



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

CA 232-2013

Resolution T-092-13

YAKAMA NATION REGULATION GOVERNING INCIDENTAL TAKE OF MARINE MAMMALS IN TREATY FISHERIES

Effective Dates: In Perpetuity

Management Area: Waters of the Columbia River and Zone 6 Tributaries

1. Purpose.

This regulation is intended to implement the Yakama Nation's right of taking fish under the Treaty of June 9, 1855 (12 Stat. 951), which includes the right to defend fishing gear and catch from interference by marine mammals that may enter the Columbia River and/or its tributaries. Consistent with Congress' determination that nothing in the 1994 amendments to the Marine Mammal Protection Act ("MMPA") "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 Yakama Nation under which the incidental take of marine mammals by tribal members exercising treaty reserved fishing rights and tribal enforcement is authorized.

This regulation also establishes a framework for government-to-government coordination between the Yakama Nation and the National Oceanic and Atmospheric Administration ("NOAA") regarding the incidental take of marine mammals in treaty fishing operations. The Yakama Nation and NOAA will share information intended to improve science-based management of marine mammals and facilitate Tribal enforcement of this regulation and NOAA enforcement of the MMPA and its implementing regulations.

2. Definitions.

(a) "Take" means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill a marine mammal.

(b) "Incidental take" means the taking of a marine mammal in the course of treaty fishing operations (i) because it is directly interfering with fishing operations, or (ii) as a consequence of the steps used to secure the fish in connection with fishing operations.

(c) "Marine mammal" means any marine mammal that is not depleted (as defined in the MMPA) or listed under the federal Endangered Species Act. The following species of non-depleted marine mammals are most likely to enter the Columbia River and/or its tributaries from the Pacific Ocean:



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California sea lion
Pacific harbor seal
Northern fur seal

3. Prohibitions.

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

4. Incidental Take Authorized.

A Yakama enrolled member or tribal game warden may incidentally take a marine mammal, under the circumstances specified below, when exercising, enforcing or managing the Yakama Nation's treaty right to fish.

5. Incidental Take of a Marine Mammal Interfering with Treaty-Reserved Fishing – Preventing Interference.

(a) Preventing Interference – Non-Lethal Acts.

A Yakama enrolled member or tribal game warden may incidentally take a marine mammal 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 marine mammal. Potential non-lethal deterrence methods will include those set forth in the NOAA Fisheries Guidance (February 2008) attached hereto, or such other measures as may be added to this provision after consultation with NOAA.

(b) Preventing Interference – Lethal Acts.

A Yakama enrolled member or tribal game warden, *after* attempting non-lethal steps to deter a California sea lion or Pacific harbor seal from damaging catch or deployed fishing gear, may incidentally take the California sea lion or Pacific harbor seal by lethal means consistent with Section 5(c) below.

(c) Public Safety.

Yakama enrolled members or tribal game wardens shall ensure that any methods used to prevent a marine mammal from interfering with their fishing operations will not create an imminent risk to public safety.



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6. Incidental Take of a Marine Mammal as a Consequence of Steps Used to Secure Fish.

A Yakama enrolled member may incidentally take a marine mammal 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 marine mammal in fishing gear.

7. Self-Defense.

A Yakama enrolled member or tribal game warden 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.

8. Information Sharing.

- (a) A Yakama enrolled member shall report any incidental take of a marine mammal to Yakama Nation Fisheries and tribal game wardens within 48 hours of landing, or as soon as reasonably possible.
- (b) Yakama Nation Fisheries shall provide on an annual basis a summary report to NOAA regarding aggregate incidental takes of marine mammals by Yakama enrolled members and/or tribal game wardens, including number of marine mammals taken, species, location (*e.g.* catch area), fishery gear type and target species (*e.g.* salmon set gillnet, salmon drift gillnet, platform hoopnet, hook and line), and disposition (mortality or serious injury). Individual fisher and vessel anonymity shall be maintained.
- (c) To facilitate Tribal enforcement of this regulation and NOAA enforcement of the MMPA and its implementing regulations, the Yakama Nation shall coordinate with the NOAA Office of Law Enforcement and share information relevant to such enforcement, including Tribal fishing regulations establishing open seasons and areas, this marine mammal regulation and contact information for Yakama Nation Fisheries, and tribal enforcement. Upon request, the Yakama Nation shall share with NOAA Office of Law Enforcement relevant information it has obtained from any reports submitted pursuant to Section 8(b) above regarding the incidental take of a marine mammal by a tribal treaty fisher or tribal fisheries game warden. The Yakama Nation 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.



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9. Disposition of Carcass.

The carcass of any marine mammal incidentally taken and killed under this regulation must be made available to the Yakama Nation Fisheries for biological sampling, after which it shall be provided for ceremonial and subsistence use within the tribal community consistent with Tribal law and custom.

10. Penalties.

Failure to observe and comply with any provision of this regulation shall be punishable by criminal penalties as specified in Section 32.19.29 of the Revised Yakama Code.

11. Reservation of Rights.

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