

Letter of Authorization (LOA) or Incidental Harassment Authorization (IHA) NOAA National Marine Fisheries (NOAA-3)

Permit Packet Includes:

1. Process Overview
2. The Marine Mammal Protection Act of 1972 As Amended 2007
3. Marine Protected Species of the Hawaiian Islands, April 2008

Approval or Permit Required:

To conduct an otherwise lawful activity that might incidentally, but not intentionally, "take" small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region. The LOA or IHA includes harassment of marine mammals by noise.

Contact Information:

NMFS Pacific Islands Regional Office (PIRO)
Protected Resources Division (PRD)
1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814
Phone: 808-944-2200

Website:

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

Steps

Determine if an LOA or IHA is necessary

Applicants should apply for an IHA for the activity if it can be shown that:

1. there is no potential for serious injury or mortality; or,
2. the potential for serious injury or mortality can be negated through mitigation requirements that could be required under the authorization.

If these two requirements cannot be met, or in other words, if the potential for "serious injury" and/or mortalities exists and there are no mitigating measurements that could be taken to prevent this form of 'take' from occurring, then the applicant must obtain an LOA.

Submit a written request to the NMFS Office of Protected Resources (OPR) and the NMFS Pacific Islands Regional Office (PIRO)

The NMFS OPR address is:

Office of Protected Resources (F/PR)
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
Phone: 301-713-2332
Fax: 301-713-0376 or 301-713-4060
Email: PR.Webmaster@noaa.gov

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These requests must include the information specified on the NOAA OPR website (website address provided above) in sufficient detail for NOAA Fisheries to meet the requirements mandated by Section 7 of the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA).

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NMFS reviews applications to ensure completeness, and that applications contain or refer to the necessary NEPA documentation. Incomplete applications are returned to the applicant with explanation.

Time Periods:

LOA applications include two comment periods, possible public hearings, and consultations. 6-12 months for LOAs

IHA applications normally involve one comment period and the length of time for approval will depend on the issues and species involved. 2-6 months for IHAs

Total Time Period:

Letters of Authorization: 6 – 8 months

Incidental Harassment Authorization: 120 days

Fees - None

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

Incidental Take Authorizations

MPA Incidental Take Authorization or Letter of Authorization (LOA)

In 1981, Congress amended the MMPA to provide for "incidental take" authorizations for maritime activities, provided NMFS found the takings would be of small numbers and have no more than a "negligible impact" on those marine mammal species not listed as depleted under the MMPA (i.e., listed under the Endangered Species Act (ESA), and not having an "unmitigable adverse impact" on subsistence harvests of these species. These "incidental take" authorizations, also known as Letters of Authorization or LOAs, require that regulations be promulgated and published in the *Federal Register* outlining:

- Permissible methods and the specified geographical region of taking;

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- The means of effecting the least practicable adverse impact on the species or stock and its habitat and on the availability of the species or stock for "subsistence" uses; and,
- Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

In 1986, Congress amended both the MMPA, under the incidental take program, and the ESA to authorize takings of depleted (and endangered or threatened) marine mammals, again provided the taking (lethal, injurious, or harassment) was small in number and had a negligible impact on marine mammals.

MMPA Incidental Harassment Authorization (IHA)

In 1994, MMPA section 101(a)(5) was amended to establish an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by "harassment", referred to as Incidental Harassment Authorizations or IHAs. It established specific time limits for public notice and comment on any requests for authorization which would be granted under this new provision. According to the legislative history, Congress expected NMFS to act expeditiously in complying with the notice and comment requirements and expected NMFS to use the general rule making authority available under section 112 of the MMPA to establish a process for granting authorization in the case of incidental takes by harassment in "Arctic waters". In 1996 NMFS published an interim final rule (50 CFR Part 216.101-108) implementing this aspect of the program. The interim rule will be amended and written upon completion of NMFS' criteria for acoustic harassment.

Because the incidental harassment authorization process has eliminated the need for promulgating specific regulations on the incidental taking, IHAs have been of increasing interest since 1994 for those individuals with relatively short-term activities that might inadvertently harass marine mammals. This program allows authorizations to be issued in 120 days, instead of the 8-18 months typically needed for LOAs issued under regulations.

Regarding activities that occur in Arctic waters, the MMPA requires that monitoring plans be peer reviewed where the activity has the potential to affect the availability of a species or stock of marine mammals for subsistence uses. In order to aid NOAA Fisheries Service in its review of the monitoring plans, NOAA Fisheries Service holds an annual Open Water Meeting in Anchorage, Alaska, each spring.

Types of Activities

Most LOAs and IHAs to date have involved the incidental harassment of marine mammals by noise. Activities with the greatest potential to harass by noise include:

- seismic airguns
- ship and aircraft noise
- high energy sonars
- explosives detonations

Applying for an LOA or IHA

First the applicant must ask: **Do I need an LOA or an IHA?**

Letter of Authorization (LOA) or Incidental Harassment Authorization (IHA) NOAA National Marine Fisheries (NOAA-3)

The applicant should apply for an **IHA** and does not need an LOA for the activity if it can be shown that:

1. there is no potential for serious injury or mortality; or,
2. the potential for serious injury or mortality can be negated through mitigation requirements that could be required under the authorization

If these two requirements cannot be met, or in other words, if the potential for "serious injury" and/or mortalities exists and there are no mitigating measurements that could be taken to prevent this form of 'take' from occurring, then the applicant must obtain an **LOA**.

After the type of authorization is determined, the applicant must submit a written request to the NMFS Office of Protected Resources AND the appropriate NMFS Regional Office where the specified activity is planned. These requests must include items 1-14 below before being considered by NMFS.

{Note that incomplete applications and applications that do not contain or refer to the necessary NEPA documentation, if applicable, will be returned to the applicant with explanation.}

All applications for marine mammal incidental take authorizations, whether an LOA or an IHA, must include the following information in sufficient detail for NOAA Fisheries to meet the requirements mandated by section 7 of the Endangered Species Act and the National Environmental Policy Act (NEPA):

1. A detailed description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals;
2. The date(s) and duration of such activity and the specific geographical region where it will occur;
3. The species and numbers of marine mammals likely to be found within the activity area;
4. A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks of marine mammals likely to be affected by such activities;
5. The type of incidental taking authorization that is being requested (i.e., takes by harassment only; takes by harassment, injury and/or death) and the method of incidental taking;
6. By age, sex, and reproductive condition (if possible), the number of marine mammals (by species) that may be taken by each type of taking identified in paragraph (a)(5) of this section, and the number of times such takings by each type of taking are likely to occur;
7. The anticipated impact of the activity upon the species or stock;
8. The anticipated impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses;
9. The anticipated impact of the activity upon the habitat of the marine mammal populations, and the likelihood of restoration of the affected habitat;
10. The anticipated impact of the loss or modification of the habitat on the marine mammal populations involved;
11. 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 on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;

Letter of Authorization (LOA) or Incidental Harassment Authorization (IHA) NOAA National Marine Fisheries (NOAA-3)

12. Where the proposed activity would take place in or near a traditional Arctic subsistence hunting area and/or may affect the availability of a species or stock of marine mammal for Arctic subsistence uses, the applicant must submit either a "plan of cooperation" or information that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses.
13. The suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking or impacts on populations of marine mammals that are expected to be present while conducting activities and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity. Monitoring plans should include a description of the survey techniques that would be used to determine the movement and activity of marine mammals near the activity site(s) including migration and other habitat uses, such as feeding. Guidelines for developing a site-specific monitoring plan may be obtained by writing to the Director, Office of Protected Resources; and
14. Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects.

All documentation, including the application, reports, and any other associated documents are considered public information and as such, are subject to the Freedom of Information Act. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

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