



BILLING CODE: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC359

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Hydrographic Surveys

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' Office of Protected Resources has received a request from the NOAA Office of Coast Survey (OCS) for authorization to take small numbers of marine mammals incidental to conducting hydrographic surveys, over the course of 5 years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of OCS's request under the MMPA for the development and implementation of regulations governing the incidental taking of marine mammals. We invite information, suggestions, and comments on OCS's application and request.

DATES: Comments and information must be received no later than [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is [ITP.Laws@noaa.gov](mailto:ITP.Laws@noaa.gov). We are not responsible for e-mail comments

sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

#### SUPPLEMENTARY INFORMATION:

##### Availability

An electronic copy of OCS's application may be obtained by visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

The OCS released a draft Environmental Assessment, prepared pursuant to requirements of the National Environmental Policy Act, for the conduct of their hydrographic surveys on June 20, 2012. A copy of the draft EA which would also support our proposed rulemaking under the MMPA, is also available at <http://www.nauticalcharts.noaa.gov/Legal/>.

##### Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 et seq.) directs the Secretary of Commerce (Secretary) 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) if certain findings are made and regulations are issued.

Incidental taking shall be allowed if NMFS finds that the taking will have a negligible impact on the species or stock(s) affected and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking 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.” 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 December 27, 2012, we received a complete and adequate application from OCS requesting authorization for take of marine mammals incidental to hydrographic surveys conducted by OCS. The requested governing regulations would be valid for 5 years from the date of issuance. OCS operates active acoustic devices that have the potential to disturb marine mammals, and operates throughout coastal waters of the U.S. Exclusive Economic Zone. During 2013-18, OCS plans to conduct surveys in all coastal waters of the U.S. except for those in the Caribbean and in Hawaii and other Pacific islands. Because the specified activities have the potential to take marine mammals present within the action areas, OCS requests authorization to take small numbers of multiple species or stocks of marine mammal.

#### Specified Activities

Hydrographic survey projects support OCS’s mandated mission to provide reliable nautical charts and other products necessary for safe navigation, economic security, and environmental sustainability in U.S. coastal waters. OCS surveys approximately 3,000 square

nautical miles of coastal waters each year, and proposes to continue the same level of activity. In order to conduct these surveys, OCS uses active acoustic devices, including some that may result in behavioral harassment of marine mammals. These include high-frequency single-beam and multibeam echosounders and side-scan sonars mounted on or towed behind vessels traveling at a slow speed.

A more detailed description of the hydrographic surveys conducted by OCS may be found in their application, which is available at:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

#### Information Solicited

Interested persons may submit information, suggestions, and comments concerning OCS's request (see ADDRESSES). We 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 OCS, if appropriate.

Helen M. Golde,  
Acting Director,  
Office of Protected Resources,  
National Marine Fisheries Service.

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