

**1SUPPORTING STATEMENT A  
FOR PAPERWORK REDUCTION ACT SUBMISSION**

**APPROVAL PROCEDURES FOR INCIDENTAL HARASSMENT  
AUTHORIZATIONS OF MARINE MAMMALS, 50 CFR 18.27  
OMB Control Number 1018-New**

**Terms of Clearance:** This is a request for a new OMB control number in conjunction with a collection in use without OMB approval.

**Justification**

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361 *et seq.*) authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographic region for periods of not more than 1 year. The U.S. Fish and Wildlife Service (we, Service) will authorize incidental take by harassment if statutory and regulatory procedures are followed and the Service finds:

- (i) take is of a small number of marine mammals of a species or stock,
- (ii) take will have a negligible impact on the species or stock, and
- (iii) take will not have an unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses by Alaska Natives.

The term “take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill, any marine mammal. Harassment for non-military readiness activities or scientific research activities conducted by or on behalf of the Federal Government means any act of pursuit, torment, or annoyance which:

- (i) has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as “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 (the MMPA defines this as “Level B harassment”).

Harassment for military readiness activities or scientific research activities conducted by or on behalf of the Federal Government means:

- (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or
- (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.

The terms “negligible impact,” “small numbers,” and “unmitigable adverse impact” are defined in 50 CFR 18.27 (i.e., the Service’s regulations governing small takes of marine mammals incidental to specified activities). “Negligible impact” is 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. “Unmitigable adverse impact” means an impact resulting from the specified activity:

- (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by:
  - (i) causing the marine mammals to abandon or avoid hunting areas,
  - (ii) directly displacing subsistence users, or
  - (iii) placing physical barriers between the marine mammals and the subsistence hunters;and
- (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term “small numbers” is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates “small numbers” with “negligible impacts.” We recognize “small numbers” and “negligible impact” as separate and distinct considerations when reviewing requests for incidental harassment authorizations (IHA) under the MMPA (see *Natural Res. Def. Council, Inc. v. Evans*, 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of takes of marine mammals and evaluate if that take is small relative to the size of the species or stock.

The term “least practicable adverse impact” is not defined in the MMPA or its enacting regulations. The Service ensures the least practicable adverse impact through mitigation measures that are effective in reducing the impact of project activities but are not so restrictive as to make project activities unduly burdensome or impossible to undertake and complete.

If the requisite findings are made, the Service issues an IHA, which may set forth the following:

- (i) Permissible methods of taking;
- (ii) other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for subsistence uses by coastal dwelling Alaska Natives (if applicable); and
- (iii) requirements for monitoring and reporting such take by harassment.

OMB previously approved information collection requirements associated with incidental take regulations (ITRs) and letters of authorization (LOAs) contained in 50 CFR 18, subparts J (Beaufort Sea) and K (Cook Inlet) under OMB Control Number 1018–0070. Because the ITRs and associated LOAs authorize specific entities to incidentally take marine mammals while engaged in specified activities within a specific geographic region for periods of not more than 5 years, the Service is requesting a separate OMB control number for information collection requirements associated with IHAs.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.**

Applicants seeking to conduct activities may request an IHA for the specified activity. If the IHA

is issued, the applicants must submit on-site monitoring reports and a final report of the activity to the Secretary.

This is a non-form collection. Applicants must comply with the regulations at 50 CFR 18.27, which outline the procedures and requirements for submitting a request. These regulations provide the applicant with a detailed description of information the Service needs in order to evaluate the proposed activity and make the required determinations. Specifically, applicants must submit the following information to the Service as part of the IHA application process:

- A description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals, and
- The dates and duration of such activity and the specific geographical region where it will occur.
- Based on the best available scientific information, each applicant must also:
  - Estimate 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;
  - Describe the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;
  - Describe the anticipated impacts of an activity upon the species or stocks;
  - Discuss the anticipated impact of the activity on the availability of the species or stocks for subsistence uses;
- Discuss the anticipated impact of the activity upon the habitat of the marine mammal populations and the likelihood of restoration of the affected habitat;
- Describe the anticipated impact of the loss or modification of the habitat on the marine mammal population involved;
- Describe 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;
- Discuss the 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
- Suggest means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking from such specified activities, and evaluating their effects.

The Service uses the information to draft the proposed IHA, including proposed determinations and mitigation measures to ensure the least practicable adverse impacts on the species or stock and its habitat. Upon IHA issuance, applicants must submit monitoring and final reports indicating the nature and extent of all takes of marine mammals that occurred incidentally to the specified activity. The purpose of monitoring requirements is to assess the effects of project activities on the species or stock, ensure that take is consistent with that anticipated in the negligible impact and subsistence use analyses, and detect any unanticipated effects on the species or stock. Because the length of project activities varies by project (a few weeks to a few months), some projects require weekly reports during project activities.

Information requested by the Service is available to the public on the Service's website:

<https://www.fws.gov/service/incidental-take-authorizations-marine-mammals>

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.**

We estimate that 100% of respondents will utilize electronic submission for the information collections. The majority of applicants and respondents indicate a preference for electronic submission of information, and we have worked to accommodate that preference. Applicants may submit information via email or in an electronic format, thus, reducing the burden on the applicant of having to provide hard copies of reports or other documents. Though not required, applicants may also submit information via hard-copy documents, if they so choose. A minority of applicants and respondents continue to submit at least some information via hard-copy documents as their preference.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

Under the MMPA, we share responsibilities with the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce (NOAA-Fisheries), with each agency being responsible for different species. While both agencies may have similar regulations, they apply to different species of marine mammals. Therefore, there is no duplication of information collected.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

The collection of information will not impact small businesses or other small entities.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The MMPA requires that we determine what impacts proposed activities would have on marine mammals. The MMPA requires we make a determination of negligible impact to the species or stock prior to issuance of authorizations. In addition, we must determine the activity will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives.

If we did not collect the information described in this supporting statement, we would not have critical information needed to make the required determinations. As a result, we could not authorize incidental taking under provisions of the MMPA. Conducting information collection less frequently than as described in this supporting statement would limit the Service's ability to monitor potential adverse impacts to federal trust species.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- \* requiring respondents to report information to the agency more often than

- quarterly;
- \* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- \* requiring respondents to submit more than an original and two copies of any document;
- \* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- \* in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- \* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- \* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- \* requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Visual sightings and interactions with Service species (i.e., polar bears, walruses, and sea otters, and manatees) during activities authorized by an IHA are not always predictable. If the encounter is persistent or unusual, the respondent must contact us to report the encounter and to request our expertise in assistance addressing the situation. At times, we also request that the respondent verbally report an encounter with a marine mammal at the time of occurrence and follow up with a written report. We are not aware of any other circumstances that would cause us to collect information in a manner that is inconsistent with OMB guidelines.

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

On January 27, 2022, we published in the *Federal Register* ([87 FR 4277](#)) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on March 28, 2022. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the *Federal Register* notice on Regulations.gov (Docket [FWS-HQ-ES-2021-0151](#)) to provide the public with an additional method to submit comments

(in addition to the typical [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov) email and U.S. mail submission methods). We received the following comments in response to that notice:

**Comment 1:** Recommends MMPA amendment to remove IHA authority.

**Agency Response to Comment 1:** The commenter did not address the information collection requirements; therefore, no response is required.

**Comment 2:** Requests protection of marine mammals.

**Agency Response to Comment 2:** The commenter did not address the information collection requirements; therefore, no response is required.

**Comment 3:** Claims the Service's definition of negligible impact is overly broad, and the agency issues too many permits generally

**Agency Response to Comment 3:** The commenter did not address the information collection requirements; therefore, no response is required.

In addition to the Federal Register Notice, we consulted with the nine (9) individuals identified in Table 8.1 who familiar with this collection of information in order to validate our time burden estimate and asked for comments on the questions below:

**Table 8.1**

<b>Organization</b>	<b>Title</b>
Rincon Consultants	Marine Resources Program Manager/ Health and Safety Officer
Elkhorn Slough National Estuarine Research Reserve	Tidal Wetland Project Director
Hilcorp Alaska, LLC	Wildlife Biologist
ELKI International, LLC	Lead Field Environmental Coordinator
U.S. Coast Guard	Environmental Protection Specialist
Solstice Alaska Consulting	Jr. Environmental Planner
National Science Foundation	Environmental Policy Specialist
High Tide Environmental	Owner / Ecological Consultant
LSA Associates	Associate / Senior Environmental Planner

***“Whether or not the collection of information is necessary, including whether or not the information will have practical utility; whether there are any questions they felt were unnecessary”***

**Comments:** Most respondents felt the collection of information is necessary. One respondent felt the questions were broad and thus, it is unclear whether the information requested will have practical utility.

**Agency Response/Action Taken:** The Service agrees that the collection of information is necessary. The information collection is codified in our regulations at 50 CFR 18.27 (see answer above) and is broad enough to capture the range of activities that may seek an IHA but specific enough to provide clarity to applicants on the information requested.

***“The accuracy of our estimate of the burden for this collection of information”***

Comments: A majority of respondents felt the estimate was accurate. One respondent felt the estimate should be increased noting related NEPA and ESA requirements.

Agency Response/Action Taken: The Service agrees that our estimate of the burden for this collection of information is accurate and acknowledges that an application that 1) requests take of a threatened or endangered marine mammal; and/or 2) has a significant effect on the environment may require additional information collection to complete the required analysis under the ESA and/or NEPA.

***“Ways to enhance the quality, utility, and clarity of the information to be collected”***

Comments: Two respondents suggested working with the National Marine Fisheries Service (NMFS) to develop a standard process for all marine mammal stocks. One respondent suggested development of a standard IHA application for marine geophysical surveys/other acoustic impacts.

Agency Response/Action Taken: The Service will continue to coordinate with the NMFS while acknowledging the separate informational needs for stocks under the Service’s jurisdiction.

And

***“Ways to minimize the burden of the collection of information on respondents”***

Comments: Three respondents suggested better use of technology, such as submitting information through an online portal with a mapping application with underlying data, to create efficiencies.

Agency Response/Action Taken: The Service is currently looking at ways to utilize technology to minimize the information collection burden on respondents.

***Additional comments received during the outreach:***

Comments: One respondent suggested guidance for underwater sound impacts. Another respondent suggested standard monitoring and reporting measures for certain types of activities.

Agency Response/Action Taken: The Service will consider development of activity-specific guidance and monitoring and reporting measures while acknowledging a specific geographic region’s unique characteristics.

Despite multiple attempts to solicit feedback, we received no response from 3 of the 9 individuals contacted.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

We will not provide any payment or gifts to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for**

**the assurance in statute, regulation, or agency policy.**

We do not provide any assurance of confidentiality to respondents. Information may be disclosed to the extent permissible under the Freedom of Information Act (FOIA), the Privacy Act of 1974 and the routine uses listed in System of Records Notice (SORN) [INTERIOR/FWS-30, Marine Mammals Management, Marking, Tagging and Reporting Program](#), 58 FR 41803 (August 5, 1993); modification published 73 FR 31877 (June 4, 2008).

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

We will not ask any questions of a sensitive nature.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- \* **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- \* **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- \* **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.**

We estimate that we will receive **70 responses** totaling **365 annual burden** hours for this information collection. The total dollar value of the annual burden hours is approximately **\$15,129** (rounded).

We used table 1 from the of Bureau of Labor Statistics (BLS) News Release [USDL-22-0469](#), March 18, 2022, Employer Costs for Employee Compensation—December 2021, to calculate the total annual burden.

- Private Sector – Table 1 lists the hourly rate for all workers as \$38.07, including benefits.
- Government – Table 1 lists the hourly rate for all workers as \$54.96, including benefits.

**Table 12.1**

Requirement	Average Number of Annual Respondents	Average Number of Responses Each	Average Number of Annual Responses	Average Completion Time per Response	Estimated Annual Burden Hours*	Hourly Rate	\$ Value of Annual Burden Hours
<b><i>Incidental Harassment Authorization – Application</i></b>							
Private Sector	4	1	4	50	200	\$ 38.07	\$ 7,614.00



Government	1	1	1	50	50	54.96	2,748.00
<b><i>Incidental Harassment Authorization – Monitoring and Observation Reports</i></b>							
Private Sector	4	12	48	1.5	72	\$ 38.07	\$ 2,741.04
Government	1	12	12	1.5	18	54.96	989.28
<b><i>Incidental Harassment Authorization – Final Report</i></b>							
Private Sector	4	1	4	5	20	\$ 38.07	761.40
Government	1	1	1	5	5	54.96	274.80
<b>Totals:</b>	<b>15</b>		<b>70</b>		<b>365</b>		<b>\$ 15,128.52</b>

\*Rounded to match ROCIS

**13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)**

- \* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- \* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- \* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

There is no annual non-hour cost burden associated with this collection.

**14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.**

The estimated annual cost to the Federal Government associated with this collection of information is **\$100,334** (rounded).

To determine average annual salary costs, we used the Office of Personnel Management Salary Table [2022-AK](#) to determine the annual salary costs for staff involved in reviewing and processing the information collected as shown below. In accordance with BLS News Release [USD-L-22-0469](#), March 18, 2022, Employer Costs for Employee Compensation—December

2021, we multiplied the annual salaries by 1.59 to account for benefits.

Position/Grade	Annual Salary	Annual Salary (Inc. Benefits)*	Time Spent on Collection	Total Annual Salary Costs*
Clerical, GS-07/05	\$ 56,909	90,485	15%	\$ 13,573
Biologist, GS-12/05	100,954	160,517	20%	32,103
Biologist, GS-12/05	100,954	160,517	20%	32,103
Management, GS-14/05	141,857	225,553	10%	22,555
<b>Total:</b>				<b>\$ 100,334</b>

\*All figures rounded

**15. Explain the reasons for any program changes or adjustments in hour or cost burden.**

This is a request for a new OMB control number in conjunction with an existing collection in use without OMB approval.

**16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

We do not publish the information in the form in which it is received. We do analyze the information annually to determine impacts resulting from incidental harassment authorizations.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

These are regulatory requirements; however, we will display the OMB control number and expiration date on appropriate materials.

**18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."**

There are no exceptions to the certification statement.