

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, breaching, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On February 11, 2022, NMFS received an adequate and complete application from CDFW requesting authorization for take of marine mammals incidental to IEP monitoring and research activities in the San Francisco Bay-Delta Estuary, California. The requested regulations would be valid for 5 years. The proposed action includes the use of fishing research gear (*e.g.*, nets, trawls, setlines, and fykes) that may result in

marine mammal interactions resulting in Level A harassment, serious injury or mortality. Therefore, CDFW requests authorization to incidentally take marine mammals.

Specified Activities

The IEP consists of multiple State and Federal agencies operating in the San Francisco Bay and Sacramento-San Joaquin Delta. The IEP has been conducting cooperative ecological investigations since the 1970s. IEP agencies partner with non-governmental organizations that work together to develop a better understanding of the Bay-Delta estuary’s fish and wildlife, water quality, hydrodynamics and impacts of human activities on ecology. IEP’s key studies specifically address the effects of the State Water Project and Federal Central Valley Project water project operations on the Delta and San Francisco Estuary. Many of the surveys monitor abundance and distribution of fish so to reduce entrainment risk at the water project export facilities in the south Delta.

IEP fish monitoring studies include use of various gears including midwater, otter, and Kodiak trawls (trawls), gill and trammel nets, purse seines and Lampara nets (nets), setlines and longlines (setlines), and hoop and fyke traps (fykes) that could result in incidental take via entanglement by net mesh, entrapment by fyke, or hooking by setlines. IEP studies also use a variety of other gears, such as backpack or boat mounted electrofishers, larval fish trawl nets, zooplankton nets, water samplers and instrumentation (acoustic receivers, water quality sondes, etc.) that are not expected to result in take of marine mammals.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning CDFW’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 CDFW, if appropriate.

Dated: March 8, 2022.

Kimberly Damon-Randall,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB870]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before March 28, 2022.

ADDRESSES: You may submit written comments by the following method:

- *Email:* nmfs.gar.efp@noaa.gov.

Include in the subject line “AOLA Early Benthic-Phase Lobster Trap EFP.”

FOR FURTHER INFORMATION CONTACT:

Laura Deighan, Fishery Management Specialist, Laura.Deighan@noaa.gov, (978) 281–9184.

SUPPLEMENTARY INFORMATION: The Atlantic Offshore Lobstermen’s Association submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the regulations would otherwise restrict to pilot test a single early benthic-phase (EBP) lobster trap, which targets lobsters between 15- and 50-millimeter carapace length, to determine its feasibility for broader use in lobster surveys. This EFP would exempt the participating vessel from the Federal regulations described in Table 1.

TABLE 1—REQUESTED EXEMPTIONS

Citation	Regulation	Need for exemption
50 CFR 697.21(c) and § 697.21(d).	Gear specification requirements	To allow for the use a modified trap with no escape vents or ghost panels.
§ 697.19	Trap limit requirements	To allow for one additional trap.
§ 697.19(j)	Trap tag requirements	To allow for the use of an untagged trap.
§§ 697.20(a)(7), 697.20(a)(8), 697.20(b)(5), 697.20(b)(6), 697.20(d), and 697.20(g).	Possession restrictions	To allow for onboard biological sampling of undersized, oversized, v-notched, and egg-bearing lobsters.
§ 697.21(a)	Gear identification and marking requirements.	To allow for the use of an unmarked trap.

This project would use one federally permitted lobster vessel to pilot test the use of an EBP lobster trap in Lobster Management Area 3 (Statistical Areas 561, 562, and 522) between May 1, 2022, and November 1, 2022. The EBP trap is an 80-centimeter square trap based on a modified crawfish trap. It has four square openings, measuring less than two inches, which lead to ramps that drop the lobsters into a baited kitchen. Inside the trap, there are additional ramps that lead the lobsters to four cylindrical parlors with vertical openings. The trap is attached to cement runners that provide weight and maintain proper orientation.

The participants would place the EBP trap on one of their existing trawls and haul it every 7–14 days during the course of the vessel's normal fishing activity. At each haul, the participants would record and immediately release all bycatch and measure, sex, and release all lobsters from the EBP trap. The project would include no more than 26 experimental hauls. In addition to the EBP trap, the vessel would fish with its full allotted number of standard traps, but the total number of traps would remain less than the Area 3 trap cap. Participants would land and sell the legal catch from the standard traps.

The goal of this project is to test the selectivity of the EBP trap (versus ventless traps that often catch eel and crab) and the scalability of its use. If

successful, EBP traps could be used in lobster surveys to provide information about larval settlement patterns and juvenile nursery grounds.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 7, 2022.

Ngagne Jafnar Gueye,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB874]

Marine Mammals and Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that permits have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to NMFS.Pr1Comments@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Erin Markin (Permit No. 25870) and Amy Hapeman (Permit No. 26024); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to www.federalregister.gov and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS

Permit No.	RTID	Applicant	Previous Federal Register notice	Issuance date
25870	0648–XB500	Harold Brundage, Environmental Research and Consulting, Inc., 325 Market Street, Lewes, DE 19958.	86 FR 56692; October 12, 2021.	2/8/2022
26024	0648–XB623	Ocean Futures Society, 513 De La Vina Street, Santa Barbara, CA 93101 (Responsible Party: Jean-Michel Cousteau).	86 FR 69632; December 8, 2021.	2/28/2022

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically

excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on

a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and