



MARINE MAMMAL COMMISSION

4 March 2026

Mr. Benjamin Laws, Supervisor
Incidental Take Program
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Mr. Laws:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's (NMFS) 2 February 2026 notice (91 Fed. Reg. 4468) and the application submitted by Hilcorp Alaska, LLC (Hilcorp) seeking issuance of regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA). The taking would be incidental to the construction, maintenance, and operation of ice roads, trails and pads on Alaska's North Slope at Northstar's Production Island (Northstar), Spy Island Drill Site (SID), and Ooguruk Drill Site (ODS). The Commission has submitted comments to NMFS regarding previous rulemaking associated with Hilcorp's activities¹ and the letters of authorization (LOAs) thereunder.

Background

Hilcorp would construct, maintain, and operate several ice roads, trails and pads on the North Slope of Alaska during the ice-covered season. Hilcorp's activities could occur from 1 December through 31 May of each year for up to five years². Hilcorp would be required to implement various mitigation, monitoring, and reporting measures. NMFS preliminarily has determined that Hilcorp's activities could cause mortality and serious injury (M/SI) and Level B harassment of a small number of ringed seals. NMFS believes that the total taking would have a negligible impact on the species or stock and that the potential for taking would be at the least practicable level because of the proposed mitigation measures. NMFS also has preliminarily determined that Hilcorp's activities would not cause an unmitigable adverse impact on the taking of ringed seals for subsistence use.

M/SI

To help inform its analysis of whether M/SI should be considered negligible, NMFS evaluated whether the proposed M/SI takes for Hilcorp's activities would exceed the potential biological removal (PBR) when those removals are added to other sources of taking by M/SI.

¹ Activities conducted by Eni US Operating Co. Inc. (Eni) also were included in the previous final rule.

² Hilcorp's previous final rule expired in November 2025 (85 Fed. Reg. 83451).

NMFS proposed to authorize up to four M/SI takes of ringed seals over the five-year period of the rule (Table 5, 91 Fed. Reg. 4476), which would equate to an annual M/SI take of 0.8 seals. However, for its negligible impact determination, NMFS indicated that the maximum annual Hilcorp M/SI of 2 seals added to the minimum estimated mean annual rate of U.S. commercial fishery-related M/SI of 5 is less than 10 percent of the negatively-biased PBR³ (10 percent of PBR=476; 91 Fed. Reg. 4480). The maximum annual M/SI for Hilcorp's activities is 0.8 seals, not 2 seals. NMFS also omitted sources of annual M/SI other than commercial fisheries that are quantified in its ringed seal SAR⁴, including 6,454 seals for subsistence hunting, 0.2 seals entangled in marine debris, and 0.2 seals for scientific research activities. Accounting for only the commercial fishery-related M/SI takes is inconsistent with Hilcorp's previous final rule (85 Fed. Reg. 83469) and other recent final rules (e.g., 90 Fed. Reg. 58810, 90 Fed. Reg. 50504, 90 Fed. Reg. 21134).

In addition, NMFS's explanation and use of residual PBR⁵ is incorrect in portions of the preamble to the proposed rule and not consistent with the rationale, justification, or use of residual PBR for other recent rulemakings (e.g., 90 Fed. Reg. 58810, 90 Fed. Reg. 50504, 90 Fed. Reg. 21134). For example, NMFS did not specify whether residual PBR was negative, whether it conducted Tier 1 and 2 analyses, or what those analyses are (90 Fed. Reg. 4480). NMFS also incorrectly noted that Hilcorp's M/SI takes represent less than 10 percent of *residual* PBR rather than 10 percent of PBR in its justification for reaching a negligible impact determination (90 Fed. Reg. 4480). The Commission therefore recommends that, at a minimum, NMFS (1) revise the maximum annual M/SI takes from 2 to 0.8 for Hilcorp's activities, (2) include all sources of M/SI takes from the ringed seal SAR⁶ in its calculation of residual PBR, (3) specify whether residual PBR is negative, whether Tier 1 and/or 2 analyses were conducted, and what those analyses are, and (4) ensure that 10 percent of PBR rather than 10 percent of residual PBR is used in Tier 2 analyses when used to inform its negligible impact determination in the preamble to the final rule.

The Commission continues to maintain that it would be prudent for NMFS to apply its revised policy directive for determining whether an impact is negligible (NMFS 2020) consistently under section 101(a)(5) of the MMPA. Similar to other authorizations NMFS has issued under section 101(a)(5)(A), Hilcorp's proposed M/SI takes would be less than the negligible impact threshold specified in NMFS (2020).

Mitigation and monitoring measures

In its informal comments to NMFS, the Commission questioned why various mitigation and monitoring measures, as well as multiple reporting measures, that had been included in Hilcorp's previous final rule were omitted from the proposed rule. Rather than provide specific reasoning for each of the numerous omissions, NMFS indicated that the omissions largely reflect changes proposed by Hilcorp in its application(s), incorporating Hilcorp's practicability concerns and, in some cases, building on experience implementing the requirements of the prior authorization that

³ NMFS determined in its stock assessment report (SAR) for ringed seals that the minimum abundance estimate (N_{\min}) is negatively-biased, in turn PBR would be considered negatively-biased as well.

⁴ <https://www.fisheries.noaa.gov/s3/2021-08/RINGED-SEAL-Pusa-hispida-hispida-Arctic-Stock.pdf>.

⁵ PBR minus both the total annual anthropogenic M/SI estimate from the SAR and other M/SI takes authorized under section 101(a)(5)(A) of the MMPA. When residual PBR is negative, additional calculations are necessary (i.e., Tier 1 and 2 analyses, see 90 Fed. Reg. 58964 for example).

⁶ Including those from subsistence hunting, entanglement in marine debris, and scientific research-permitted activities.

suggests that some measures should be relaxed or eliminated. When measures are impracticable, particularly those that have been implemented previously, both the applicant in its application and NMFS in its preamble to the proposed and/or final rule specify as much (see 90 Fed. Reg. 58810 and the underlying application documentation as one example). However, in this instance, Hilcorp included no information in its application regarding practicability concerns nor were practicability concerns included in any of the annual monitoring reports submitted by Hilcorp and Eni under the previous final rule. In fact, Hilcorp specified in each of the five annual monitoring reports that the mitigation measures and best management practices (BMP) as outlined in the Marine Mammal Mitigation and Monitoring Plan (4MP) and BMP Plan, particularly the significant rollout of annual training as outlined in section 4(a)(2) of the LOA and every-other-day ringed seal surveys after 1 March, contributed greatly to effectively mitigating potential impacts on ringed seals. Hilcorp additionally stated in each of its annual monitoring reports that it did not have any proposed changes to the Wildlife Interaction Plan, 4MP, or BMP Plan for NMFS's consideration. NMFS similarly included no mention of practicability concerns in its preamble to the proposed rule. The Commission is concerned that some of the measures that contributed to mitigating impacts have been eliminated or relaxed without discussion of their practicability or efficacy.

For example, annual training requirements that were specified in section 4(a)(2)(iii)(A) to (E) of the previous LOA and section 217.154(a)(3)(iii)(A) to (E) of Hilcorp's previous final rule were not included in the proposed rule. Those training requirements included (1) ringed seal identification and brief life history, (2) habitat characteristics and how to potentially identify habitat, (3) ringed seal use in the area (timing, location, habitat use, birthing lairs, breathing holes⁷, basking, etc.), (4) potential effects of disturbance, and (5) importance of lairs, breathing holes, and basking to ringed seals. Similar training requirements were included in Hilcorp's application and in the preamble to the proposed rule, but not in the proposed rule itself. In addition, all of those training requirements have been included in recent incidental harassment authorizations (IHAs) issued to other oil and gas action proponents conducting activities, including ice road and trail construction, on the North Slope⁸.

Under the previous rule, Hilcorp also was required to engage with Alaska Native seal hunters on methods for detecting ringed seals along the ice roads and trails and to incorporate the hunters' recommendations into the training materials (sections 217.155(d)(1) and (2), respectively, in the previous final rule). Since Hilcorp has engaged with the hunters and incorporated their recommendations into the training materials per its application, it is unclear why those recommendations were not discussed as being part of the annual training or training materials in the preamble to the proposed rule or the proposed rule itself⁸. Therefore, the Commission recommends that NMFS specify in either section 217.154 or 217.155 of any final rule issued to Hilcorp and/or any LOA issued thereunder that the annual training or training materials must include (1) ringed seal identification and brief life history, (2) habitat characteristics and how to potentially identify habitat, (3) ringed seal use in the area (e.g., timing, location, habitat use, birthing lairs, breathing holes, basking, etc.), (4) the importance of lairs, breathing holes, and basking to ringed seals, (5) the potential effects of disturbance, and (6) the hunters' recommendations regarding methods for ringed seal detection along sea ice roads and trails. It is unclear why certain aspects of the training were

⁷ NMFS has termed lairs and breathing holes as seal structures throughout the *Federal Register* notice.

⁸ Similar requirements were included in the IHA recently issued to Narwhal, LLC (Narwhal).

<https://www.fisheries.noaa.gov/s3/2025-08/NarwhalWHB-2025IHA-FIHA-OPRI.pdf>

considered mitigation measures, while other portions were considered monitoring measures under the previous rule. In any event, inclusion of the relevant information in its annual training or training materials is practicable, since Hilcorp complied previously and proposed to do so again in its application and other action proponents are required to abide by the same requirements.

As another example, NMFS proposed to require Hilcorp to conduct ringed seal surveys once per week (section 217.155(b)(1) of proposed rule) rather than every other day, as was required under the previous final rule (section 217.155(c)(1)(i)). Hilcorp stated in each of their annual monitoring reports that every-other-day ringed seal surveys after 1 March contributed greatly to effectively mitigating potential impacts on ringed seals—the company did not report that these surveys were impractical. In Narwhal’s recent IHA, NMFS required ringed seal surveys to occur every three days. If the practicability of every-other-day surveys is indeed a concern for Hilcorp, that should have been discussed in the preamble to the proposed rule. Regardless, it is not impracticable to require action proponents to conduct ringed seal surveys every three days, as NMFS recently required another action proponent to do so for the same ice road and trail activities. The Commission recommends that NMFS increase the frequency at which Hilcorp would be required to conduct ringed seal surveys from once per week to at least every three days in section 217.155(b)(1) of the final rule.

Although Hilcorp was required to have and renew annually a Plan of Cooperation (POC) under section 217.154(a)(1) of the previous final rule, NMFS did not include the same requirement in the proposed rule, opting to allow Hilcorp to address the concerns of subsistence communities through less formal consultations. Section 216.104(a)(12) of NMFS’s implementing regulations requires applicants whose activities will 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 to provide either a POC *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. NMFS noted in the preamble to the proposed rule that Hilcorp frequently engages with subsistence communities along the North Slope as part of routine operations and will continue to meet with the North Slope Borough Department of Wildlife Management (NSB DWM) and the Ice Seal Committee (ISC) to discuss planned activities. NMFS further indicated that NSB DWM and ISC have never expressed concerns that Hilcorp’s ice road, trail and pad activities are affecting the availability of ringed seals for subsistence. As such, the agency did not propose to require a POC nor did it plan to require specific mitigation or monitoring measures to address subsistence use under the proposed rule (91 Fed. Reg 4481).

The fact that subsistence hunters have not raised concerns in the past does not mean that concerns will not arise in the future, particularly if Hilcorp would no longer be required to engage with Alaska Native seal hunters as it had been under the previous final rule. Additionally, some of Hilcorp’s ice road and trail activities are near or overlap with ice road and trail activities conducted by Narwhal, which was required to engage with subsistence communities under its IHA. It is unclear why Hilcorp is being held to a different standard, especially when it already plans to engage with the communities. To better understand possible conflicts between Hilcorp’s activities and subsistence use during the five-year period covered by the final rule and to comply with section 216.104(a)(12) of its implementing regulations, the Commission recommends that NMFS include in section 217.155 of the final rule a requirement that Hilcorp engage with affected subsistence communities (including the ISC) regarding its ongoing North Slope activities through established community

meetings or periodic one-on-one meetings with the appropriate Alaska Native organizations. If any subsistence concerns arise that need to be mitigated, NMFS should invoke the adaptive management provisions to modify or augment the existing mitigation, monitoring, or reporting measures under section 217.157(c) of the final rule.

Reporting measures

Similar to the mitigation and monitoring measures, some standard reporting measures also were omitted from the proposed rule. The requirement to record and report the distance to either an observed seal or seal structure was not included in the proposed rule (see sections 217.155(g) and 217.155(i), respectively) but should have been, similar to Narwhal's IHA (see section 6(b)(v)⁹). The standard requirement to report all dead and injured marine mammals to NMFS's Office of Protected Resources (OPR) and the Alaska Regional Stranding Coordinator was not included in section 217.155(j) of the proposed rule. Instead, Hilcorp would be required to report mortalities and injuries only if they were caused by its activities, which is inconsistent with the previous final rule (see sections 217.155(e)(2) and (3)) and all other incidental take authorizations (see section 6(d) of Narwhal's IHA and section 217.165(j) of Hilcorp's final rule in Cook Inlet¹⁰, as two examples). The Commission recommends that NMFS include the requirements that Hilcorp (1) record and report the distance to any observed seal or seal structure in sections 217.155(g) and 217.155(i), respectively, and (2) report *all* dead and injured marine mammals to NMFS's OPR and the Alaska Regional Stranding Coordinator as soon as feasible in section 217.155(j) of the final rule.

If Hilcorp should happen to kill or injure an animal, section 217.155(j) of the proposed rule would not require Hilcorp to cease its activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the LOA. That is a standard measure that is included in all other incidental take authorizations (see section 217.165(j) of Hilcorp's Cook Inlet final rule). A few years ago, NMFS did revise the information required to be reported when an animal is killed or injured. Action proponents previously were required to report any marine mammal observations in the 24 hours preceding the death or injury, the environmental conditions when the death or injury occurred, and a description of the incident that led to the death or injury (see 217.155(e)(2)(ii) to (iv) in Hilcorp's previous final rule). However, NMFS has simplified those requirements to reporting only the general circumstances under which the animal was discovered. Describing how a dead or injured animal was discovered is much different than describing the incident that led to its death or injury. NMFS likely assumed that in order to review the circumstances of an incident, the action proponent would have to provide additional information. The Commission contends that such information should be stipulated in advance to ensure that action proponents collect it. Therefore, the Commission recommends that NMFS include in section 217.165(j) of the final rule the requirements that, if an animal were to be killed or injured by Hilcorp's activities, Hilcorp must (1) cease its activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the LOA and (2) report any marine mammal observations in the 24 hours preceding the death or injury, the environmental conditions when the death or injury occurred, and a description of the incident that led to the death or injury. These latter requirements can easily be incorporated as section 217.165(j)(7) in the final rule.

⁹ The letters and numbers in the outline structure of section 6 of Narwhal's final IHA are incorrect.

¹⁰ <https://www.govinfo.gov/content/pkg/FR-2026-02-20/pdf/2026-03375.pdf>

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Please contact me if you have questions regarding the Commission's recommendations.

Sincerely,



Peter O. Thomas, Ph.D.,
Executive Director

Reference

NMFS. 2020. Criteria for determining negligible impact under MMPA section 101(a)(5)(E). NMFS Procedure 02-204-02, Office of Protected Resources, Silver Spring, Maryland. 20 pages.
<https://media.fisheries.noaa.gov/dam-migration/02-204-02.pdf>.