



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
1315 East-West Highway  
Silver Spring, Maryland 20910

Arthur Charfauros, Coastal Resources Planner III  
Division of Coastal Resources Management  
CNMI Bureau of Environmental and Coastal Quality  
P.O. Box 501304  
Saipan, MP 96950

December 20, 2021

RE: Federal National Negative Determination for proposed Guidelines for Safely Detering Marine Mammals, carried out in accordance with the Marine Mammal Protection Act

Dear Arthur Charfauros:

Pursuant to section 307(c)(1) of the Coastal Zone Management Act, 16 U.S.C. § 1457(c)(1), and 15 C.F.R. part 930.35, NOAA's National Marine Fisheries Service (NOAA Fisheries) is submitting this National Negative Determination that the proposed [Guidelines for Safely Detering Marine Mammals](#) under the authority of the Marine Mammal Protection Act (MMPA) for deterring marine mammals under NOAA Fisheries' jurisdiction will have no effects on any state Coastal Zone Management Program. The information in this National Negative Determination is provided pursuant to 15 C.F.R. § 930.39 and is being submitted in compliance with 15 C.F.R. § 921.13.

The MMPA allows for specified persons to deter marine mammals from damaging fishing gear and catch, damaging personal or public property, or endangering personal safety, as long as these measures do not result in death or serious injury of marine mammals. The MMPA directs the Secretary of Commerce, through NOAA Fisheries, to publish a list of "guidelines" for use in safely deterring marine mammals under NOAA Fisheries' jurisdiction and to recommend "specific measures," which may be used to nonlethally deter marine mammals listed under the Endangered Species Act (ESA). While the guidelines and specific measures are not mandatory, the MMPA provides protection from liability under the MMPA for take resulting from such deterrence measures by specifying that any actions taken to deter marine mammals that are consistent with the guidelines or specific measures are not a violation of the act. Compliance with this proposed regulation and MMPA section 101(a)(4)(A) would not obviate the user's obligation to comply with all other applicable local, state, and Federal requirements related to the use of deterrents.

The purpose of these guidelines and specific measures is to provide options for safely deterring marine mammals in a manner that will allow fishermen and property owners to protect gear, catch, and property without killing or seriously injuring marine mammals. These tools are intended to reduce the likelihood of intentional lethal takes and serious injuries. This rulemaking also includes proposed prohibitions on certain deterrent methods that NOAA Fisheries has determined, using the best available scientific information, would have a significant adverse effect on marine mammals. As a result, the guidelines would substantially protect marine mammals compared to the status quo. NOAA Fisheries strongly encourages fishermen, private property owners, and government officials to practice avoidance techniques prior to attempting to deter any marine mammal. Of note, NOAA Fisheries has not evaluated these deterrents for effectiveness.





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NOAA Fisheries received extensive public comments on the proposed rule, such as marine debris concerns and opposition to tactile projectiles being used on Hawaiian monk seals. NOAA Fisheries is evaluating these public comments as well as relevant new information as we develop the final rule.

The rule will allow specified persons to use the guidelines and specific measures for safely deterring marine mammals from damaging gear, catch, and property, and endangering personal safety, potentially resulting in temporary displacement of marine mammals, which NOAA Fisheries has determined will not result in effects to coastal uses and resources of state coastal zones. In addition, as NOAA explained in its 2000 Final Rule amending the CZMA federal consistency regulations (65 FR 77130, December 8, 2000): “[T]he effect on a resource or use while that resource or use is outside of the coastal zone could result in effects felt within the coastal zone. However, it is possible that a federal action could temporarily affect a coastal resource while that resource is outside of the coastal zone, e.g., temporary harassment of a marine mammal, such that resource impacts are not felt within the coastal zone.” Similarly, due to potential but temporary displacement impacts, NOAA Fisheries has determined the rule will not result in coastal effects to other coastal species (i.e., seabirds, sea turtles, fish, and invertebrates). As the guidelines and specific measures are not mandatory, NOAA Fisheries has also determined the rule will not result in economic impacts to coastal uses and resources of state coastal zones.

The draft Environmental Assessment for this action, which supports the conclusion of a national negative determination, can be found at <http://www.fisheries.noaa.gov/action/guidelines-safely-detering-marine-mammals>. Hard copies are available upon request. The proposed rule including the guidelines, recommended specific measures, and prohibitions has been published in the *Federal Register* (85 FR 53763, August 31, 2020).

Based upon best available information, data, and analysis, NOAA Fisheries has determined that the rule will have no foreseeable effects on coastal uses and resources of any state coastal zone. Pursuant to 15 C.F.R. § 930.35, your state has 60 days from the receipt of this statement to concur with or object to this National Negative Determination. NOAA Fisheries will presume state concurrence if a decision by your state is not received by the 60th day from receipt of this determination.

If you have any questions or concerns, please contact Kristy Long at 206-526-4792 or [kristy.long@noaa.gov](mailto:kristy.long@noaa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly B. Randall".

Kimberly Damon-Randall

Director

NOAA Fisheries Office of Protected Resources

