

# Incidental Take Authorizations for Marine Mammals

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While section 101 of the Marine Mammal Protection Act (MMPA) creates a moratorium on take (i.e., to or attempt to harass, hunt, capture, or kill) of marine mammals, it also creates a few exceptions. Upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region, the Service may authorize the incidental, but not intentional, take of small numbers of marine mammals of a species or stock if the Service finds that the total of such taking will have a negligible impact on such species or stock(s) and will not have an unmitigable adverse impact on the availability of such species or stock(s) for subsistence uses. As part of the authorization process, the Service must prescribe permissible methods of take and other means of effecting the least practicable adverse impact on the species or stock and its habitat and requirements pertaining to the monitoring and reporting of such takings. Additionally, the Service must provide an opportunity for public review and comment.

The Service may issue two types of incidental take authorizations: **Incidental Harassment Authorization** and **Incidental Take Regulation**. An applicant must determine which type of authorization is appropriate for its planned activity.

## What is an Incidental Harassment Authorization?

An Incidental Harassment Authorization (IHA) authorizes U.S. citizens, engaged in military and non-military readiness activities, to take by harassment a small number of marine mammals for a period of not more than one year.

Note: IHA analyses are often highly complex due to the nature of activities that may impact marine mammals and required MMPA determinations. The Service recommends potential applicants contact the appropriate Service office early in the planning process to ensure sufficient time to process any request.

## What is an Incidental Take Regulation?

An Incidental Take Regulation (ITR) authorizes U.S. citizens to take small numbers of marine mammals for periods up to five years for non-military readiness activities and seven years for military readiness activities.

Once the Service promulgates an ITR, U.S. citizens covered in the ITR may request a Letter of Authorization (LOA) to carry out activities that fall under the ITR analysis. LOAs are issued on a project specific basis and include restrictions and other mitigation measures designed to minimize interactions with, and impacts to, marine mammals. LOAs also specify monitoring and reporting requirements to evaluate the level and impact of

any resulting takes. Service regulations addressing LOAs can be found at 50 CFR 18.27(f) ([http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=b4a02399da8b7577b8b78d1842a6e310&mc=true&n=pt50.9.18&r=PART&ty=HTML#se50.9.18\\_127](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=b4a02399da8b7577b8b78d1842a6e310&mc=true&n=pt50.9.18&r=PART&ty=HTML#se50.9.18_127)).

Note: There is no statutory timeline for issuance of ITRs, which involves rulemaking and the publication of both a proposed and final rule. This process can often take up to a year or more before issuance of LOAs under the ITRs can be considered. Early engagement with the appropriate office is recommended.

## Who Can Apply

Citizens of the United States who engage in a specified activity (other than commercial fishing) that may incidentally, but not intentionally, take of small numbers of marine may apply for an Incidental Take Authorization under the MMPA.

## Paperwork Requirements

For the Service to consider authorizing incidental take of small numbers of marine mammals, an applicant must submit a request to the Service. The application must include specific information as required by the Service's MMPA implementing regulation (50 CFR § 18.27(d)(1)):

1. A description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals;
2. The dates and duration of such activity and the specific geographical region where it will occur;
3. Based upon the best available scientific information;

An estimate of the species and numbers of marine mammals likely to be taken by age, sex, and reproductive conditions, and the type of taking (e.g., disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;

The anticipated impact of the activity upon the species or stocks;

The anticipated impact of the activity on the availability of the species or stocks for subsistence uses;

4. The anticipated impact of the activity upon the habitat of the marine mammal populations and the likelihood of restoration of the affected habitat;
5. The anticipated impact of the loss or modification of the habitat on the marine mammal population involved;
6. The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and, where relevant, on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. (The applicant and those conducting the specified activity and the affected subsistence users are encouraged to develop mutually agreeable mitigating measures that will meet the needs of subsistence users.);
7. Suggested means of accomplishing the necessary monitoring and reporting which will result in increased knowledge of the species through an analysis of the level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons

conducting such activity; and

8. Suggested means of learning of, encouraging, and coordinating research opportunities, plans and activities relating to reducing such incidental taking from such specified activities, and evaluating its effects. When fully addressed, this information is designed to provide a narrative that explains, in detail, the action, the nature of the action's anticipated effects on marine mammals, their habitats, the availability of marine mammals for subsistence uses, and the methods of mitigating, monitoring, and reporting on the effects of the action.

## Process

The main steps and key timeframes for the incidental take authorization process are outlined below. Timelines are approximations only, and the time of issuance for a given authorization may vary.

### Incidental Harassment Authorizations

#### Step 1 - Submit IHA Request

An applicant submits an IHA request to the appropriate field or regional office.

#### Step 2 - Request Review

The Service reviews the request and determines whether it is adequate and complete. If the Service determines the request is incomplete, it notifies the applicant.

#### Step 3 - Preliminary Determinations, Publish Notice, and Public Comment Period

Within 45 days of an adequate and complete request determination, the Service makes preliminary determinations (i.e., small numbers, negligible impact, no unmitigable adverse impact on subsistence use), initiates NEPA and ESA processes (if applicable)\*, prepares the proposed IHA, and publishes notice of the proposed IHA in the *Federal Register* for a 30-day public comment period.

#### Step 4 - Public Comment Review and Final Determinations

Within 45 days of the close of the comment period, the Service reviews and addresses public comments, finalizes ESA and NEPA compliance, makes final determinations, and either issues or denies the IHA.

### Incidental Take Regulations

#### Step 1 - Submit ITR Request

An applicant submits an ITR request to the appropriate field or regional office.

#### Step 2 - Request Review

The Service reviews the request and determines whether it is adequate and complete.

### **Step 3 - Preliminary Determinations, Publish Notice, and Public Comment Period**

If the Service determines the request is incomplete, it notifies the applicant. If the Service determines the request is adequate and complete, it makes preliminary determinations (e.g., small numbers, negligible impact, no unmitigable adverse impact on subsistence use), initiates NEPA and ESA processes (if applicable)\*, prepares the proposed rule, and publishes notice of proposed rule in the *Federal Register* for a 30- to 60-day public comment period.

### **Step 4 - Public Comment Review and Final Determinations**

After the close of the comment period, the Service reviews and addresses public comments, finalizes ESA and NEPA compliance, makes final determinations, and if applicable, prepares the final rule.

### **Step 5 - Final ITR Published**

The Service publishes the final ITR in the *Federal Register*, and the regulation becomes effective after 30 days.

### **Step 6 - Submit LOA Request**

Applicant(s) authorized under the ITR submit LOA requests as outlined in the finalized ITR.

### **Step 7 - Service Reviews LOA Request**

The Service reviews the LOA request and determines whether the level of taking will be consistent with the findings made for the total allowable take under the ITR.

The Service either issues or denies the LOA.

\*If the subject species is listed as threatened or endangered under the Endangered Species Act (ESA), then the Service and applicant (if federal) must initiate a section 7 consultation. Additionally, if the applicant is a federal agency, the Service may request a draft National Environmental Protection Act (NEPA) document before *Federal Register* notice.

### **Activity**

Take (/taxonomy/term/5388)

# Get Started

For more information or to request an incidental take authorization, please contact the appropriate field office.

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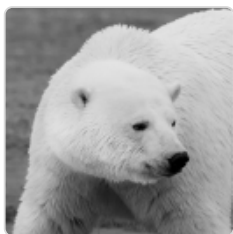
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Internal Review Process for Authorizing Harassment under the Marine Mammal Protection Act (</media/internal-review-process-authorizing-harassment-under-marine-mammal-protection-act>)

The U.S. Fish and Wildlife Service (Service) prepared this internal review process for authorizing harassment under section 101(a)(5)(D) of the Marine Mammal Protection Act. Although this document is specific to incidental harassment authorizations, it provides general guidance on the...

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