

National Ocean Service (NOS)
Surveying and Mapping Projects
In U.S. Waters for Coastal and
Marine Data Acquisition

***Environmental Compliance
Fact Sheet***



Marine Mammal Protection Act (MMPA)

The Marine Mammal Protection Act (MMPA) of 1972 establishes a national policy to prevent marine mammal species and population stocks from declining beyond the point where they cease to be significant functioning elements of the ecosystems of which they are a part. The MMPA prohibits the “take” of marine mammals in U.S. waters and by U.S. citizens in international waters. The MMPA defines “take” as: “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammals”. Harassment means “any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild; or 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” (16 U.S.C. § 1362). Jurisdiction for MMPA is shared by the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS). NMFS is responsible for the protection of whales, dolphins, porpoises, seals, and sea lions. USFWS is responsible for the protection of walrus, manatees, sea otters, and polar bears.

NOS Consultation Under MMPA

Section 101(a)(5)(A-D) of the MMPA provides a mechanism for allowing, upon request, the "incidental" but not intentional taking of small numbers of marine mammals. For species under the jurisdiction of NMFS, incidental take authorizations may be issued as either: 1) regulations and associated Letters of Authorization (LOAs) for multi-year actions or actions with the potential to result in serious injury or mortality; or 2) Incidental Harassment Authorizations (IHAs) for actions limited to potential harassment. For species under the jurisdiction of USFWS, an Incidental Take Regulation (ITR) request can be issued to cover all forms of incidental take.

Due to the multi-year nature of NOS surveys, NOS submitted an LOA Application to the NMFS Office of Protected Resources (OPR) on June 3, 2022. NOS submitted an ITR request to USFWS on September 12, 2022.

Photo Credit (left, top right, bottom right): Douglas Croft; NOAA; NOAA

NOS Consultation with NMFS Under MMPA



Following the publication of the Final PEIS in November 2022, NOS continued to pursue its LOA Application with NMFS OPR to fulfill its requirements under MMPA. OPR provided its response on August 19, 2024, and stated that no incidental take of marine mammals under NMFS' jurisdiction is expected to result from the proposed activities and no take authorization is necessary. The NMFS conclusion does not apply to the Kongsberg EM124 system or similar systems.* This response completes the consultation process under MMPA for NMFS species.



NOS Consultation with USFWS Under MMPA



NOS also continued to pursue its ITR request with USFWS to fulfill its requirements under MMPA. USFWS provided its response on April 1, 2024 and determined that the proposed activities are not likely to result in incidental take, including incidental take in the form of harassment, of the marine mammals under USFWS jurisdiction. No ITR request is necessary. This response completes the consultation process under MMPA for USFWS species.



Outcomes: Through the MMPA consultation process, NOS developed additional mitigation measures to minimize potential impacts to MMPA-listed species from NOS project activities. The NOS mitigation measures will be implemented on each project as appropriate.



Photo Credit (top to bottom): Ed Lyman, NOAA; Sue Thomas, USFWS; NOAA

*NOS does not currently have plans to use the Kongsberg EM124 (a multibeam echosounder suitable for deep ocean mapping) or similar multibeam echosounders. NOS will notify NMFS to work through the necessary steps to ensure MMPA compliance prior to using such sources.