comments may also be sent to [ICDocketmgr@ed.gov](mailto:ICDocketmgr@ed.gov).

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Todd Stephenson, 202-205-1645.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general