



Skokomish Indian Tribe

Fisheries Department

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SKOKOMISH TRIBE'S 2021 ANNUAL MARINE MAMMAL REGULATION F#21-06

INTRODUCTION

This regulation shall apply to all commercial, ceremonial and subsistence fisheries in the on-reservation portion of the Skokomish River (the full width of the Skokomish River, from the river mouth upstream to the Bonneville Power Administration's power lines), the Skokomish River delta flats, and off-reservation commercial marine catch reporting areas 12, 12B, 12C, 12D and 12H (the Hoodspport Hatchery Zone which is the area 1,000 feet from the shore between the Hoodspport Marina dock to the dock at Glen Ayr).

MANAGEMENT PERIOD June 1, 2021 through May 31, 2022.

A. TAKING IS PROHIBITED

It is prohibited to **take a marine mammal** except as otherwise provided by this regulation.

“**Take**” means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill a **marine mammal**.

B. INCIDENTAL TAKE AUTHORIZED

A **tribal treaty fisher** and tribal fisheries enforcement and management professional may **incidentally take** a non-depleted **marine mammal (Appendix A)**, under the circumstances specified below, when exercising, enforcing or managing the Tribe's treaty right to fish.

A list of non-depleted **marine mammals** is found in **Appendix A**.

“**Tribal treaty fisher**” means a person authorized by the Skokomish Tribe to exercise the Skokomish Tribe's treaty fishing rights.

“**Incidental take**” means to take a **marine mammal** in the course of treaty fishing operations (i) because it is directly interfering with fishing operations, (ii) as a consequence of the steps used to secure the fish in connection with fishing operations, or (iii) as a measure of self-defense.

C. INCIDENTAL TAKE OF A NON-DEPLETED MARINE MAMMAL INTERFERING WITH TREATY FISHING – PREVENTING INTERFERENCE WITH GEAR OR CATCH

(1) Preventing Interference – Non-Lethal Acts.

A **tribal treaty fisher** or tribal fisheries enforcement and management professional may **incidentally take** a non-depleted **marine mammal** (**Appendix A**) by deterring it from damaging catch or deployed fishing gear, so long as such acts of deterrence are not intended to result in the death of or serious injury to the non-depleted **marine mammal** (**Appendix A**). Potential non-lethal deterrence methods will include those set forth in the most recent list provided by the National Oceanic and Atmospheric Administration (NOAA), attached as Appendix B (and available at the link below), or such other measures as may be added to this provision after consultation with NOAA.

https://www.westcoast.fisheries.noaa.gov/publications/protected_species/marine_mammals/pinnipeds/sea_lion_removals/potential-deterrence-methods-10-2018.pdf

(2) Preventing Interference – Lethal Acts.

A **tribal treaty fisher** or tribal fisheries enforcement and management professional, *after* attempting non-lethal steps to deter a Steller sea lion, California sea lion or harbor seal from damaging catch or deployed fishing gear, may **incidentally take** Steller sea lion, California sea lion or harbor seal by lethal means consistent with Section C(3) below.

****Lethal means of protecting gear and catch only apply to Steller sea lions, California sea lions and harbor seals, and only after first using non-lethal means under Section C(1) and protecting public safety under Section C(3).****

(3) Public Safety.

Tribal treaty fishers and tribal fisheries enforcement and management professionals shall ensure that any methods used to prevent a non-depleted **marine mammal** (**Appendix A**) from interfering with their fishing operations will not create an imminent risk to public safety.

D. INCIDENTAL TAKE OF A NON-DEPLETED MARINE MAMMAL AS A CONSEQUENCE OF STEPS USED TO SECURE FISH

A **tribal treaty fisher** may **incidentally take** a non-depleted **marine mammal** (**Appendix A**) as a consequence of the steps used to secure fish in connection with treaty fishing operations. Such

incidental take includes but is not limited to entanglement of a non-depleted **marine mammal** in fishing gear.

E. SELF-DEFENSE

A **tribal treaty fisher** or a tribal fisheries enforcement and management professional may **incidentally take** by non-lethal or lethal means a **marine mammal** if such take is imminently necessary in self-defense or a life-threatening situation.

F. MONITORING

Fishing vessels may be asked to include the Tribal marine mammal biologist or technician as an observer on board vessels to monitor **marine mammal** interactions. The purpose is to observe **marine mammal** and fishery interactions and to research and develop methods to reduce the **incidental taking** of **marine mammals** and reduce harm to gear and catch caused by **marine mammals**. Fishing vessels may also be asked to maintain a **marine mammal** interaction log provided by Skokomish Department of Natural Resources (DNR).

G. INFORMATION SHARING – FISHER AND TRIBAL REPORTING

- (1) A tribal treaty fisher or tribal fisheries enforcement and management professional shall report any **incidental take** resulting in mortality or injury of a **marine mammal** to Skokomish DNR within 48 hours of landing, or as soon as reasonably possible. Skokomish DNR will make forms available for **incidental take** reports.
- (2) Skokomish DNR shall provide on an annual basis by January 15 a summary report to NOAA Fisheries and the Northwest Indian Fisheries Commission (“NWIFC”) regarding aggregate **incidental takes** resulting in mortality or injury of **marine mammals** by **tribal treaty fishers** or tribal fisheries enforcement and management professionals, including number of **marine mammals** taken, approximate date, species, location (*e.g.* catch area), fishery gear type and target species (*e.g.* salmon troll, salmon drift gillnet), and disposition (mortality or injury). Individual tribal treaty fisher and vessel anonymity shall be maintained. The NWIFC will aggregate the information received from the Skokomish Tribe and other tribes into a single report, while maintaining tribal anonymity, and also provide it to NOAA.
- (3) To facilitate Skokomish Tribal enforcement of this regulation and NOAA enforcement of the MMPA and its implementing regulations, the Skokomish Tribe shall coordinate with NOAA Office of Law Enforcement and share information relevant to such enforcement, including Skokomish Tribal fishing regulations establishing open seasons and areas, this marine mammal regulation and contact information for Skokomish DNR and the Skokomish Public Safety Enforcement Office. Upon request, the Skokomish Tribe shall share with NOAA Office of Law Enforcement relevant information it has obtained from any reports submitted pursuant to Section G(1) above regarding the **incidental take** of a

marine mammal by a **tribal treaty fisher** or tribal fisheries enforcement and management professional. The Skokomish Tribe shall also share information regarding and the disposition of any incident involving **incidental take** referred to the Tribe for investigation, including the outcome of any prosecution arising from the incident.

H. DISPOSITION OF CARCASS

The carcass of any **marine mammal incidentally or intentionally** killed under this regulation may be returned to the sea. If the carcass is retained, it must be made available to the Skokomish Tribe's DNR for biological sampling, after which it shall be provided for ceremonial and subsistence use within the tribal community consistent with Skokomish Tribal law and custom.

I. PENALTIES

Failure to observe and comply with any provision of this regulation shall be punishable by civil and/or criminal penalties as specified in Skokomish Tribal Council 7.02 - Skokomish On-Reservation and Treaty Fishing Ordinance.

J. RESERVATION OF RIGHTS

By adopting this regulation as Skokomish Tribal law, the Skokomish Tribe is not waiving any right, claim, defense or other legal entitlement regarding the Skokomish Tribe's treaty fishing right or other rights held by the Skokomish Tribe, nor is it intending to define or interpret the scope of its treaty right to take **marine mammals**.

K. PURPOSE

This regulation enacted by the Skokomish Tribe is intended to implement the Tribe's right of taking fish under the Treaty of Point No Point, which includes the right to defend fishing gear and catch from interference by **marine mammals**. Consistent with Congress's determination that nothing in the 1994 amendments to the Marine Mammal Protection Act "alters or is intended to alter any treaty between the United States and one or more Indian tribes," Pub. L. No. 103-238, § 14, 108 Stat. 532, 558 (1994), this regulation describes those circumstances identified by the Skokomish Tribe under which the **incidental take** of **marine mammals** by tribal members exercising treaty reserved fishing rights and certain identified tribal fisheries enforcement and management professionals is authorized.

This regulation also establishes a framework for government-to-government coordination between the Skokomish Tribe and NOAA regarding the **incidental take** of **marine mammals** in treaty fishing operations. The Skokomish Tribe and NOAA will share information intended to improve science-based management of **marine mammals** and facilitate Skokomish Tribal enforcement of this regulation and NOAA enforcement of the MMPA and its implementing regulations.

7. AUTHORITY

This regulation is promulgated by the Skokomish Fish Committee and adopted by the Skokomish Tribal Council under authority of the Skokomish Treaty Fishing Ordinance section 7.02.025.



Cynthia Gray
Finfish Program Manager
Skokomish Department of Natural Resources

Appendix A

List of Non-depleted Marine Mammals Found in Skokomish U&A

A non-depleted marine mammal means any marine mammal that has not been determined by the Secretary of Commerce (including NOAA Fisheries or NMFS) to be depleted as defined in the Marine Mammal Protection Act or has not been listed as endangered or threatened under the federal Endangered Species Act.

California sea lion
Harbor seal
Pacific white-sided dolphin
Sea otter
Steller sea lion
Dall's porpoise
Harbor porpoise



Potential Methods for Deterring Pacific Harbor Seals, California Sea Lions, Northern Fur Seals, Eastern U.S. Stock of Steller Sea Lions, & Northern Elephant Seals - Updated October 2018

GENERAL INFORMATION:

- The Marine Mammal Protection Act (MMPA) generally prohibits the harassment, hunting, capturing, or killing of marine mammals, or any attempt to engage in such activities. However, Section 101(a)(4) of the MMPA allows for the non-lethal deterrence of nuisance animals under certain circumstances. For more information, see 101(a)(4) below.
- When attempting to deter these animals, you are **not allowed** to seriously injure or kill them (*e.g.* no open wounds, avoid impact to the animals' eyes and face, avoid blunt force trauma and aiming pyrotechnics directly at animals, *etc.*).
- These "**Potential Methods**" are **not** "approved" deterrence methods by NOAA Fisheries. They are examples of methods that are known to have been effective at deterring pinnipeds in the past.

Methods to Avoid:

The following methods/devices have an increased likelihood of causing injury or death and **should be avoided**.

- **No** Firearms with "live" (lethal) ammunition (including metallic, glass, or sharp projectiles: *e.g.* BBs, marbles)
- **No** Devices with Injurious Projectiles (*e.g.*, archery gear, crossbows, spear guns, bangsticks)
- **No** Sharp/Pointed Objects (*e.g.*, harpoons, spears, gaffs, nail studded bats/poles/clubs/docks)
- **No** Entangling Devices (*e.g.*, loose webbing, snares, concertina wire)
- **No** Aggressive Tactile Methods (*e.g.*, striking animals with bats, hammers, *etc.*; impact with vehicles or boats)
- **No** Tainted Baits or Poisons
- **No** Guard Dogs

Potential Methods for Private Property Owners:

Barriers & Exclusion Devices:

- fencing (*e.g.*, plastic construction/snow fence, chain link), closely spaced posts
- bull rails
- electric livestock fencing
- netting
- swim step protector
- Noise Makers:
- horns, whistles, bells
- music
- clapping, banging pots, pans, drums; empty aluminum cans on a string banging together
- electronic acoustic devices (Acoustic Harassment Devices)
- starter pistols
- pyrotechnics (*e.g.*, bird screamers, bangers, firecrackers, propane canons) (*there are municipal and state ordinances managing the use and possession of these products*)

Visual Repellents:

- flags, pinwheels, or streamers
- flashing lights or strobes
- human attendants/monitors
- Physical Contact:
- high or low pressure water hoses
- sprinklers, sprayers
- crowder boards
- bull poles (blunt tip), brooms
- cattle prod (these products produce only a mild electric shock designed for handling livestock and are in no way related to "stun guns" designed for self-defense)
- toy water guns (*e.g.*, "Super Soaker[®]")
- non-toxic and water soluble paint ball or air soft guns (no metallic/glass/sharp projectiles)
- slingshot (no metallic/glass/sharp projectiles)
- chemical irritants (*e.g.*, non-toxic pepper spray, mace) used for animal control (note: *there are municipal and state ordinances managing the use and possession of these irritants*)

Additional Potential Methods for Fisherman:

Visual Repellents/Noise Makers:

- boat hazing, circling
- pounding on hull
- horns, bells, whistles
- pyrotechnics (*e.g.*, bird screamers, bangers, underwater firecrackers, cracker shells)

Physical Contact:

- Slingshots (no metallic/glass/sharp projectiles)
- non-toxic and water soluble paint ball guns
- non-lethal ammunition (*e.g.*, rubber bullets)



Marine Mammal Protection Act (MMPA)

Section 101(a)(4)

- A) Except as provided in subparagraphs (B) and (C), the provisions of this Act shall not apply to the use of measures—
 - (i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;
 - (ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;
 - (iii) by any person, to deter a marine mammal from endangering personal safety; or
 - (iv) by a government employee, to deter a marine mammal from damaging public property, so long as such measures do not result in the death or serious injury of a marine mammal.
- (B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals listed as endangered species or threatened species under the Endangered Species Act of 1973, the Secretary shall recommend specific measures which may be used to non-lethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this Act.
- (C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this Act.
- (D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this Act.