

**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 “take” of any marine mammal: (1) by any person, vessel, or other conveyance in waters under the jurisdiction of the United States; or (2) by any person, vessel, or conveyance subject to the jurisdiction of the United States on the high seas. 16 U.S.C. §1372(a)(1) & (a)(2)(A). The term “take” means to harass, hunt, capture, or kill any marine mammal, or attempt to do so. 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 the U.S. Exclusive Economic Zone (EEZ). 16 U.S.C. §1362(15)(A) & (B).

Any person or entity conducting marine scientific research in waters under the jurisdiction of the United States (which includes the U.S. EEZ and the U.S. territorial sea) would fit within the MMPA definition of “person” and thus would be prohibited from taking any marine mammal unless that person or entity obtains authorization to take marine mammals.²

The MMPA allows the Secretary³ to authorize takes of marine mammals during marine scientific research in the following instances:

- For marine mammal take that is *unintentional and incidental to* marine scientific research (or any other non-commercial fishing activity⁴), the applicable provisions are 16 U.S.C. §1371(a)(5)(A) and (D).⁵ These provisions 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 from NOAA under one of these provisions). The MMPA does not provide any mechanism for a foreign citizen to independently obtain take coverage under 16 U.S.C. §1371(a)(5)(A) and (D).

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. **See *Marine Scientific Research and the Endangered Species Act*.**

² Unless authorized by the Secretary, U.S. citizens and U.S. flagged vessels are prohibited from taking any marine mammal not only in waters subject to U.S. jurisdiction, but also on the high seas and in foreign EEZs.

³ “Secretary” means the Secretary of Commerce or Secretary of the Interior, depending on the species.

⁴ Commercial fishing incidental take is governed by 16 U.S.C. §§1371(a)(5)(E) & 1387.

⁵ See implementing regulations at 50 C.F.R. Part 216, Subpart I.

- 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. §1374.⁶

Additional Information:

- NOAA Fisheries, [Scientific Research and Enhancement Permits for Marine Mammals](#)
- NOAA Fisheries, [Incidental Take Authorizations under the Marine Mammal Protection Act](#)

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⁶ See implementing regulations at 50 C.F.R. Part 216, Subpart D.