

**Marine Scientific Research and the
Marine Mammal Protection Act of 1972, 16 U.S.C. §§ 361, 1362, 1371-1389, 1401-1407, 1411-1418,
1421-1423h**

Except as otherwise provided, the MMPA prohibits the unauthorized “take” by any person, vessel, or other conveyance of any marine mammal in waters under the jurisdiction of the United States. 16 U.S.C. §1372(a)(2)(A).

The term “take” means to harass, hunt, capture, or kill any marine mammal. 16 U.S.C. §1362(13).¹ The term “person” includes any private person or entity and any officer, employee, agent, department or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government. 16 U.S.C. §1362(10). While the term “vessel” is not defined in the MMPA, NOAA employs the default definition of the term set forth in 1 U.S.C. §3. That section defines “vessel” to include every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. “Waters under the jurisdiction of the United States” includes the U.S. territorial sea and U.S. EEZ. 16 U.S.C. §1362(15)(A) & (B).

Any person or entity conducting marine scientific research in the U.S. EEZ or U.S. territorial sea would fit within the MMPA definition of “person” and thus would be prohibited from taking any marine mammal unless an exception applies.

16 U.S.C. §1372(a)(2)(A) exempts taking expressly provided for by international treaty, convention, or agreement to which the U.S. is a party and which was entered into before the effective date of the Marine Mammal Protection Act (MMPA), or by any statute implementing any such treaty, convention, or agreement.

16 U.S.C. §1371 excludes taking related to marine scientific research in certain circumstances.

- For marine mammal take that is unintentional and incidental to marine scientific research (or any other non-commercial fishing activity²), the applicable provisions are 16 U.S.C. §1371(a)(5)(A) and (D). A major limitation of these provisions is they are available only to U.S. citizens (and non-U.S. citizens conducting the activities in conjunction with and under the direction of U.S. citizens who have obtained an incidental take authorization under one of these provisions). The MMPA does not provide any mechanism for a foreign citizen to independently and directly apply for or obtain take coverage under 16 U.S.C. §1371(a)(5)(A) and (D). In the absence of a U.S. citizen partner, a non-U.S. citizen seeking coverage for incidental take would need to apply for a waiver under 16 U.S.C. §1373, which requires “formal rule making” procedures.
- For marine scientific research that involves intentional “direct” take of any marine mammal, a non-U.S. citizen could apply for a permit under 16 U.S.C. §1374.³

¹ “Harassment” means any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or to disturb a marine mammal by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. 16 U.S.C. §1362(18). Note that if the marine mammal species or stock is listed under the Endangered Species Act, then that law’s requirements also apply.

² Commercial fishing incidental take is governed by 16 U.S.C. §1387.

³ “Scientific research” must be to further a *bona fide* scientific purpose.” Under 16 U.S.C. §1362(22), “bona fide research” means scientific research on marine mammals, the results of which (A) likely would be accepted for publication in a referred scientific journal; (B) are likely to contribute to the basic knowledge of marine mammal biologic or ecology; or (C) are likely to identify, evaluate, or resolve conservation problems.