FEDERAL REGISTER

Vol. 87 Thursday

No. 4 January 6, 2022

Pages 729–874

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 211222–0267]

RIN 0694–AH89

Export Control Classification Number 0Y521 Series Supplement—Extension of Controls on an Emerging Technology (Software Specially Designed To Automate the Analysis of Geospatial Imagery Classification)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule; technical amendment.

SUMMARY: On January 6, 2020, the Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to add Software Specially Designed to Automate the Analysis of Geospatial Imagery to the 0Y521 Temporary Export Control Classification Numbers (ECCN) Series as 0D521. BIS first extended controls on this emerging technology for a second year pursuant to the 0Y521 series extension procedures on January 6, 2021, and in this action extends these controls a second time for an additional year for a total of three years of this control since it was added to the EAR on January 6, 2020.

DATES: This rule is effective January 6, 2022.

FOR FURTHER INFORMATION CONTACT: Aaron Amundson, Director, Information Technology Division, Office of National Security and Technology Transfer Controls, at email *Aaron.Amundson@bis.doc.gov* or by phone at (202) 482–5299.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 2020, the Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) with an interim final rule to add an emerging technology—Software Specially Designed to Automate the Analysis of Geospatial Imagery—to the 0Y521 Temporary Export Control Classification Numbers (ECCN) Series as 0D521. (85 FR 459, January 6, 2020). More specifically, the software was described as Geospatial imagery ''software'' ''specially designed'' for training a Deep Convolutional Neural Network to automate the analysis of geospatial imagery and point clouds. The following year, BIS extended that status for a year. (86 FR 461, January 6, 2021). These actions are consistent with Section 1758 (50 U.S.C. 4801) of the Export Control Reform Act of 2018 (ECRA), which requires the Department of Commerce to establish appropriate controls on the export, reexport, or transfer (in-country) of emerging and foundational technologies.

BIS established the ECCN 0Y521 series (April 13, 2012, 72 FR 22191) to identify items that warrant control on the Commerce Control List (CCL) but are not yet identified in an existing ECCN. Items in the 0Y521 series of ECCNs are added upon a determination by the Department of Commerce, with the concurrence of the Departments of Defense and State, and other agencies as appropriate, that the items warrant control for export because the items may provide a significant military or intelligence advantage to the United States or because foreign policy reasons justify control. The ECCN 0Y521 series is a temporary holding classification.

Under the procedures set forth in Section 742.6(a)(8)(iii) of the EAR, items classified under ECCN 0Y521 remain so classified for one year from the date they are listed in supplement no. 5 to part 774 of the EAR, unless the items are re-classified under a different ECCN or the 0Y521 classification is extended. BIS may extend an item's ECCN 0Y521 classification for two one-year periods, provided that the U.S. Government has submitted a proposal to the relevant multilateral regime(s) (*e.g.,* the Wassenaar Arrangement) to obtain multilateral controls over the item, with the understanding that multilateral controls are preferable when practical. Further extension beyond three years may occur only if the Under Secretary for Industry and Security makes a determination that such extension is in the national security or foreign policy interest of the United States. Any extension or re-extension of control of an ECCN 0Y521 item, including the determination by the Under Secretary, shall be published in the **Federal Register**.

In this action, BIS extends the status of an item classified under a 0Y521 ECCN for a second time for an additional year, for a total of three years of this control since it was added to the EAR on January 6, 2020, consistent with procedures that allow such an extension. Specifically, in this case the U.S. Government submitted a proposal for multilateral control of software specially designed to automate the analysis of geospatial imagery, as described in the January 6, 2020 interim final rule and in ECCN 0D521, to the relevant multilateral regime (the Wassenaar Arrangement) in a timely manner, within the first year of the item's 0D521 classification. However, due to the pandemic, the Wassenaar Arrangement did not formally convene in 2020 and therefore was unable to consider acceptance of the proposal. Therefore, BIS published the first extension of this 0Y521 control on January 6, 2021. However, the Wassenaar Arrangement's limited deliberations in 2021 due to the pandemic did not allow for sufficient discussion of this proposal. An additional extension of time is appropriate in order for the U.S. Government to continue its effort at the Wassenaar Arrangement in 2022, and is consistent with the requirements of Section 1758(c) of ECRA.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852) that provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim final rule has been designated to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This rule does not involve any collection of information.

3. This rule does not contain policies associated with Federalism as that term is defined under Executive Order 13132.

4. Pursuant to section 1762 of ECRA (*see* 50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act requirements (under 5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. This rule only updates Supplement No. 5 to Part 774 to the EAR by extending the date of the period of validity of 0D521 software in Supplement No. 5 to Part 774 for one year. This revision is merely technical and in accordance with established 0Y521 ECCN series procedure and purpose, which was proposed to the public and subject of comment. This rule clarifies information, which serves to avoid confusing readers about the 0D521 item's status. It does not alter any right, obligation or prohibition that applies to any person under the EAR.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 774—THE COMMERCE CONTROL LIST

■ 1. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

Supplement No. 5 to Part 774 [Amended]

■ 2. In Supplement No. 5 to part 774, amend the table under section ''0D521. Software'' by revising entry No 1. to read as follows:

Supplement No. 5 to Part 774—Items Classified Under ECCNS 0A521, 0B521, 0C521, 0D521 and 0E521

* * * * *

Item descriptor ..... *Note:* The description must match by model number or a broader descriptor that does not necessarily need to be company specific.	Date of initial or subsequent BIS classification. (ID = initial date; SD = subsequent date).	Date when the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued.	Item-specific license exception eligibility.
* * *	*	* *	*
0D521. Software.			
No. 1 Geospatial imagery ''software'' ''specially designed'' for training a Deep Convolutional Neural Network to automate the analysis of geospatial imagery and point clouds, and having all of the following: 1. Provides a graphical user interface that enables the user to identify objects (*e.g.,* vehicles, houses, etc.) from within geospatial imagery and point clouds in order to extract positive and negative samples of an object of interest; 2. Reduces pixel variation by performing scale, color, and rotational normalization on the positive samples; 3. Trains a Deep Convolutional Neural Network to detect the object of interest from the positive and negative samples; and 4. Identifies objects in geospatial imagery using the trained Deep Convolutional Neural Network by matching the rotational pattern from the positive samples with the rotational pattern of objects in the geospatial imagery. *Technical Note:* A point cloud is a collection of data points defined by a given coordinate system. A point cloud is also known as a digital surface model.	January 6, 2020 (ID)	January 6, 2023	License Exception GOV under § 740.11(b)(2)(ii) only.
* * *	*	* *	*

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2021–28444 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 800

Determination Regarding Excepted Foreign States

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Determination.

SUMMARY: The Department of the Treasury, as Chair of the Committee on Foreign Investment in the United States, is publishing the Committee's determination that two foreign states have established and are effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

DATES: Effective January 5, 2022.

FOR FURTHER INFORMATION CONTACT: Laura Black, Director of Investment Security Policy and International Relations, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: *CFIUS.FIRRMA@treasury.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The list of excepted foreign states and additional information with respect to the Committee on Foreign Investment in the United States (CFIUS or the Committee) are available on the Committee's section of the Department of the Treasury website.

Notice of CFIUS Action

The Committee, taking into consideration the factors identified on the Committee's section of the Department of the Treasury website, has determined, under the authority of section 721 of the Defense Production Act of 1950, as amended, and 31 CFR 800.1001(a), that: (1) Australia has established and is effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security; and (2) Canada has established and is effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

This determination satisfies the second criterion in the definition of excepted foreign state under 31 CFR 800.218 with respect to Australia and Canada. Therefore, Australia and Canada are and will remain excepted foreign states absent further Committee action and notice in the **Federal Register**.

Larry McDonald,

Acting Assistant Secretary for International Markets.

[FR Doc. 2021–28598 Filed 1–5–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Parts 800 and 802

Certain Investments in the United States by Foreign Persons and Certain Transactions by Foreign Persons Involving Real Estate in the United States

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule adopts without change the proposed rule modifying the definitions of ''excepted foreign state'' and ''excepted real estate foreign state'' by extending by one year the effective date of one of two criteria set forth in the definitions in the regulations implementing certain provisions of Section 721 of the Defense Production Act of 1950, as amended.

DATES: This final rule is effective on February 4, 2022.

FOR FURTHER INFORMATION CONTACT: For questions about this rule, contact: Laura Black, Director of Investment Security Policy and International Relations, Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations, or Richard Rowe, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: *CFIUS.FIRRMA@treasury.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Definitions of Excepted Foreign State and Excepted Real Estate Foreign State—Sections 800.218 and 802.214

On November 15, 2021, the Department of the Treasury (Treasury Department) published a proposed rule amending the definitions of ''excepted foreign state'' and ''excepted real estate foreign state'' in 31 CFR part 800 and 31 CFR part 802, respectively. 86 FR 62978. These terms operate together with other relevant terms to provide an exception from the jurisdiction of the Committee on Foreign Investment in the United States (CFIUS or the Committee) over covered investments by certain foreign persons who meet specific criteria establishing sufficiently close ties to certain foreign states, as well as certain other provisions of the Foreign Investment Risk Review Modernization Act of 2018.

The preamble to the proposed rule provides background on CFIUS's statutory authority and the rationale for these definitional changes. The public was provided an opportunity to comment on the proposed rule and comments were due by December 10, 2021. The Treasury Department received two comments prior to the deadline, which are described in the next section.

B. Excepted Foreign States and Excepted Real Estate Foreign States

As described in the preamble to the proposed rule, ''excepted foreign state'' and ''excepted real estate foreign state'' are each defined by a two-criteria conjunctive test, with delayed effectiveness for the second criterion. This second criterion is a Committee determination under § 800.1001(a) for each eligible foreign state that it has established and ''is effectively utilizing'' a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security, and a Committee determination under § 802.1001(a) for each eligible foreign state that it has ''made significant progress'' toward establishing and effectively utilizing the robust process that is described in § 800.1001. The final rule extends the effectiveness of the second criterion with respect to each definition. Instead of becoming effective on February 13, 2022, each such second criterion will become effective on February 13, 2023.

II. Summary of Comments

During the public comment period, the Treasury Department received two comments to the proposed rule. The Treasury Department considered each submitted comment. All comments received by the end of the comment period are available on the public rulemaking docket at *https://www.regulations.gov* and addressed herein.

One comment supported the proposed rule and asked whether foreign states understand the determination criteria set forth in § 802.1001(a). The Treasury Department notes that there is additional information with respect to the factors that the Committee will consider in making determinations under §§ 800.1001(a) and 802.1001(a) on its website, available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-excepted-foreign-states*. The public disclosure of the factors that CFIUS will consider in its determinations is informative to foreign states of the progress needed to meet the definitions of excepted foreign state and excepted real estate foreign state. CFIUS also engages with foreign counterparts on investment screening issues.

Another comment asked about the impact of the pandemic and the excepted foreign state determinations. Extending the effective date of the second criterion in each definition provides foreign states with additional time to meet the determination factors. As stated in the preamble to the proposed rule, the Committee had determined that extending the time period before which such requirements become applicable is desirable given certain ongoing changes to foreign investment review regimes. The proposed rule does not make any change to the two-part conjunctive tests or to the factors set forth under §§ 800.1001(a) and 802.1001(a) for the second criterion. These tests and factors continue to provide the basis for CFIUS to designate excepted foreign states and excepted real estate foreign states.

Upon review and consideration of these comments, the Treasury Department has determined that the proposed rule is desirable given certain ongoing changes to foreign investment review regimes. The final rule therefore adopts the proposed rule without change.

III. Rulemaking Requirements

Executive Order 12866

These regulations are not subject to the general requirements of Executive Order 12866, which covers review of regulations by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), because they relate to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order. In addition, these regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to section 7(c) of the April 11, 2018, Memorandum of Agreement between the Treasury Department and OMB, which states that CFIUS regulations are not subject to OMB's standard centralized review process under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* RFA) generally requires an agency to prepare a regulatory flexibility analysis unless the agency certifies that the rule will not, once implemented, have a significant economic impact on a substantial number of small entities. The final rule extends the delayed effectiveness period for the second criterion in each of 31 CFR part 800 and 31 CFR part 802 without making any change to the two-criteria conjunctive test in either the definition of excepted foreign state or excepted real estate foreign state. The final rule therefore does not change the circumstances of any investor. Both before and after the final rule's effectiveness, any investor with sufficiently close ties to an eligible foreign state may be excepted from certain aspects of CFIUS's jurisdiction, including if engaging in a transaction with a small business. Such exception would be expected to lessen the burden on any such small business. The final rule therefore does not impose any additional burden on potential filers, including small businesses. Considering the foregoing, the Secretary of the Treasury certifies, pursuant to 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

Congressional Review Act

This rule has been submitted to the Office of Information and Regulatory Affairs (OIRA), which has determined that the rule is not a ''major'' rule under the Congressional Review Act.

List of Subjects

31 CFR Part 800

Foreign investments in the United States, Investments.

31 CFR Part 802

Real estate transactions in the United States, Investments.

For the reasons set forth in the preamble, the Treasury Department amends 31 CFR parts 800 and 802 regarding the definition of excepted foreign state and excepted real estate foreign state as follows:

PART 800—REGULATIONS PERTAINING TO CERTAIN INVESTMENTS IN THE UNITED STATES BY FOREIGN PERSONS

■ 1. The authority citation for part 800 continues to read:

Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.

Subpart B—Definitions

§ 800.218 [Amended]

■ 2. Amend § 800.218 introductory text by removing the year ''2022'' wherever it appears and adding in its place ''2023''.

PART 802—REGULATIONS PERTAINING TO CERTAIN TRANSACTIONS BY FOREIGN PERSONS INVOLVING REAL ESTATE IN THE UNITED STATES

■ 3. The authority citation for part 802 continues to read:

Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.

Subpart B—Definitions

§ 802.214 [Amended]

■ 4. Amend § 802.214 introductory text by removing the year ''2022'' wherever it appears and adding in its place ''2023''.

Larry McDonald,

Acting Assistant Secretary for International Markets.

[FR Doc. 2021–28599 Filed 1–5–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8365

[212.LLAZA01000.L1220000.DD0000]

Final Supplementary Rule for Public Lands at Virgin River Canyon Recreation Area in Mohave County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rule.

SUMMARY: The Bureau of Land Management (BLM) is finalizing a supplementary rule to reinstate a 14-day camping limit at the Virgin River Canyon Recreation Area within the Arizona Strip Field Office, Arizona Strip District, Mohave County, Arizona. The supplementary rule is needed to protect public health and safety, reduce user conflicts within the designated

recreation area, and protect the area's natural resources.

DATES: The final supplementary rule is effective February 7, 2022.

ADDRESSES: You may submit inquiries by any of the following methods:

Mail: BLM Arizona Strip Field Office, 345 East Riverside Drive, St. George, UT 84790. Attention: Amanda Sparks.

Email: blm_az_asdo_comments@blm.gov.

FOR FURTHER INFORMATION CONTACT: Amanda Sparks, Assistant Field Manager, Arizona Strip Field Office, at 435–688–3271 or by email at *BLM_AZ_ASDO Comments@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background Information

The supplementary rule is needed because an increasing number of users of the Virgin River Canyon Recreation Area have established long-term residency under the pretext of recreational camping. The proliferation of residential use interferes with legitimate recreational use of public lands and creates other health and safety concerns including hygiene and sanitation issues (*e.g.,* no access to showers or waste dump stations, accumulation of miscellaneous items, and the occasional long-term presence of dogs and their associated waste). The supplementary rule will provide more recreational opportunities for the public and reduce damage to natural resources that occur from trash dumping, accumulation or abandonment of equipment or vehicles, loss of vegetation, and contamination of nearby waters.

Efforts to contain the problems associated with long-term occupancy without imposing a 14-day stay have proven insufficient and concerns with public health and safety have intensified. Establishment of this supplementary rule will: (1) Provide more opportunities for the recreating public to utilize the campground facilities and access the surrounding area; (2) create consistent camping limitations across the Arizona Strip Field Office; (3) allow for management of the site for recreational purposes while preserving the health and safety of visitors; and (4) enable law enforcement personnel to cite persons for unlawful camping and use of public land for residential purposes, thereby increasing campsite availability to the recreating public.

This supplementary rule is consistent with the Arizona Strip Field Office Resource Management Plan (RMP), approved by the BLM (January 29, 2008). The BLM analyzed the proposed change in an environmental assessment (EA) (DOI–BLM–AZ–A010–2018–0030–EA) and issued a Finding of No Significant Impact (FONSI) and Decision Record on February 6, 2019.

The BLM is establishing this supplementary rule under the authority of 43 CFR 8365.1–6, which allows BLM State Directors to establish supplementary rules for ''the protection of persons, property, and public lands and resources.'' This provision allows the BLM to issue rules of less than national effect by publishing the rule in the **Federal Register** without codifying it in the Code of Federal Regulations. This final supplementary rule applies to public lands at the Virgin River Canyon Recreation Area within sections 14 & 15 of Township 41 North, Range 14 West of the Gila and Salt River Meridian. You may contact the Arizona Strip Field Office (see **ADDRESSES**) for maps of the management area and boundary or to review the notice.

II. Discussion on Public Comment and Final Supplementary Rule

On March 31, 1994, the BLM Arizona State Office established supplementary rules for the Virgin River Canyon Recreation Area (59 FR 15214). The 1994 camping and occupancy rule exempted the Virgin River Canyon Recreation Area from the Arizona Strip District's 14-day camping limit that prohibits camping longer than 14 consecutive days within a 28-day period and requires campers to move at least 30 air miles from a previously occupied camping location. The 1994 supplementary rule therefore allowed for unlimited overnight stays within the Virgin River Canyon Recreation Area. This final supplementary rule will revise the 1994 rule by reinstating the camping limit of 14 consecutive days within a 28-day period on public land within the Virgin River Canyon Recreation Area, making it consistent with all other public lands within the Arizona Strip Field Office area.

No other changes to the 1994 supplementary rules will occur and they will continue to be enforced as described in the 1994 notice. The reinstatement of a camping limit will help the BLM maintain public access for recreational purposes, reduce conflicts among visitors, and preserve public health and safety.

The BLM Arizona State Director proposed the supplementary rule in the **Federal Register** on June 15, 2021 (86 FR 31665). The notice announced a 60-day public comment period on the proposed supplementary rule to reinstate a 14-day camping limit within a 28-day period at the Virgin River Canyon Recreation Area within the Arizona Strip Field Office area, Arizona Strip District, Mohave County, Arizona. The BLM also published a news release announcing the comment period. The comment period ended on August 16, 2021. The BLM received five comments by email, all in support of the proposed rule.

III. Procedural Matters

Executive Order 12866 and 13563, Regulatory Planning and Review

This supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Orders 12866 or 13563. The rule will not have an effect of $100 million or more on the economy. This rule establishes a duration for camping stays and does not adversely affect, in a material way, the economy, productivity, competition, jobs, environment, public health or safety, or state, local, or tribal governments or communities. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor does the rule raise novel legal or policy issues. This rule will enable law enforcement personnel to efficiently track occupancy and enforce regulations pertaining to unlawful occupancy in a manner consistent with current Arizona State and county laws, where appropriate on public lands.

National Environmental Policy Act

The BLM prepared an EA and found that the supplementary rule does not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM completed the EA to analyze the effects of the change in the stay limit in the Virgin River Canyon Recreation Area. The Decision Record for this EA was signed on February 6, 2019. The BLM has placed the EA and the FONSI on file in the BLM

Administrative Record at the Arizona Strip Field Office address specified in the **ADDRESSES** section.

Regulatory Flexibility Act (RFA)

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601, *et seq.,* to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This supplementary rule does not pertain specifically to commercial or governmental entities of any size but contains a rule to limit the duration of overnight camping on public lands within the Virgin River Canyon Recreation Area in the Arizona Strip Field Office area. Therefore, the BLM has determined, under the RFA, that this supplementary rule does not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This supplementary rule does not constitute ''major rules'' as defined at 5 U.S.C. 804(2). The supplementary rule establishes a 14-day stay limit on overnight camping during a 28-day period and within 30 air miles on lands within the Virgin River Canyon Recreation Area. The limitation is necessary to: (1) Provide more opportunities for the recreating public to utilize the campground facilities and access the surrounding area; (2) create consistent camping limitations across the Arizona Strip Field Office; (3) allow for management of the site for recreational purposes while preserving the health and safety of visitors; and (4) enable law enforcement personnel to cite persons for unlawful camping and use of public land for residential purposes. The supplementary rule will have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

This supplementary rule does not impose an unfunded mandate on state, local or Tribal governments or the private sector of more than $100 million per year, nor does the supplementary rule have a significant or unique effect on state, local or Tribal governments or the private sector. The supplementary rule does not require anything of state, local or Tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This supplementary rule does not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rule does not address property rights in any form and does not cause the impairment of anyone's property rights. Therefore, the BLM has determined that this supplementary rule does not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

This supplementary rule will not have a substantial, direct effect on the states, on the relationship between the Federal government and the states or on the distribution of power and responsibilities among the various levels of government. The supplementary rule applies in only one state, Arizona, and does not address jurisdictional issues involving the Arizona state government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the supplementary rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that this supplementary rule will not unduly burden the judicial system and that the rule meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found this supplementary rule does not include policies that have tribal implications and will have no bearing on trust lands or on lands for which title is held in fee status by Indian tribes or U.S. Government-owned lands managed by the Bureau of Indian Affairs. Since this supplementary rule does not change BLM policy and does not involve Indian reservation lands or resources, the BLM has determined that the government-to-government relationships remain unaffected. The supplementary rule will only prohibit camping longer than 14 days in any 28-day period and within 30 air miles of the Virgin River Canyon Recreation Area on public lands managed by the BLM Arizona Strip Field Office.

Executive Order 13352, Facilitation of Cooperative Conservation

Under Executive Order 13352, the Arizona State Office of the BLM has determined that this supplementary rule will not impede the facilitation of cooperative conservation. The supplementary rule will take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources, properly accommodate local participation in the Federal decision-making process and provide that the programs, projects and activities are consistent with protecting public health and safety.

Information Quality Act

In developing this supplementary rule, the BLM did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This supplementary rule does not constitute a ''significant energy action'' as defined in Executive Order 13211. The supplementary rule will not have an adverse effect on energy supplies, production, or consumption. The rule only addresses unauthorized occupancy on public lands and has no connection with energy policy.

Paperwork Reduction Act

This supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

Final Supplementary Rule

Author

The principal author of this supplementary rule is Jon Jasper, Outdoor Recreation Planner, Arizona Strip Field Office, Bureau of Land Management.

For the reasons stated in the preamble, and under the authority of 43 CFR 8365.1–6 and 43 U.S.C. 1740, the Arizona State Director establishes the following supplementary rule for public lands managed by the BLM in Mohave County, Arizona, subject to the Arizona Strip Field Office Resource Management Plan, to read as follows:

Definitions

Camp means erecting a tent or shelter of natural or synthetic material; preparing a sleeping bag or other bedding material; parking a motor vehicle, motor home, or trailer; or mooring a vessel for the apparent purpose of overnight occupancy.

Prohibited Acts

Unless otherwise authorized, the BLM will enforce the following rule on public lands within the Virgin River Canyon Recreation Area, within the Arizona Strip Field Office, Arizona Strip District, Arizona.

Camping and Occupancy

1. You must not remain or camp within the Virgin River Canyon Recreation Area for more than 14 consecutive days in a 28-day period.

2. After the 14th consecutive day, campers must move beyond a 30-mile radius from the boundary of the Virgin River Canyon Recreation Area.

Exemptions

The following persons are exempt from this rule: Any Federal, state, local, and/or military employee acting within the scope of his or her official duties; members of any organized rescue or firefighting force in performance of an official duty; and any person authorized, in writing, by the BLM authorized officer.

Penalties

Any person who violates this rule may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 8365.1–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Arizona law.

Raymond Suazo,

State Director, Arizona.

[FR Doc. 2022–00025 Filed 1–5–22; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210210–0018; RTID 0648–XB704]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Hook-and-Line Gear in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using hook-and-line (HAL) gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2022 total allowable catch of Pacific cod by catcher vessels using HAL gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 3, 2022, through 1200 hours, A.l.t., June 10, 2022.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2022 Pacific cod total allowable catch (TAC) apportioned to catcher vessels using HAL gear in the Western Regulatory Area of the GOA is 47 metric tons (mt) as established by the final 2021 and 2022 harvest specifications for groundfish in the GOA (86 FR 10184, February 19, 2021) and inseason adjustment (86 FR 74384, December 30, 2021). The Regional Administrator has determined that the 2022 TAC apportioned to catcher vessels using HAL gear in the Western Regulatory Area of the GOA is necessary to account for the incidental catch of this species in other anticipated groundfish fisheries for the 2022 fishing year. Therefore, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowance for catcher vessels using HAL gear in the Western Regulatory Area of the GOA as zero mt. Consequently, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for catcher vessels using HAL gear in the Western Regulatory Area of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels using HAL gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notification providing time for public comment because the most recent, relevant data only became available as of December 30, 2021.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 3, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–00042 Filed 1–3–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 4
Thursday, January 6, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 724

RIN 3206–AO26

Elijah E. Cummings Federal Employee Anti-Discrimination Act of 2020

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations that would govern Federal antidiscrimination (including retaliation) and whistleblower protection. The proposed rule would implement statutory changes and amend the regulations to incorporate technical revisions and other changes relating to these subjects to make the rule more efficient and effective.

DATES: Comments must be received on or before February 7, 2022.

ADDRESSES: You may submit comments, identified by the docket number or Regulation Identifier Number (RIN) for this proposed rulemaking, by the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for sending comments.

Instructions: All submissions must include the agency name and docket number or RIN for this rulemaking. Please arrange and identify your comments on the regulatory text by subpart and section number; if your comments relate to the supplementary information, please refer to the heading and page number. All comments received will be posted without change, including any personal information provided. Please ensure your comments are submitted within the specified open comment period. Comments received after the close of the comment period will be marked ''late,'' and OPM is not required to consider them in formulating a final decision. Before acting on this proposal, OPM will consider and respond to all comments within the scope of the regulations that we receive on or before the closing date for comments. Changes to this proposal may be made in light of the comments we receive.

FOR FURTHER INFORMATION CONTACT: Timothy Curry by email at *employeeaccountability@opm.gov* or by telephone at (202) 606–2930 (voice) and 711 (TTY).

SUPPLEMENTARY INFORMATION: The Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (Cummings Act) became law on January 1, 2021. The law amends the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (''No FEAR Act''), Public Law 107–174. In the No FEAR Act of 2002, Congress entrusted the President with the authority to promulgate rules to carry out Title II of the No FEAR Act and the President, in turn, delegated to OPM the authority to issue regulations to implement these provisions. The regulations at title 5, Code of Federal Regulations, part 724 carry out that authority and, as modified by the proposed rule, will assist agencies in carrying out, consistent with law, these No FEAR Act amendments. First, OPM proposes to rename the title of this part to state the current purpose and content of this part by removing ''Implementation of,'' which was appropriate for the initial regulations established in 2006. We also propose to amend the authority citation to add a reference to the Cummings Act.

The proposed regulations clarify procedures and add new requirements. In particular, they require an agency to: Provide notice, in an accessible format, of a finding of intentionally committed discriminatory (including retaliatory) [1] acts on the public internet website (linked directly from the home page) of the agency after all appeals have been exhausted; submit the annual report in an accessible, electronic format prescribed by the Director of OPM; submit a disciplinary action report, in an accessible, electronic format, to the Equal Employment Opportunity Commission (EEOC); establish, or leverage, a system to track each complaint of discrimination; and provide a notation of any adverse action taken under section 7512 of title 5, United States Code, for a covered act of discrimination (including retaliation) in the personnel record of an agency employee found to have intentionally committed discriminatory (including retaliatory) acts, after all appeals are exhausted.

The proposed regulations also will update references and language due to statutory changes and clarify procedures and requirements to support agencies in complying with the requirements of the No FEAR Act. OPM will issue revised language for Notice obligations, § 724.202, which includes the model paragraphs for agency No FEAR notices, in a separate rulemaking.

Finally, OPM proposes to remove references to requirements and deadlines that were established when the law was initially implemented and that have been fulfilled. As noted in the original final rule implementing the No FEAR Act, Congress found that, ''[i]n order to maintain a productive workplace that is fully engaged with the many important missions before the Government, it is essential that the rights of employees, former employees, and applicants for Federal employment, under antidiscrimination and whistleblower protection laws, be steadfastly protected and that agencies that violate these rights be held accountable.'' 71 FR 27185 (May 10, 2006). Additionally, through the No FEAR Act amendments, it was the sense of Congress that accountability in the enforcement of the rights of Federal employees is furthered when Federal agencies agree to take appropriate disciplinary action against Federal employees who are found to have intentionally committed discriminatory (including retaliatory) acts, but that accountability is not furthered if Federal agencies react to increased accountability for their lawful responsibility by taking unfounded disciplinary actions against Federal employees or by violating the procedural rights of managers who have been accused of discrimination. Accordingly, disciplinary actions against Federal employees alleged to have intentionally committed discriminatory (including retaliatory) acts should not be taken reflexively, but rather as the result of methodical consideration of all the facts and pursuant to the prescribed processes.

[1] Retaliation is a form of prohibited discrimination.

5 CFR Part 724—Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

Subpart A—Reimbursement of Judgment Fund

This subpart implements the portion of Title II of the No FEAR Act of 2002 concerning the obligation of Federal agencies to reimburse the Judgment Fund for payments. Key terms used throughout title 5, Code of Federal Regulations (CFR), part 724 are defined in this subpart.

Currently in 5 CFR 724.102, the No FEAR Act is defined. OPM proposes to remove the quotation marks from and revise the definition of ''No FEAR Act'' to reflect that the term means the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, as amended by the Cummings Act. In addition, there are definitions of ''Antidiscrimination Laws'' and ''Payment.'' Congress enacted the ''Genetic Information Nondiscrimination Act (GINA) of 2008'', effective November 21, 2009, after finding that ''Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.'' Title II of GINA prohibits employment discrimination on the basis of genetic information. OPM proposes to revise the definitions of ''Antidiscrimination Laws'' and ''Payment'' in 5 CFR 724.102 to add sections 2000ff *et seq.* of title 42, United States Code, which codifies GINA, to the list of statutes that comprise the Antidiscrimination Laws. ''Antidiscrimination Laws'' is further revised to make clear it applies to laws prohibiting discrimination (including retaliation).

Subpart B—Notification of Rights and Protections and Training

This subpart implements the portion of Title II of the No FEAR Act concerning the obligation of Federal agencies to notify all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Antidiscrimination Laws and Whistleblower Protection Laws. This subpart also implements Title II concerning the obligation of agencies to train their employees on such rights and remedies. The regulations describe agency obligations and the procedures for written notification and training.

Section 724.203 Notification of Final Agency Action

Subpart B of the No FEAR Act, as amended by the Cummings Act, will now provide for two different notices. The notice regulations already existing at 5 CFR 724.202 were derived from section 202 of the original text of the No FEAR Act; the new requirement implements section 1133 of the Cummings Act. The existing regulation applies to the notice of rights agencies are required to provide to current and former Federal employees and applicants for Federal employment. OPM proposes to redesignate § 724.203 for notification of final agency action to implement the new public disclosure obligations an agency must undertake when there has been a finding of discrimination (including retaliation) against the agency and all appeals have been exhausted. (The Cummings Act refers to this as a ''notice of violation.'') Specifically, an agency must provide notice in an accessible format linked from its public-facing website of any final decision in which there has been a finding of discrimination (including retaliation) against the agency. Note that a claim of discrimination need not include retaliation as a basis and retaliation can separately be raised as a basis for a claim of discrimination.

Under the proposed § 724.203, the head of the Federal agency subject to the finding must provide notice on the agency's public website within 90 days after the date on which any of the events specified in section 1133 of the Cummings Act occur, that is, the date on which—

- all appeals of a final action by a Federal agency, including when a Federal agency fails to take a final action and the administrative judge's decision becomes final (see 29 CFR 1614.109(i)), involving a finding of intentionally committed discriminatory (including retaliatory) acts prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) of the No FEAR Act have been exhausted;
- all appeals of a final decision by the EEOC involving a finding of intentionally committed discriminatory (including retaliatory) acts prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) of the No FEAR Act have been exhausted; or
- a court of jurisdiction issues a final judgment involving a finding of intentionally committed discriminatory (including retaliatory) acts prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) of the No FEAR Act.

OPM interprets the phrase ''final judgment'' in the description of the third event to mean the date on which the opportunity for further appeal expires, either because the time for any further appeal elapses or because the court issuing the final decision in the case is the final reviewing court from which relief could be sought.

The agency's notification must identify the date on which the finding was made, the date on which each discriminatory act was found to have occurred, and the law found to have been violated by each such discriminatory act, and, once again, advise Federal employees of the rights and protections available under the provisions of law covered by paragraphs (1) and (2) of section 201(a) of the No FEAR Act. Where an EEOC decision fails to identify the date on which each act found by the EEOC to be discriminatory occurred, the agency should affirmatively note its inability to specify such dates, for that reason.

Section 724.204 Training Obligations

In OPM's current regulations, training obligations are addressed at § 724.203. However, due to the addition of the new requirement for notification of final agency action as discussed above at § 724.203, OPM proposes to add a new section designated as § 724.204 for the training obligations. The proposed § 724.204 describes the training that each Federal agency must provide to all of its employees (including supervisors and managers) about the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws applicable to them. Agencies were required to provide the initial training by December 17, 2006, and, thereafter, on a training cycle of no longer than every two years. Because the deadline for the initial training has passed, OPM proposes to remove that deadline from § 724.204(d) (formerly § 724.203(d)).

Consistent with the No FEAR Act, however, the regulations continue to require agencies to train new employees on the rights and remedies available under the antidiscrimination and whistleblower protection laws as part of its agency orientation program or other training program. Any agency that does not use a new employee orientation program for this purpose must train new employees within 90 calendar days of the new employees' appointment. In this context, ''new employees'' are those who are new to the agency, including those who transfer from one Federal agency to another. In addition, each agency must continue to train all

existing employees on a training cycle of no longer than every two years.

Subpart C—Annual Report

This subpart implements the portion of Title II of the No FEAR Act concerning the obligation of Federal agencies to report on specific topics concerning Federal Antidiscrimination Laws and Whistleblower Protection Laws applicable to them, covering Federal employees, former Federal employees, and applicants for Federal employment. Section 1134(b) of the Cummings Act adds a new reporting requirement to section 203 of the No FEAR Act for a disciplinary action report. To incorporate the new disciplinary action report requirement into part 724, OPM proposes to change the subpart C heading from ''Annual Report'' to ''Reporting Obligations.''

Section 724.302 Reporting Obligations

OPM proposes to change the heading for § 724.302 from ''Reporting obligations'' to ''Annual report'' to clarify that the provisions in § 724.302(a) through (c) are specific to the annual report required by section 203(a) of the No FEAR Act, which requires Federal agencies to create annual reports on a number of items concerning Federal Antidiscrimination Laws and Whistleblower Protection Laws as defined in section 201 of the Act. The annual reports are to be submitted to: The Speaker of the U.S. House of Representatives; President Pro Tempore of the U.S. Senate; U.S. Senate Committee on Homeland Security and Governmental Affairs; U.S. House of Representatives Committee on Oversight and Reform; each committee of Congress with jurisdiction relating to the agency; the EEOC; the Attorney General; and OPM.

Section 1134(a) of the Cummings Act requires that the annual reports mandated by section 203(a) of the No FEAR Act be submitted in an electronic format prescribed by the Director of OPM. OPM proposes to amend paragraphs (a) and (c) of § 724.302 to require that each agency submit its annual report in a Portable Document Format (PDF) or other electronic file format that conforms with the standards of Section 508 of the Rehabilitation Act, as amended (29 U.S.C. 794(d)), and its implementing regulations (36 CFR part 1194). Section 508 of the Rehabilitation Act requires Federal agencies to make their information and communication technology accessible to people with disabilities in a manner that is substantially equivalent to the access provided to people without disabilities. The annual report must be formatted to enable it to be attached to an electronic mail (email) message (or a successor electronic delivery system identified by OPM) addressed to the receiving Congressional office or agency. This electronic format will be required for any annual report submitted under this provision on or after January 1, 2022. Agencies may, however, begin use of the OPM-prescribed electronic format requirements prior to January 1, 2022. Annual report submissions to OPM should be sent to *employeeaccountability@opm.gov.* Annual report submissions to the Equal Employment Opportunity Commission, pursuant to 5 CFR 724.302(c)(6), should be sent to *federalsectoreeo@eeoc.gov.*

Under the provisions of the No FEAR Act, each agency's first annual report was due on March 30, 2005, as explained in the current text at 5 CFR 724.302(b). Agencies that had submitted their reports before the original regulations became final were instructed in § 724.302(b) to ensure that their reports contained data elements 1 through 8 of paragraph (a) of this section and to provide any necessary supplemental reports by April 25, 2007. Given that the March 2005 and April 2007 deadlines have passed and the instructions for reports submitted prior to the finalization of the regulations are no longer relevant, OPM proposes to remove those deadlines and instructions from the regulations at § 724.302(b).

Section 1134(a) of the Cummings Act amends Section 203(a) of the No FEAR Act by updating the names of two Congressional committees that must receive the annual report: The U.S. Senate ''Committee on Governmental Affairs'' is now the U.S. Senate ''Committee on Homeland Security and Governmental Affairs'', and the U.S. House ''Committee on Government Reform'' is now the U.S. House ''Committee on Oversight and Reform.'' Accordingly, OPM proposes to amend § 724.302(c) to revise the committee names, as well as to encompass any successor committees.

Section 724.303 Disciplinary Action Report

OPM proposes to add § 724.303, a new section for ''Disciplinary action report,'' in accordance with the establishment of the new reporting requirement in section 1134(b) of the Cummings Act. The provision tracks the statute to the effect that, not later than 120 days from the date on which a Federal agency takes final action (or fails to take a final action and the administrative judge's decision becomes final; see 29 CFR 1614.109(i)), or a Federal agency receives a final decision issued by the EEOC (*i.e.,* a decision from the EEOC's Office of Federal Operations (OFO), or a decision as to which the time to seek OFO review has elapsed) involving a finding of intentionally committed discriminatory (including retaliatory) acts in violation of a provision of law covered by paragraph (1) or (2) of section 201(a) of the No FEAR Act, as applicable, the applicable Federal agency must submit to the EEOC a report stating (1) whether disciplinary action has been proposed against a Federal employee as a result of the violation; and (2) the reasons for any disciplinary action.

Subpart D—Best Practices

Section 724.401 Purpose and Scope

As described in 5 CFR 724.401, current subpart D, titled ''Best Practices,'' implements Title II of the No FEAR Act concerning the obligation of the President or his designee (OPM) to conduct a comprehensive study of best practices in the executive branch for taking disciplinary actions against employees for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws and the obligation to issue advisory guidelines for agencies to follow in taking appropriate disciplinary actions in such circumstances. As explained further below, the obligations under the subpart have been fulfilled. Therefore, OPM proposes to revise subpart D, by removing the heading and content in its entirety and renaming and redesignating the subpart for new requirements under the Cummings Act. OPM may elect in the future, under its statutory authority, to conduct future studies if necessary.

Section 724.402 Best Practices Study

Section 724.403 Advisory Guidelines

Pursuant to current § 724.402, OPM conducted a comprehensive study in the executive branch to identify best practices for taking appropriate disciplinary actions against Federal employees for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws. As required by current § 724.403, OPM developed advisory guidelines for best practices that agencies may follow to take appropriate disciplinary actions against employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Laws. OPM compiled its best practices findings and advisory guidelines and issued them in the report ''Disciplinary Best Practices and Advisory Guidelines Under the No FEAR Act'' in September 2008. A copy

of the report can be found on *https://www.opm.gov/policy-data-oversight/employee-relations/reference-materials/nofearact.pdf* or provided upon a request to the Manager, Employee Accountability, Accountability and Workforce Relations, Employee Services, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415. Given that OPM fulfilled its one-time obligations under this subpart, these sections are no longer needed in the regulations and will be removed.

Section 724.404 Agency Obligations

Under current § 724.404, each Federal agency was required to provide a written statement to Congress, the EEOC, the Attorney General and OPM within 30 working days of the issuance of the advisory guidelines. The written statement was to describe in detail whether the agency had adopted the guidelines and would fully follow them; the reasons for non-adoption, if such agency had not adopted the guidelines; and the reasons for the decision not to fully follow the guidelines, as well as an explanation of the extent to which the agency would not follow them if such agency would not do so. Given that the 30-day deadline for the agency reports has expired and the No FEAR Act does not envision an ongoing obligation for agency statements on the advisory guidelines, this section is no longer needed in the part 724 regulations and will be removed.

Subpart D—Complaint Tracking and Notation in Personnel Record [Redesignated]

Section 724.401 Purpose and Scope

The proposed removal of the Best Practices text (because those requirements were previously fulfilled) allows OPM to redesignate subpart D to address two new amendments to the No FEAR Act established by the Cummings Act: A new section 207, concerning the obligation of Federal agencies to track discrimination complaints from filing to resolution (Complaint Tracking), and a new section 208, containing a requirement to place a notation in the personnel record of a Federal employee who is found, following an adverse action, and after all appeals have been exhausted, to have intentionally committed discriminatory (including retaliatory) acts (Notation in Personnel Record). Proposed § 724.401 explains that the purpose of subpart D is to implement these new requirements.

Section 724.402 Complaint Tracking

Under proposed § 724.402, OPM incorporates the requirement of the Cummings Act that each agency create a tracking system for discrimination complaints. Not later than January 1, 2022, each Federal agency must establish or leverage an existing system to track each complaint of discrimination arising under section 2302(b)(1) of title 5, United States Code, and adjudicated through the Equal Employment Opportunity process from the filing of a complaint with the Federal agency to resolution of the complaint. In a case where there was a finding of intentionally committed discriminatory (including retaliatory) acts, the agency would also need to track whether a decision has been made regarding any follow-up disciplinary action, and what decision was reached.

Section 724.403 Notation in Personnel Record

Under proposed § 724.403, OPM addresses a new requirement for agencies to document any adverse action taken against a Federal employee found to have intentionally committed discriminatory (including retaliatory) acts. If a Federal agency takes an adverse action covered under section 7512 of title 5, United States Code, against a Federal employee for intentionally committed discriminatory (including retaliatory) acts prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) of the Act, the agency must, after all appeals relating to that action have been exhausted and the finding remains, include a notation of the adverse action, and the reason for the action, in the personnel record of the employee. This requirement of the statute underscores agencies' current responsibility to notate an employee's personnel record if a chapter 75 adverse action is taken and the reason for the action. The obligation for such a notation is fulfilled when the agency processes the Standard Form (SF) 50, ''Notification of Personnel Action,'' which is located at *https://www.opm.gov/forms/pdfimage/sf50.pdf,* or equivalent for agencies with an OPM-approved exception to the SF 50, which is required documentation for section 7512 adverse actions. The SF 50 creates a permanent record of the adverse action taken by recording the ''Nature of Action'' and ''Remarks.'' OPM uses nature of action and remarks to identify the different types of personnel actions to facilitate certain payroll/personnel processes and Agency unique requirements. The Nature of Action is the required phrase that explains the action that is occurring (*e.g.,* suspension, reduction in grade or pay, or removal). Under the Remarks section of the SF 50, the agency must provide the reason for the action. OPM will establish a new nature of action code and new remark code for actions taken against a Federal employee for intentionally committing discriminatory (including retaliatory) acts identified by the No FEAR Act as amended by the Cummings Act. Instructions for processing the SF 50 are found in OPM's *Guide to Processing Personnel Actions* at *https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/#url=Processing-Personnel-Actions.*

Technical Amendments

OPM proposes to correct the spelling of ''Judgment'' in the table of contents and the regulatory heading for subpart A. The proposed rule corrects the quotation marks by removing them in the definition of the No FEAR Act in § 724.102. The proposed rule corrects the capitalization in ''antidiscrimination'' and ''whistleblower protection laws'' in the Disciplinary Actions model paragraph in § 724.202(g) for consistency with the capitalization of the terms elsewhere in the model paragraphs. Also, the proposed rule adds a period at the end of the last sentence in the Disciplinary Actions model paragraph. Within § 724.202, OPM proposes to revise all references to ''web sites'' to read ''websites'' and references to ''Web site'' to read ''website''. Within § 724.302(a)(4), OPM proposes to correctly identify the citation to the Equal Employment Opportunity regulations at subpart G of part 1614 of title 29, Code of Federal Regulations. In 724.302(b) OPM proposes to correct March 30th to appear as March 30.

Expected Impact of This Proposed Rule

A. Statement of Need

OPM is issuing the proposed rule to implement the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (hereafter, the Cummings Act), which amends the No FEAR Act of 2002. The No FEAR Act of 2002 states that ''[t]he President (or the designee of the President) *shall* issue—(1) rules to carry out this title [Pub. L. 107–174, Title II §§ 201–206, May 15, 2002, 116 Stat. 568].'' *See* 5 U.S.C.A. 2301 note, Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, sec. 204 (emphasis supplied). President George W. Bush designated OPM as the entity that would carry out

the President's obligation to issue rules to carry out title II of the No FEAR Act. Accordingly, OPM has an obligation to promulgate amendments necessary to implement the new requirements created by the Cummings Act and incorporate them into the regulatory scheme.

The Cummings Act added five new requirements to the original No FEAR Act. (1) Each Federal agency must now post a notice, on a public-facing website, of any final finding of discrimination or retaliation by the agency in violation of applicable law. (2) Agencies will be required to submit their annual reports in a uniform manner to be prescribed by OPM in its regulations. (3) An agency that has been found to have committed discrimination or retaliation must notify the Equal Employment Opportunity Commission (EEOC) whether disciplinary action has been proposed against any agency employee as a result of the finding. (4) Every agency must establish a system to track each complaint of discrimination, arising under one of the statutes listed in 5 U.S.C. 2302(b)(1), through its conclusion, including whether a decision has been made regarding disciplinary action. (5) Each agency that takes an adverse action against an employee under 5 U.S.C. 7512 in relation to a finding of discrimination or retaliation by the agency must add a notation about that action to the employee's personnel record. OPM is implementing these statutory requirements in the least burdensome way it can while still effectuating the congressional purposes of the No FEAR Act, as amended by the Cummings Act.

The rulemaking proposes new regulations that require an agency to provide notice of a finding of discrimination (including retaliation) on the public internet website (linked directly from the home page) of the agency after all appeals have been exhausted; submit the annual report in an accessible, electronic format prescribed by the Director of the OPM; submit a disciplinary action report, in an accessible, electronic format, to the EEOC; establish, or leverage, a system to track each complaint of discrimination; and provide a notation of any adverse action taken under section 7512 of title 5, United States Code, for a covered act of discrimination (including retaliation) in the personnel record of an agency employee found to have intentionally engaged in an act of discrimination, after all appeals are exhausted.

B. Impact

The purpose of the OPM regulations is largely to conform existing regulations to the new statutory requirements. OPM regulations do fill in some policy gaps, but any regulatory decisions will have a marginal impact on transfers, costs, and benefits, and the regulatory amendments proposed in this rulemaking go no further than is necessary to implement the statutory changes. Without these amendments, it will be impossible for OPM to comply with its own obligations under the No FEAR Act, as amended, and agencies will lack guidance concerning how to effectuate their own obligations under the Cummings Act.

Under the existing regulations, it is difficult for members of the public to determine whether an agency has been the subject of a finding of discrimination (including retaliation) against the agency, because such findings are posted only in physical form on agency bulletin boards. The statute now requires an electronic posting on a public-facing website. Agencies already provide notice on their public websites related to No FEAR, so the additional burden should be minimal.

Currently, there is not a uniform method for agencies to submit annual No FEAR Act reports. An agency may submit its annual report in any format and via any means of delivery, which means there is room for improvement in consistency and efficiency in the agency reporting process. OPM aims to provide a format that will simplify reporting for agencies and better enable Congress to review and grasp results from across the Government. The ongoing burden should be minimal once new regulations are published and the new format is adopted at each agency.

OPM assumes that agencies currently have some system for tracking complaint information, if for no other purpose than compiling and preparing the annual report of No FEAR Act data. Agencies with simpler systems may need to develop a more robust tool to meet the statutory requirement for a system that tracks each complaint from filing through resolution and including disciplinary action, if taken as a consequence of a finding of discrimination, but we do not expect that the additional effort will be very burdensome.

The requirement that an agency notify the EEOC whether the agency has proposed disciplinary action against any agency employee as a result of a finding that the agency has violated one or more of the Antidiscrimination or Whistleblower Protection Laws, will add a new burden to agencies, but this burden has been imposed by Congress, and OPM is merely aligning its regulations to the statute to incorporate the new requirement.

The regulation also provides that an agency must include a notation of the adverse action and the reason for the action in the personnel record of the employee if the agency takes an adverse action covered under section 7512 of title 5, U.S. Code, against the employee for an intentional act of discrimination (including retaliation). In order to ease agencies' compliance with this statutory requirement, OPM proposes to establish a new nature of action code and new remark code for agencies to notate and provide the reason for the adverse action. This will enhance transparency as to the basis for agency action and serve the congressional purpose by providing a deterrent to prohibited behavior.

C. Regulatory Alternatives

For the most part, the changes reflected in OPM's implementing regulations are required by statute and cannot be avoided or further simplified. The Cummings Act requires that an agency provide notice of a finding of discrimination (including retaliation) on the public internet website (linked directly from the home page) of the agency after all appeals have been exhausted; agencies were already posting physical copies at their agency worksites, and now OPM has modified its regulations to incorporate the new electronic posting requirement. In addition, the statute requires that the Director of OPM prescribe an electronic format for agencies to submit annual reports about cases in Federal court pending or resolved in each fiscal year and arising under the Federal Antidiscrimination Laws and Whistleblower Protection Laws applicable to them in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws. We have laid out an approach that we believe is minimally burdensome for agencies. The Cummings Act imposed on agencies a new obligation to submit a disciplinary action report to the Equal Employment Opportunity Commission (EEOC) whenever the agency is found to have violated one of the anti-discrimination or whistleblowing provisions. Our proposed regulations incorporate this new obligation. The Cummings Act requires an agency to track each complaint of discrimination or retaliation; we assume agencies already do this in some fashion, but we now instruct them how to fulfill all the terms of the statutory requirement, which should cause minimal additional burden. Similarly, the statute provides the requirement that the agency insert a

notation of any adverse action taken under section 7512 of title 5, United States Code, for a covered act of discrimination (including retaliation) in the personnel record of an agency employee found to have intentionally engaged in an act of discrimination, after all appeals are exhausted, and we believe this can be accomplished with relatively minimal burden.

OPM considered alternatives with respect to the electronic format for the annual report. Currently, agencies submit their annual reports electronically or via hard copy. One option was to require agencies to submit the annual report as a Portable Document Format (PDF) via email. The other option was to give agencies flexibility to determine the electronic file format, as long as the format conforms with the standards of Section 508 of the Rehabilitation Act, as amended (29 U.S.C. 794(d) and 36 CFR part 1194), and the means of submission. Under this option, which is preferred by OPM, the regulation would give the agency authority to determine a format within their available means. Submission via another avenue, such as fax or U.S. Postal Service, would require use of more resources, including staff time, than submission via email.

OPM also considered alternatives with regard to the complaint tracking system. One option was for agencies to establish a new system to track complaints. Alternatively, agencies could leverage an existing system. Currently, the existing annual report requirement involves the collection of data elements that are closely related to the data elements agencies must capture in a complaint tracking system as required by the Cummings Act. For example, among other elements, agencies must report annually on the number of cases; the status or disposition (including settlement) of each case; and the number of employees disciplined and the nature of discipline for conduct that is inconsistent with Antidiscrimination Laws and Whistleblower Protection Laws. Similarly, agencies must now track each complaint of discrimination arising under section 2302(b)(1) of title 5, United States Code, and adjudicated through the Equal Employment Opportunity process from the filing of a complaint with the Federal agency to resolution of the complaint. In a case where there was a finding of intentional discrimination, the agency would also need to track whether a decision has been made regarding any follow-up disciplinary action, and what decision was reached. In considering the options for a tracking system, OPM weighed the burden of an agency developing or procuring a new system and determined that regulations should not mandate establishment of a new system if an agency can leverage an existing system.

In considering the regulation for disciplinary action reports, OPM tracked the statute to the effect that, not later than 120 days from the date on which a Federal agency takes final action, or a Federal agency receives a final decision issued by the EEOC (*i.e.,* a decision from the EEOC's Office of Federal Operations (OFO), or a decision as to which the time to seek OFO review has elapsed) involving a finding of intentional discrimination (including retaliation) in violation of a provision of law covered by paragraph (1) or (2) of section 201(a) of the No FEAR Act, as applicable, the applicable Federal agency must submit to the EEOC a report stating (1) whether disciplinary action has been proposed against a Federal employee as a result of the violation; and (2) the reasons for any disciplinary action. OPM proposes to require that agencies submit the disciplinary action report in an accessible, electronic format. As is the case with the annual report, this option gives agencies flexibility to determine the electronic file format, as long as the format conforms with the standards of Section 508 of the Rehabilitation Act, as amended (29 U.S.C. 794(d) and 36 CFR part 1194). This preferred option gives agencies authority to determine a format within their available means. OPM did not prescribe the means of submission for the disciplinary action reports. Given that the report is to be submitted only to the EEOC, OPM defers to the EEOC and agencies to determine the best delivery method for disciplinary action reports.

Regarding the statutory requirement that an agency provide notice linked from its public-facing website of any final decision in which there has been a finding of discrimination (including retaliation) against the agency, OPM has not specified any design requirements. Agencies have the discretion to lay out the required information and links in the most beneficial and cost-effective manner to achieve the outcome of public notice about agency efforts at accountability for applicable violations. In adopting this approach, OPM assumes that covered agencies have public websites that they update regularly with information for the public and that these updates will occur with no more frequency than other changes that an agency may make to its public-facing website.

Finally, there is the statutory requirement that an agency document any adverse action taken against a Federal employee found to have engaged in an act of discrimination. If a Federal agency takes an adverse action covered under section 7512 of title 5, United States Code, against a Federal employee for an act of intentional discrimination (including retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) of the Act, the agency must, after all appeals relating to that action have been exhausted and the finding remains, include a notation of the adverse action, and the reason for the action, in the personnel record of the employee. OPM considered that this requirement could be met by the agency preparing a written statement that describes the adverse action and the reason for the action and filing the written statement in the employee's Official Personnel Folder. A potential disadvantage to this approach is a lack of consistency across agencies on how documentation is prepared. OPM determined that an alternative, more effective approach is to establish a new nature of action code and new remark code for agencies to notate and provide the reason for the adverse action. This preferred option promotes consistency and transparency across Federal agencies in documenting adverse actions taken for acts of intentional discrimination (including retaliation). In addition, establishment of new processing codes specifically for adverse actions that result from violations of the antidiscrimination laws will help to distinguish these actions from adverse actions taken for other types of misconduct. This will facilitate data collection and thereby improve the efficiency of agency reporting processes.

D. Costs

This proposed rule will affect the operations of the Federal agencies in the Executive branch—ranging from cabinet-level departments to small independent agencies. Regarding implementation of the Cummings Act requirements, this proposed rule will require individuals employed by these agencies to revise and rescind policies and procedures to implement certain portions of this proposed rule. The proposed rule mandates that agencies establish or leverage an existing system to track discrimination complaints arising under section 5 U.S.C. 2302(b)(1) and adjudicated through the EEO process from filing through resolution and including disciplinary action, if taken as a consequence of a finding of discrimination.

In order to estimate the costs to implement this requirement, OPM collected information from one large

agency; one medium size agency; and one small agency. Each agency provided to OPM estimates for establishing a new complaint tracking system and estimates for annual maintenance for any new complaint tracking system which will permit the agency to track discrimination complaints arising under 5 U.S.C. 2302(b)(1) and adjudicated through the EEO process from filing through resolution and including disciplinary action (if applicable). For example, the large agency reported to OPM that it would cost approximately $1,000,000 to establish a new complaint tracking system and incur annual maintenance costs of approximately $375,000. There are at least 34 large agencies impacted by this requirement. The medium size agency reported to OPM that it would cost approximately $804,000 to establish a new complaint tracking system and incur annual maintenance costs of approximately $160,000. There are at least 31 medium size agencies impacted by this requirement. Finally, the small agency reported to OPM that it would cost approximately $61,000 to establish a new complaint tracking system and incur annual maintenance costs of approximately $23,000. There are at least 50 small agencies impacted by this requirement. Thus, based on the information provided by these agencies, the average cost for establishment of a complaint tracking system is estimated to be $622,000. The average annual cost of maintenance of a complaint tracking system is estimated to be $186,000. OPM anticipates these costs may vary depending on agency size and whether the agency is able to leverage existing complaint tracking systems in lieu of purchasing a new complaint tracking system.

The remaining requirements of the proposed rule will require no additional costs for agencies or only negligible costs. With respect to the requirement to provide notice on the agency's public website of a finding of discrimination (including retaliation), the additional cost to agencies will be negligible if there are any costs at all. As noted above, agencies already provide notice on their public websites related to No FEAR and thus an additional notice does not present a greater cost. The regulation also requires that agencies report to Congress, the EEOC, Attorney General, and OPM annually in an electronic format via email on cases arising under each of the respective provisions of the Antidiscrimination Laws and Whistleblower Protection Laws in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws. This regulatory change mandates the format of the existing annual report requirement. Currently, agencies primarily submit annual reports electronically. We expect that those few agencies which submit their reports in paper format will experience less cost with the required electronic format given there will be less handling involved in printing and preparing a paper copy for mailing, as well as avoidance of the mailing costs.

Further, the proposed rule requires that agencies submit to the EEOC a report stating whether disciplinary action has been proposed against a Federal employee for a violation of the Antidiscrimination and Whistleblower Protection Laws not later than 120 days after the date on which a Federal agency takes final action, or 120 days after a Federal agency receives a final decision from the EEOC's Office of Federal Operations (OFO) or the time to seek OFO review has elapsed. No additional costs for agencies are required as they already report to the EEOC on discrimination and the report required by the proposed rule does not require additional cost. Similarly, no additional cost is needed to include a notation of the adverse action and the reason for the action in the personnel record of the employee if the agency takes an adverse action covered under section 7512 of title 5, U.S. Code, against the employee for an intentional act of discrimination (including retaliation). Agencies regularly make required notations of adverse actions and the reason in the personnel record of employees.

E. Benefits

A significant way the regulation achieves transparency and accountability is through the requirements for agencies to provide notice linked directly from the home page of their public website of a finding of discrimination (including retaliation) and maintain the notice there for one year. Additionally, the regulation's requirement for publication of findings of discrimination (including retaliation) on agency websites gives employees and the general public greater confidence that action is taken for violations. These requirements meet a need for greater accountability and transparency. FY 2020 data show that retaliation remains the most frequently cited claim in discrimination charges.[2] Nonetheless, studies consistently have found that retaliation has low reporting rates and factors that contribute to this include that victims feel it is not likely the harasser will be found responsible. These studies also have found that another factor in the lack of reporting of retaliation is that victims believe the employer will disregard the finding or shield the harasser from consequences.[3] Agency websites are highly visible and valuable channels of communication. Thus, the regulation's requirement for notifications on the Federal agency websites should help employees and the public become more aware that actions are being taken to address discrimination (including retaliation).

Another way that the regulation provides transparency and accountability is through mandating that agencies establish a system or leverage an existing system to track discrimination complaints arising under section 5 U.S.C. 2302(b)(1) and adjudicated through the EEO process from filing through resolution, including disciplinary action, if taken as a result of a finding of discrimination. Agencies can greatly benefit by such a change to a digital infrastructure. Using web-based data collection and analytic capabilities can diminish agencies' risks of errors, duplication of effort, and lack of transparency.

In another reporting requirement—the annual report to Congress, the EEOC, Attorney General, and OPM—the regulation instructs that submission of data be made in an accessible, electronic format via email. This improved format for the annual report should facilitate submission, receipt, and review of the data for oversight purposes.

The provision implementing the requirement for a notation in the personnel record of an employee if the agency takes an action covered under 5 U.S.C. 7512 relates to Congress's finding that accountability is furthered when agencies take action against employees found to have committed discriminatory (including retaliatory) acts. In addition, Congress's requirement is no doubt intended to deter such employees from further engaging in activities that are in violation of the antidiscrimination and whistleblower protection laws.

Finally, the regulation will support the Administration's priority to advance comprehensive equity as discussed in E.O. 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* at *https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-*

[2] See *https://www.eeoc.gov/fiscal-year-2021-congressional-budget-justification.*

[3] See *https://hbr.org/2020/10/do-your-employees-feel-safe-reporting-abuse-and-discrimination.*

federal-government. As described in E.O. 13985, ''a first step to promoting equity in Government action is to gather the data necessary to inform that effort.'' By striving for the transparency and accountability as previously described, this regulation helps ''recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity'' so that the Federal government can continue to serve as a model employer described in E.O. 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce,* at *https://www.federalregister.gov/documents/2021/06/30/2021-14127/diversity-equity-inclusion-and-accessibility-in-the-federal-workforce.*

E.O. 14035 establishes an initiative on diversity, equity, inclusion, and accessibility (DEIA) in the federal workforce. As part of OPM's work, a Government-Wide Strategic Plan To Advance Diversity, Equity, and Accessibility In The Federal Workforce was released in November 2021, available at *https://www.whitehouse.gov/wp-content/uploads/2021/11/Strategic-Plan-to-Advance-Diversity-Equity-Inclusion-and-Accessibility-in-the-Federal-Workforce-11.23.21.pdf.* This plan directs agencies to prioritize a number of efforts to support sustainability and continued improvement on DEIA matters. This includes tracking complaints related to discrimination, harassment, and retaliation and collecting data on complaints of discrimination, harassment (including sexual harassment), and retaliation. The data collection requirements under this proposed rule compliment and support the objectives of the DEIA strategic plan and the data collected will help inform decision-making and policy development.

In practice, our current system often places the primary responsibility for enforcing antidiscrimination laws on individual workers, who must file complaints with their employer or a government agency. There is often an asymmetry of information and resources between employers and employees, which can create hurdles for workers to defend their rights. Discrimination should not be tolerated in workplaces. By implementing these new statutory measures, the regulations will help achieve greater accountability in identifying and addressing discrimination (including retaliation) in the Federal workplace, helping to promote a Federal workplace free from discrimination that will attract well-qualified individuals to Federal service and help agencies to retain their employees, regardless of their background. This proposed rule is consistent with the Administrations' efforts to promote equity within the Federal workforce. By enhancing data collection and reducing harm for transparency requirements, the Federal government may be able to better identify patterns and protect those at risk of discrimination, including members of underserved communities. OPM will make data available to the reporting agencies and EEOC under the new nature of action code and new remark code which require agencies to notate and provide the reason for the adverse action as a way of monitoring agency progress. This proposed rule also helps position the Federal Government as a model workplace in its commitment to remove barriers to equal employment opportunity.

F. List of Studies Considered

Equal Employment Opportunity Commission Fiscal Year 2020 Congressional Budget Justification, Section VIII—February 2020, *https://www.eeoc.gov/fiscal-year-2021-congressional-budget-justification*

''Do Your Employees Feel Safe Reporting Abuse and Discrimination?'' Harvard Business Review—October 8, 2020, *https://hbr.org/2020/10/do-your-employees-feel-safe-reporting-abuse-and-discrimination*

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies and employees.

E.O. 13563 and E.O. 12866, Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a ''significant regulatory action'' under Executive Order 12866.

E.O. 13132, Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local or tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this action before its effective date, as required by 5 U.S.C. 801. OMB's Office of Information and Regulatory Affairs has determined that this proposed rule is not a ''major rule'' as defined by the Congressional Review Act (5 U.S.C. 804(2)).

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in Title 5 CFR Part 724

Government employees.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

Accordingly, for the reasons stated in the preamble, OPM proposes to amend 5 CFR part 724 as follows:

PART 724—TITLE II OF THE NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002

■ 1. Revise the authority citation for part 724 to read as follows:

Authority: Sec. 204 of Pub. L. 107–174, 116 Stat. 566; Presidential Memorandum dated July 8, 2003, ''Delegation of Authority Under Section 204(a) of the Notification and Federal Employee Antidiscrimination Act of 2002''; Sec. 1131–1138 of Pub. L. 116–283.

■ 2. Revise the heading for part 724 to read as set forth above.
■ 3. Revise the heading for subpart A to read as follows:

Subpart A—Reimbursement of Judgment Fund

■ 4. In § 724.102, revise the definitions of ''Antidiscrimination Laws'' and ''No FEAR Act'', and the first sentence of the definition of ''Payment'' to read as follows:

§ 724.102 Definitions.

* * * * *

Antidiscrimination Laws refers to 5 U.S.C. 2302(b)(1), 5 U.S.C. 2302(b)(9) as applied to conduct described in 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791, and 42 U.S.C. 2000ff *et seq.* These laws prohibit discrimination, including retaliatory acts.[1]

* * * * *

No FEAR Act means the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, as amended by the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020;

* * * * *

Payment, subject to the following exception, means a disbursement from the Judgment Fund on or after October 1, 2003, to an employee, former employee, or applicant for Federal employment, in accordance with 28 U.S.C. 2414, 2517, 2672, 2677 or with 31 U.S.C. 1304, that involves alleged discriminatory or retaliatory conduct described in 5 U.S.C. 2302(b)(1) and (b)(8) or (b)(9) as applied to conduct described in 5 U.S.C. 2302(b)(1) and/or (b)(8) or conduct described in 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791, and 42 U.S.C. 2000ff *et seq.*

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Subpart B—Notification of Rights and Protections and Training

§ 724.203 [REDESIGNATED AS § 724.204]

■ 5. Redesignate § 724.203 as § 724.204.
■ 6. Add a new § 724.203 to read as follows:

§ 724.203 Notification of final agency action.

(a) Not later than 90 days after the date on which an event described in paragraph (b) of this section occurs with respect to a finding of discrimination (including retaliation), the head of the Federal agency subject to the finding shall provide notice, in an accessible format:

(1) On the public website of the agency, in a clear and prominent location linked directly from the home page of that website;

(2) Stating that a finding of discrimination (including retaliation) has been made; and

(3) Which shall remain posted for not less than one year.

(b) An event described in this paragraph is any of the following:

(1) All appeals of a final action by a Federal agency, including when a Federal agency fails to take a final action and the administrative judge's decision becomes final (see 29 CFR 1614.109(i)), involving a finding of intentionally committed discriminatory (including retaliatory) acts prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) of the No FEAR Act have been exhausted.

(2) All appeals of a final decision by the Equal Employment Opportunity Commission (EEOC) involving a finding of intentionally committed discriminatory (including retaliatory) acts prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) of the No FEAR Act have been exhausted.

(3) A court of jurisdiction issues a final judgment involving a finding of intentionally committed discriminatory (including retaliatory) acts prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) of the No FEAR Act. ''Final judgment'' under this event means the date on which the opportunity for further appeal expires, either because the time for any further appeal elapses or because the court issuing the final decision was the final reviewing court from which relief could be sought.

(c) A notification provided under paragraph (a) of this section with respect to a finding of discrimination (including retaliation) shall—

(1) Identify the date on which the finding was made, the date on which each discriminatory act occurred, and the law violated by each such discriminatory act; and

(2) Advise Federal employees of the rights and protections available under the provisions of law covered by paragraphs (1) and (2) of section 201(a) of the No FEAR Act.

■ 7. Amend newly redesignated § 724.204 by revising paragraph (d) and removing paragraph (e) and to read as follows:

§ 724.204 Training obligations.

* * * * *

(d) Each agency must train new employees as part of its agency orientation program or other training program. Any agency that does not use a new employee orientation program for this purpose must train each new employee within 90 calendar days of the new employees' appointment. Each agency must train all employees on a training cycle of no longer than every two years.

■ 8. Revise the heading of subpart C to read as follows:

Subpart C—Reporting Obligations

* * * * *

■ 9. Amend § 724.302 by:
■ a. Revising the section heading;
■ b. Revising the introductory text of paragraph (a);
■ c. Revising paragraph (a)(4);
■ d. Revising paragraph (b);
■ e. Revising the introductory text of paragraph (c); and
■ f. Revising paragraphs (c)(3) and (4).

The revisions read as follows:

§ 724.302 Annual report.

(a) Except as provided in paragraph (b) of this section, each agency must report in an electronic format as prescribed in paragraph (c) of this section no later than 180 calendar days after the end of each fiscal year the following items:

* * * * *

(4) The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations at subpart G of part 1614 of title 29 of the Code of Federal Regulations (implementing section 301(c)(1)(B) of the No FEAR Act);

* * * * *

(b) The first report also must provide information for the data elements in paragraph (a) of this section for each of the five fiscal years preceding the fiscal year on which the first report is based to the extent that such data is available. Under the provisions of the No FEAR Act, agency reports are due annually on March 30. Reports must include data elements 1 through 9 of paragraph (a) of this section.

(c) Agencies must submit the annual report as an attachment in an accessible, electronic format (*i.e.,* Portable Document Format (PDF) or other electronic file format) via electronic mail. The PDF or other electronic format must conform with the standards of section 508 of the Rehabilitation Act, as amended (29 U.S.C. 794(d), and its implementing regulations at 36 CFR part 1194). This electronic format will be

[1] Retaliation is a form of prohibited discrimination.

required for any annual report submitted on or after January 1, 2022. Agencies must provide copies of each report to the following:

* * * * *

(3) U.S. Senate Committee on Homeland Security and Governmental Affairs, or any successor Committee;

(4) U.S. House of Representatives Committee on Oversight and Reform, or any successor Committee;

* * * * *

■ 9. Add § 724.303 to read as follows:

§ 724.303 Disciplinary action report.

Not later than 120 days after the date on which a Federal agency takes final action (including when a Federal agency fails to take a final action and the administrative judge's decision comes final; see 29 CFR 1614.109(i)), or 120 days after a Federal agency receives a final decision from the EEOC's Office of Federal Operations (OFO) or the time to seek OFO review has elapsed, involving a finding of intentionally committed discriminatory (including retaliatory) acts, in violation of a provision of law covered by paragraph (1) or (2) of section 201(a) of the No FEAR Act, as applicable, the applicable Federal agency shall submit to the EEOC a report stating—

(1) whether disciplinary action has been proposed against a Federal employee as a result of the violation; and

(2) the reasons for any disciplinary action proposed as a result of the violation.

10. Revise subpart D to read as follows:

Subpart D—Complaint Tracking and Notation in Personnel Record

Sec.

§ 724.401 Purpose and scope.

This subpart implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 concerning the obligation of Federal agencies to track discrimination complaints from filing to resolution and notate adverse actions in the personnel record of a Federal employee for intentionally committed discriminatory (including retaliatory) acts.

§ 724.402 Complaint tracking.

Not later than January 1, 2022 (one year after the date of enactment of the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020), each Federal agency shall establish or leverage an existing system to track each complaint of discrimination arising under section 2302(b)(1) of title 5, United States Code, and adjudicated through the Equal Employment Opportunity process from the filing of a complaint with the Federal agency to resolution of the complaint; where there is a finding of intentionally committed discriminatory (including retaliatory) acts, the agency shall also track whether a decision has been made regarding disciplinary action as a consequence of this finding.

§ 724.403 Notation in personnel record.

If a Federal agency takes an adverse action covered under section 7512 of title 5, United States Code, against a Federal employee for intentionally committed discriminatory (including retaliatory) acts prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) of the No FEAR Act, the agency shall, after all appeals relating to that action have been exhausted, include a notation of the adverse action and the reason for the action in the personnel record of the employee.

[FR Doc. 2021–28019 Filed 1–5–22; 8:45 am]

BILLING CODE 6325–39–P

Notices

Federal Register
Vol. 87, No. 4
Thursday, January 6, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–815]

Finished Carbon Steel Flanges From Spain: Final Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that sales of finished carbon steel flanges (flanges) from Spain were made at less than normal value (NV) during the period of review (POR) June 1, 2019, through May 31, 2020.

DATES: Applicable January 6, 2022.

FOR FURTHER INFORMATION CONTACT: Marc Castillo or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0519 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2021, Commerce published the *Preliminary Results* and invited interested parties to comment.[1] These final results cover eight companies for which an administrative review was initiated and not rescinded. On August 17, 2021, Weldbend Corporation and Boltex Manufacturing Co., L.P. (collectively, the petitioners) and ULMA Forja, S.Coop (ULMA) submitted their case briefs.[2] On August 24, 2021, the petitioners and ULMA submitted their rebuttal briefs.[3] On October 27, 2021, Commerce extended the deadline for these final results, until December 30, 2021.[4] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [5]

The scope of the *Order* covers finished carbon steel flanges from Spain. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the comments received, and for the reasons explained in the Issues and Decision Memorandum, we made certain changes from the *Preliminary Results.*

Final Results of Administrative Review

For these final results, we determine that the following weighted-average dumping margins exist for the period June 1, 2019, through May 31, 2020:

Exporter/manufacturer	Weighted-average dumping margin (percent)
ULMA Forja, S.Coop	5.76
Rate Applicable to the Following Non-Selected Companies	
Aleaciones De Metales Sinterizados S.A	5.76
Central Y Almacenes	5.76
Farina Group Spain	5.76
Friedrich Geldbach Gmbh	5.76
Grupo Cunado	5.76
Transglory S.A	5.76
Tubacero, S.L	5.76

Rate for Non-Selected Respondents

For the rate for non-selected respondents in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' In this segment of the proceeding, we calculated a margin for ULMA that was not zero, *de minimis,* or based on facts available. Accordingly, we have applied the margin calculated for ULMA to the non-individually examined respondents.

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results of review to parties in this review within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

[1] *See Finished Carbon Steel Flanges from Spain: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 35745 (July 7, 2021) (*Preliminary Results*).

[2] *See* Petitioners' Letter, ''Finished Carbon Steel Flanges from Spain: Petitioners' Case Brief,'' dated August 17, 2021; and ULMA's Letter, ''ULMA Forja, S. Coop's Case Brief: Finished Carbon Steel Flanges from Spain, POR 3,'' dated August 17, 2021.

[3] *See* Petitioners' Letter, ''Finished Carbon Steel Flanges from Spain: Petitioners' Rebuttal Case Brief,'' dated August 24, 2021; and ULMA's Letter, ''ULMA Forja, S. Coop's Rebuttal Brief: Finished Carbon Steel Flanges from Spain, POR 3,'' dated August 24, 2021.

[4] *See* Memorandum, ''Finished Carbon Steel Flanges from Spain: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review, 2019–2020,'' dated October 27, 2021.

[5] *See Finished Carbon Steel Flanges from Spain: Antidumping Duty Order,* 82 FR 27229 (June 14, 2017) (*Order*).

[6] *See* Memorandum, ''Issues and Decisions Memorandum for the Final Results of the Antidumping Duty Administrative Review: Finished Carbon Steel Flanges from Spain; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Assessment Rates

Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For ULMA, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1). Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties. For entries of subject merchandise during the POR produced by ULMA for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[7] For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rates established in these final results of review.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication of this notice for all shipments of flanges from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 18.81 percent, the all-others rate established in the less-than-fair-value investigation of this proceeding.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction or return of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the destruction or return of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: December 30, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–00018 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] *See Order,* 82 FR at 27229.

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for the upcoming public meeting of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: The meeting will be held on January 20, 2022, from 12:00 p.m. to 1:30 p.m., Eastern Standard Time (EST).

ADDRESSES: The meeting will be held via Webex.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain, Professional & Business Services, International Trade Administration at Email: *richard.boll@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness and on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: *https://www.trade.gov/acscc.*

Matters To Be Considered: Committee members are expected to continue discussing the major competitiveness-related topics raised at the previous Committee meetings, including supply chain resilience and congestion; trade and competitiveness; freight movement and policy; trade innovation; regulatory issues; finance and infrastructure; workforce development; and the work of

the Committee's subcommittees. The agenda may change to accommodate other Committee business.

The meeting is open to the public and press on a first-come, first-served basis. Space is limited. Members of the public and the press wishing to participate should contact Richard Boll, at *richard.boll@trade.gov,* for participation information no later than 24 hours before the meeting.

Interested parties may submit written comments to the Committee at any time before and after the meeting by emailing them to *richard.boll@trade.gov.*

Comments may be considered at the meeting. The transcript of the meeting will be posted on the Committee website within 60 days of the meeting.

Dated: December 30, 2021.

Heather Sykes,

Director, Office of Supply Chain, Professional, and Business Services.

[FR Doc. 2021–28595 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind, in Part; 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies were provided to producers and exporters of crystalline silicon photovoltaic cells, whether or not assembled into modules, (solar cells) from the People's Republic of China (China) during the period of review (POR), January 1, 2019, through December 31, 2019. In addition, we intend to rescind this review with respect to 48 companies. We invite interested parties to comment on these preliminary results.

DATES: Applicable January 6, 2022.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Chien-Min Yang, or Lingjun Wang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3642, (202) 482–5484, or (202) 482–2316.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2021, Commerce initiated this administrative review of the countervailing duty (CVD) order on solar cells from China on 83 companies.[1] On July 23, 2021, we partially rescinded this review with respect to eleven companies for which the requests for review were withdrawn by the requesting parties within 90 days of the date of publication of the notice of initiation in accordance with 19 CFR 351.213(d)(1).[2] Therefore, this review now covers 72 companies, of which JA Solar Technology Yangzhou Co., Ltd. (JA Solar) and Risen Energy Co., Ltd. (Risen) are the mandatory respondents.

On July 30, September 2, and December 6, 2021, Commerce extended the time limit for completion of these preliminary results until no later than December 30, 2021.[3]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is provided in an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by this order are crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels, and building integrated materials. For a complete description of the scope of this order, *see* the Preliminary Decision Memorandum.

Intent To Rescind Review, in Part

In accordance with 19 CFR 351.213(d)(3), we intend to rescind this review with respect to 48 other companies for which we find no reviewable suspended entries of subject merchandise, based on U.S. Customs and Border Protection (CBP) data. *See* Appendix III for a complete list of those companies.

Trina Solar Energy Co., Ltd. (formerly, Changzhou Trina Solar Energy Co., Ltd.) and its cross-owned companies (collectively, Trina) certified that they had no sales of subject merchandise during the POR and requested rescission of the review.[5] However, the CBP entry data on the record show shipments made by these companies during the POR. Thus, we have requested entry information from CBP regarding these shipments. Upon receipt from CBP, we will place the information on the record, provide an opportunity for interested parties to comment, and then determine whether to rescind the review for these companies.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs preliminarily found to be countervailable, Commerce preliminarily finds that there is a subsidy, *i.e.,* a financial contribution from an authority that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on facts available with adverse inferences pursuant to sections 776(a) and (b) of

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 8166 (February 4, 2021).

[2] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic* of China: Partial Rescission of Countervailing Duty Administrative Review; 2019, 86 FR 38978 (July 23, 2021).

[3] *See* Memorandum, ''Extension of Deadline for the Preliminary Results of Countervailing Duty Administrative Review,'' dated July 30, 2021; *see also* Memorandum, ''Extension of the Deadline for Preliminary Results,'' dated September 2, 2021; and Memorandum, ''Extension of Time Limit for the Preliminary Results,'' dated December 6, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; 2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* Trina's Letter, ''Notice of No Sales,'' dated March 5, 2021. The Trina companies for which rescission of review was requested are: Changzhou Trina Solar Energy Co., Ltd., Changzhou Trina Solar Yabang Energy Co. Ltd., Hubei Trina Solar Energy Co. Ltd., Trina Solar Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd., Turpan Trina Solar Energy Co., Ltd., and Yancheng Trina Solar Energy Technology Co., Ltd.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

the Act, *see* the Preliminary Decision Memorandum.

Preliminary Rate for Non-Selected Companies Under Review

There are 12 companies for which a review was requested, which had reviewable entries, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. *See* Appendix II. For these companies, because the rates calculated for the mandatory respondents, JA Solar and Risen, were above *de minimis* and not based entirely on facts available, we are applying to the non-selected companies the simple-average of the net subsidy rates calculated for JA Solar and Risen, which we calculated using the publicly ranged sales data submitted by those respondents. This methodology is consistent with our practice for establishing an all-others rate pursuant to section 705(c)(5)(A) of the Act.[7]

Preliminary Results of Review

Commerce preliminarily determines the net countervailable subsidy rates for the period January 1, 2019, through December 31, 2019, are as follows:

Company	Subsidy rate (percent)
JA Solar Technology Yangzhou Co., Ltd. (JA Solar)	18.49
Risen Energy Co., Ltd. (Risen)[8]	15.71
Non-Selected Companies Under Review[9]	17.10

Disclosure and Public Comment

We will disclose to the parties to this proceeding the calculations performed in reaching the preliminary results within five days of publication of these preliminary results.[10] Case briefs, or other written comments, may be submitted to the Assistant Secretary for Enforcement and Compliance at a date to be determined. Rebuttal comments (rebuttal briefs), limited to issues raised in case briefs, may be filed within seven days after the time limit for filing case briefs.[11] Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] All briefs must be filed electronically using ACCESS. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESSS by 5:00 p.m. Eastern Time within 30 days of the publication date of this notice.[14] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the schedule date.

Parties are reminded that briefs and hearing requests are to be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Assessment Rates

Pursuant to 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results. If the assessment rate calculated in the final results in zero or *de minimis,* we will instruct CBP to liquidate all appropriate entries without regard to countervailing duties. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirement

In accordance with section 751(a)(2)(C) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposit of estimated countervailing duties in the amounts shown for each of the respective companies listed above, except, where the rate calculated in the final results is *de minimis,* no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1), unless this deadline is extended.

Notification to Interested Parties

These preliminary results are issued and published pursuant to sections 751(a)(l) and 777(i)(l) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: December 30, 2021.

Ryan Majerus,

Deputy Assistant Secretary, for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

[7] *See Truck and Bus Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2019,* 86 FR 33644 (June 25, 2021).

[8] This rate applies to Risen Energy Co., Ltd. and its cross-owned companies: Zhejiang Boxin Investment Co., Ltd., JiuJiang Shengchao Xinye Technology Co., Ltd., Changzhou Sveck New Material Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Risen (Wuhai) New Energy Co., Ltd., Ninghai Risen Energy Power Development Co., Ltd., Jiangsu Sveck New Material Co., Ltd., Changzhou Sveck Photovoltaic New Material Co., Ltd., Risen Energy (Changzhou) Co., Ltd., Risen Energy (Yiwu) Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Ningbo) Electric Power Development Co., Ltd.

[9] *See* Appendix II of this notice for a list of all companies that remain under review but were not selected for individual examination and to which Commerce has preliminarily assigned the non-selected company rate.

[10] *See* 19 CFR 351.224(b).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[12] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l).

[13] *See Temporary Rule.*

[14] *See* 19 CFR 351.310(c).

XII. Recommendation
Appendix I—Grant Programs Preliminarily Determined to be Not Used by JA Solar and Risen During the POR
Appendix II—Programs Preliminarily Determined Not to Confer a Measurable Benefit to JA Solar and Risen During the POR

Appendix II

Non-Selected Companies Under Review

1: Canadian Solar International Limited
2: Canadian Solar Manufacturing (Changshu) Inc.
3: Canadian Solar Manufacturing (Luoyang) Inc.
4: Chint Solar (Zhejiang) Co., Ltd.
5: CSI Cells Co., Ltd.
6: CSI–GCL Solar Manufacturing (Yancheng) Co., Ltd.
7: Hengdian Group DMEGC Magnetics Co., Ltd.
8: Jinko Solar Co., Ltd.
9: Jinko Solar Import and Export Co., Ltd.
10: LONGi Solar Technology Co., Ltd.
11: Suntech Power Co., Ltd.
12: Yingli Energy (China) Co., Ltd.

Appendix III

Intent To Rescind Review, in Part

1. Astronergy Co., Ltd.
2. Astronergy Solar
3. Baoding Jiasheng Photovoltaic Technology Co., Ltd.
4. Baoding Tianwei Yingli New Energy Resources Co., Ltd.
5. Boviet Solar Technology Co., Ltd.
6. BYD (Shangluo) Industrial Co., Ltd.
7. Chint New Energy Technology (Haining) Co., Ltd.
8. Chint Solar (Hong Kong) Company Limited
9. Chint Solar (Jiuquan) Co., Ltd.
10. CSI Modules (Dafeng) Co., Ltd.
11. DelSolar (Wujiang) Ltd.
12. DelSolar Co., Ltd.
13. De-Tech Trading Limited HK
14. Dongguan Sunworth Solar Energy Co., Ltd.
15. Eoplly New Energy Technology Co., Ltd.
16. ERA Solar Co., Ltd.
17. ET Solar Energy Limited
18. Fuzhou Sunmodo New Energy Equipment Co., Ltd.
19. GCL System Integration Technology Co. Ltd
20. Hainan Yingli New Energy Resources Co., Ltd.
21. Hangzhou Sunny Energy Science and Technology Co., Ltd.
22. Hengshui Yingli New Energy Resources Co., Ltd.
23. Jiangsu High Hope Int'l Group
24. Jinko Solar International Limited
25. JinkoSolar Technology (Haining) Co., Ltd.
26. LERRI Solar Technology Co., Ltd.
27. LightWay Green New Energy Co., Ltd.
28. Lixian Yingli New Energy Resources Co., Ltd.
29. Longi (HK) Trading Ltd.
30. Ningbo ETDZ Holdings, Ltd.
31. ReneSola Jiangsu Ltd.
32. Renesola Zhejiang Ltd.
33. Shenzhen Yingli New Energy Resources Co., Ltd.
34. Sumec Hardware & Tools Co., Ltd.
35. Sunpreme Solar Technology (Jiaxing) Co., Ltd.
36. Suntimes Technology Co., Limited
37. Systemes Versilis, Inc.
38. Taimax Technologies Inc.
39. Talesun Energy
40. Talesun Solar
41. tenKsolar (Shanghai) Co., Ltd.
42. Tianjin Yingli New Energy Resources Co., Ltd.
43. Tianneng Yingli New Energy Resources Co., Ltd.
44. Toenergy Technology Hangzhou Co., Ltd.
45. Yingli Green Energy International Trading Company Limited
46. Zhejiang ERA Solar Technology Co., Ltd.
47. Zhejiang Jinko Solar Co., Ltd.
48. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company

[FR Doc. 2022–00021 Filed 1–5–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–846]

Certain Hot-Rolled Steel Flat Products of Brazil: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the Department of Commerce (Commerce) finds that revocation of the countervailing duty order (CVD) on certain hot-rolled steel flat products (HRS) from Brazil would be likely to lead to continuation or recurrence of countervailable subsidies at the levels as indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable January 6, 2022.

FOR FURTHER INFORMATION CONTACT: Macey Mayes, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4473.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2016, Commerce published in **Federal Register** a notice of the CVD order on HRS from Brazil.[1] On September 1, 2021, Commerce published the notice of initiation of the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce received notices of intent to participate from Cleveland-Cliffs Inc., Nucor Corporation, Steel Dynamics Inc., and United States Steel Corporation (collectively, domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested parties each claimed interested party status under section 771(9)(C) of the Act as manufacturers or producers of the domestic like product.[4]

On September 30, 2021, Commerce received an adequate substantive response to the *Notice of Initiation* from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] Commerce also received a response from the Government of Brazil (GOB).[6] However, we did not receive a substantive response from any other interested party in this proceeding. On October 20, 2021, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[7] As a result, Commerce conducted an expedited (120-day) sunset review of the *Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Order

The merchandise subject to the *Order* is certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The merchandise subject to the *Order* is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) statistical categories 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030,

[1] *See Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders,* 81 FR 67960 (October 3, 2016) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 48983 (September 1, 2021) (*Initiation Notice*).

[3] *See* Cleveland-Cliffs Inc.'s Letter, ''Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; Nucor Corporation's Letter, ''Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; United States Steel Corporation's Letter, ''Notice of Intent to Participate,'' dated September 16, 2021; Steel Dynamic Inc.'s Letter, ''Notice of Intent to Participate,'' dated September 16, 2021.

[4] *Id.*

[5] *See* Domestic Interested Parties' Letter, ''Domestic Industry's Substantive Response to Notice of Initiation,'' dated September 30, 2021 (Domestic Interested Parties' Substantive Response).

[6] *See* GOB's Letter, ''Initial Comments,'' dated September 30, 2021.

[7] *See* Commerce's Letter, ''Sunset Reviews Initiated on September 1, 2021,'' dated October 20, 2021.

7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. Subject merchandise may also enter under subheadings 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes only. The written description of the scope of the *Order* is dispositive.[8]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of subsidization in the event of revocation of the *Order* and the countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is provided in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, we determine that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Exporters or manufacturers	Net countervailable subsidy rate (percent)
Companhia Siderurgica Nacional (CNS)	11.30
Usinas Siderurgicas de Minas Gerais S.A. (Usiminas)	11.09
All Others	11.20

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: December 29, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–00020 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–809, A–351–845, A–588–874, A–580–883, A–421–813, A–489–826, A–412–825]

Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these expedited sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on certain hot-rolled steel flat products (hot-rolled steel) from Australia, Brazil, Japan, the Republic of Korea (Korea), the Netherlands, the Republic of Turkey (Turkey), and the United Kingdom would be likely to lead to continuation or recurrence of dumping as indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable January 6, 2022.

[8] For a complete description of the scope of the *Order, see* Memorandum, ''Issues and Decision Memorandum for the Final Results of the First Sunset Review of the Countervailing Duty Order on Certain Hot-Rolled Steel Flat Products from Brazil,'' dated concurrently with, and herby adopted by, this notice (Issues and Decision Memorandum).

FOR FURTHER INFORMATION CONTACT: Zachary Le Vene, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0056.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2021, Commerce published the notice of initiation of the sunset reviews of the AD orders on hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] In accordance with 19 CFR 351.218(d)(1)(i) and (ii), Commerce received notices of intent to participate in these sunset reviews from California Steel Industries, Steel Dynamics, Inc., Nucor Corporation, Cleveland-Cliffs Inc., and United States Steel Corporation (domestic interested parties) within 15 days after the date of publication of the *Initiation Notice*.[3] On September 20, 2021, Commerce received a request to amend received notices to include SSAB Enterprises LLC (SSAB) in the reviews.[4] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as domestic producers of hot-rolled steel in the United States.[5]

Commerce received adequate substantive responses to the *Initiation Notice* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[6] Commerce received no substantive responses from any respondent interested parties.

On October 21, 2021, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[7] As a

[1] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016), as amended, *Certain Hot-Rolled Steel Flat Products from Turkey: Notice of Court Decision Not in Harmony with the Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination, Amended Antidumping Duty Order, Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of the 2017–18 and 2018–19 Antidumping Duty Administrative Reviews, in Part,* 85 FR 29399 (May 15, 2020) (*AD Orders*).

[2] *See Initiation Notice of Five-Year (Sunset) Reviews,* 86 FR 48983 (September 1, 2021) (*Initiation Notice*).

[3] *See* Domestic Interested Parties' Letters, ''Five-Year (''Sunset'') Review Of Antidumping Duty Order On Certain Hot-Rolled Steel Flat Products from Australia: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from Australia: Notice of Intent to Participate,'' dated September 16, 2021; ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from Australia,'' dated September 16, 2021; ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from Australia'' as amended to include SSAB Enterprises LLC (SSAB), dated September 16, 2021 and amended September 20, 2021; ''Hot-Rolled Steel Flat Products from Australia: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from Brazil: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Five-Year ('Sunset') Review of Antidumping and Countervailing Duty Orders on Certain Hot-Rolled Steel Flat Products from Brazil: Notice of Intent to Participate,'' dated September 16, 2021; ''Notice of Intent to participate in the First Five-Year Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from Brazil'' as amended to include SSAB Enterprises LLC (SSAB), dated September 16, 2021 and amended September 20, 2021; ''Hot-Rolled Steel Flat Products from Brazil: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from Japan: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from Japan'' as amended to include SSAB Enterprises LLC (SSAB), dated September 16, 2021 and amended September 20, 2021; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from Japan: Notice of Intent to Participate,'' dated September 16, 2021; ''Hot-Rolled Steel Flat Products from Japan: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Five-Year ('Sunset') Review of Antidumping and Countervailing Duty Orders on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Notice of Intent to Participate,'' dated September 16, 2021; ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from Korea'' as amended to include SSAB Enterprises LLC (SSAB), dated September 16, 2021 and amended September 20, 2021; ''Hot-Rolled Steel Flat Products from the Republic of Korea: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the Netherlands: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the Netherlands: Notice of Intent to Participate,'' dated September 16, 2021; ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from the Netherlands'' as amended to include SSAB Enterprises LLC (SSAB), dated September 16, 2021 and amended September 20, 2021; ''Hot-Rolled Steel Flat Products from the Netherlands: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Five-Year (''Sunset'') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Notice of Intent to Participate,'' dated September 16, 2021; ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from Turkey'' as amended to include SSAB Enterprises LLC (SSAB), dated September 16, 2021 and amended September 20, 2021; ''Hot-Rolled Steel Flat Products from Turkey: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the United Kingdom: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the United Kingdom: Notice of Intent to Participate,'' dated September 16, 2021; ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty order on Hot-Rolled Steel Flat Products from the United Kingdom'' as amended to include SSAB Enterprises LLC (SSAB), dated September 16, 2021 and amended September 20, 2021; ''Hot-Rolled Steel Flat Products from the United Kingdom: Notice of Intent to Participate in Sunset Review,'' dated September 16, 2021 (collectively, Notices of Intent to Participate).

[4] *See* Interested Parties' Letters, ''Amendment to Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from Australia''; ''Amendment to Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from Brazil''; ''Amendment to notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from Japan''; ''Amendment to Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty order on Hot-Rolled Steel Flat Products from Korea''; ''Amendment to Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty order on Hot-Rolled Steel Flat Products from the Netherlands''; ''Amendment to Notice of Intent to Participate in the First Five-year Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from Turkey''; ''Amendment to Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from the United Kingdom,'' each dated September 20, 2021.

[5] Note that some domestic interested parties are not participating in every review. *See* country-specific substantive responses for a specific list of the domestic interested parties participating in each county review.

[6] *See* Domestic Interested Parties' Letters, ''Hot-Rolled Steel Flat Products from Australia: Substantive Response of the Domestic Interested Parties to Commerce's Notice of Initiation of Five-Year ('Sunset') Reviews,'' dated September 30, 2021; ''Hot-Rolled Steel Flat Products from Japan: Substantive Response of the Domestic Interested Parties to Commerce's Notice of Initiation of Five-Year ('Sunset') Reviews,'' dated September 30, 2021; ''First Five-years (''Sunset'') Review of the Antidumping Order on Hot-Rolled Steel Flat Products from Brazil: Domestic Industry's Substantive Response to Notice of Initiation,'' dated September 30, 2021; ''Five-Year ('Sunset'') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the Netherlands: Domestic Industry Substantive Response,'' dated September 29, 2021; ''Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the United Kingdom: Domestic Industry Substantive Response,'' dated September 29, 2021 (collectively, Domestic Interested Parties' Substantive Responses).

[7] *See* Commerce's Letter, ''Sunset Reviews Initiated on September 1, 2021,'' dated October 21, 2021.

result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset reviews of the *AD Orders*.

Scope of the AD Orders

The merchandise subject to the *AD Orders* is hot-rolled steel flat products. A full description of the scope of the *AD Orders* is contained in the Issues and Decision Memorandum.[8] The written description is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of dumping margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Issues and Decision Memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNotices/ListLayout.aspx*.

Final Results of Sunset Reviews

Pursuant to sections 751(c) and 752(c) of the Act, Commerce determines that revocation of the *AD Orders* would be likely to lead to continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail would be weighted-average margins up to the following percentages:

Country	Weighted-average margin (percent)
Australia	29.58
Brazil	34.28
Japan	11.70
Korea	11.10
The Netherlands	3.73
Turkey	24.32
United Kingdom	33.06

[8] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.221(c)(5)(ii).

Dated: December 29, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–00019 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Voluntary Laboratory Accreditation Program—Revisions to the Personal Body Armor Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Voluntary Laboratory Accreditation Program (NVLAP) announces approval of revisions to its Personal Body Armor Laboratory Accreditation Program (LAP) for accreditation of laboratories performing tests on ballistic- and stab-resistant personal body armor. The program has been renamed as the Law Enforcement and Corrections Equipment LAP to better reflect the types of testing being performed within this accreditation program and to allow for future expansion of the program for testing of additional law enforcement and corrections equipment.

DATES: Handbook 150–24, 2021 edition, is applicable 30 days after publication on the NVLAP website, *https://www.nist.gov/nvlap.*

ADDRESSES: Laboratories may obtain a copy of NIST Handbook 150–24, NVLAP Law Enforcement and Corrections Equipment, by visiting the NVLAP website at *https://www.nist.gov/nvlap* or by sending a request to NVLAP by mail at NIST/NVLAP, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140 or by email at *nvlap@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Timothy Rasinski, Program Manager, NIST/NVLAP, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140, Phone: (301) 975–4016 or email: *timothy.rasinski@nist.gov.* Information regarding NVLAP and the accreditation process can be obtained from *http://www.nist.gov/nvlap.*

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology (NIST) administers NVLAP under regulations found in 15 CFR part 285. NVLAP provides an unbiased third-party evaluation and recognition of laboratory performance, as well as expert technical assistance to upgrade that performance, by accrediting calibration and testing laboratories found competent to perform specific calibrations or tests. NVLAP is comprised of a set of LAPs which are established on the basis of requests and demonstrated need. Each LAP includes specific calibration and/or test standards and related methods and protocols assembled to satisfy the unique needs for accreditation in the field of calibration, field of testing, product or service.

The NVLAP Personal Body Armor LAP was established in 2006 at the request of the U.S. Department of Justice (DOJ) National Institute of Justice (NIJ) Office of Science and Technology. The LAP was developed to accredit laboratories for body armor testing in support of the NIJ Compliance Testing Program (CTP). The LAP currently encompasses accreditation for ballistic-resistant body armor testing, stab-resistant body armor testing, and autoloading pistol testing.

The Chief of NVLAP may approve modifications to a specific LAP when a request to modify the LAP is received. Modifications may include addition of tests, types of tests or standards that are directly relevant to the LAP. NVLAP

received a request to revise the name of its Personal Body Armor LAP to the Law Enforcement and Corrections Equipment LAP in order to better encompass the scope of this program. NVLAP also received a request to expand the technology tested under this program to include rifle testing, helmet testing and shield testing. On March 19, 2021, NIST published a notice in the **Federal Register** (86 FR 14876) requesting public comments on the potential change of name and future expansion of the accreditation program to include rifle testing, helmet testing and shield testing.

A response to this notice was submitted from one entity, an accreditation organization. The comment submitted did not address the specific items of the proposal. The feedback from the organization related specifically to future consideration of the use of ISO/IEC 17065, *Conformity assessment—Requirements for bodies certifying products, processes and services* in the NIJ CTP.

The following is a summary and analysis of the comment received during the public comment period, and NIST's response to it:

Comment: One commenter responded that they encouraged the adoption of ISO/IEC 17065 for the certification of products in the NIJ CTP.

Response: The purpose of the NVLAP LAP is to determine competence of a laboratory performing the testing of the law enforcement and corrections equipment based on the requirements of ISO/IEC 17025, *General requirements for the competence of testing and calibration laboratories.* The comment encourages the further expansion of the NIJ program to include accreditation of certification bodies to ISO/IEC 17065. As the comment is specific to the NIJ CTP and its operation, this was deemed outside of the scope of the NVLAP LAP.

After considering the request, the Chief of NVLAP has determined that the revision of the LAP name to Law Enforcement and Corrections Equipment better reflects the types of testing that support the NIJ CTP and will allow for future expansion of the types of testing covered under this accreditation program. Therefore, the modification has been approved. Revised NIST Handbook 150–24 is available electronically from the NVLAP website at: *https://nvlpubs.nist.gov/nistpubs/hb/2021/NIST.HB.150-24-2021.pdf.*

Authority: 15 U.S.C. 272(b) & (c).

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–00035 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures 2022 Interim Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The 2022 Interim Meeting of the National Conference on Weights and Measures (NCWM) will be held using a virtual meeting platform and in-person at the Westin Tampa Waterside Hotel, Tampa Florida, from Sunday, January 9 through Wednesday, January 12, 2022. This notice contains information about significant items on the NCWM Committee agendas but does not include all agenda items. As a result, the items are not consecutively numbered.

DATES: The 2022 Interim Meeting will be held from Sunday, January 9, through Wednesday, January 12, 2022. The meeting schedule will be available on the NCWM website at *www.ncwm.com*.

ADDRESSES: This meeting will be held using a virtual meeting platform and in-person at the Westin Tampa Waterside Hotel, Tampa Florida.

FOR FURTHER INFORMATION CONTACT: Dr. Katrice Lippa, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Dr. Lippa at (301) 975–3116 or by email at *katrice.lippa@nist.gov*. The meeting is open to the public, but a paid registration is required. Please see the NCWM website (*www.ncwm.com*) to view the meeting agendas, registration forms, and hotel reservation information.

SUPPLEMENTARY INFORMATION: Publication of this notice on the NCWM's behalf is undertaken as a public service and does not itself constitute an endorsement by the National Institute of Standards and Technology (NIST) of the content of the notice. NIST participates in the NCWM as an NCWM member and pursuant to 15 U.S.C. 272(b)(10) and (c)(4) and in accordance with Federal policy (*e.g.,* OMB Circular A–119 ''Federal Participation in the Development and Use of Voluntary Consensus Standards'').

The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, and representatives from the private sector and federal regulatory agencies. These meetings can bring these government officials together with representatives of business, industry, trade associations, and consumer organizations to discuss proposed laws and regulations and other subjects related to the field of weights and measures technology, administration, and enforcement. NIST hosted the first meeting of the NCWM in 1905. Since then, the conference has provided a model of cooperation between Federal, State, and local governments and the private sector. NIST participates to encourage cooperation between federal agencies and the states in the development of legal metrology requirements. NIST also promotes uniformity in state laws, regulations, and testing procedures used in the regulatory control of commercial weighing and measuring devices, packaged goods, and for other trade and commerce issues.

The NCWM has established multiple committees, task groups, and other working bodies to address legal metrology issues of interest to regulatory officials, industry, consumers, and others. The following are brief descriptions of some of the significant agenda items that will be considered by some of the NCWM Committees at the NCWM Interim Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals.

This meeting also includes work sessions in which the Committees may accept comments, and where recommendations will be developed for consideration and possible adoption at the NCWM 2022, 107th Annual Meeting. The Committees may withdraw or carryover items that need additional development.

These notices are intended to make interested parties aware of these development projects and to make them aware that reports on the status of the project will be given at the Interim Meeting. The notices are also presented to invite the participation of manufacturers, experts, consumers, users, and others who may be interested in these efforts.

The following are brief descriptions of some of the significant agenda items that will be considered at the 2022 Interim Meeting. Comments will be taken on these and other recommendations to amend NIST Handbook 44, ''Specifications, Tolerances, and other Technical

Requirements for Weighing and Measuring Devices'' (NIST Handbook 44 or HB 44), NIST Handbook 130, ''Uniform Laws and Regulations in the areas of Legal Metrology and Fuel Quality'' (NIST Handbook 130 or HB 130), and NIST Handbook 133, ''Checking the Net Contents of Packaged Goods'' (NIST Handbook 133 or HB 133). These NIST Handbooks are regularly adopted by reference or through the administrative procedures of all the states.

NCWM S&T Committee (S&T 2022 Interim Meeting)

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44. Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of products or services sold among businesses.

Item Block 2 (B2): Define True Value for Use in Error Calculations

BLK–2: (SCL–20.3, SCL–20.4, SCL–20.5, SCL–20.6, SCL–20.7, and SCL–20.8)

The S&T Committee will further consider a proposal that has been designated as an ''Informational'' item meaning that the committee wants to allow more time for review by stakeholders and possibly further development to address concerns. This ''block'' proposal includes six individual items related to the application of NIST Handbook 44 requirements based on the values of a scale's verification scale division ''e'' or the minimum scale division ''d''. Adoption of this proposal would have a significant impact on scales, particularly in cases where the values of ''e'' and ''d'' are not equal.

Item Block 4 (B4): Electronically Captured Tickets or Receipts

The S&T Committee will further consider a proposal to allow for the expanded use of electronically captured tickets and receipts by amending NIST HB 44 Sections 1.10. General, 3.30. LMD, 3.31. VTM, 3.32. LPG, 3.34. CLM, 3.37. MFM, 3.38. CDL, 3.39. HGM, 3.35. Milk Meters, and the definition of ''recorded representation'' in Appendix D, Definitions. The committee amended this carry-over block of items during the 2020 Interim Meeting based on comments it received expressing a continued need for printed tickets. As a result, the proposal now references NIST HB 44 paragraph G–S.5.6. in various specific codes. At the 2021 NCWM Annual Meeting, the S&T Committee designated this ''block'' proposal as ''developing'' for further comment and consideration.

LMD—Liquid Measuring Devices

LMD–21.1: Table S.2.2. Categories of Device Method of Sealing

The S&T Committee will further consider a proposal to amend NIST HB 44 Section 3.30. Liquid-Measuring Devices to permit the use of an electronic log, in lieu of a printed copy for devices with Category 3 sealing. The current ''Category 3'' sealing requirements in HB 44 Liquid-Measuring Devices Code Section 3.30. specify that a printed copy of an event logger must be available on demand through the device or through another on-site device and that the information may also be available electronically. The new proposal would amend the language in Table S.2.2. ''Categories of Device and Methods of Sealing'' to permit either a printed or electronic form of the event logger be made available. This item, LMD–21.1 was previously a ''block'' item with LMD 20.1. Both items were similar proposals, so the submitters of both items agreed to withdraw LMD–20.1 and further develop LMD 21.1. At the 2021 NCWM Interim Meeting, the committee agreed to withdraw item LMD–20.1 from the previous block of items and designated LMD–21.1 as a developing item so that the submitters of both items could work together to further develop item LMD–21.1. At the 2021 NCWM Annual Meeting the committee agreed to a developing status for this item for further comments and consideration.

VTM—Vehicle Tank Meters

VTM–18.1: S.3.1.1. Means for Clearing the Discharge Hose and UR.2.6. Clearing the Discharge Hose

The S&T Committee will further consider this item, which proposes to provide specifications and user requirements for manifold flush systems designed to eliminate product contamination on VTMs used for multiple products. This proposal would add specifications on the design of VTMs under S.3.1.1. ''Means for Clearing the Discharge Hose.'' and add a new user requirement UR.2.6. ''Clearing the Discharge Hose.'' During open hearings of previous NCWM meetings, comments were heard about the design of any system to clear the discharge hose of a product prior to the delivery of a subsequent product which could provide opportunities to fraudulently use this type of system. At the 2021 NCWM Annual Meeting the committee agreed to keep this item developing for further comments and consideration.

EVF—Electric Vehicle Fueling Systems

EVF–20.1: S.1.3.2. EVSE Value of the Smallest Unit

The S&T Committee will further consider a proposal that would specify the maximum value of the indicated and/or recorded electrical energy unit used in an EVSE (Electric Vehicle Supply Equipment). This proposal would reduce (by a factor of 10) the current specified values of these units. The current maximum values of 0.005 MJ and 0.001 kWh would be changed to 0.0005 MJ and 0.0001 kWh respectively. The submitters contend that testing of these systems would be expedited through these changes and reduce the amount of time necessary to complete official tests. During the 2021 NCWM Annual Meeting, additional changes were proposed to the Electric Vehicle Fueling System Code to add a new paragraph S.1.3.X to address how the value of the quantity unit shall be expressed and at this meeting the committee recommended a developing status for this item for further comments and consideration.

GMA—Grain Moisture Meters 5.56. (A)

GMA–19.1: Table T.2.1. Acceptance and Maintenance Tolerances Air Oven Method for All Grains and Oil Seeds

The S&T Committee will further consider a proposal that would reduce the tolerances for the air oven reference method in the Grain Moisture Meter Code. The proposed new tolerances would apply to all types of grains and oil seeds. This item is a carry-over proposal from 2019 and would replace the contents of Table T.2.1. with new criteria. Additional inspection data will be collected and reviewed to assess whether or not the proposed changes to the tolerances are appropriate. At the 2021 Annual Meeting the Committee recommended a developing status for this item to review the results of additional data.

TMS/TNMS—Taxi Meters and Transportation Network Measurement Systems

Item BLOCK 3 (B3): Tolerances for Distance Testing in Taximeters and Transportation Network Systems.

The S&T Committee will further consider changes included in this block affecting the HB 44 Taximeters Code (Section 5.54.) and the Transportation Network Measurement Systems (TNMS) Code (Section 5.60.) that would amend the value of tolerances allowed for distance tests. The changes proposed in this item would change the Taximeters Code requirement T.1.1. ''On Distance Tests'' by increasing that tolerance to 2.5% when the test exceeds one mile. The change to the TNMS Code affects requirement T.1.1. ''Distance Tests'' by

reducing the tolerance allowed on overregistration under T.1.1.(a) from the current 2.5% to 1% when the test does not exceed one mile and would increase the tolerance for underregistration in T.1.1.(b) from 2.5% to 4%. These changes if adopted would align the tolerances values for distance tests allowed for taximeters and TNMS. At the 2021 NCWM Annual Meeting it was noted that these items were being discussed with the USNWG and the Committee agreed to a developing status for this item for further comment and consideration.

NCWM L&R Committee

NIST Handbook 130 and NIST Handbook 133

The following items are proposals for NIST HB 130 Uniform Method of Sale (MOS) and the Uniform Fuels and Automotive Lubricants Regulation (FLR):

Item Block 1 (B1)—

NIST HB 130, PAL–19.1. UPLR, Sec. 2.8. Multiunit Package. NET–19.2. NIST HB 133 Modify ''scope'' for Chapters 2 through 4, add a note following Sections 2.3.7.1. and 2.7.3., NET–19.3. NIST HB 133 create a Chapter 5. Specialized Test Procedures. The L&R Committee will also be addressing a proposal to include adoption of a test procedure for the total quantity declaration on multiunit or variety packages. In addition, in NIST HB 130, Uniform Packaging and Labeling Regulation, the proposal would clarify Section 2.8. Multiunit.

Item MOS–22.4. Section 2.16. Compressed or Liquefied Gasses in Refillable Cylinders

The L&R Committee will consider a proposal to modify the existing language for the method of sale of Compressed or Liquefied Gases in Refillable Cylinders. The proposed amendments are being considered so that current HB 130 requirements are not in conflict between the tare weight and other labeling requirements for compressed gas cylinders in the Method of Sale of Commodities Regulation and similar Federal regulations published by the U.S. DOT.

Item MOS–20.5 Section 2.21 Liquefied Petroleum Gas

The L&R Committee will consider a proposal to modify the existing language for the method of sale of Liquefied Petroleum Gas. Consider changes to the existing language that references a value of ''15.6 °C'' for temperature determinations in metric units. According to the current industry practice for sales of petroleum products, the reference temperature for sales in metric are based on 15 °C rather than the exact conversion from 60 °F (which is 15.6 °C). Thus, the temperature reference in metric should be 15 °C. This will also add language for metered sales with a maximum capacity equal to or greater than 20 gal/min will have a metering system that automatic temperature compensates. For metering system with a maximum capacity less than 20 gal/min. Effective January 2030, all metered sales, shall be accomplished using a metering system that automatic temperature compensates.

Item MOS 22.3. Section 2.4. Fireplace and Stove Wood

The Committee will consider a proposal to modify the language to clarify the language as to how compressed firewood bricks shall be sold. This also clarifies the terms for plural and singular representation for the units.

Item 22.1. Uniform Regulation for E-commerce Products

The L&R Committee will consider a proposal to add a new regulation into HB 130 for Uniform Labeling for E-commerce for consumer commodities and non-consumer commodities. This regulation will provide guidance to those state that adopt such a regulation. It also provides for required information that shall be provided when the product is delivered. This regulation would also lay out the terms that shall appear on an e-commerce website.

Item Block 3 Cannabis

B3: PALS–22.1. Section XX. Cannabis and Cannabis-Containing Products. The Committee will consider a proposal to establish definitions within HB 130 Packaging and Labeling Requirements for Cannabis and Cannabis containing products. In addition, PAL–22.2 Section 10.XX. Cannabis and Cannabis-Containing Products. will establish labeling requirements. B3: NET–22.1. Section 1.XX. Cannabis and Cannabis-Containing Products and 2.XX. Cannabis and Cannabis-Containing Products. provides for a 3% moisture allowance for Cannabis containing more than 0.3% total Delta-9 THC or containing 0.3% less total Delta-9 THC (hemp). B3: MOS–22.2. HB 130 Section 1.XX. and Section 2.XX. Cannabis and Cannabis-Containing Products. The Committee will consider a proposal to amend these two sections to include language for a method of sale for Cannabis. Included within this proposal is also a water activity limit of 0.6 ± −0.5, when unprocessed Cannabis is sold or transferred.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–00036 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB618]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore From New York to Massachusetts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization (IHA).

SUMMARY: NMFS received a request from Ørsted Wind Power North America, LLC, (Ørsted) for the Renewal of their 2020 IHA to take marine mammals incidental marine site characterization surveys, using high-resolution geophysical (HRG) equipment, in coastal waters from New York to Massachusetts. Ørsted is also planning to conduct marine site characterization surveys along one or more potential submarine export cable routes (ECRs). The activities for which Ørsted has requested a Renewal IHA are identical to those covered under the initial IHA, which expired on September 24, 2021. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the initial IHA in 2020, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The Renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed Renewal not previously provided during the initial 30-day comment period. If issued, the Renewal would be effective through September 24, 2022.

DATES: Comments and information must be received no later than January 21, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written

comments should be submitted via email to *ITP.Esch@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Carter Esch, Office of Protected Resources, NMFS, (301) 427–8421. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional period not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Description of the Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a Renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of initial IHA, provided all of the following conditions are met:

(1) A request for Renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

(2) The request for Renewal must include the following:

- An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

(3) Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential Renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA Renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested Renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* issuance of incidental harassment authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA Renewal qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA Renewal request.

History of Request

On September 25, 2020, NMFS issued an IHA to Ørsted to take marine mammals incidental to marine site characterization survey activities offshore from New York to Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0486/0517, OCS–A 0487, and OCS–A 0500) (Lease Areas) and along potential submarine ECRs to landfall locations from New York to Massachusetts (85 FR 63508, October 8, 2020), effective from September 25, 2020 through September 24, 2021. On July 8, 2021, NMFS received a request for a Renewal of that initial IHA so that Ørsted can continue survey activities beyond September 24, 2021. Ørsted later communicated that marine site characterization surveys under the Renewal IHA would not begin until 2022. As described in the request for a Renewal IHA, the activities for which incidental take is requested are identical to those covered by the initial authorization. As required, the applicant also provided a monitoring report (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-orsted-wind-power-north-america-llc-site-characterization*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

NMFS previously issued an IHA to Ørsted for similar activities (84 FR 52464; October 2, 2019); Ørsted complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of that IHA.

Description of the Specified Activities and Anticipated Impacts

Ørsted proposes to conduct a second year of marine site characterization surveys, using high-resolution geophysical (HRG) equipment, within the Lease Areas, located approximately 14 miles (mi) (22 kilometers (km)) south of Martha's Vineyard, Massachusetts at its closest point, and proposed ECRs from the Lease Areas to potential shore landing locations for submarine cables associated with offshore wind development along the coast from New York to Massachusetts. The purpose of the marine site characterization surveys is to support site characterization, siting, and engineering design of offshore project facilities, including wind turbine generators (WTGs), offshore substation(s), and submarine cables within the Lease and proposed ECR Areas. The activities covered under the initial IHA have been completed. Ørsted requested a Renewal of the initial IHA issued by NMFS in September 2020 on the basis that they plan to conduct up to another year of identical activities in the same area as described in the *Detailed Description of the Specified Activities* section of the **Federal Register** notice for the initial proposed IHA (85 FR 48179, August 10, 2020), which can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

In their 2020 IHA application, Ørsted estimated it would conduct surveys at a rate of 70 kilometers (km) per survey day. Ørsted defined a survey day as a 24-hour activity day, which could be the sum of multiple partial surveys if less than 70 km is surveyed in 24 hours. Based on the planned 24-hour operations, the survey activities for all survey areas would require 1,302 survey days if one vessel were surveying continuously. However, Ørsted proposed to use an estimated five vessels simultaneously, with a maximum of no more than nine vessels. Therefore, Ørsted planned to complete all survey effort in one year, prior to the expiration of the initial IHA on September 24, 2021; all of the work addressed under the initial IHA was completed prior to the initial IHA expiration date. The Renewal IHA would authorize take, by Level B harassment only (in the form of behavioral disturbance), of 15 species/stocks of marine mammals for a second year of identical survey activities to be completed in one year, in the same area, using survey methods identical to those described in the initial IHA application; therefore, the anticipated effects on marine mammals and the affected stocks also remain the same. The amount of take, by Level B harassment, requested for the Renewal IHA is also identical to that authorized in the initial IHA. All active acoustic sources, mitigation, and monitoring measures would remain exactly as described in the **Federal Register** notice of the issued initial IHA (85 FR 63508, October 8, 2020; 85 FR 71058, November 6, 2020).

Detailed Description of the Activity

A detailed description of the marine site characterization survey activities for which incidental take is proposed here may be found in the **Federal Register** notice of the proposed IHA (85 FR 48179; August 10, 2020) for the initial authorization. As described above, Ørsted completed the survey activities analyzed for the initial IHA by the date the IHA expired (September 24, 2021). The surveys Ørsted proposes to conduct under this Renewal would be a second year of surveys, identical to those described in the initial IHA. The location and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. The proposed Renewal IHA would be effective from the date of issuance to September 24, 2022 (one year from the expiration of the initial IHA).

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (85 FR 48179; August 10, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports (SARs), Technical Reports (*e.g.,* Pace 2021), information on relevant Unusual Mortality Events (UMEs), and other scientific literature, and determined that neither this nor any other information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activity contained in the supporting documents for the initial IHA.

The draft 2021 SARs, available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*) state that estimated abundance has increased for the Western North Atlantic stocks of common dolphins (from 172,825 (CV = 0.21) to 172,974 (CV = 0.21)), and gray seals (from 27,131 (CV = 0.19) to 27,300 (CV = 0.22)). Abundance estimates have decreased for the following: The Western North Atlantic stocks of fin whales (from 7,418 (CV = 0.25) to 6,802 (CV = 0.24)), Risso's dolphins (from 35,293 (CV = 0.19 to 35,215 (CV = 0.19)), harbor seals (from 75,834 (CV = 0.15) to 61,336 (CV = 0.22)), and the Canadian East coast stock of minke whales (from 24,202 (CV = 0.3) to 21,968 (CV = 0.31)). The abundance estimate for the Western North Atlantic stock of North Atlantic right whales has also been updated in the draft 2021 SAR, which states that right whale abundance has decreased from 428 to 368 (95% CI 356–378) individuals (Hayes *et al.,* 2021).

NMFS has preliminarily determined that neither the updated abundance

information presented above nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activity contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (85 FR 48179; August 10, 2020). NMFS has reviewed the most recent information relevant to this proposed Renewal IHA (monitoring data from the initial IHA, recent draft SARs, Technical Reports (*e.g.,* Pace 2021), information on relevant Unusual Mortality Events, and other scientific literature and data), and preliminarily determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed (85 FR 48179; August 10, 2020) and issued (85 FR 63508; October 8, 2020) IHAs for the initial authorization. The acoustic source types, as well as source levels, applicable to this authorization remain unchanged from the initial IHA. Similarly, the stocks taken, methods of take and type of take (*i.e.,* Level B harassment in the form of behavioral disturbance) remain unchanged from the initial IHA.

In the initial authorization for marine site characterization survey activities, Ørsted used the following parameters to estimate the potential for take: (1) Maximum number of survey days that could occur over a 12-month period in each of the identified survey areas; (2) maximum distance each vessel could travel per 24-hour period in each of the identified survey areas; (3) maximum ensonified area; and (4) mean annual marine mammal densities in each of the identified survey areas. The calculated radial distances to the Level B harassment isopleth (160 decibel (dB) root mean square (rms)) from each acoustic source for a subset of representative survey equipment are included in Table 1 (please see the notice of the issued initial IHA for a complete list).

TABLE 1—MODELED RADIAL DISTANCES IN METERS (M) FROM HRG SURVEY EQUIPMENT TO ISOPLETH CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Sound source	Radial distance to Level B harassment isopleth (m)
EdgeTech Chirp 424	4
EdgeTech Chirp 512i	6
EdgeTech Chirp 216	12
GeoPulse 5430	29
Teledyne Benthos Chirp III	54
Applied Acoustics Triple plate S-Boom (700/1,000 J)	76
Applied Acoustics, Dura-spark (500 J/400 tip)	141
Applied Acoustics, Dura-spark 400+400	141
GeoMarine, Geo-Source dual 400 tip sparker	141

The equation for estimating take for all species remains the same as the initial IHA:

Estimated Take = D × ZOI × # of days

Where:

D = species density (per km^2) and
ZOI = maximum daily ensonified area

As described in the notices of the proposed (85 FR 48179; August 10, 2020) and issued (85 FR 63508; October 8, 2020) IHAs for the initial authorization, not all noise producing survey equipment/sources will be operated concurrently by each survey vessel on every vessel day. In the initial IHA application, Ørsted calculated conservative ZOIs by applying the maximum radial distance for any category and type of HRG survey equipment considered in its assessment. The maximum distances to the Level B harassment isopleth for impulsive sources (141 m; *e.g.,* sparkers or boomers) and non-impulsive sources (54 m; *e.g.,* Chirps) were used to calculate the ZOIs for the 54 percent and 46 percent of survey days on which each type of survey equipment would be used predominantly, respectively. The resulting ZOIs were 19.8 km^2 (*e.g.,* sparkers and boomers) and 7.659 km^2 (*e.g.,* Chirps). The Renewal request applied this exact same approach to calculate ZOIs, resulting in ZOIs for sparkers/boomers and Chirps that are identical to those in the initial IHA.

The methodology for calculating take in the initial IHA applies to the proposed Renewal IHA for all species. The result is that the amount of take requested in Ørsted's request for a Renewal IHA is identical to that authorized in the initial IHA. NMFS agrees with Ørsted's request for take and proposes to authorize the same amount of take as described in their request.

TABLE 2—RENEWAL IHA PROPOSED TAKE BY LEVEL B HARASSMENT

Species		Abundance estimate [1]	Requested take	Percent population
North Atlantic right whale	*Eubalaena glacialis*	368	37	10.05
Humpback whale	*Megaptera novaeangliae*	1,396	21	1.50
Fin whale	*Balaenoptera physalus*	6,802	36	0.53
Sei whale	*Balaenoptera borealis*	6,292	2	0.0
Minke whale	*Balaenoptera acutorostrata*	21,968	13	0.06
Sperm whale	*Physeter macrocephalus*	4,349	3	0.07
Long-finned pilot whale	*Globicephala melas*	39,215	69	0.18
Bottlenose dolphin (W.N.A. offshore)	*Tursiops truncatus*	62,851	419	0.67
Common dolphin	*Delphinus delphis*	172,974	2,211	1.28
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	93,233	418	0.45
Atlantic spotted dolphin	*Stenella frontalis*	35,215	7	0.02
Risso's dolphin	*Grampus griseus*	35,493	30	0.08
Harbor porpoise	*Phocoena phocoena*	95,543	916	0.96
Harbor seal	*Phoca vitulina*	61,336	215	0.36
Gray seal	*Halichoerus grypus*	27,300	215	0.79

W.N.A. = Western North Atlantic.

[1] Abundance estimates have been updated from the initial IHA (85 FR 63508; October 8, 2020) using the 2021 Draft SARs (Hayes *et al.,* 2021).

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this proposed authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (85 FR 63508; October 8, 2020), and the discussion of the least practicable adverse impact included in that document and the notice of the proposed IHA remains applicable. All mitigation, monitoring, and reporting measures in the initial IHA are carried over to this proposed Renewal IHA and summarized below.

- *Ramp-up:* A ramp-up procedure would be used for HRG equipment capable of adjusting energy levels at the start or re-start of survey activities.
- *Protected Species Observers (PSOs):* A minimum of one NMFS-approved PSO would be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset), and two active duty PSOs would conduct observations 30 minutes prior to and during nighttime ramp-ups of HRG equipment.
- *Exclusion Zones (EZ):* Marine mammal EZs would be established around the HRG survey equipment and monitored by PSOs during marine site characterization surveys as follows: A 500-m EZ for North Atlantic right whales during use of impulsive acoustic sources (*e.g.,* boomers and/or sparkers) and non-impulsive, non-parametric sub-bottom profilers (*e.g.,* Chirps); and a 100-m EZ for all other marine mammals during use of impulsive acoustic sources (*e.g.,* boomers and/or sparkers).
- *Pre-Operation Clearance Protocols:* Ørsted would implement a 30-minute pre-start clearance period of the specified EZs prior to the initiation of ramp-up of boomers, sparkers, and non-impulsive, non-parametric sub-bottom profilers (*e.g.,* Chirps). During this period, the EZs would be monitored by PSOs using the appropriate visual technology. Ramp-up would not be initiated if any marine mammal(s) is within its respective EZ. If a marine mammal is observed within its respective EZ during the pre-start clearance period, ramp-up would not begin until the animal(s) has been observed exiting its respective EZ, or until an additional period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species). Pre-clearance and ramp-up, but not shutdown, would be required when using non-impulsive, non-parametric sub-bottom profilers (*e.g.,* Chirps), except in the case that a North Atlantic right whale is observed within the 500-m EZ.
- *Shutdown of HRG Equipment:* If an HRG source is active and a marine mammal is observed entering or within a relevant EZ (as described above), an immediate shutdown of the HRG survey equipment would be required. Note that this shutdown requirement would be waived for certain genera of small delphinids. If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone (54 m, non-impulsive; 141 m impulsive), shutdown would occur.
- *Vessel strike avoidance measures:* Vessel strike measures include, but are not limited to, separation distances for large whales (500 m North Atlantic right whales, 100 m other large whales; 50 m other cetaceans and pinnipeds), restricted vessel speeds, and operational maneuvers.
- *Seasonal Operating Requirements:* Ørsted would limit to three the number of survey vessels that will operate concurrently from January 1 through May 31 within the Lease Areas (OSC–A 0486/0517, OCS–A 0487, and OCS–A 500) and ECR Area north of the Lease Areas up to, but not including, coastal and bay waters. Ørsted would operate either a single vessel, two vessels concurrently or, for short periods, no more than three survey vessels concurrently in the areas described above from January 1 through May 31. The seasonal restriction described above would help to reduce both the number and intensity of North Atlantic right whale takes by Level B harassment.
- *Reporting:* Ørsted would submit a final technical report within 90 days following completion of the surveys. In the event that Ørsted personnel discover an injured or dead marine mammal, Ørsted would be required to report the incident to NMFS Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov* and *itp.esch@noaa.gov*) and to the New England/Mid-Atlantic Regional Stranding Coordinator through the NOAA Fisheries Marine Mammal and Sea Turtle Stranding and Entanglement Hotline (866–755–6622) as soon as feasible. In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, Ørsted would be required to report the incident immediately to NMFS OPR and to the New England/Mid-Atlantic Regional Stranding Coordinator through the NOAA Fisheries Marine Mammal and Sea Turtle Stranding and Entanglement Hotline. Ørsted would be required to immediately cease all project 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 terms of the proposed Renewal IHA.

Comments and Responses

As noted previously, NMFS published a notice of the proposed initial IHA (85 FR 48179; August 10, 2020) and solicited public comments on both our proposal to issue the initial IHA for marine site characterization surveys and on the potential for a Renewal IHA, should certain requirements be met.

All public comments were addressed in the notices announcing the issuance of the initial IHA (85 FR 63508, October 8, 2020; 85 FR 71058, November 6, 2020). Below, we describe how we have addressed, with updated information where appropriate, the comment received that specifically pertains to the renewal of the 2020 IHA.

Comment: A group of environmental non-governmental organizations (ENGOs) objected to NMFS' process to consider extending any 1-year IHA with a truncated 15-day comment period, claiming that it is contrary to the MMPA.

Response: NMFS' IHA Renewal process meets all statutory requirements. All IHAs issued, whether an initial IHA or a Renewal IHA, are valid for a period of not more than one year. The public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA Renewals. As noted above, the Request for Public Comments section in the notice of the proposed initial IHA made clear that the agency was seeking comment on both the proposed initial IHA and the potential issuance of a Renewal for this project. Because any Renewal (as explained in the Request for Public Comments section) is limited to another year of identical or nearly identical activities in the same location (as described in the Description of the Proposed Activity section) or the same activities that were not completed within the 1-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible 1-year Renewal, should the IHA holder choose to request one.

While there are additional documents submitted with a Renewal request, for a qualifying Renewal these are limited to documentation that NMFS will make

available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS will also confirm, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request must also contain a preliminary monitoring report, but that is to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information, and comment on whether they think the criteria for a Renewal have been met. NMFS also will provide direct notice of the proposed Renewal to those who commented on the initial IHA, to provide an opportunity to submit any additional comments. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a Renewal is 45 days.

In addition to the IHA Renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress's intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for Renewals in the regulations, description of the process and express invitation to comment on specific potential Renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as this, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and Renewals, respectively, NMFS has ensured that the public ''is invited and encouraged to participate fully in the agency decision-making process.''

In prior responses to comments about IHA Renewals (*e.g.,* 84 FR 52464; October 02, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, provides additional efficiencies beyond the use of abbreviated notices, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the Renewal process. For more information, NMFS has published a description of the Renewal process on our website (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals*).

Preliminary Determinations

The survey activities proposed by Ørsted are identical to those analyzed in the initial IHA, including the planned number of days and location of activity, as are the method of taking and the effects of the action. Therefore, the amount of take proposed is equal to that authorized in the initial IHA. The proposed mitigation measures and monitoring and reporting requirements, as described above, are identical to the initial IHA. The potential effect of Ørsted's activities remains limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS preliminarily determined that Ørsted's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third of the abundance of all stocks).

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundances of five stocks (North Atlantic right whales, fin whales, minke whales, Risso's dolphins, and harbor seals) decreasing and the estimated abundances of two stocks (common dolphins and gray seals) increasing (Hayes *et al.,* 2021). Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable adverse impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Ørsted's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take of endangered or threatened species.

The NMFS Office of Protected Resources is proposing to authorize the incidental take of four species of marine mammals that are listed under the ESA: The North Atlantic right, fin, sei and sperm whale. We requested initiation of consultation under Section 7 of the ESA with NMFS GARFO on July 1, 2020, for issuance of the initial IHA. Previously, BOEM consulted with NMFS GARFO under section 7 of the ESA on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. The NMFS GARFO issued a Biological Opinion in 2013 concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the North Atlantic right, fin, sei and sperm whale. Upon request from the NMFS Office of Protected Resources, NMFS GARFO issued an amended incidental take statement associated with this Biological Opinion on September 25, 2020, to include the take of the ESA-listed marine mammal species authorized through the initial IHA. The proposed Renewal IHA provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of consultation with NMFS GARFO; therefore, the incidental take statement issued for the initial IHA remains valid.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a Renewal IHA to Ørsted for conducting marine site characterization survey activities offshore from New York to Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on

the Outer Continental Shelf (OCS–A 0486/0517, OCS–A 0487 and OCS–A 0500) and along potential ECRs to landfall locations from New York to Massachusetts from the date of issuance through September 24, 2022, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed initial IHA and the final initial IHA can be found at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-orsted-wind-power-north-america-llc-site-characterization.* We request comments on our analyses, the proposed Renewal IHA, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: January 3, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–00016 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB685]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public joint meeting of its Habitat Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, January 18, 2022 at 9 a.m.

ADDRESSES: All meeting participants and interested parties can register to join the webinar at *https://attendee.gotowebinar.com/register/6570510383641205518*.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee plans a discussion to designate a Habitat Area of Particular Concern in Southern New England: Articulate the problem and rationale for action, discuss potential objectives, and identify information sources to consider. Potentially recommend that the Council initiate a framework adjustment at their next meeting. Also on the agenda is the Northern Edge habitat management: Discuss a white paper documenting new information to consider should the Council wish to revise habitat management areas and restrictions on fishing in this region. The Committee can request additional information or analysis that would support future Council decision making on this issue. Because this action is not a 2022 work priority, the next Council decision on Northern Edge habitat management would be related to future prioritization of this work.

The committee will also review a draft letter expressing Council concerns about the Amitie telecommunications cable project. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 3, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–00039 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB619]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Weapons Testing at Vandenberg Air Force Base, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewals.

SUMMARY: NMFS has received a request from the United States Department of the Air Force (DAF) for authorization to take marine mammals incidental to 2 years of activity related to testing of the Extended Range Cannon Artillery II (ERCA II) system at Vandenberg Air Force Base (VAFB), California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two consecutive one-year incidental harassment authorizations (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal for each IHA that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision. The DAF's activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (2004 NDAA).

DATES: Comments and information must be received no later than February 7, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Pauline@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-

megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The 2004 NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as applied to a ''military readiness activity.'' The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHAs qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On July 15, 2021, NMFS received a request from the DAF for two consecutive IHAs to take marine mammals incidental to ERCA II testing at VAFB, California. The application was deemed adequate and complete on November 19, 2021. The DAF's request is for take of California sea lions, Steller sea lions, harbor seals, and northern elephant seals by Level B harassment. Neither the DAF nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The DAF is proposing to conduct test activities of the ERCA II system at VAFB over 2 years and requested the issuance of two consecutive one-year IHAs. The ERCA II system is a multi-element, multi-phase test program of the U.S. Army's (Army's) next-generation artillery systems. Major components of the artillery system include the cannon, gun mount, artillery projectile, and propelling charges. These components would be sited at the existing deactivated Launch Facility (LF)–05 site on VAFB. The proposed activities would include testing of ERCA II by firing non-explosive projectiles over the Pacific Ocean at distances ranging from the shoreline to approximately 1,180 miles (mi) (1,900 kilometers (km)) from the VAFB shoreline onto and beyond the Point Mugu Sea Range (PMSR). A total of 77 projectiles are proposed to be fired over 51 test event days (39 events in year 1 and 12 events in year 2).

Dates and Duration

The DAF anticipates that testing will occur over 2 years. The first proposed IHA would be effective from October 1, 2023 to September 30, 2024, which would include 39 days of testing activities, and the second proposed IHA would be effective from October 1, 2024 to September 30, 2025, which would include 12 days of testing activities.

Geographic Region

VAFB occupies approximately 99,100 acres (400 square kilometers [km^2]) of central Santa Barbara County, California (Figure 1), approximately halfway between San Diego and San Francisco. The base includes 42 miles (mi.) (68 km) of coastline with a variety of natural communities, including beaches, coastal salt marshes, rocky intertidal, kelp forests, and hard and soft bottom substrates. ERCA II would be installed at LF–05 which is an existing deactivated launch facility located on the northern end of VAFB, 4.5 mi. (7.2 km) southeast of Point Sal. The site is located approximately 400 meters (m) from the cliffs, beach, and rocky shoreline. Test activities would require firing non-explosive projectiles over the Pacific Ocean with splash-down locations for the projectiles and components of the projectiles at distances ranging from the shoreline to approximately 1,180 mi (1,900 km) from the shoreline of VAFB, onto and beyond the PMSR. The PMSR is 36,000-square-miles (93,200 km^2) in size and is located adjacent to Los Angeles, Ventura, Santa Barbara, and San Luis Obispo Counties along the Pacific Coast of Southern California. PMSR includes controlled sea and associated airspace.

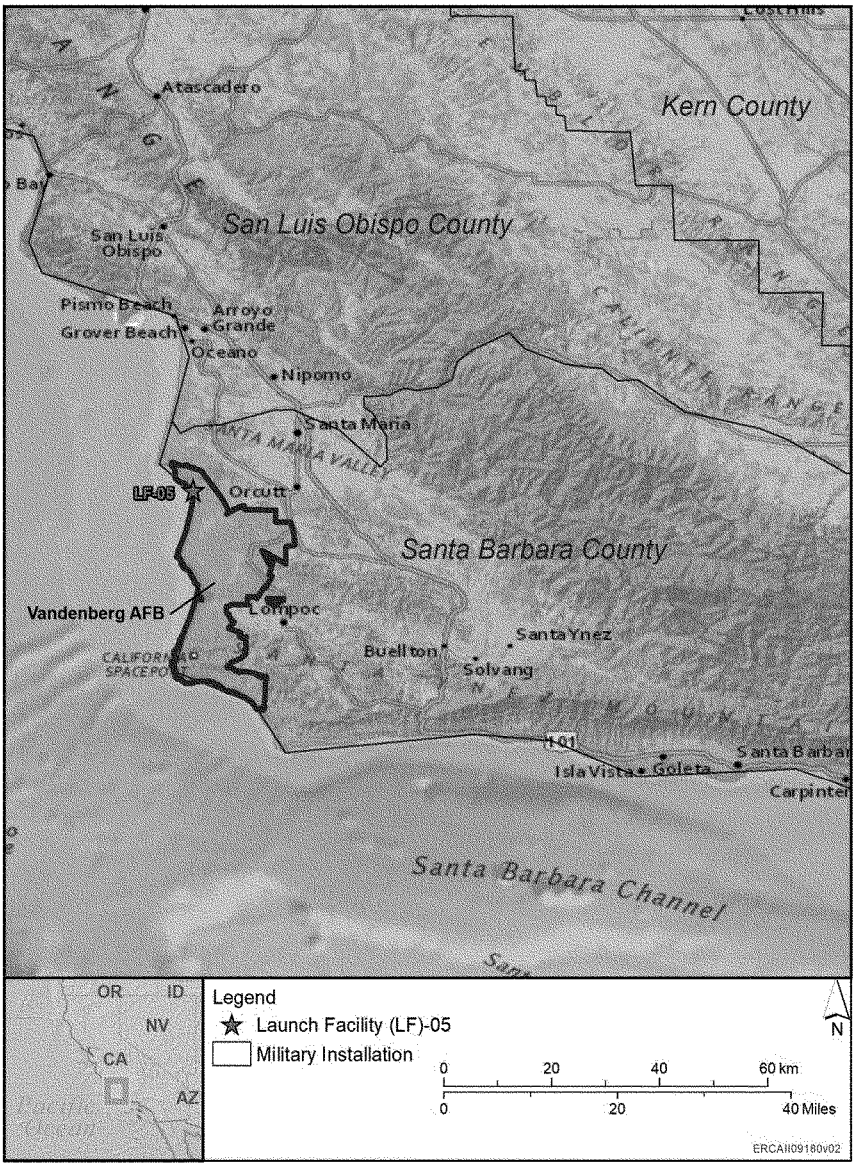

Figure 1. Vandenberg Air Force Base and Location of LF-05

Detailed Description of Specific Activity

ERCA II testing consists of 77 test events that would be conducted over 51 days within a 24-month period starting in the late calendar year 2023 and continuing into calendar year 2025 (Table 1). In addition to the projectiles, there are components of the projectiles that would land in the water at varying distances from LF–05. Three types of projectiles would be tested. The majority would be the Mass Simulant (Projectile A). Two other projectiles are the Terminal Flight Body Pre-Programmed Maneuver (PPM) Projectile (Projectile B) and the Boost Demo, Capture Demo, and Final Demo projectile (Projectile C). Major components of the artillery system include the cannon, gun mount, artillery projectile, and propelling charges; these components would be sited at the existing deactivated LF–05 site on VAFB. The proposed activities would include testing ERCA II by firing non-explosive projectiles over the Pacific Ocean at distances ranging from the shoreline to approximately 1,180 mi (1,900 km) from the shoreline of VAFB onto and beyond the PMSR.

TABLE 1—ERCA II TEST SCHEDULE

Test event	Test schedule	Projectile type	Number of tests	Number of test event days
Weapon Strength of Design	4QCY23 (4th Quarter, Calendar Year 2023)	A	35	30
Pre-Programmed Maneuver	2QCY24	A	3	3
		B	3	

TABLE 1—ERCA II TEST SCHEDULE—Continued

Test event	Test schedule	Projectile type	Number of tests	Number of test event days
Boost Demo	2QCY24	A	6	6
		C	6	
Capture Test	1QCY25	A	6	6
		C	6	
Final Demo	2QCY25	A	6	6
		C	6	
Total			77	51

There would be a total of 35 Weapons Strength of Design (WSD) test events over the course of 30 test days with a maximum of two to three mass simulant (Projectile A) test firings per day. There would be three PPM test days over a 2-week period. For each PPM test day, there would be one mass simulant (Projectile A) fired to confirm instrumentation is working and one PPM configuration (Projectile B) fired. Each of the Boost Demo, Capture Test, and Final Demo test events would involve 6 days of testing over a 2 week period. For each test day, there would be one mass simulant (Projectile A) fired to confirm instrumentation and one Boost Demo, Capture Test, or Final Demo configuration (Projectile C) fired.

In addition to the projectiles, there are components of the projectiles that would land in the water. With the exception of the WSD tests, all other tests include a ''pusher plate'' (having an approximate 12 inches [in.] diameter) that exits the muzzle along with the rest of the projectile and will splash down in the ocean. There is a chance that during PPM testing, sabot petals (5 in. x 5 in. x 45 in. and made of either aluminum or a carbon fiber composite) that fall from the projectile may fall into nearshore waters from the shoreline to approximately 1,150 feet (ft) (350 m) from shore.

Figure 1–2 through Figure 1–7 in the Navy's application (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*) show the potential impact or splash-down areas where the projectile and component parts for each test event are likely to fall. The potential splash-down area associated with Projectile A is mostly within 3 nautical miles (NM) from shore (Figure 1–2). During the PPM test (using Projectile B), the splash-down area is defined by the longer range and estimated dispersal area of the pusher plate, sabot petals, and the terminal flight body, which would splash down at different locations along the projectile flightpath (Figure 1–3, Figure 1–4, and Figure 1–5 in the application). For the Boost Demo, Capture Test, and Final Demo (using Projectile C), the potential splash-down area associated with the pusher plate is shown in Figure 1–7 in the application, and the potential splash-down area for all other component parts are shown in Figure 1–6 in the application.

Characteristics of the debris, such as the size, weight, and composition of materials associated with each test, will determine the potential for debris recovery. The three projectiles and their physical characteristics are provided in Table 1–1 in the application.

The weapon would fire all projectiles due west from the established gun position on the LF–05 site at VAFB (Figure 1–8 in the application). No nighttime tests would be conducted. The flightpath of the projectiles would transit within a narrow corridor into the PMSR (approximately 3 NM from the VAFB shoreline), with impact sites ranging from 3 NM offshore through the extent of the PMSR and beyond (Figure 1–2, Figure 1–3, and Figure 1–6 in the application). However, only Projectile C, used in the Final Demo test, would impact beyond the PMSR, and of the six Final Demo tests, only two the projectiles would impact beyond the PMSR (Figure 1–6 in the application). The impact site would be monitored as part of the testing and include video impact scoring. Off-range DoD assets would participate in later scheduled test events and include the Pacific Tracker, RG–4 Global Hawks or MQ–9 Reapers, and Wave Gliders.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species).*

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. SARs (*e.g.,* Carretta *et al.*, 2021a). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2020 U.S. Pacific SARs (Carretta *et al.*, 2021a) and 2021 draft Pacific and

Alaska SARs (Carretta *et al.*, 2021b, Muto *et al.*, 2021) available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.*

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA THAT MAY BE AFFECTED BY THE PROPOSED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (n/a, 233,515, 2014).	14,011	>320
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	-, -, N	43,201 (43,201, 2017)	2,592	112
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardsi*	California	-, -, N	30,968 (N/A, 27,348, 2012).	1,641	43
Northern Elephant seal	*Mirounga angustirostris*	California Breeding	-, -, N	187,386 (N/A, 85,369, 2013).	5,122	13.7

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

As indicated above, all four pinniped species (with four managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. Additional pinniped species and numerous cetacean species are also known to inhabit the waters near VAFB. The Guadalupe fur seal can be expected to occur in both deeper waters of the open ocean and coastal waters within the ERCA II Project Area. Satellite tracking data from Guadalupe fur seals tagged at Guadalupe Island have demonstrated movements into the offshore waters between 50 and 300 km from the U.S. West Coast (Norris *et al.* 2015; Norris 2017b, 2017a; Norris & Elorriaga-Verplancken 2020). Based on that data, the seals could occur in both deeper waters of the open ocean and coastal waters within the ERCA II Project Area. However, Guadalupe fur seals have not been observed at any VAFB haulout locations (U.S. Air Force 2020; Evans 2020) and are not expected to be within the area exposed to in-air noise levels that may cause behavioral affects. The northern fur seal could occur in the ERCA II Project Area. Migrating seals and those along the U.S. West Coast are typically found over the edge of the continental shelf and slope (Kenyon & Wilke 1953; Sterling & Ream 2004; Gentry 2009; Adams *et al.* 2014). Northern fur seals have not been observed at any VAFB haulout location (National Marine Fisheries Service 2020b) and also are not expected to be within the area exposed to in-air noise levels that may cause behavioral affects. Given this information take was not requested by the DAF and is not proposed by NMFS for Guadalupe fur seals and Northern fur seals and these species will not be discussed further.

The in-air noise created by the cannon firing and the supersonic flight of the projectile was analyzed by DAF for the potential transfer of sound energy through the air-water interface, resulting in underwater noise that could affect cetaceans in the Project Area. However, the potential for in-air noise to have any effect on at-sea marine mammals is extremely low. We have reviewed DAF's analysis and conclusions, and concur. Cetaceans spend their entire lives in the water and spend most of their time (>90 percent for most species) entirely submerged below the surface. When at the surface, cetacean bodies are almost entirely below the water's surface, with only the blowhole exposed to allow breathing. This minimizes in-air noise exposure, both natural and anthropogenic, essentially 100 percent of the time, because their ears are nearly always below the water's surface. Furthermore, due to the elevation of the LF–05 site approximately 95 ft. above sea level and the firing angle of the cannon upward and away from the water, the majority of the overpressure from the cannon blast and the sonic boom generated by the projectile would strike the water's surface at angles greater than 14 degrees, and, therefore, the majority of in-air acoustic energy would not be transmitted underwater. Since the majority of the pressure generated by an in-air detonation is reflected at the water's surface and remains in the air, peak pressure levels from the cannon blast and sonic boom from the projectile measured underwater are not likely to result in sound levels that would exceed marine mammal harassment thresholds underwater in the ERCA II Project Area.

The DAF also analyzed the potential for a projectile or a component of a projectile to strike a marine mammal in one of the test-specific splash-down areas. The main variables used in the probability estimates include projectile and component dimensions, number of projectiles, size of the splash-down area, marine mammal presence and density within each splash-down area, season, and size (length and width) of representative adult marine mammals. The results of the probability calculations presented in Appendix A of the application show that, with a reasonably high degree of certainty due to the conservative assumptions made, marine mammals are highly unlikely to be struck by the projectiles or components from ERCA II testing. Given this information, the DAF and NMFS have determined that strikes from projectiles as well as underwater noise associated with cannon blasts and sonic booms would have a discountable effect on cetaceans in the ERCA II Project Area.

Biologically Important Areas (BIAs) include areas of known importance for reproduction, feeding, or migration, or areas where small and resident populations are known to occur (Van

Parijs, 2015). An interactive map of the BIAs may be found here: *https://cetsound.noaa.gov/biologically-important-area-map.* There are three BIAs off the West Coast of the continental United States with the potential to overlap portions of the PMSR. These include a designated blue whale feeding BIA from June to October, a humpback whale feeding BIA from April to November, and a gray whale migratory BIA from January to July and then from October to December. However, and as stated previously, neither strikes from projectiles nor underwater noise associated with cannon blasts and sonic booms are likely to impact these cetacean species and associated BIAs.

California Sea Lion

The California sea lion occurs in the eastern north Pacific from Puerto Vallarta, Mexico, through the Gulf of California and north along the west coast of North America to the Gulf of Alaska (Barlow *et al.,* 2008; DeLong *et al.,* 2017b; Jefferson *et al.,* 2008). Typically, during the summer, California sea lions congregate near rookery islands and specific open-water areas. The primary rookeries off the coast of the United States are on San Nicolas (SNI), San Miguel, Santa Barbara, and San Clemente Islands (Le Boeuf & Bonnell 1980; Lowry *et al.,* 1992; Carretta *et al.,* 2000; Lowry & Forney 2005; Lowry *et al.,* 2017). Haulout sites are also found on Anacapa Island, Richardson Rock, Santa Catalina Island, Santa Cruz Island, and Santa Rosa Island in the Southern California Bight (Le Boeuf 2002; Lowry *et al.,* 2017). In the nonbreeding season, beginning in late summer, adult and subadult males migrate northward along the coast of California to Washington and return south the following spring (Laake, 2017; Lowry & Forney, 2005). Females and juveniles also disperse somewhat but tend to stay in the Southern California area, although north and west of the Channel Islands (Lowry & Forney, 2005; Melin & DeLong, 2000; Thomas *et al.,* 2010).

California sea lions can also be found in California open ocean and coastal waters (Barlow *et al.,* 2008; Jefferson *et al.,* 2008). Animals are usually found in waters over the continental shelf and slope; however, they are also known to occupy locations far offshore in deep, oceanic waters, such as Guadalupe Island and Alijos Rocks off Baja California (Jefferson *et al.,* 2008; Melin *et al.,* 2008; Urrutia & Dziendzielewski, 2012; Zavala-Gonzalez & Mellink, 2000). California sea lions are the most frequently sighted pinnipeds offshore of Southern California during the spring, and peak abundance is during the May through August breeding season (Green *et al.,* 1992; Keiper *et al.,* 2005; Lowry *et al.,* 2017).

California sea lions haul out at sites in the southern portion of VAFB, which are located more than 20 mi. (32 km) south of LF–05, outside the area that would be impacted by any proposed activities. They have not been observed at any northern VAFB haulout locations, except for rare individuals affected by domoic acid poisoning (U.S. Air Force 2020; Evans 2020). In 2019 a significant die-off of California sea lions, presumed to be caused by domoic acid toxicity associated with red tide algal blooms, was noted—this mortality event included most of Southern and Central California and included more than 80 deceased California sea lions observed on VAFB beaches (U.S. Air Force 2020; Evans 2020). There is no known successful breeding of this species on VAFB. Approximately 3.2 mi. (5.9 km) north of LF–05 and beyond the VAFB boundary but within the Project Area, California sea lions have been observed at Lion Rock during the three most recent aerial surveys (2013, 2016, 2017) performed by NMFS (National Marine Fisheries Service 2020b).

Steller Sea Lion

Steller sea lions range along the north Pacific from northern Japan to California (Perrin *et al.,* 2009), with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands (Muto *et al.,* 2020). There have also been reports of Steller sea lions in waters off Mexico as far south as the various islands off the port of Manzanillo in Colima, Mexico (Gallo-Reynoso *et al.,* 2020). The Eastern U.S. stock (or DPS) of Steller sea lion is defined as the population occurring east of 144° W longitude. The locations and distribution of the Eastern population's breeding sites along the U.S. Pacific coast have shifted northward, with fewer breeding sites in Southern California and more sites established in Washington and Southeast Alaska (Pitcher *et al.,* 2007; Wiles 2015). San Miguel Island and Santa Rosa Island were, in the past, the southernmost rookeries and haulouts for the Steller sea lions, but their range contracted northward in the 20th century, and now Año Nuevo Island off central California is currently the southernmost rookery. Steller sea lions pups were known to be born at San Miguel Island up until 1981 (Pitcher *et al.,* 2007; National Marine Fisheries Service 2008; Muto *et al.,* 2020), and so, as the population continues to increase, it is anticipated that the Steller sea lions may re-establish a breeding colony on San Miguel Island in the future. In the Channel Islands and vicinity and despite the species' general absence from the area, a consistent but small number of Steller sea lions (one to two individuals at a time) have been sighted in recent years. Approximately one to two adult and subadult male Steller sea lions have been seen hauled out at San Miguel Island each year during the fall and winter over the last decade, and adult and subadult males have occasionally been seen on rocks north of Northwest Point at San Miguel Island during the part of the summer in the past few years (Delong 2019). In 2011, a vagrant Steller sea lion was observed hauled out at the Point Loma Space and Naval Warfare Systems Command facility in San Diego Bay, and a vagrant individual was observed in the water at the entrance channel during the monitoring of a pile driving project in 2015 (U.S. Department of the Navy 2015). Aerial surveys for pinnipeds in the Channel Islands from 2011 to 2015 encountered a single Steller sea lion at SNI in 2013 (Lowry *et al.,* 2017). Additional sightings have included a single male that was seen hauled out on an oil production structure off Long Beach during the winter of 2015 and 2016, a Steller observed in 2018 hauled out on a buoy outside Ventura Harbor, and a lone adult female who gave birth to and reared a pup on San Miguel Island in the summer of 2017 (Delong 2019).

In April and May 2012 Steller sea lions were observed at VAFB which was the first time this species had been reported at the Base over the past two decades. Since 2012, Steller sea lions have been observed occasionally in routine monthly surveys, with as many as 16 individuals recorded. In 2019, up to four Steller sea lions were observed on south VAFB during monthly marine mammal counts (U.S. Air Force 2020), and none have been observed during monthly counts in 2020 (U.S. Air Force In Prep.). Note that these locations are more than 20 mi. (32 km) south of LF–05 and are not within an area that would be impacted by any proposed activities. While flying to VAFB from Santa Maria for an unrelated project, contract biologists observed and photographed three Steller sea lions at Lion Rock in October 2017 (Ball 2017). This offshore rock haulout site is within an area exposed to in-air noise levels that may cause behavioral affects to pinnipeds at that haulout.

Harbor Seal

The harbor seal is one of the most widely distributed seals, found in nearly

all temperate coastal waters of the northern hemisphere (Jefferson *et al.,* 2008). Harbor seals are generally not present in the deep waters of the open ocean. Harbor seals, while primarily aquatic, also use the coastal terrestrial environment, where they haul out of the water periodically. Harbor seals are a coastal species, rarely found more than 20 km from shore, and frequently occupying bays, estuaries, and inlets (Baird, 2001; Harvey & Goley, 2011; Jefferson *et al.,* 2014)

Ideal harbor seal habitat includes suitable haulout sites, shelter from high surf during the breeding periods, and sufficient food near haulout sites to sustain the population throughout the year. Haulout sites vary but include intertidal and subtidal rock outcrops, sandbars, sandy beaches, estuaries, and even peat banks in salt marshes (Burns, 2009; Gilbert & Guldager, 1998; Wilson, 1978). Harbor seals generally haul out in greatest numbers at low tides and during the afternoon, when it is usually warmest. The period from late May to early June corresponds with the peak molt season when the maximum number of harbor seals are onshore (Lowry *et al.,* 2017).

Harbor seals use haulouts along the shoreline at VAFB. Most haulout sites on VAFB are located on south VAFB, more than 20 mi. (32 km) south of LF–05 and are not within an area that would be impacted by any proposed activities. On north VAFB, there are two haulout locations near LF–05: Lion's Head is 0.45 mi. (0.72 km) northwest and Little Sal is 2.15 mi. (3.45 km) northwest from LF–05. The Purisima Point haulout is 7.43 mi. (11.95 km) southwest of LF–05 and is located outside the area that would be impacted by any proposed activities. During monthly pinniped counts at haulouts during 2019, VAFB observed a maximum of 10 harbor seals at Little Sal and a maximum of 9 harbor seals at Lion's Head (U.S. Air Force 2020). As of November 2020, a maximum of six harbor seals have been observed at Little Sal, and a maximum of four harbor seals have been observed at Lion's head during the 2020 monthly counts (U.S. Air Force In Prep.).

Northern Elephant Seal

There are two distinct populations of northern elephant seals: One that breeds in Baja California, Mexico; and a population that breeds in California (Garcia-Aguilar *et al.,* 2018). The northern elephant seals in the ERCA II Project Area are from the California Breeding stock, although elephant seals from Baja Mexico frequently migrate through the ERCA II Project Area (Aurioles-Gamboa & Camacho-Rios 2007; Carretta *et al.,* 2017; Carretta *et al.,* 2020). Northern elephant seals spend little time nearshore and migrate four times a year as they travel to and from breeding/pupping and molting areas, spending more than 80 percent of their annual cycle at sea (Robinson *et al.,* 2012; Lowry *et al.,* 2014; Lowry *et al.,* 2017; Carretta *et al.,* 2020). Peak abundance in California is during the January–February breeding season and during the time when adults return to molt from April to July (Lowry *et al.,* 2014; Lowry *et al.,* 2017).

Although northern elephant seals haul out at south VAFB locations, they were not observed at north VAFB haul outs in 2019 (U.S. Air Force 2020) or in 2020 (U.S. Air Force In Prep.) Northern elephant seal occurrence on VAFB has become more frequent over the past decade (U.S. Air Force 2020) and northern elephant seals may begin to use areas where they have not previously been observed. Breeding has been observed on south VAFB since 2017 (Evans 2020).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999). To reflect this, Southall *et al.,* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). A functional group for pinnipeds exposed to sounds out of water was established with a hearing range shown in Table 3. This is based on behavioral measurements of hearing for several pinniped species.

TABLE 3—MARINE MAMMAL FUNCTIONAL HEARING GROUP FOR PINNIPEDS (IN AIR) AND ITS GENERALIZED HEARING RANGE

Hearing group	Generalized hearing range *
Pinnipeds (in air)	75 Hz to 30 kHz

* Southall *et al.,* 2007.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large

changes in sound pressure. For airborne sound pressure, the reference amplitude is usually 20 μPa and is expressed as dB re 20 μPa. The source level (SL) represents the SPL referenced at a distance of 1 m from the source while the received level is the SPL at the listener's position.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy contained within a pulse and considers both intensity and duration of exposure. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-p) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (pk-pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.,* 2007).

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* cannon fire, sonic booms, explosions, gunshots, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment. There are no non-pulsed sounds associated with the ERCA II Project that could result in harassment of marine mammals.

The effects of sounds on marine mammals are dependent on several factors, including the species, size, and behavior (feeding, nursing, resting, etc.) of the animal; the intensity and duration of the sound; and the sound propagation properties of the environment. Impacts to marine species can result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.,* 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of sounds on marine mammals. Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973).

Masking

Any man-made noise that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics and environmental sounds such as surf noise. The infrequent cannon fire and corresponding sonic booms, (77 events on 51 days over 2 calendar years) could cause masking, but it would be expected for no more than a very small fraction of the time during any single day. Occasional brief episodes of masking at VAFB would have no significant effects on the ability of pinnipeds to hear one another or to detect natural environmental sounds that may be relevant. Due to the expected sound levels of the activities proposed and the distance of the activity from marine mammal habitat, the effects of sounds from the proposed activities are unlikely to result in masking. Therefore, masking is not discussed further.

Temporary or Permanent Hearing Loss

Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. Received sound levels must far exceed the animal's hearing threshold for there to be any temporary hearing impairment or temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received levels must be even higher for there to be risk of permanent hearing impairment, or permanent threshold shift (PTS). Although it is possible that some pinnipeds may incur TTS during cannon fire and sonic booms from ERCA II testing, hearing impairment has not been measured for pinniped species exposed to these combined sound sources. Auditory brainstem response *(i.e.,* hearing assessment using measurements of electrical responses of the brain) was used to demonstrate that harbor seals did not exhibit loss in hearing sensitivity following launches of large rockets with sonic booms at VAFB (Thorson *et al.,* 1999; Thorson *et al.,* 1998). However, the hearing tests did not begin until at least 45 minutes after the launch; therefore, harbor seals may have incurred TTS which was undetectable by the time testing was begun. There was no sign of PTS in any of the harbor seals tested (Thorson *et al.,* 1999; Thorson *et al.,* 1998).

In general, if any TTS were to occur to pinnipeds, it is expected to be mild and reversible. It is possible that some artillery fire as measured very close to the firing location may exceed the permanent threshold shift (PTS) criteria, but it is not expected that any pinnipeds would be close enough to the cannons to be exposed to sounds strong enough to cause PTS. Due to the expected sound levels of the activities proposed and the distance of the activity from marine mammal habitat, the effects of sounds from the proposed activities are unlikely to result in PTS and therefore, PTS is not discussed further.

Non-Auditory Physical or Physiological Effects

If noise-induced stress does occur in marine mammals, it is expected to occur primarily in those exposed to chronic or frequent noise. It is very unlikely that it would occur in animals, specifically California sea lions, Steller sea lions,

harbor seals, and northern elephant seals, exposed to only a few very brief cannon fire and accompanying sonic booms over the course of 2 years. Due to the expected sound levels of the activities proposed and the distance of the activity from marine mammal habitat, the effects of sounds from the proposed activities are unlikely to result in non-auditory physical or physiological responses and are not discussed further in this section.

Disturbance Reactions

Cannon fire and sonic booms are characterized by sudden onset of sound, moderate to high peak sound levels, and short sound duration. Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Behavioral responses to sound are highly variable and context-specific and reactions, if any, depend on species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day, and many other factors (Richardson *et al.,* 1995; Southall *et al.,* 2007). Pinnipeds may be exposed to airborne sounds that have the potential to result in behavioral harassment, depending on an animal's distance from the cannon fire and sonic booms. Sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as temporarily abandoning their habitat. The onset of noise can result in temporary, short-term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include: Reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior; avoidance of areas where sound sources are located; and/or flight responses (Richardson *et al.,* 1995).

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could potentially be biologically significant if the change affects growth, survival, or reproduction. The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

While there are no data on pinniped behavioral impacts associated with cannon fire and sonic booms, the results from studies at beaches exposed to acoustic disturbance arising from missile launches and associated sonic booms at VAFB and SNI are highly variable (Holst *et al.* 2005, Ugoretz and Greene Jr. 2012). The DAF has also monitored pinniped responses to rocket launches at the Northern Channel Islands (NCI) during numerous launches over the past two decades. Monitoring data has consistently shown that reactions among pinnipeds to sonic booms vary between species, with harbor seals typically responding at the highest rates, followed by California sea lions, with northern elephant seals generally being much less responsive. Because Steller sea lions occur in the project area relatively infrequently, no data has been recorded on their reactions to sonic booms. Northern elephant seals generally exhibit no reaction at all, except perhaps a heads-up response or some stirring, especially if sea lions in the same area or mingled with the elephant seals react strongly to the boom. Post-launch monitoring generally reveals a return to normal patterns within minutes or up to an hour or two of each launch, regardless of species.

Responsiveness also varies with time of year and age class, with juvenile pinnipeds being more likely to react by leaving the haulout site. The probability and type of behavioral response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. For example, in some cases, harbor seals have been found to be more responsive during the pupping/breeding season (Holst *et al.,* 2005a; Holst *et al.,* 2008) while in others, mothers and pups seem to react less to launches than lone individuals (Ugoretz and Greene Jr. 2012), and California sea lions seem to be consistently less responsive during the pupping season (Holst *et al.,* 2010; Holst *et al.,* 2005a; Holst *et al.,* 2008; Holst *et al.,* 2011; Holst *et al.,* 2005b; Ugoretz and Greene Jr. 2012). Though pup abandonment could theoretically result from these reactions, site-specific monitoring data indicate that pup abandonment is not likely to occur as a result of the specified activity because it has not been previously observed. While the reactions are variable, and can involve abrupt movements by some individuals, biological impacts of these responses appear to be limited.

Anticipated Effects on Marine Mammal Habitat

Impacts on marine mammal habitat are part of the consideration in making a finding of negligible impact on the species and stocks of marine mammals. Habitat includes, but is not necessarily limited to, rookeries, mating grounds, feeding areas, and areas of similar significance. We do not anticipate that the proposed activities would result in any temporary or permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (*i.e.,* fish and invertebrates) since underwater sound levels are low. These low underwater sound levels are not expected to cause any impacts to prey species, including physical injury, behavioral disturbance, or survivability. Therefore, it is not expected that the test activities would impact feeding success of pinnipeds.

While it is anticipated that the proposed activity may result in marine mammals avoiding certain haulout areas in close proximity to LF–05 due to temporary ensonification of out-of-water habitat, this impact to habitat is temporary and reversible and was considered in further detail earlier in this document, as behavioral modification. No impacts are anticipated to prey species and in-water habitat frequented by pinnipeds. The main impact associated with the proposed activity will be temporarily elevated in-air noise levels and the associated direct effects on marine mammals, previously discussed in this notice.

Debris projectiles or materials associated with firing the projectiles are not expected to impact beaches. The DAF would recover all debris found on land in the vicinity of pinniped haulout sites. Dense debris falling into the water farther offshore, including the projectiles, would sink quickly to the seafloor in deep waters and would not be recovered. Debris would be distributed within the predicted splash-down areas rather than concentrated in a single location, and it is unlikely that

marine mammals would encounter the debris in the water column or in the benthic environment. None of the debris, which is primarily composed of metal, would negatively affect benthic habitat.

Overall, the proposed test activities are not expected to cause significant impacts or have permanent, adverse effects on pinniped habitats or on their foraging habitats and prey.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform NMFS' negligible impact analysis and determination.

Harassment is the only type of take expected to result from these activities. For this military readiness activity, the MMPA defines ''harassment'' as (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where the behavioral patterns are abandoned or significantly altered (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to airborne sounds from cannon fire and sonic booms. Based on the nature of the activity, Level A harassment and Level B harassment in the form of TTS are neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. Generally, for in-air sounds, NMFS predicts that harbor seals exposed above received levels of 90 dB re 20 µPa (rms) will be behaviorally harassed, and other pinnipeds will be harassed when exposed above 100 dB re 20 µPa (rms). However, more recent data suggest that pinnipeds will be harassed when exposure is above 100 dB SEL (unweighted) (*Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) Technical Report* (U.S. Department of the Navy, 2017)) as shown in Table 4. NMFS helped develop the Phase III criteria and previously used this threshold for the SNI, PMSR incidental harassment authorization (84 FR 28,462; June 19, 2019). Therefore, NMFS is using 100 dB re 20 µPa2s SEL (unweighted) here.

TABLE 4—BEHAVIORAL THRESHOLD FOR IMPULSIVE SOUND FOR PINNIPEDS

Species	Level B harassment by behavior disturbance threshold
All pinniped species (in-air).	100 dB re 20 µPa2s SEL (unweighted).

Each time the ERCA II cannon is fired it would generate blast noise from the cannon firing and a nearly simultaneous sonic boom from the projectile as it travels along its flight path. The blast noise can be described as an overpressure, and would be highest in the immediate vicinity of the cannon and dissipate with distance from the LF–05 site. Peak sound pressure level (SPL) from the blast is predicted to reach 159 decibels related to 20 micropascals dB (re 20 µPa) on the beach due west of the LF–05 site (See Figure 6–1 in application). As the sound propagates farther offshore and away from the cannon, the peak SPL decreases, such that SPL would be less than 140 dB approximately 1 km west of the LF–05 site and less than 135 dB 2 km west of the site. The projectile generates a sonic boom, another high-energy impulsive sound or overpressure. The sound from the cannon fire and blast and the sonic boom would reach the beach nearly simultaneously, and the two sounds would be indistinguishable to pinnipeds on the beach or just offshore.

TABLE 5—TTS/PTS IN-AIR THRESHOLDS FOR PINNIPEDS IN-AIR

Group	Impulsive			
	TTS threshold SEL (weighted)	TTS threshold Peak SPL (unweighted)	PTS threshold SEL (weighted)	PTS threshold Peak SPL (unweighted)
All other Pinnipeds	146	170	161	176
Harbor seals	123	155	138	161

Modeling predicts that the SPL from the sonic boom would reach 21 pounds per square foot (psf) (equivalent to 153.6 dB re 20 µPa) on the beach due west of the LF–05 site (Figure 6–2). Assuming that the sound from the two acoustic events, the blast from the cannon and the sonic boom from by the projectile, arrives on the beach at the same time, the sound experienced by a pinniped on the beach would be more intense than would be experienced from either source independently. Because SPLs are expressed in decibels, which is based on a logarithmic scale, the SPLs cannot simply be summed. Instead, the SPLs must first be converted from decibels to units of Pascals (Pa) before they are

summed, and then the total SPL can be converted back to decibels for comparison with the marine mammal thresholds. The formula used to calculate the total SPL is dependent on the square of the SPLs divided by a reference pressure (*e.g.,* 20 dB µPa), making the summation less intuitive. Using the equation below, where p_1 = 1,782.5 Pa (equivalent to 159 dB) and p_2 = 957.6 Pa (equivalent to 153.6 dB), the total SPL is 160.1 dB re 20 µPa.

$$Total\ SPL_{dB} = 10 * log_{10}\left(\left(\frac{p_1}{p_0}\right)^2 + \left(\frac{p_2}{p_0}\right)^2\right)$$

The in-air SPL generated by the combined cannon blast and sonic boom (160.1 dB re 20 µPa) is likely only to exceed the TTS threshold (155 dB re 20 µPa) shown in Table 5 onshore directly west of LF–05, between the site and the shoreline. The 155 dB re 20 µPa threshold only applies to harbor seals. The TTS threshold for all other pinnipeds is 170 dB re 20 µPa as shown in Table 5 which is well above calculated in-air sound levels. This area consists of approximately 0.15 km of rocky shoreline and 0.20 km of narrow sandy beach, with an approximate maximum of 150 feet of dry sand at low tides, comprising the northern tip of Minuteman Beach. Three pinniped species (California sea lion, northern elephant seal, and Pacific harbor seal) could potentially utilize this location. However, observations of live pinnipeds on Minuteman Beach are very infrequent and have been limited to only California sea lions, and appear coincident with elevated concentrations of domoic acid (red tide) in nearshore waters (Evans 2020). Harbor seals have never been observed at this location. Because of their rare occurrence on Minuteman Beach and the lack of documented use of the coastal strand area between LF–05 and Minuteman Beach, it is very unlikely that any marine mammals, including harbor seals, would be present in that portion of the Project Area. In summary, and based on this analysis, TTS effects would be very unlikely for harbor seals and discountable for all other pinniped species. In addition, no PTS or other direct injury to pinnipeds is anticipated from in-air noise caused by ERCA II testing activities.

The nearest pinniped haulout from LF–05 is Lion's Head, which is approximately 0.5 km distant and is used by harbor seals. California sea lions could also use this location but have not been observed in the past 6 years of monthly counts performed by the DAF (U.S. Air Force 2020; Evans 2020). The maximum in-air SPL received at Lion's Head from the cannon blast is predicted to be 148 dB re 20 µPa (See Figure 6–1 in application), and the SPL from the sonic boom is predicted to be 8.5 psf (146.2 dB re 20 µPa; Figure 6–2 in application). The combined SPL received on the beach at Lion's Head, assuming noise from both sources arrived simultaneously, would be 150.2 dB re 20 µPa (calculated as described in the previous section). This total SPL is less than the TTS threshold for all pinniped hearing groups.

Marine Mammal Occurrence and Take Estimation

To conservatively estimate the number of pinnipeds that would potentially be exposed to noise levels above the Level B harassment behavioral threshold during test events, the analysis considered the maximum number of pinnipeds observed at haulouts within the predicted 100 dB re 20 µPa²sec or greater SEL. The furthest haulout within this area is Lion Rock, predicted to receive an SEL of 130 dB re 20 µPa²sec, which exceeds the 100 dB re 20 µPa²sec threshold for behavioral reactions (Figure 6–3 in application). Therefore, pinnipeds observed at the Lion Rock haulout were included to estimate the numbers of pinnipeds exposed during each test event day. During the WSD test event, the cannon will be fired multiple times per day. Because the analysis assumes all hauled-out pinnipeds would react to the initial noise by either an alert reaction, reorienting their position on land, or leaving the haulout and returning to the water, multiple cannon blasts in succession would result in only one take for each individual on a given day. A total of 35 tests would occur during the WSD test event which uses only Projectile A. Ten tests would occur during the weeks 1 and 2 and the remaining 25 tests would occur over the course of 13 test days during weeks 3 through 5. For the PPM test event one Projectile A and one Projectile B would be fired on each of 3 days during a 2-week period. Similarly, for each of the Boost Demo, Capture Test, and Final Demo test events, one Projectile A and one Projectile C would be fired on each of 6 test days over a 2-week period. Over the entire testing period (from calendar year 2023 through 2025) there would be a total of 51 days when test events would produce in-air noise at levels that could potentially result in take of pinnipeds by Level B harassment.

Estimated take of California sea lions by Level B harassment was calculated by taking the highest number of individuals (n=883) observed on a single day during the three most recent aerial surveys (2013, 2016, 2017) of Lion Rock multiplied by the number of days (39 for year 1 and 12 for year 2) over which each test event would occur. Surveys were performed by NMFS (NMFS 2020b). The total number of exposures to in-air noise from the proposed testing would result in an estimated 34,437 takes by Level B harassment during Year 1 and 10,596 takes by Level B harassment during Year 2 (Table 6, Table 7). Therefore the DAF requested, and NMFS proposes to authorize, this amount of Level B harassment by behavioral disruption for the Year 1 and Year 2 IHAs, respectively.

The DAF estimated take by Level B harassment by assuming that the number of Steller sea lions (n=3) observed once at Lion Rock in October 2017 could occur during each day of testing. The total number of exposures to in-air noise from the proposed testing would result in an estimated 117 takes by Level B harassment in Year 1 and 36 takes by Level B harassment in Year 2. The DAF requested and NMFS proposes to authorize 117 takes during Year 1 and 36 takes during Year 2 by Level B harassment from behavioral disruption, as shown in Table 6 and Table 7.

Take of harbor seals was calculated by taking the highest number observed hauled out at Little Sal (n=10) and Lion's Head (n=9) during monthly counts in 2019 and 2020 (U.S. Air Force 2020, In Prep.), resulting in a total of 19 harbor seals for each test event. This resulted in an estimate of 741 takes in Year 1 and 228 takes in Year 2 by Level B harassment. Therefore, the DAF requested and NMFS proposes to authorize 741 takes during Year 1 and 228 takes during Year 2 by Level B harassment from behavioral disruption (Table 6, Table 7).

Northern elephant seals have not been observed hauled out at any locations

within the project area in which Level B harassment could occur. However, overall numbers have been increasing on VAFB over the past decade (U.S. Air Force 2020), and it is possible that northern elephant seals may begin to occupy areas where they have not previously been observed. The DAF, therefore, conservatively assumed that one northern elephant seal may be exposed to in-air noise resulting in behavioral disturbance during each test event. Therefore, NMFS proposes to authorize 39 takes during Year 1 and 12 takes during Year 2 by Level B harassment from behavioral disruption (Table 6, Table 7).

TABLE 6—ESTIMATED TAKES BY LEVEL B HARASSMENT BY TEST EVENT AND TEST SCHEDULE

Test dates	IHA Year 1 (4QCY23–2QCY24)			IHA Year 2 (1QCY25–2QCY25)	
Test event	WSD	PPM	Boost demo	Capture test	Final demo
California sea lion	26,490	2,649	5,298	5,298	5,298
Steller sea lion	90	9	18	18	18
Harbor seal	570	57	114	114	114
Northern elephant seal	30	3	6	6	6
All	27,180	2,718	5,436	5,436	5,436

TABLE 7—LEVEL B HARASSMENT TAKE ESTIMATES BY YEAR

Species	Estimated number of Level B harassment events Year 1	Estimated number of Level B harassment events Year 2
California Sea lion	34,437	10,596
Steller sea lion	117	36
Harbor seal	741	228
Northern elephant seal	39	12

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)). The NDAA for FY 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) and the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The DAF must employ PSOs at established monitoring locations as described in the Proposed Monitoring and Reporting section. PSOs must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions.

The DAF, when practicable, would perform ERCA II test activities when tides are greater than 1.0 foot (0.3 m). This is when haulouts tend to be unoccupied by pinnipeds and would reduce the number of exposures.

To prevent unauthorized take of marine mammals, test activities must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that

requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Monitoring and Recording

Protected Species Observers (PSOs) would commence monitoring at Lion's Head, Little Sal, northern end of Minuteman Beach (beach between Minuteman Beach parking area and LF–05), and Lion Rock at least 72 hours prior to ERCA II test events and continue until at least 48 hours after each event. PSO's would be stationed at locations offering the best possible view of individual haulout sites. During each daily monitoring effort, surveys (counts with binoculars and spotting scopes, if necessary) would be conducted hourly for 6 hours (6 counts per day) centered around the late morning or afternoon low tides as much as possible. Monitors will record species; number of animals hauled out; general behavior; presence of pups; age class; and gender. Environmental conditions will also be monitored including tide, wind speed, air temperature, and swell.

PSOs cannot be present to survey Little Sal and Lion's Head when live cannon fire is underway for safety purposes, therefore, video recording of pinnipeds would be conducted during live fire testing in order to record any reaction to the blast noise and sonic boom. Lion Rock is approximately 0.25 mi (0.4 km) from the closest observation location and only half of the offshore rock is visible from land so it may be monitored via drone rather than traditional survey methods (spotting scopes and binoculars). The DAF would prefer to use a drone so that the entire rock can be observed. However, if DAF is unable to secure necessary permits, protected species observers (PSOs) would use a spotting scope to observe reactions during test events as an alternative.

Reporting

Technical reports will be submitted to the NMFS' Office of Protected Resources within 90 days from the date that each IHA expires. This report will provide full documentation of methods, results, and interpretation pertaining to ERCA II testing activities covered under these proposed IHAs.

The DAF will submit reports that include:

- Summary of test activities (dates and times);
- Summary of mitigation and monitoring measures implemented;
- Number, species, and any other relevant information regarding marine mammals observed and estimated exposed/taken during activities;
- Description of the observed behaviors (in both presence and absence of test activities);
- Environmental conditions when observations were made including visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction; and
- Assessment of the implementation and effectiveness of mitigation and monitoring measures.

If a dead or seriously injured pinniped is found during post-firing monitoring, the incident must be reported to the NMFS Office of Protected Resources and NMFS West Coast Regional Stranding Coordinator immediately. In the unanticipated event that any cases of pinniped mortality are judged to result from ERCA II testing activities at any time during the period covered by these IHAs, this will be reported to NMFS and the West Coast Stranding Coordinator. The report must include the following information:

1. Time and date of the incident;
2. Description of the incident;
3. Environmental conditions (*e.g.,* wind speed and direction, cloud cover, and visibility);
4. Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;
5. Species identification or description of the animal(s) involved;
6. Fate of the animal(s); and
7. Photographs or video footage of the animal(s).

Testing activities must not resume until NMFS is able to review the circumstances of the prohibited take. If it is determined that the unauthorized take was caused by ERCA II activities, NMFS will work with the Holder to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The DAF may not resume their activities until notified by NMFS.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status

of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 6, given that the anticipated effects of this activity on these different marine mammal species are expected to be similar. Activities associated with the proposed activities, as outlined previously, have the potential to disturb or displace marine mammals.

The specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from airborne sounds associated with ERCA II cannon fire and accompanying sonic booms. Based on the best available information, including monitoring reports from similar activities (*i.e.,* missile launches and sonic booms) at VAFB and nearby launch facilities, behavioral responses will likely be limited to reactions such as alerting to the noise, with some animals possibly moving toward or entering the water, depending on the species and the intensity of the cannon fire and sonic booms. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in TTS or PTS. Thresholds for PTS are higher than modeled sound levels across the entirety of the Project Area, and thresholds would not be exceeded or significantly disrupt foraging behavior. Thus, even repeated instances of Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole.

If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Flushing of pinnipeds into the water has the potential to result in mother-pup separation, or could result in a stampede, either of which could potentially result in serious injury or mortality. However, even in the instances of pinnipeds being behaviorally disturbed by cannon fire and associated sonic booms at VAFB and nearby launch facilities no evidence has been presented of abnormal behavior, injuries or mortalities, or pup abandonment as a result of sonic booms. These findings came as a result of more than two decades of surveys at VAFB. Post missile-launch monitoring generally reveals a return to normal behavioral patterns within minutes up to an hour or two of each launch, regardless of species (SAIC 2012). Therefore, in-air sound associated with canon firing and associated sonic booms is not expected to impact reproductive rates or population levels of affected species.

We do not anticipate that the proposed activities would result in any temporary or permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (*i.e.,* fish and invertebrates) since underwater sound levels would not affect prey species.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No impacts to cetaceans are anticipated;
- No impacts in the form of TTS or PTS are expected or authorized;
- The anticipated incidences of Level B harassment are expected to consist of, at worst, temporary modifications in behavior (*i.e.,* short distance movements and occasional flushing into the water), which are not expected to adversely affect the fitness of any individuals or populations;
- The proposed activities are expected to result in no long-term changes in the use by pinnipeds of haulouts in the project area, based on over 20 years of monitoring data;
- No impacts to marine mammal habitat/prey are expected; and
- The expected efficacy of planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that for both the Year 1 IHA and the Year 2 IHA the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorizations

As a result of these preliminary determinations, NMFS proposes to issue two distinct and consecutive one-year IHAs to the Department of the Air Force for conducting Extended Range Cannon Artillery II testing at Vandenberg Air Force Base, California from October 1, 2023 to September 30, 2024 (Year 1) and from October 1, 2024 to September 30, 2025 (Year 2) provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Drafts of the proposed IHAs can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorizations, and any other aspect of this notice of proposed IHAs for the proposed ERCA II testing. We also request at this time comment on the potential renewal of these proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for these IHAs or subsequent Renewal IHAs.

On a case-by-case basis, NMFS may issue a one-time, 1 year Renewal IHA following notice to the public providing

an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

(1) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

(2) The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

(3) Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: January 3, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–00032 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB697]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Subcommittee of the Scientific and Statistical Committee (SSC) will hold an online meeting to review the 2021 groundfish stock assessment process and discuss process improvements for the next stock assessment cycle.

DATES: The online meeting will be held Tuesday, January 25, 2022, from 12:30 p.m. to 5:30 p.m., Pacific Standard Time (PST) or until business for the day is completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: John DeVore, Staff Officer, Pacific Council; telephone: (503) 820–2413.

SUPPLEMENTARY INFORMATION: Participants in the Pacific Council's 2021 groundfish stock assessment process will hold a meeting via webinar to review and evaluate the 2021 stock assessment review (STAR) process. The goal of the webinar is to solicit process improvements to recommend for future groundfish stock assessments and STAR panel reviews. Process recommendations will be provided to the Pacific Council at their March 2022 meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*; (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 3, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–00040 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2021–0033]

Deferred Subject Matter Eligibility Response Pilot Program

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is implementing a pilot program to evaluate the effects of permitting applicants to defer responding to subject matter eligibility (SME) rejections in certain patent applications. Under this pilot program, applicants may receive invitations to participate if their applications meet the criteria for the program as specified in this notice, including a criterion that the claims in the application necessitate rejections on SME and other patentability-related grounds. An applicant who accepts the invitation to participate in this pilot program must still file a reply to every Office action mailed in the application, but is permitted to defer responding to SME rejections until the earlier of final disposition of the application, or the withdrawal or obviation of all other outstanding rejections. This notice outlines the conditions, eligibility requirements, and guidelines of the pilot program.

DATES: Comments must be received by March 7, 2022 to ensure consideration.

Pilot Duration: Invitations to participate in the Deferred Subject Matter Eligibility Response (DSMER) Pilot Program will be mailed during the

period beginning on February 1, 2022, and ending on July 30, 2022. The USPTO may extend the pilot program (with or without modifications) or terminate it depending on the workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program. If the pilot program is extended or terminated, the USPTO will notify the public.

ADDRESSES: For reasons of Government efficiency, comments must be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* To submit comments via the portal, enter docket number PTO–P–2021–0033 on the homepage and click ''Search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice and click on the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in ADOBE® portable document format or MICROSOFT WORD® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal website (*www.regulations.gov*) for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: For questions or comments regarding this pilot program in general, please contact Nalini Mummalaneni, Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, USPTO, at 571–270–1647. Questions regarding a specific application should be directed to the Technology Center examining the application.

SUPPLEMENTARY INFORMATION: Patent examiners at the USPTO customarily practice compact prosecution when examining patent applications. See section 2103 of the Manual of Patent Examining Procedure (MPEP, Ninth Edition, Revision 10.2019). Under the principles of compact prosecution, as described in the MPEP, an examiner reviews each claim for compliance with every requirement for patentability in the initial review of the application, and identifies all the applicable grounds of rejection in the first Office action. See MPEP 2100 for a discussion of the requirements for patentability, including the SME, utility, inventorship, and double patenting requirements of 35 U.S.C. 101; the enablement, written description, and definiteness requirements of 35 U.S.C. 112; and the prior art-based novelty and non-obviousness requirements of 35 U.S.C. 102 and 35 U.S.C. 103, respectively. The applicant must then respond to every ground of rejection in the Office action in order to continue prosecution and avoid abandonment of the application. 37 CFR 1.111(b); MPEP 714.02.

On March 22, 2021, Senators Thom Tillis and Tom Cotton sent a letter to the Commissioner for Patents suggesting that the USPTO modify the compact prosecution process with respect to SME issues. This letter is available at *https://www.uspto.gov/patents/initiatives/patent-application-initiatives/deferred-subject-matter-eligibility-response.* In particular, the letter requested that the USPTO adopt a pilot program under which full prosecution of SME issues under 35 U.S.C. 101 is deferred until a patent application satisfies the other patentability conditions, and that the USPTO also determine ''whether this approach is more effective, and produces higher quality patents'' than the traditional compact prosecution approach.

In response to the Senators' requests, the USPTO is implementing the DSMER Pilot Program. Under this program, an applicant must still file a reply to every Office action mailed regarding a participating application, but is permitted to defer responding to SME rejections until the earlier of final disposition of the application, or the withdrawal or obviation of all other outstanding rejections. The DSMER Pilot Program thus deviates from traditional compact prosecution, because participating applicants may defer engaging with examiners on SME issues until after non-SME issues have been addressed.

This pilot program provides the USPTO with the opportunity to evaluate how deferred applicant responses to SME rejections affect examination efficiency and patent quality as compared to traditional compact prosecution practice. Because satisfaction of non-SME conditions for patentability (*e.g.,* novelty, non-obviousness, adequacy of disclosure, and definiteness) may resolve SME issues as well, the pilot program may result in improved examination efficiency and increased patent quality as compared to compact prosecution practice, particularly in certain technology areas.

I. Prospective Pilot Applications

The USPTO may identify an application as a prospective pilot application if it satisfies the following conditions during the invitation phase: (1) The application is assigned to a participating examiner, as explained in section I.A.; (2) the application meets the procedural criteria specified in section I.B.; and (3) the claims meet the patentability-related criteria specified in section I.C. Such identification will be made in the first Office action on the merits, which will include a form paragraph identifying the application as a prospective pilot application, inviting the applicant to participate, and informing the applicant about how to accept or decline the invitation. See section II for more information on the invitation process. The USPTO will not accept requests to have a particular application identified as a prospective pilot application.

A. Participating Examiners

This pilot program is open to primary examiners across the patent examining corps. While examiner participation is not mandatory, the USPTO will make efforts to ensure that a representative number of primary examiners are participating from each applicable Technology Center.

B. Procedural Criteria

1. Application Types

A prospective pilot application must be an original nonprovisional utility application filed under 35 U.S.C. 111(a) or an international application that has entered the national stage under 35 U.S.C. 371, and must not claim the benefit of the earlier filing date, under 35 U.S.C. 120 or 121, of any prior nonprovisional application. The application may claim the benefit of the earlier filing date, under 35 U.S.C. 120, 121, 365(c), or 386(c), of any prior international application or international design application designating the United States, and may claim priority, under 35 U.S.C. 119, 365(a), 365(b), 386(a), or 386(b), to any prior application filed in the United States or in a foreign country, including provisional applications, international applications, and international design applications that designate at least one country other than the United States. Plant and design applications do not qualify for participation in this pilot program because they are not governed by the SME requirements of 35 U.S.C. 101.

2. Application Status

Because this pilot program is being implemented to study how applicant deferrals of responses to SME rejections affect examination efficiency, applications that have been advanced out of turn (accorded special status) do not qualify for participation in this pilot. Thus, applications that have been accorded special status under 37 CFR 1.102, or via participation in initiatives or pilot programs that advance applications out of turn and/or provide fast-track examination (*e.g.,* the Collaborative Search Pilot Program or the COVID–19 Prioritized Examination Pilot Program), will not be invited to participate in this pilot program. Further, as a condition of entering this pilot program, an applicant must agree that they will not seek special status or expedited processing of a participating application until final disposition has been achieved in the application.

Applications participating in this pilot program may participate in initiatives that expedite processing after final disposition, for example, the Fast-Track Appeals Pilot Program. Applicants of participating applications may also request prioritized examination under 37 CFR 1.102(e)(2) in connection with the filing of a request for continued examination (RCE). Additionally, applications participating in this pilot program may take part in other USPTO initiatives or pilot programs that do not advance applications out of turn, including the After Final Consideration Pilot 2.0 (AFCP 2.0) Program, the Pre-Appeal Brief Conference Pilot Program, and the Quick Path Information Disclosure Statement (QPIDS) Program. For more information about after-final practice, please refer to section III.C below.

C. Patentability-Related Criteria

The claims of the prospective pilot application must raise both SME issues and non-SME issues that necessitate rejections, and the first Office action on the merits must make both SME and non-SME rejections. The inclusion of SME rejections in this action will ensure that the applicant has sufficient information on which to make an educated decision about whether to participate in the pilot program. This program does not require that any individual claim be the subject of both SME and non-SME rejections. For the purposes of this pilot program, an ''SME rejection'' is a rejection under 35 U.S.C. 101 for lack of SME, and includes both step 1 rejections, where the claim as a whole does not fall within a statutory category, and step 2B rejections, where the claim as a whole is directed to a judicial exception without also including additional limitations amounting to significantly more than the exception. See MPEP 2106.07 for a discussion of SME rejections. Additional information about patent SME and the USPTO's evaluation of this requirement is provided in MPEP 2106 *et seq.,* and at *www.uspto.gov/PatentEligibility.* A ''non-SME rejection'' is a rejection based on any other condition for patentability, such as, for example, utility or inventorship under 35 U.S.C. 101; enablement, written description, or definiteness under 35 U.S.C. 112; novelty under 35 U.S.C. 102; non-obviousness under 35 U.S.C. 103; or double patenting. See MPEP chapter 2100 for more information about these conditions for patentability.

II. Pilot Invitation and Election Process

A. Pilot Invitation

As explained in section I, participating examiners may invite the applicant of a prospective pilot application to participate in the pilot program by including a form paragraph in the first Office action on the merits. The form paragraph will identify the application as a prospective pilot application, invite the applicant to participate, and inform the applicant about how to accept or decline the invitation. For purposes of issuing an invitation to participate in this program, the term ''first Office action on the merits'' does not include actions containing only a requirement for restriction and/or election of species. A copy of the invitation form paragraph is available on the pilot program website at *https://www.uspto.gov/patents/initiatives/patent-application-initiatives/deferred-subject-matter-eligibility-response.*

B. Election by the Applicant

An applicant receiving an invitation to participate in the DSMER Pilot Program may elect to accept the invitation and participate in the program or to decline participation.

If an applicant wishes to participate in the program, they must file a properly completed request form PTO/SB/456 concurrently with a timely response to the first Office action on the merits. The request form must be signed, in accordance with 37 CFR 1.33(b), by a person having the authority to prosecute the application, and must be submitted via the USPTO's patent electronic filing systems (EFS-Web or Patent Center). Use of this form will help the Office to quickly identify applications participating in this pilot program and improve the data generated on the effectiveness of the program. The form is available on the pilot program website at *https://www.uspto.gov/patents/initiatives/patent-application-initiatives/deferred-subject-matter-eligibility-response.* If the form is properly completed and timely received in a prospective pilot application, the application will be entered into the pilot program, and further prosecution will proceed as detailed below in section III. Form PTO/SB/456 does not collect ''information'' as defined in 5 CFR 1320.3(h) and therefore is exempt from the Paperwork Reduction Act of 1995.

If the applicant does not timely file a properly completed PTO/SB/456, the application will not be entered into the program. In this case, the application will undergo the normal prosecution process as described in MPEP chapter 700, and the applicant must file a complete reply to the first Office action on the merits, as required by 37 CFR 1.111(b) and as described in MPEP 714.02.

Once an applicant has elected to participate in the pilot program, there is no provision for them to withdraw a participating application. However, applicants may, at any time, choose not to avail themselves of the program's benefit (the ability to defer responding to SME rejections in certain circumstances) and may voluntarily reply to any outstanding SME rejections. Such action does not remove the application from the pilot program or terminate the waiver for that application.

III. Pilot Procedure

A. Applicant Replies

Participation in this pilot program provides the applicant with a limited waiver of 37 CFR 1.111(b) with respect to SME rejections in the participating application, as set out below. Although the applicant must still file a reply to every Office action mailed in the participating application, the limited waiver permits the applicant to defer presenting arguments, evidence, or amendments in response to the SME rejection(s) until the earlier of final disposition of the participating application or the withdrawal or obviation of all other outstanding rejections. Other than this permitted deferral of responding to the SME rejection(s), the applicant's replies must be fully responsive to the Office action, as described in MPEP 714.02, and must be timely filed within the applicable period for reply, as extended under 37 CFR 1.136(a).

The phrase ''final disposition'' should be understood for a particular application as occurring upon the earliest of the: (1) Mailing of a notice of allowance, (2) mailing of a final Office action, (3) filing of a notice of appeal, (4) filing of an RCE, or (5) abandonment of the application. The phrase ''withdrawal or obviation of all other outstanding rejections'' refers to the situation in which a second or subsequent non-final Office action containing only the SME rejection(s) is mailed in a participating application, because the applicant has overcome, or the examiner has withdrawn, all the non-SME rejections that were previously made. Although such actions are not final dispositions, they are effective in terminating the limited waiver of 37 CFR 1.111(b) for that participating application. This termination is necessary because the applicant is required by 35 U.S.C. 132 and 133 to respond to Office actions in order to prevent abandonment of the application.

Prior to termination of the waiver (whether by final disposition or by the withdrawal or obviation of all other outstanding rejections), the applicant may defer responding to any particular SME rejection in a participating application. For example, if the applicant accepts the invitation to participate in the pilot program, in compliance with section II.B above, for an application having a first Office action on the merits setting forth a step 1 SME rejection, a step 2B SME rejection, and an anticipation rejection, an applicant may exercise any of the following options when filing a reply to the action:

- Respond only to the anticipation rejection and remain silent on the SME rejections, pursuant to the limited waiver of 37 CFR 1.111(b);
- Respond to the anticipation rejection and one of the SME rejections, and remain silent on the other SME rejection, pursuant to the limited waiver of 37 CFR 1.111(b); or
- Respond to all three rejections.

Any of these three replies will be considered as an adequate reply to the SME rejection(s) for purposes of evaluating whether the applicant has made a *bona fide* attempt to advance the application to final action.

Upon final disposition, or the withdrawal or obviation of all other outstanding rejections (which would normally occur in a final Office action but may, in some circumstances, occur in a second or subsequent non-final Office action), the limited waiver of 37 CFR 1.111(b) provided by this pilot program ends, and the applicant may no longer defer responding to any outstanding SME rejection(s). See section III.C below for more information on after-final practice.

In the event that circumstances require the USPTO to remove an application from this pilot program, the limited waiver of 37 CFR 1.111(b) ends, and the applicant may no longer defer responding to any outstanding SME rejection(s). Such circumstances may occur, for instance, if the application must be transferred upon the retirement of the original examiner. In the event of removal, the applicant will be notified that the application no longer qualifies for the pilot program.

B. Examiner Actions

An examiner's or applicant's participation in this pilot program does not alter the normal prosecution process, as described in MPEP chapter 700, except for the SME response deferral outlined above in section III.A. Thus, for example, interviews conducted in participating applications must be made of record, in accordance with the normal interview procedure (see MPEP 713), and the written statement of the substance of the interview must capture all matters discussed (including any SME rejection-related discussions) between the applicant and the examiner, in accordance with normal interview practice (see MPEP 713.04).

Even though the limited waiver of 37 CFR 1.111(b) permits the applicant to defer responding to an SME rejection, the examiner will consider whether the applicant's responses to other rejections (*e.g.,* amendments made in response to an obviousness or indefiniteness rejection) overcome the SME rejection(s) of record. In cases where the applicant's reply overcomes all outstanding rejections, including the SME rejection(s) set forth in the Office action, and the application is otherwise in condition for allowance, the examiner will issue a Notice of Allowance. If the examiner believes that the record of the prosecution as a whole does not make clear their reasons for allowing a claim or claims, the examiner may set forth such reasoning in the Notice of Allowance, as described in MPEP 1302.14. Issuance of a Notice of Allowance is a final disposition that concludes the limited waiver of 37 CFR 1.111(b) for that particular application.

In cases where the applicant's reply does not overcome all outstanding rejections, the examiner will issue a subsequent Office action setting forth all applicable rejections, including any applicable SME rejection(s), and addressing all amendments, arguments, and evidence provided by the applicant. In accordance with normal prosecution practice and as explained in MPEP 706.07(a), the subsequent action will typically be a final action, except in limited circumstances. Issuance of a final rejection is a final disposition that concludes the limited waiver of 37 CFR 1.111(b) for that particular application. If the subsequent Office action is a non-final action, and a non-SME rejection(s) remains outstanding, the applicant may continue deferring their response to any outstanding SME rejection(s) set forth in the subsequent Office action, as described above in section III.A. If the subsequent Office action is a non-final action, and there are no non-SME rejections outstanding, the limited waiver is terminated, and the applicant must respond to the outstanding SME rejection(s), as described above in section III.A.

C. After-Final and Appeal Practice

As stated earlier, a final disposition of the application ends the limited waiver of 37 CFR 1.111(b) provided by this pilot program. Thus, the applicant may not defer responding to any outstanding SME rejection(s) after final disposition (*e.g.,* after the mailing of a final Office action, filing of a notice of appeal, or filing of an RCE). If the applicant chooses to file an after-final response, it must be complete, in accordance with 37 CFR 1.111(b), and any amendment, affidavit, or other evidence submitted after a final Office action and prior to appeal must comply with 37 CFR 1.116. If the applicant chooses to file a Notice of Appeal, the application will be treated in accordance with the normal appeal procedure (see MPEP chapter 1200), and the applicant must present arguments with respect to each ground of rejection (including SME rejections) that is contested, pursuant to 37 CFR 41.37(c)(1)(iv). Applicants are cautioned that participation in this program is not, in itself, a good and sufficient reason why an amendment or evidence was not earlier presented under 37 CFR 1.116 or 41.33. See, *e.g.,* MPEP 714.12 and MPEP 1206 regarding amendments and other replies after final rejection or appeal.

If the applicant chooses to file an RCE, they must submit a complete response to the final Office action, including a response to any outstanding SME rejection(s), with the RCE as required by normal rules of practice.

Because abandonment is a final disposition, it also ends the limited waiver of 37 CFR 1.111(b) provided by this pilot program. Thus, if a participating application is abandoned, the applicant may not defer responding to any outstanding SME rejection(s) if

the application is later revived, even if the application was abandoned due to failure to respond to a non-final Office action. Accordingly, a grantable petition for revival of a participating application that is abandoned *must* be accompanied by a complete reply to any outstanding SME rejection(s) of record, in addition to the other requirements of such petitions under 37 CFR 1.137 and Office practice. Due to this particular response requirement, a petition for revival of a participating application may not be filed as an e-Petition and instead must be filed by: (1) Uploading the petition and accompanying papers using a USPTO electronic filing system (EFS-Web or Patent Center); (2) physical delivery to the USPTO by way of the United States Postal Service, another delivery service, or by hand delivery to the USPTO Customer Service Window; or (3) facsimile. More information about these delivery options is available at *www.uspto.gov/patents/apply/petitions/02-where-file-petitions-requests-and-related-inquiries-office.*

An application participating in this pilot program may participate in other USPTO initiatives after final disposition of the application if it satisfies the conditions of those other initiatives. Such initiatives include, for example, the AFCP 2.0 Program, the Fast-Track Appeals Pilot Program, the Fast-Track for COVID–19-Related Appeals Pilot Program, the Pre-Appeal Brief Conference Pilot Program, and the QPIDS Program. An application participating in this pilot program may also request special status or expedited processing in connection with the filing of an RCE (*e.g.,* prioritized examination under 37 CFR 1.102(e)(2)).

Andrew Hirshfeld,

Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2021–28473 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–16–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: EAC Federal Financial Report

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Request for public comment on standardized EAC Federal Financial Report (EAC–FFR) to be used for both interim and final financial reporting for all EAC grants.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the U.S. Election Assistance Commission (EAC) gives notice that it is requesting from the Office of Management and Budget (OMB) approval for the information collection EAC Federal Financial Report (EAC–FFR).

DATES: Comments must be received by 5 p.m. Eastern on Tuesday, March 8, 2022.

ADDRESSES: To view the proposed EAC–FFR format, see: *https://www.eac.gov/payments-and-grants/reporting.*

For information on the EAC–FFR, contact Kinza Ghaznavi, Office of Grants, Election Assistance Commission, *Grants@eac.gov.*

Written comments and recommendations for the proposed information collection should be sent directly to *Grants@eac.gov.*

All requests and submissions should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION: The EAC Office of Grants Management (EAC/OGM) is responsible for distributing, monitoring, and providing technical assistance to states and grantees on the use of federal funds. EAC/OGM also reports on how the funds are spent, negotiates indirect cost rates with grantees, and resolves audit findings on the use of HAVA funds.

The EAC–FFR is employed for all financial reports for grants issued under HAVA authority. This revised format builds upon that report for the various grant awards given by EAC. A ''For Comment'' version of the draft format for use in submission of the FFR is posted on the EAC website at: *https://www.eac.gov/payments-and-grants/reporting.* The FFR will directly benefit award recipients by making it easier for them to administer federal grant and cooperative agreement programs through standardization of the types of information required in financial reporting—thereby reducing their administrative effort and costs.

After obtaining and considering public comment, the EAC will prepare the format for final clearance. Comments are invited on (a) ways to enhance the quality, utility, and clarity of the information collected from respondents, including through the use of automated collection techniques or other forms of information technology; and (b) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Description: The EAC proposes to collect financial activity data for HAVA. EAC will use this data to ensure grantees are proceeding in a satisfactory manner in meeting the approved goals and purpose of the project.

The requirement for grantees to report on performance is OMB grants policy. Specific citations are contained in Code of Federal Regulations TITLE 2, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.

Respondents: All EAC grantees and state governments.

ANNUAL BURDEN ESTIMATES

EAC grant	Instrument	Total number of respondents	Total number of responses per year	Average burden hours per response	Annual burden hours
251	EAC–FFR	35	2	.5	35
101	EAC–FFR	20	2	.5	20
Election Security	EAC–FFR	56	2	.5	56
CARES	EAC–FFR	15	2	.5	15
Total					126

The estimated cost of the annualized cost of this burden is: $2,863.98, which is calculated by taking the annualized burden (126 hours) and multiplying by an hourly rate of $22.73 (GS–8/Step 5 hourly basic rate).

Kevin Rayburn,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2021–27861 Filed 1–5–22; 8:45 am]

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FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, January 11, 2022 at 10 a.m. and its continuation at the conclusion of the open meeting on January 13, 2022.

PLACE: 1050 First Street NE, Washington, DC (This meeting will be a virtual meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Information for which disclosure would constitute an unwarranted invasion of privacy.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2022–00130 Filed 1–4–22; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 21–16]

Wan Hai Lines, Ltd. and Wan Hai Lines (USA) Ltd.; Possible Violations; Order of Investigation and Hearing

AGENCY: Federal Maritime Commission.

ACTION: Notice of Order of Investigation and Hearing.

DATES: The Order of Investigation and Hearing was served December 30, 2021.

SUPPLEMENTARY INFORMATION: On December 30, 2021, the Federal Maritime Commission instituted an Order of Investigation and Hearing entitled Wan Hai Lines, Ltd. and/or Wan Hai Lines (U.S.A.) Ltd. Possible Violations of 46 U.S.C. 41102(c). Acting pursuant to Section 41102(c) of Title 46 of the United States Code, that investigation is instituted to determine:

(1) Whether Wan Hai Lines, Ltd. and/or Wan Hai Lines (USA) Ltd. are violating or have violated section 41102(c) of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to its assessment of charges on containers when return locations with corresponding appointments were unavailable.

The Order may be viewed in its entirety at *http://www.fmc.gov/21-16.*

Authority: 46 U.S.C. 41102(c).

William Cody,

Secretary.

[FR Doc. 2021–28594 Filed 1–5–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 7, 2022.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org*:

1. *Omni Bank Group, Inc., Little Rock, Arkansas*; to become a bank holding company by acquiring Community State Bank, Bradley, Arkansas.

Board of Governors of the Federal Reserve System, January 3, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–00033 Filed 1–5–22; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0002]

Advisory Committee on Immunization Practices (ACIP)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public. Time will be available for public comment. The meeting will be webcast live via the World Wide Web.

DATES: The meeting will be held on January 5, 2022, from 1:00 p.m. to 5:00 p.m. EST (dates and times subject to change; see the ACIP website for updates *http://www.cdc.gov/vaccines/acip/index.html*). The public may submit written comments from January 6, 2022, through January 12, 2022.

ADDRESSES: You may submit comments identified by Docket No. CDC–2022–0002 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Centers for Disease Control and Prevention, 1600 Clifton Road NE, MSH24–8, Atlanta, GA 30329–4027, Attn: January 5, 2022 ACIP Meeting.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the

https://www.regulations.gov suitability policy will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Written public comments will be provided to ACIP members.

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, ACIP Committee Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road NE, MSH24–8, Atlanta, GA 30329–4027; Telephone: 404–639–8367; Email: *ACIP@cdc.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 41 CFR 102–3.150(b), less than 15 calendar days' notice is being given for this meeting due to the exceptional circumstances of the COVID–19 pandemic and rapidly evolving COVID–19 vaccine development and regulatory processes. The Secretary of Health and Human Services has determined that COVID–19 is a Public Health Emergency. A notice of this ACIP meeting has also been posted on CDC's ACIP website at: *http://www.cdc.gov/vaccines/acip/index.html.* In addition, CDC has sent notice of this ACIP meeting by email to those who subscribe to receive email updates about ACIP.

Purpose: The ACIP is charged with advising the Director, CDC, on the use of immunizing agents. In addition, under 42 U.S.C. 1396s, the ACIP is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children program, along with schedules regarding dosing interval, dosage, and contraindications to administration of vaccines. Further, under provisions of the Affordable Care Act, section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been approved by the CDC Director and appear on CDC immunization schedules must be covered by applicable health plans.

Matters To Be Considered: The agenda will include discussions on COVID–19 vaccine booster doses. A recommendation vote is scheduled. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda visit *https://www.cdc.gov/vaccines/acip/meetings/meetings-info.html.*

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Written Public Comment: The docket will be opened to receive written comments on January 6, 2022. Written comments must be received on or before January 12, 2022.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes including all votes relevant to the ACIP's Affordable Care Act and Vaccines for Children Program roles. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedures below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the January 5, 2022 ACIP meeting must submit a request at *http://www.cdc.gov/vaccines/acip/meetings/* no later than 11:59 p.m. EST, January 4, 2022, according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by 12:00 p.m. EST, January 5, 2022. To accommodate the significant interest in participation in the oral public comment session of ACIP meetings, each speaker will be limited to 3 minutes, and each speaker may only speak once per meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–00123 Filed 1–4–22; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Human Therapeutics for Fibrotic Disease

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Heart, Lung and Blood Institute (NHLBI), National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to Inversago Pharma, Inc., located in Montreal, Quebec, Canada, to practice the inventions embodied in the patent applications listed in the Supplementary Information section of this notice.

DATES: Only written comments and/or applications for a license which are received by the NHLBI Office of Technology Transfer and Development January 21, 2022 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated exclusive patent license should be directed to: Michael Shmilovich, Esq., CLP Senior Licensing and Patenting Manager, phone number 301–435–5019 or *shmilovm@nih.gov.*

SUPPLEMENTARY INFORMATION: The following and all continuing U.S. and foreign patents/patent applications thereof are the intellectual properties to be licensed under the prospective license to Inversago Pharma, Inc.:

NIH ref No.	Patent No. or application No.	Issue date	Filing date	Title
E–282–2012–0–US–01	61/725,949		November 13, 2012	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–PCT–02	PCT/US2013/069686		November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–US–03	9,765,031	September 19, 2017	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–CA–04	2889697		April 27, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–EP–05	2919779	January 6, 2021	June 01, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–CH–12	2919779	January 6, 2021	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–DE–13	2919779	January 6, 2021	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–FR–14	2919779	January 6, 2021	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–GB–15	2919779	January 6, 2021	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–IE–16	2919779	January 6, 2021	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–IN–06	354301	December 23, 2020	May 1, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–JP–07	6272626	January 12, 2018	May 11, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–CN–08	ZL201380069389.9	August 20, 2019	July 3, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–US–09	10,683,270	June 16, 2020	August 10, 2017	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–US–10	10,787,419	September 29, 2020	August 10, 2017	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–US–11	16/870,093		May 8, 2020	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–US–01	62/171,179		June 4, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–PCT–02	PCT/US2016/035291		June 1, 2016	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–US–08	15/579,123		December 1, 2017	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–US–09	16/438,850		June 12, 2019	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–US–01	61/991,333		May 9, 2014	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–PCT–02	PCT/US2015/029946		May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–AU–03	2015255765		November 7, 2016	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–CA–04	2948349		May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–CN–05	201580028788.X	February 7, 2020	May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–EP–06	15728668.3		May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–IN–07	201637038171		November 8, 2016	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–JP–08	6762930	September 11, 2020	May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–US–09	10,329,259	June 25, 2019	November 8, 2016	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–HK–10	17105705.6		June 9, 2017	Cannabinoid Receptor Mediating Compounds.

The patent rights in these inventions have been assigned to the Government of the United States of America. The prospective exclusive patent license territory may be worldwide and in a field of use limited to human therapeutics for fibrotic disease.

The invention covered by the patents and patent applications pertaining to NIH Ref. No. E–282–2012–0 and –1 pertain to cannabinoid receptor 1 (CB_1R) inverse agonists. CB_1R activation plays a key role in appetitive behavior and metabolism. Of importance as a therapeutic target here is that the receptor is expressed in both peripheral tissue as well as the CNS. The invention is a class of pyrazole compounds that act as CB1 receptor inverse agonists and have been shown effective at reducing obesity and its associated metabolic consequences, and for fibrotic disease, while having no experimentally discernable neuropsychotropic side effects that are considered adverse such as the earlier antagonists rimonabant. These CB_1R receptor compounds were developed with the goals of limiting their brain penetrance without losing their metabolic efficacy due to CB1 inverse agonism, and having a primary metabolite directly targeting enzymes involved in inflammatory and fibrotic processes associated with metabolic disorders. The patents are both compositions of matter and methods of use.

The inventions covered by HHS Ref. E–140–2014–0 also pertain to pyrazole CB_1R receptor inverse agonists. In addition, some of these compounds also have a direct inhibitory effect on inducible nitric oxide synthase (iNOS), whereas another group of the compounds directly activates AMP kinase. There is evidence that the metabolic effects of endocannabinoids are mediated by CB1 receptors in peripheral tissues. These dual-target compounds may be useful for treating metabolic disease and related conditions such as obesity and diabetes and their complications, and includes various fibrotic disorders, without the dangerous the side effects.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive patent license will be royalty bearing and may be granted unless within fifteen (15) days from the date of this published notice, the NHLBI receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: January 3, 2022.

Michael Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2022–00022 Filed 1–5–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Research Topic No. 051 Inhaled Delivery of Clofazimine (CFZ)—An Important Anti-Tuberculosis Drug Phase

II Proposal Title: Optimized Dry Powder Formulation and Delivery for Inhaled Clofazimine (N01).

Date: January 27, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Cynthia L. De La Fuente, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31, Rockville, MD 20852, 240–669–2740, *delafuentecl@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 30, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00008 Filed 1–5–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2022–1: Development of Diagnostics to Differentiate HIV Infection from Vaccine Induced Seropositivity (Topic 103).

Date: February 2, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kristina S. Wickham, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22B, Rockville, MD 20852, 301–761–5390, *kristina.wickham@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 30, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00009 Filed 1–5–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0016]

Meetings To Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of meetings.

SUMMARY: The Federal Emergency Management Agency (FEMA) is holding a series of meetings, under the Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19, to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic.

DATES:

- Wednesday, January 5, 2022, from 1 p.m. to 3 p.m. Eastern Time (ET).
- Wednesday, January 12, 2022, from 1 p.m. to 3 p.m. ET.
- Wednesday, January 19, 2022, from 1 p.m. to 3 p.m. ET.
- Wednesday, January 26, 2022, from 1 p.m. to 3 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Robert Glenn, Office of Business, Industry, Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212–1666.

SUPPLEMENTARY INFORMATION: Notice of these meetings is provided as required by section 708(h)(8) of the Defense Production Act (DPA), 50 U.S.C. 4558(h)(8), and consistent with 44 CFR part 332.

The DPA authorizes the making of ''voluntary agreements and plans of action'' with representatives of industry, business, and other interests to help provide for the national defense.[1] The President's authority to facilitate voluntary agreements with respect to responding to the spread of COVID–19 within the United States was delegated to the Secretary of Homeland Security in Executive Order 13911.[2] The Secretary of Homeland Security further delegated this authority to the FEMA Administrator.[3]

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the **Federal Register** a ''Voluntary Agreement, Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic'' (Voluntary Agreement).[4] Unless terminated earlier, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Agreement may be used to prepare for or respond to any pandemic, including COVID–19, during that time.

On December 7, 2020, the first plan of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID–19 (PPE Plan of Action)—was finalized.[5] The PPE Plan of Action established several sub-committees under the Voluntary Agreement, focusing on different aspects of the PPE Plan of Action.

On May 24, 2021, four additional plans of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Diagnostic Test Kits and other Testing Components to respond to COVID–19, the Plan of Action to

[1] 50 U.S.C. 4558(c)(1).

[2] 85 FR 18403 (Apr. 1, 2020).

[3] DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

[4] 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the **Federal Register** on the same day. 85 FR 50049 (Aug. 17, 2020).

[5] *See* 85 FR 78869 (Dec. 7, 2020). *See also* 85 FR 79020 (Dec. 8, 2020).

Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to respond to COVID–19, the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to respond to COVID–19, and the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to respond to COVID–19—were finalized.[6] These plans of action established several sub-committees under the Voluntary Agreement, focusing on different aspects of each plan of action.

On October 15, 2021, the sixth plan of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19—was finalized.[7] This plan of action established several sub-committees under the Voluntary Agreement, focusing on different transportation categories.

The meetings are chaired by the FEMA Administrator's delegates from the Office of Response and Recovery (ORR) and Office of Policy and Program Analysis (OPPA), attended by the Attorney General's delegates from the U.S. Department of Justice, and attended by the Chairman of the Federal Trade Commission's delegates. In implementing the Voluntary Agreement, FEMA adheres to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

Meeting Objectives: The objectives of the meetings are as follows:

1. Convene the Sub-Committee to Define Requirements under the National Multimodal Healthcare Supply Chains Plan of Action to establish priorities related to the COVID–19 response under the Voluntary Agreement.

2. Gather Sub-Committee Participants and Attendees to ask targeted questions for situational awareness.

3. Identify pandemic-related supply chain issues, information gaps, and areas for potential additional discussion.

4. Identify potential Objectives and Actions which correspond to Sub-Committees. These will be held for further discussion under those Sub-Committees.

Meetings Closed to the Public: By default, the DPA requires meetings held to implement a voluntary agreement or plan of action be open to the public.[8] However, attendance may be limited if the Sponsor[9] of the voluntary agreement finds that the matter to be discussed at a meeting falls within the purview of matters described in 5 U.S.C. 552b(c), such as trade secrets and commercial or financial information.

The Sponsor of the Voluntary Agreement, the FEMA Administrator, found that these meetings to implement the Voluntary Agreement involve matters which fall within the purview of matters described in 5 U.S.C. 552b(c) and the meetings are therefore closed to the public.

Specifically, these meetings may require participants to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for meetings to be closed to the public pursuant to 5 U.S.C. 552b(c)(4).

The success of the Voluntary Agreement depends wholly on the willing participation of the private sector participants. Failure to close these meetings to the public could reduce active participation by the signatories due to a perceived risk that sensitive company information could be released to the public. A public disclosure of a private sector participant's information executed prematurely could reduce trust and support for the Voluntary Agreement.

A resulting loss of support by the participants for the Voluntary Agreement would significantly hinder the implementation of the Agency's objectives. Thus, these meeting closures are permitted pursuant to 5 U.S.C. 552b(c)(9)(B).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–28596 Filed 1–5–22; 8:45 am]

BILLING CODE 9111–19–P

[6] *See* 86 FR 27894 (May 24, 2021). *See also* 86 FR 28851 (May 28, 2021).

[7] *See* 86 FR 57444 (Oct. 15, 2021).

[8] *See* 50 U.S.C. 4558(h)(7).

[9] ''[T]he individual designated by the President in subsection (c)(2) [of section 708 of the DPA] to administer the voluntary agreement, or plan of action.'' 50 U.S.C. 4558(h)(7).

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF000000.L14400000.ET0000 LXSSG0270000 223L1109AF; NMNM–144042]

Notice of Proposed Withdrawal and Public Meetings; San Juan County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed withdrawal.

SUMMARY: At the request of the Bureau of Land Management (BLM) and subject to valid existing rights, the Secretary of the Interior proposes to withdraw 351,479.97 acres of public lands from location and entry under the United States mining laws and from leasing under the mineral leasing laws, but not disposal under the mineral materials laws, for a 20-year term. This notice segregates the lands for up to 2 years from location and entry under the United States mining laws and from leasing under the mineral leasing laws, subject to valid existing rights, initiates a 90-day public comment period on the withdrawal application, and notifies the public that one or more public meetings will be held regarding the application.

DATES: Comments and public meeting requests must be received by April 6, 2022. In-person public meetings regarding the withdrawal application will be held on February 23, 2022, from 3:00–4:30 p.m. and 6:00–7:30 p.m. at San Juan College Henderson Fine Arts Building, 4601 College Boulevard, Farmington, New Mexico. All current guidelines issued by the Centers for Disease Control and Prevention and Department of the Interior COVID–19 safety precautions will be strictly enforced. Members of the public are required to pre-register for the in-person event by using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. A virtual public meeting will take place on February 24 from 6:00–7:30 p.m. via the Zoom platform. To register for the virtual session, visit *https://blm.zoomgov.com/webinar/register/WN_79HAmxoxQ-GXRVRBXl5U0w.* A notice for public meeting(s) regarding the withdrawal application will be announced in the local newspaper and on the agency websites at least 30 days before the meeting(s).

ADDRESSES: All comments should be sent to Sarah Scott, CCNHP Area Withdrawal, Bureau of Land Management Farmington Field Office, 6251 College Blvd. Suite A, Farmington, NM 87402.

A map and other information related to the withdrawal application are available at the Bureau of Land Management Farmington Field Office, 6251 College Blvd., Suite A, Farmington, New Mexico 87402. Details are also available on the project ePlanning website: *https://eplanning.blm.gov/eplanning-ui/project/2016892/510.*

FOR FURTHER INFORMATION CONTACT: Sarah Scott, BLM Farmington Field

Office, (505) 564–7689 or *sscott@blm.gov,* during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact Ms. Scott. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has filed a petition/application requesting the Secretary of the Interior to withdraw public lands and interests in lands (excluding lands with federally owned fractional mineral interests) situated within the boundaries of the area depicted on the map submitted with the application, titled Appendix B: Chaco Culture National Historical Park Area Withdrawal, dated November 30, 2021. The Secretary has approved the BLM's petition for approval to file its withdrawal application and proposed the withdrawal as requested. Following consideration of environmental and other analyses prepared by the BLM in support of its application, the Secretary will decide whether to establish the withdrawal.

The purpose of the proposed withdrawal would be to protect these public lands and the greater connected landscape with a rich Puebloan, Tribal Nations, and cultural legacy in northwestern New Mexico from industrial impacts associated with oil and gas development activities and from adverse effects of locatable mineral exploration and mining, subject to valid existing rights. This proposed withdrawal area holds a deep meaning for the Indigenous peoples whose ancestors lived, worked, traded, and thrived in this high-desert community. Existing uses of the public lands may continue in accordance with their terms and conditions (except for the location or relocation of mining claims and the sale of new oil and gas leases) during the segregation period, including but not limited to livestock grazing, and lawful ingress and egress to any valid or patented mining claims and mineral leases that may exist on these lands. There may be continued use of all public lands and lawful access to non-Federal lands and interest in lands; current recreational uses including hunting, camping and day use; and all commercial uses being conducted under special use permits. Temporary uses that may be permitted during the segregation period are leases, licenses, permits, rights-of-way, and other uses consistent with the 2003 Farmington Resource Management Plan, as amended.

The legal description is as follows:

New Mexico Principal Meridian, New Mexico

T. 20 N., R. 6 W.,
Sec. 6, lots 3 thru 7, SE¼NW¼, and E½SW¼;
Sec. 7;
Sec. 8, W½;
Secs. 17 thru 20 and sec. 30.
T. 21. N., R. 6 W.,
Sec. 18, lot 4;
Sec. 19, lots 3 and 4, E½SW¼, and SW¼SE¼;
Sec. 30, lots 1 thru 4, W½NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 31, lots 1 thru 4, NE¼, E½NW¼, and E½SW¼;
Sec. 32, SW¼NW¼ and W½SW¼.
T. 19 N., R. 7 W.,
Sec. 1, lots 5 thru 7 and SW¼SE¼;
Sec. 5, S½;
Sec. 6, lots 1, 2, 6, and 7, S½NE¼, E½SW¼, and SE¼;
Secs. 7 and 8;
Sec. 11, S½;
Sec. 12, lots 1 and 2, W½NE¼, and NW¼;
Secs. 17 thru 19;
Sec. 20, N½ and SW¼;
Sec. 21;
Sec. 22, W½;
Sec. 27, NW¼NE¼, N½NW¼, and SW¼NW¼;
Sec. 28, N½, SW¼, and N½SE¼;
Secs. 29 thru 31.
T. 20 N., R. 7 W.,
Secs. 2 and 3;
Sec. 4, SW¼;
Secs. 5 thru 7;
Sec. 8, N½ and SW¼;
Secs. 9 thru 12;
Secs. 17, 19, 21, and 29;
Sec. 30, lots 1 thru 4, E½NW¼, E½SW¼, and SE¼;
Sec. 31;
Sec. 32, N½ and SW¼;
Sec. 33, SW¼.
T. 21 N., R. 7 W.,
Sec. 2, lot 4, S½NW¼, SW¼, NW¼SE¼, and S½SE¼;
Secs. 3 thru 5;
Sec. 6, lots 1 and 2, S½NE¼, and SE¼;
Secs. 7 thru 11;
Sec. 12, SW¼NW¼, SW¼, and SW¼SE¼;
Sec. 13, NW¼NE¼, S½NE¼, NW¼, and S½;
Sec. 14 and secs. 15 thru 18;
Sec. 19, lots 1 thru 4, NE¼, E½NW¼, and E½SW¼;
Sec. 20, N½;
Secs. 21 thru 23;
Sec. 24, SW¼;
Sec. 25, W½;
Sec. 26, N½ and SE¼;
Sec. 27, N½;
Sec. 28, N½ and SW¼;
Sec. 29, NE¼ and S½;
Sec. 32, NE¼, and S½;
Sec. 33, W½;
Sec. 35, E½;
Sec. 36, N½ and SE¼.
T. 22 N., R. 7 W.,
Sec. 28, S½SW¼;
Sec. 29, S½NW¼ and S½;
Secs. 30, 31, and 33;
Sec. 34, SW¼NW¼, SW¼, and S½SE¼.
T. 19 N., R. 8 W.,
Secs. 1 and 2;
Sec. 3, lots 3 and 4, S½NW¼, and S½;
Sec. 9, E½ and E½SW¼;
Secs. 10 thru 15;
Sec. 16, lots 3 thru 7, NE¼, NE¼SW¼, and N½SE¼;
Sec. 18, lots 3 and 4 and E½SW¼;
Sec. 19;
Sec. 20, N½ and SW¼;
Sec. 21, S½SE¼;
Secs. 23 thru 25, 27, and 29;
Sec. 30, lots 1 and 4, E½, NE¼NW¼, and SE¼SW¼;
Secs. 33 thru 35.
T. 20 N., R. 8 W.,
Tracts 37, 40, 41, 48, 49, 52 thru 55, 58, 61 thru 69, 73, 77, and 78;
Tracts 85, 86, 92, 94 thru 98, 102, 104, and 105.
T. 21 N., R. 8 W.,
Secs. 3 thru 9;
Sec. 10, N½ and SW¼;
Sec. 11, N½ and SE¼;
Sec. 13;
Sec. 14, E½;
Secs. 17, 18, and 22 thru 24;
Sec. 26, N½ and SE¼;
Sec. 34, lots 1 thru 8 and NE¼;
Secs. 35 and 36.
T. 22 N., R. 8 W.,
Sec. 7, lots 1 thru 4, SE¼NW¼, E½SW¼, NW¼SE¼, and S½SE¼;
Sec. 17, NW¼NW¼, S½NW¼, SW¼, NW¼SE¼, and S½SE¼;
Sec. 18;
Sec. 20, N½ and SW¼;
Sec. 21, SW¼NE¼, NW¼NW¼, S½NW¼, and SE¼;
Sec. 22, S½;
Sec. 23, S½;
Sec. 24, S½SW¼ and S½SE¼;
Secs. 25 thru 27;
Sec. 28, E½;
Sec. 31, lots 3 thru 8 and E½SW¼;
Secs. 32 thru 35.
T. 19 N., R. 9 W.,
Sec. 3, lots 1 thru 4, S½NE¼, S½NW¼, and SW¼;
Sec. 12;
Sec. 14, N½ and SE¼;
Sec. 15, NW¼ and S½;
Sec. 23;
Sec. 24, NW¼ and S½;
Sec. 27;
Sec. 30, lots 1 and 2;
Sec. 35.
T. 20 N., R. 9 W.,
Sec. 4;
Sec. 5, SW¼;
Sec. 6;
Sec. 7, lots 1 and 2, E½, and E½NW¼;
Secs. 8 and 9;
Sec. 17, N½;
Sec. 18, NE¼;
Sec. 30.
T. 21 N., R. 9 W.,
Sec. 3, lot 4;
Sec. 4, lots 1 and 4.
T. 22 N., R. 9 W.,
Sec. 1, SW¼NW¼, NW¼SE¼, and S½SE¼;
Secs. 3 thru 9 and secs. 12 thru 15;

Sec. 16, S½;
Sec. 17;
Sec. 18, lots 3 and 4, E½, and E½SW¼;
Secs. 19 and 20;
Sec. 21, NE¼ and S½;
Secs. 22 thru 24;
Sec. 26, W½;
Secs. 27 thru 34 and sec. 36.
T. 23 N., R. 9 W.,
Sec. 18, SW¼SE¼;
Sec. 19;
Sec. 20, SW¼NE¼;
Sec. 27, SW¼NW¼, SW¼, and SW¼SE¼;
Secs. 28 and 30;
Sec. 31, lots 1 thru 4, E½NW¼, E½SW¼, and SE¼;
Sec. 33, E½;
Sec. 34;
Sec. 35, SW¼NW¼, SW¼, and SW¼SE¼.
T. 17 N., R. 10 W.,
Sec. 30, lot 3, NE¼SW¼, and N½SE¼;
T. 19 N., R. 10 W.,
Sec. 10, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 28, SE¼SE¼.
T. 20 N., R. 10 W.,
Sec. 1;
Sec. 2, lots 1 thru 3, lots 5 thru 19, and S½NE¼;
Sec. 3, lots 5 and 6;
Sec. 6;
Sec. 12, lots 1 thru 4;
Secs. 20 and 28;
Sec. 30, NE¼SW¼.
T. 21 N., R. 10 W.,
Sec. 4;
Sec. 5, lot 2 and W½SW¼;
Secs. 6 thru 9 and secs. 16 thru 30;
Sec. 33, lots 1 thru 4;
Sec. 34, lots 1 thru 7, NE¼, NW¼SW¼, S½SW¼, and SW¼SE¼;
Secs. 35 and 36.
T. 22 N., R. 10 W.,
Sec. 1 and secs. 3 thru 9;
Sec. 10, NW¼ and N½SW¼;
Sec. 11, S½;
Secs. 12 and 13;
Sec. 14, W½SW¼;
Sec. 15, S½;
Secs. 16 thru 19;
Sec. 20, SE¼;
Sec. 21, N½;
Sec. 22;
Sec. 23, W½NE¼, W½, and SE¼;
Secs. 24 and 25;
Sec. 27, S½;
Sec. 28, NE¼ and SW¼;
Sec. 30, lots 1 and 2, NE¼, and E½NW¼;
Sec. 34, N½ and SW¼.
T. 23 N., R. 10 W.,
Secs. 5 thru 8;
Sec. 9, SW¼ and SW¼SE¼;
Sec. 13, S½NW¼ and S½;
Sec. 14, S½NE¼, NW¼, and S½;
Sec. 15, NE¼ and S½;
Secs. 17 thru 22;
Sec. 24, NE¼ and S½;
Sec. 25, E½;
Sec. 27, N½ and SE¼;
Sec. 28, N½ and SW¼;
Secs. 29 thru 31 and secs. 33 and 34.
T. 24 N., R. 10 W.,
Secs. 17 thru 20 and sec. 29;
Sec. 30, lot 1, E½, E½NW¼, and NE¼SW¼;
Sec. 31.
T. 15 N., R. 11 W.,
Sec. 6;
Sec. 8, N½, N½SW¼, SW¼SW¼, and NW¼SE¼.
Sec. 9, N½NW¼ and SW¼NW¼.
T. 16 N., R. 11 W.,
Sec. 2, lots 1 thru 4, SW¼, NW¼SE¼, and S½SE¼;
Sec. 14, SW¼;
Sec. 21, SW¼;
Sec. 22, NE¼ and SW¼;
Sec. 26, E½NE¼, W½NW¼, SW¼, and W½SE¼;
Secs. 28 and 29;
Sec. 30, lots 1 and 2, E½NW¼, and SE¼;
Sec. 31, lots 1 thru 4, NE¼, E½NW¼, and E½SW¼;
Sec. 33, N½NE¼, SE¼NE¼, W½, NE¼SE¼, S½NW¼SE¼, and S½SE¼;
Sec. 34, N½, SW¼, N½SE¼, and SW¼SE¼.
T. 17 N., R. 11 W.,
Sec. 2, SE¼;
Sec. 3, lots 1 and 2 and S½NE¼;
Sec. 4, SE¼;
Sec. 10, N½SW¼ and N½SE¼;
Secs. 12, 14, and 18;
Sec. 19, lots 3 and 4 and E½SW¼;
Sec. 22, S½;
Sec. 24;
Sec. 32, SW¼;
Sec. 34, NW¼ and S½.
T. 18 N., R. 11 W.,
Sec. 18.
T. 20 N., R. 11 W.,
Sec. 22, NE¼NE¼;
Sec. 23, W½NW¼NW¼;
Sec. 26, E½SE¼.
T. 21 N., R. 11 W.,
Secs. 1 thru 3;
Sec. 4, lots 3 and 4, S½NW¼, and S½;
Sec. 5, lots 3 and 4 and S½NW¼;
Sec. 6, lots 1 thru 5, S½NE¼, and SE¼NW¼;
Secs. 7 thru 10;
Sec. 11, lot 1, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 12, lots 10 thru 15, N½, N½SW¼, and N½SE¼;
Sec. 13, lots 1 thru 4, S½NE¼, S½NW¼, and S½;
Sec. 14, lot 1, W½NE¼, SE¼NE¼, W½, and SE¼;
Secs. 15 thru 25;
Sec. 26, NE¼;
Secs. 28 and 30.
T. 22 N., R. 11 W.,
Secs. 2 and 6;
Sec. 10, SE¼;
Sec. 12;
Sec. 14, SW¼;
Sec. 18, lots 1 thru 4, E½NW¼, and E½SW¼;
Sec. 22;
Sec. 24, SW¼NE¼ and W½;
Sec. 26, NE¼ and S½;
Sec. 28, W½;
Sec. 30;
Sec. 34, SE¼.
T. 23 N., R. 11 W.,
Secs. 1 thru 4 and sec. 6;
Sec. 7, lots 1 and 2, NE¼, and E½NW¼;
Sec. 8, S½;
Secs. 9 thru 11;
Sec. 12, N½ and SE¼;
Secs. 13 thru 15, sec. 17, and secs. 21 thru 23;
Sec. 24, N½ and SE¼;
Sec. 25, NW¼ and S½;
Sec. 26;
Sec. 27, N½ and SE¼;
Sec. 28, NE¼ and N½NW¼;
Sec. 33, S½NE¼, S½NW¼, and S½;
Sec. 34, S½SW¼;
Sec. 35, NE¼;
Sec. 36, S½.
T. 24 N., R. 11 W.,
Sec. 13, NW¼;
Sec. 14;
Sec. 15, lot 1, lots 5 thru 8, lot 10, and S½;
Sec. 16, lots 10, 13, and 14;
Sec. 20, lots 3, 5 and 6;
Sec. 21, lots 7 thru 10 and SE¼;
Sec. 22, NE¼ and S½;
Sec. 23;
Sec. 24, NE¼ and S½;
Sec. 25, W½;
Secs. 26 thru 28;
Sec. 29, lots 1 and 2, lots 5 thru 8, lots 10 thru 14, and SE¼;
Sec. 30, lots 6 thru 13;
Sec. 31 and secs. 33 thru 36.
T. 15 N., R. 12 W.,
Sec. 8, SW¼NE¼;
Sec. 10, SW¼.
T. 16 N., R. 12 W.,
Secs. 6 and 8;
Sec. 10, NW¼;
Sec. 14, NW¼ and S½;
Sec. 20, N½ and SW¼;
Secs. 22 and 24;
Sec. 26, N½ and SE¼;
Secs. 28 and 30;
Sec. 32, E½;
Sec. 35, SW¼.
T. 17 N., R. 12 W.,
Sec. 4, SE¼;
Sec. 6, lots 1 thru 5, S½NE¼, and SE¼NW¼;
Sec. 8, NE¼ and S½;
Sec. 10, NW¼;
Sec. 20, W½;
Sec. 22, N½;
Sec. 24, NE¼;
Sec. 26, E½;
Sec. 28, SE¼;
Sec. 30;
Sec. 32, W½ and SE¼SE¼;
Sec. 36;
Tract 37.
T. 18 N., R. 12 W.,
Sec. 1;
Sec. 2, lots 1 thru 4, S½NW¼, and SW¼;
Sec. 4, SE¼;
Secs. 11 thru 13;
Sec. 14, N½;
Sec. 16;
Sec. 20, N½ and SW¼;
Secs. 22 thru 25;
Sec. 30, SE¼;
Sec. 32, SW¼, NW¼SE¼, and S½SE¼.
T. 19 N., R. 12 W.,
Sec. 1;
Sec. 8, NW¼;
Sec. 9, NE¼;
Sec. 16, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 21;
Sec. 30, E½;
Sec. 31.
T. 20 N., R. 12 W.,

Sec. 4, lots 5 thru 16;
Sec. 5, S½NW¼, SW¼, and W½SE¼;
Sec. 6, lots 3 and 4, lot 8, and lots 9 thru 11;
Sec. 8, SW¼;
Sec. 17, NW¼NE¼ and N½NW¼;
Sec. 18;
Sec. 20, SE¼;
Sec. 22, N½ and SE¼;
Sec. 26;
Sec. 30, lots 3 and 4 and E½SW¼.

T. 21 N., R. 12 W.,
Secs. 1 and 4;
Sec. 10;
Sec. 22, NW¼;
Sec. 24, SW¼;
Sec. 25;
Sec. 28, NE¼ and S½;
Sec. 31, E½SE¼;
Secs. 32 and 34.

T. 22 N., R. 12 W.,
Sec. 1, S½;
Sec. 3, SE¼;
Sec. 4;
Sec. 5, SE¼;
Sec. 6;
Sec. 7, SE¼;
Sec. 8;
Sec. 9, NW¼ and S½;
Secs. 10 thru 15;
Sec. 17, SW¼;
Sec. 18;
Sec. 19, lots 1 and 2, NE¼, and E½NW¼;
Sec. 21, N½;
Secs. 22 thru 27;
Sec. 28, N½;
Sec. 29;
Sec. 30, lots 3 and 4, E½SW¼, and SE¼;
Sec. 33, lots 1 thru 8 and NW¼;
Sec. 34;
Sec. 35, N½ and SE¼.

T. 23 N., R. 12 W.,
Sec. 1;
Sec. 3, lots 5 thru 16;
Sec. 4;
Sec. 5, lots 9 thru 20;
Sec. 6, lots 12 thru 15;
Sec. 9, E½;
Sec. 10, lots 1 thru 8;
Sec. 13;
Sec. 14, lots 1 thru 8 and NW¼;
Sec. 15, lots 1 thru 8;
Sec. 17, lot 5 and W½SW¼;
Sec. 18, lots 3, 4, and 6, SE¼NE¼, E½SW¼, and SE¼;
Sec. 19;
Sec. 20, lots 4 thru 6 and lots 9 thru 16;
Sec. 21, lots 1 thru 3 and lots 6 thru 16;
Secs. 22 thru 24;
Sec. 25, E½;
Secs. 26 thru 30;
Sec. 33, W½;
Sec. 35, SE¼SE¼.

T. 24 N., R. 12 W.,
Sec. 35, lots 9 and 10 and lots 13 thru 16;
Sec. 36, lots 1 and 2 and lots 5 thru 18.

T. 15 N., R. 13 W.,
Sec. 2, lots 3 and 4 and S½NW¼.

T. 16 N., R. 13 W.,
Sec. 2;
Sec. 10, NW¼;
Sec. 18, lots 1 and 2 and E½NW¼;
Sec. 26, NW¼;
Sec. 36.

T. 17 N., R. 13 W.,
Sec. 2, lots 1 and 2 and S½NE¼;
Sec. 5, lots 3 and 4, S½NW¼, and S½;
Secs. 10 and 12;
Sec. 15, SE¼;
Sec. 19;
Sec. 21, NW¼;
Sec. 24, NE¼ and S½;
Sec. 26, SW¼;
Sec. 28, SW¼;
Secs. 32 and 33;
Sec. 34, NW¼.

T. 18 N., R. 13 W.,
Sec. 1;
Sec. 2, lots 1 and 2, S½NE¼, SW¼, and E½SE¼;
Secs. 3, 5, 9, 11, 13, and 15;
Sec. 19, SE¼;
Secs. 20, 21, 23, 25, 27, 29, and 31;
Sec. 32, NE¼ and SW¼;
Sec. 33;
Sec. 34, W½;
Sec. 35;
Sec. 36, SW¼.

T. 19 N., R. 13 W.,
Secs. 2 and 4;
Sec. 6, SE¼;
Sec. 14, NW¼;
Sec. 15, S½SW¼ and S½SE¼;
Sec. 18, lots 5 thru 12 and NE¼;
Sec. 19, lot 3, lots 5 thru 8, E½, and E½SW¼;
Secs. 20 thru 22;
Sec. 24, SW¼;
Secs. 28 and 29;
Sec. 32, NE¼, N½NW¼, SE¼NW¼, SW¼, and N½SE¼;
Sec. 33;
Sec. 34, N½ and SW¼;
Sec. 36.

T. 20 N., R. 13 W.,
Sec. 4;
Sec. 6, lots 6 and 7 and E½SW¼;
Sec. 7, lot 2, W½SW¼NE¼, and SE¼NW¼;
Secs. 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, and 30;
Sec. 32, N½;
Sec. 34.

T. 21 N., R. 13 W.,
Secs. 3 thru 6;
Sec. 8, N½ and SW¼;
Sec. 9;
Sec. 10, NE¼;
Secs. 11 and 13;
Sec. 14, lots 1 thru 12;
Sec. 15;
Sec. 17, N½ and SE¼;
Secs. 18, 19, and 21;
Sec. 22, N½;
Sec. 23;
Sec. 24, NE¼ and S½;
Secs. 25 and 27;
Sec. 28, NE¼ and SW¼;
Sec. 29;
Sec. 30, lots 5 thru 8, E½NW¼, and E½SW¼;
Secs. 31 and 33;
Sec. 34, NW¼;
Sec. 35.

T. 22 N., R. 13 W.,
Sec. 1, lots 3 and 4 and S½NW¼;
Sec. 3, SW¼;
Sec. 4, lots 3 and 4, S½NW¼, and S½;
Sec. 5;
Sec. 8, NW¼ and S½;
Sec. 9, NE¼ and SW¼;
Sec. 10;
Sec. 11, NW¼ and S½;
Sec. 12, S½;
Sec. 13, NE¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 14, N½ and W½SE¼;
Sec. 15, NE¼;
Sec. 17;
Sec. 19, lot 4, NE¼NE¼, S½NE¼, E½SW¼, and SE¼;
Sec. 20, W½;
Sec. 21, N½NW¼;
Sec. 23;
Sec. 24, N½NE¼, SE¼NE¼, NW¼, and S½;
Sec. 25, E½;
Sec. 27, SW¼;
Secs. 28 thru 30;
Sec. 31, lots 1 thru 3, E½, E½NW¼, and NE¼SW¼;
Sec. 33;
Sec. 34, E½;
Sec. 35.

T. 23 N., R. 13 W.,
Sec. 2, S½;
Sec. 3, S½SE¼;
Sec. 15, S½NW¼ and S½;
Sec. 20, E½SW¼, and SE¼;
Sec. 21, S½;
Sec. 22, SW¼;
Sec. 26;
Sec. 27, NE¼ and S½;
Sec. 28;
Sec. 29, NE¼, NE¼NW¼, S½NW¼, and S½;
Sec. 34;
Sec. 35, NE¼ and SW¼.

The area aggregates 351,479.97 acres in San Juan County, New Mexico.

There are no suitable alternative sites, and no water rights will be needed for this withdrawal.

For a period until April 6, 2022, persons who wish to submit comments, suggestions, or objections related to the withdrawal application may present their views in writing to the individual listed in the **ADDRESSES** section earlier. Comments will be available for public review by appointment at the BLM Farmington Field Office, 6251 College Blvd. Suite A, Farmington, NM 87402, during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask BLM in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

A notice for public meeting(s) regarding the withdrawal application will be announced in the local newspaper and on the agency websites at least 30 days before the meeting(s). For a period until January 6, 2024,

subject to valid existing rights, the BLM lands described in this notice will be temporarily segregated from location and entry under the United State mining laws and from leasing under the mineral leasing laws, but not disposal under the mineral materials laws, unless the application is denied or canceled or the withdrawal is approved prior to that date. All activities currently consistent with the 2003 Farmington Resource Management Plan, as amended, are authorized to continue, including public recreation, mineral materials disposition, and other activities compatible with preservation of the character of the area, subject to BLM discretionary approval, during the segregation period.

(Authority: 43 CFR part 2300)

Melanie G. Barnes,

Acting State Director, New Mexico.

[FR Doc. 2021–28525 Filed 1–5–22; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-33209; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before December 25, 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by January 21, 2022.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before December 25, 2021. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

DISTRICT OF COLUMBIA

District of Columbia

Buildings at 5000–5040 New Hampshire Avenue NW, (Apartment Buildings in Washington, DC, MPS) 5000–5040 New Hampshire Ave. NW, Washington, MP100007399

FLORIDA

Miami-Dade County

Hampton House Motel, 4240 NW 27th Ave., Miami, SG100007393

Sarasota County

Sarasota Garden Center (Sarasota School of Architecture MPS), 1131 Boulevard of the Arts, Sarasota, MP100007394

MASSACHUSETTS

Middlesex County

Common Street Cemetery, Common St., Watertown, SG100007387

Old Burying Ground, Grove St., Watertown, SG100007388

Worcester County

YWCA of Worcester, 2 YWCA Way, Worcester, SG100007389

NEW YORK

Monroe County

Johnson, James H. and Sarah, House (Architecture of James H. Johnson in the Greater Rochester Area 1961–1977 MPS), 86 Mountain Rd., Penfield vicinity, MP100007386

Montgomery County

Smith-Voorhees-Covenhoven House, 141 Reynolds Rd., Fultonville, SG100007397

Oneida County

Olbiston Flats, 1431 Genesee St., Utica, SG100007398

OHIO

Mercer County

Morvilius Opera House, 101 North Wayne St., Fort Recovery, SG100007396

Noble County

Exaltation-Elevation of the Holy Cross Church, 100 Walnut St., Belle Valley, SG100007400

SOUTH CAROLINA

Kershaw County

Plane Hill, 691 Cantey Ln., Rembert vicinity, SG100007390

SOUTH DAKOTA

Roberts County

Sisseton Agency Headquarters & Wacipi Grounds, 45744 BIA Hwy. 706, Agency Village, SG100007395

TEXAS

Bell County

Missouri, Kansas and Texas (MK&T-Katy) Railway Passenger Depot, 620 Central Ave., Temple, SG100007401

Harris County

Eldorado Ballroom, 2310 Elgin St., Houston, SG100007402

Tarrant County

Farrington Field and Public Schools Gymnasium, 1501 University Dr. and 1400 Foch St., Fort Worth, SG100007403

Travis County

Anderson Stadium, South of the intersection of Hargrave Ave., Rosewood Ave., and Thompson St., Austin, SG100007405

Webb County

Pan-American Courts and Cafe, 3301 San Bernardo Ave., Laredo, SG100007392

Wharton County

Stephen F. Austin Elementary School, 500 Abell St., Wharton, SG100007404

A request for removal has been made for the following resource:

IOWA

Adams County

Odell, Noah, House, 1245 240th St., Nodaway vicinity, OT00000917

Authority: Section 60.13 of 36 CFR part 60.

Dated: December 25, 2021.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–00007 Filed 1–5–22; 8:45 am]

BILLING CODE 4312–52–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 7, 2022. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, at the above address, 703–292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2022–027

1. *Applicant:* Richard Bailey, Deneb US LLC, 50 Old Courthouse Sq. #404, Santa Rosa CA 95405.

Activity for Which Permit is Requested: Waste Management. The applicant seeks an Antarctic Conservation Act permit for waste management activities associated with a planned flight expedition to Antarctica. The applicant proposes conducting a polar circumnavigation originating in Punta Arenas, Chile, with two planned refueling stops at a Chilean Airfield on King George Island. Upon each landing at King George Island, the aircraft will be refueled using pre-provided fuel by trained crewmembers. The aircraft is equipped with an anti-pollution kit in the event of any fuel spills and mitigation measures are in place in the event of accidental release of fuel.

Location: King George Island, Antarctica.

Dates of Permitted Activities: February 1, 2022–February 28, 2022.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–00002 Filed 1–5–22; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2021; Order No. 6079]

FY 2021 Annual Compliance Report

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Postal Service has filed an Annual Compliance Report on the costs, revenues, rates, and quality of service associated with its products in fiscal year 2021. Within 90 days, the Commission must evaluate that information and issue its determination as to whether rates were in compliance with title 39, chapter 36, and whether service standards in effect were met. To assist in this, the Commission seeks public comments on the Postal Service's Annual Compliance Report.

DATES: *Comments are due:* January 31, 2022. *Reply Comments are due:* February 14, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On December 29, 2021, the United States Postal Service (Postal Service) filed with the Commission its Annual Compliance Report (ACR) for fiscal year (FY) 2021, pursuant to 39 U.S.C. 3652.[1] Section 3652 requires submission of data and information on the costs, revenues, rates, and quality of service associated with postal products within 90 days of the closing of each fiscal year. In conformance with other statutory provisions and Commission rules, the ACR includes the Postal Service's FY 2021 Comprehensive Statement on Postal Operations, its FY 2021 annual report to the Secretary of the Treasury on the Competitive Products Fund, and certain related Competitive Products Fund material. *See respectively,* 39 U.S.C. 3652(g), 39 U.S.C. 2011(i), and 39 CFR 3060.20–23. In line with past practice, some of the material in the FY 2021 ACR appears in non-public annexes.

The filing begins a review process that results in an Annual Compliance Determination (ACD) issued by the Commission to determine whether Postal Service products offered during FY 2021 were in compliance with applicable title 39 requirements.

II. Overview of the Postal Service's FY 2021 ACR

Contents of the filing. The Postal Service's FY 2021 ACR consists of a 93-page narrative; extensive additional material appended as separate folders and identified in Attachment One; and an application for non-public treatment of certain materials, along with supporting rationale, filed as Attachment Two. The filing also includes the Comprehensive Statement,[2] Report to the Secretary of the Treasury, and information on the Competitive Products Fund filed in response to Commission rules. This material has been filed electronically with the Commission.

Scope of the filing. The material appended to the narrative consists of: (1) Domestic product costing material filed on an annual basis summarized in the Cost and Revenue Analysis (CRA); (2) comparable international costing material summarized in the International Cost and Revenue Analysis (ICRA); (3) worksharing-related cost studies; and (4) billing determinant information for both domestic and international mail. FY 2021 ACR at 3. Inclusion of these four data sets is consistent with the Postal Service's past ACR practices. As with past ACRs, the Postal Service has split certain materials into public and non-public versions. *Id.*

[1] United States Postal Service FY 2021 Annual Compliance Report, December 29, 2021, at 1 (FY 2021 ACR). Public portions of the Postal Service's filing are available on the Commission's website at *http://www.prc.gov.*

[2] In years prior to 2013, the Commission reviewed the Postal Service's reports prepared pursuant to 39 U.S.C. 2803 and 39 U.S.C. 2804 (filed as the Comprehensive Statement by the Postal Service) in its ACD. However, as it has for the past several years, the Commission intends to issue a separate notice soliciting comments on the Comprehensive Statement and provide its related analysis in a separate report from the ACD.

''*Roadmap*'' *document.* A roadmap to the FY 2021 ACR can be found in Library Reference USPS–FY21–9. This document provides brief descriptions of the materials submitted, as well as the flow of inputs and outputs among them; a discussion of differences in methodology relative to Commission methodologies in last year's ACD; and a list of special studies and a discussion of obsolescence, as required by Commission rule 3050.12. *Id.* at 4.

Methodology. The Postal Service states that it has adhered to the methodologies historically used by the Commission subject to changes identified and discussed in Library Reference USPS–FY21–9 and in prefaces accompanying the appended folders. *Id.* at 4–5.

Market dominant product-by-product costs, revenues, and volumes. Comprehensive cost, revenue, and volume data for all market dominant products of general applicability are shown directly in the FY 2021 CRA or ICRA. *Id.* at 7.

The FY 2021 ACR includes a discussion by class of each market dominant product, including costs, revenues, and volumes, workshare discounts, and passthroughs responsive to 39 U.S.C. 3652(b), and FY 2021 promotions. *Id.* at 7–47.

In response to the Commission's FY 2010 ACD directives,[3] the Postal Service states that it is providing information regarding its progress in increasing USPS Marketing Mail Flats (Flats) prices, implementing operational changes aimed at lowering flats costs, effectuating costing methodology improvements, and phasing out the subsidy in Flats. FY 2021 ACR at 31. In Docket No. RM2018–1, the Commission codified and expanded the first directive as rule 3050.50(f), which applies to all flat-shaped mail.[4] Accordingly, the Postal Service states that the information required by rule 3050.50(f) is provided in Library Reference USPS–FY2021–45, noting that the section titled ''Costing Methodology Changes and Subsidy of the Flats Product'' responds to the second and third directives. FY 2021 ACR at 34–36. In addition, the Postal Service presented its schedule of above-average price increases for Flats. *Id.* at 32.

Service performance. The Postal Service notes that the Commission issued rules on periodic reporting of service performance measurement and customer satisfaction in FY 2010. Responsive information appears in Library Reference USPS–FY21–29. *Id.* at 48.

Customer satisfaction. The FY 2021 ACR discusses the Postal Service's approach for measuring customer experience and satisfaction; discusses survey modifications; describes the methodology; presents a table with survey results; compares the results from FY 2020 to FY 2021; and provides information regarding consumer access to postal services. *Id.* at 56–81.

Competitive products. The FY 2021 ACR provides costs, revenues, and volumes for competitive products of general applicability in the FY 2021 CRA or ICRA. For competitive products not of general applicability, data are provided in non-public Library References USPS–FY21–NP2 and USPS–FY21–NP27. *Id.* at 82. The FY 2021 ACR also addresses the competitive product pricing standards of 39 U.S.C. 3633. *Id.* at 82–89.

Market tests; nonpostal services. The Postal Service discusses three market dominant market tests conducted during FY 2021 as well as nonpostal services. *Id.* at 90–91.

III. Procedural Steps

Statutory requirements. Section 3653 of title 39 requires the Commission to provide interested persons with an opportunity to comment on the ACR and to appoint an officer of the Commission (Public Representative) to represent the interests of the general public. The Commission hereby solicits public comment on the Postal Service's FY 2021 ACR and on whether any rates or fees in effect during FY 2021 (for products individually or collectively) were not in compliance with applicable provisions of chapter 36 of title 39 or Commission regulations promulgated thereunder. Commenters addressing market dominant products are referred in particular to the applicable requirements (39 U.S.C. 3622(d) and (e) and 39 U.S.C. 3626); objectives (39 U.S.C. 3622(b)); and factors (39 U.S.C. 3622(c)). Commenters addressing competitive products are referred to 39 U.S.C. 3633.

The Commission also invites public comment on the cost coverage matters the Postal Service addresses in its filing; service performance results; levels of customer satisfaction achieved; and such other matters that may be relevant to the Commission's review.

Access to filing. The Commission has posted the publicly available portions of the FY 2021 ACR on its website at *http://www.prc.gov.*

Comment deadlines. Comments by interested persons are due on or before January 31, 2022. Reply comments are due on or before February 14, 2022. The Commission, upon completion of its review of the FY 2021 ACR, comments, and other data and information submitted in this proceeding, will issue its ACD.

Public Representative. Kenneth E. Richardson is designated to serve as the Public Representative to represent the interests of the general public in this proceeding. Neither the Public Representative nor any additional persons assigned to assist him shall participate in or advise as to any Commission decision in this proceeding other than in his or her designated capacity.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. ACR2021 to consider matters raised by the United States Postal Service's FY 2021 Annual Compliance Report.
2. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson as an officer of the Commission (Public Representative) in this proceeding to represent the interests of the general public.
3. Comments on the United States Postal Service's FY 2021 Annual Compliance Report to the Commission are due on or before January 31, 2022.
4. Reply comments are due on or before February 14, 2022.
5. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–00034 Filed 1–5–22; 8:45 am]

BILLING CODE 7710–FW–P

[3] Docket No. ACR2010, Annual Compliance Determination, March 29, 2011, at 106–107 (FY 2010 ACD).

[4] *Id.* at 33; *see* Docket No. RM2018–1, Order Adopting Final Rules on Reporting Requirements Related to Flats, May 8, 2019 (Order No. 5086).

DEPARTMENT OF STATE

[Public Notice: 11619]

Proposal To Extend and Amend Cultural Property Agreement Between the United States and Mali

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Proposal to extend and amend the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from Mali from the Paleolithic Era (Stone Age) to Approximately the Mid-Eighteenth Century.*

FOR FURTHER INFORMATION CONTACT: Anne Compton, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 377–9783; *culprop@state.gov;* include ''Mali'' in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension and amendment of the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from Mali from the Paleolithic Era (Stone Age) to Approximately the Mid-Eighteenth Century* is hereby proposed.

A copy of the Memorandum of Understanding, the Designated List of categories of material restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

Allison Davis,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–00013 Filed 1–5–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11618]

Proposal To Extend Cultural Property Agreement Between the United States and Guatemala

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Proposal to extend the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Ecclesiastical Ethnological Material from the Conquest and Colonial Periods of Guatemala.*

FOR FURTHER INFORMATION CONTACT: Andrew Zonderman, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 718–9481; *culprop@state.gov;* include ''Guatemala'' in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Ecclesiastical Ethnological Material from the Conquest and Colonial Periods of Guatemala* is hereby proposed.

A copy of the Memorandum of Understanding, the Designated List of categories of material restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

Allison Davis,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–00012 Filed 1–5–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11620]

Cultural Property Advisory Committee; Notice of Meeting

ACTION: Notice of meeting.

SUMMARY: The Department of State announces the location, dates, times, and agenda for the next meeting of the Cultural Property Advisory Committee.

DATES AND TIMES: The Cultural Property Advisory Committee (''the Committee'') will meet January 25–27, 2022, from 9:00 a.m. to 5:00 p.m. (EST) via videoconference. The Committee will hold an open session on January 25, 2022, at 11:00 a.m. (EST), which will last approximately one hour.

Participation: You may participate in the open session by videoconference. To participate, visit *http://culturalheritage.state.gov* for information on how to access the meeting. Please submit any requests for reasonable accommodation no later than January 18, 2022, by contacting the Bureau of Educational and Cultural Affairs at *culprop@state.gov*. It may not be possible to accommodate requests made after that date.

Comments: The Committee will review your written comments if they are received by January 18, 2022, at 11:59 p.m. (EST). You are not required to submit written comments in order to make an oral comment in the open session. You may submit written comments in two ways, depending on whether they contain privileged or confidential information:

- *Electronic Comments:* For ordinary comments, please use *http://www.regulations.gov,* enter the docket *[DOS–2021–0037],* and follow the prompts to submit your comments.
- *Email Comments:* For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please email submissions to *culprop@state.gov*. Include ''Cyprus'', ''Guatemala'', and/or ''Mali'' in the subject line, as appropriate.

FOR FURTHER INFORMATION CONTACT: For general questions concerning the meeting, contact Allison Davis, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, by phone (202–702–1166) or email (*culprop@state.gov*).

SUPPLEMENTARY INFORMATION: In accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (''the Act''), the Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (''the Committee'') (19 U.S.C. 2605(e)(2)). The Act describes the Committee's responsibilities. A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will continue to review the proposed extension and amendment of the cultural property agreement with the Government of the Republic of Cyprus, including a request to include additional categories of archaeological and ethnological material. The Committee will also review the proposed extension of the cultural property agreement with the Government of the Republic of Guatemala and the proposed extension and amendment of the cultural property agreement with the Government of the Republic of Mali, including a request to include additional categories of ethnological material. In addition, the Committee will undertake a continuing review of the effectiveness of other cultural property agreements and emergency actions currently in force.

Open Session Participation: The Committee will hold an open session of the meeting to receive oral public comments on the proposed extension and amendment of the agreement with Cyprus, the proposed extension of the agreement with Guatemala, and the proposed extension and amendment of the agreement with Mali on Tuesday, January 25, 2021, from 11:00 a.m. to approximately 12:00 p.m. (EST). The Department will provide specific instructions on how to participate or observe the open session at *http://culturalheritage.state.gov*.

You do not need to register to observe the open session. You do not have to submit written comments to make an oral comment in the open session. If you do wish to speak, however, you must request to be scheduled by January 18, 2022, via email (*culprop@state.gov*). Please include your name and any organizational affiliation in this request. The open session will start with a brief presentation by the Committee, after which you should be prepared to answer questions on any written statements you may have submitted. Finally, you may be invited to provide additional oral comments for a maximum of five (5) minutes per participant, time permitting. Due to time constraints, it may not be possible to accommodate all who wish to speak.

Written Comments: If you do not wish to participate in the open session but still wish to make your views known, you may submit written comments for the Committee's consideration. Submit non-privileged and non-confidential information (within the meaning of 19 U.S.C. 2605(i)(1)) regarding the proposed extension and amendment of the agreement with Cyprus, the proposed extension of the agreement with Guatemala, and/or the proposed extension and amendment of the agreement with Mali using the regulations.gov website (listed in the ''COMMENTS'' section above) no later than January 18, 2022, at 11:59 p.m. (EST). For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please send comments to *culprop@state.gov*. Include ''Cyprus'', ''Guatemala'', and/or ''Mali'' in the subject line. In all cases, your written comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). Written comments submitted via regulations.gov are not private and are posted at *http://www.regulations.gov*. Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that are privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)). We request that any party soliciting or aggregating written comments from other persons inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments that they do not want publicly disclosed.

Allison Davis,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–00015 Filed 1–5–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability, Notice of Public Comment Period, and Request for Comment on the Draft Environmental Assessment for the Sierra Space Dream Chaser Vehicle Operator License at the Shuttle Landing Facility, Brevard County, Florida

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability, notice of public comment period, and request for comment.

SUMMARY: The FAA is announcing the availability of and requesting comments on the Draft Environmental Assessment for the Sierra Space Dream Chaser Vehicle Operator License at the Shuttle Landing Facility, Brevard County, Florida (Draft EA).

DATES: Comments must be received on or before January 24, 2022.

ADDRESSES: Comments should be mailed to Ms. Chelsea Clarkson, Sierra Space at SLF EA, c/o ICF, 9300 Lee Highway, Fairfax, VA 22031. Comments may also be emailed to *SierraSpaceSLF@icf.com*.

FOR FURTHER INFORMATION CONTACT: Ms. Chelsea Clarkson, Environmental Protection Specialist, Federal Aviation Administration, c/o ICF, 9300 Lee Highway, Fairfax, VA 22031; phone (202) 267–4745; and email *SierraSpaceSLF@icf.com*.

SUPPLEMENTARY INFORMATION: The FAA is the lead agency. The National Aeronautics and Space Administration (NASA), U.S. Space Force (USSF), U.S. Fish and Wildlife Service (USFWS), the National Park Service (NPS), and the U.S. Coast Guard (USCG) are cooperating agencies for the Draft EA. The FAA is evaluating Sierra Space's proposal to conduct Dream Chaser reentry operations at the Shuttle Landing Facility in Brevard County, Florida. Sierra Space's reentry operations would require an FAA Vehicle Operator License.

The FAA has posted the Draft EA and a presentation describing the project and potential environmental impacts on the project website: *https://www.faa.gov/space/stakeholder_engagement/shuttle_landing_facility/*.

At this time, the FAA does not intend to host a public meeting regarding the Draft EA. If you would like to request a public meeting, email *SierraSpaceSLF@icf.com* by January 10, 2022.

The FAA encourages all interested parties to provide comments concerning the scope and content of the Draft EA. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask the FAA in your comment to withhold from public review your personal identifying information, the FAA cannot guarantee that we will be able to do so.

The FAA prepared the Draft Environmental Assessment (EA) for public review pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended (42 United States Code 4321, *et seq.*), Council on Environmental Quality (CEQ) NEPA implementing regulations (40 Code of Federal Regulations Parts 1500 to 1508), and FAA Order 1050.1F, Environmental Impacts: Policies and Procedures.

Issued in Washington, DC, on December 23, 2021.

James R. Repcheck,

Manager, Safety Authorization Division.

[FR Doc. 2021–28329 Filed 1–5–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Regional Infrastructure Accelerator Demonstration Program

AGENCY: Build America Bureau, Department of Transportation (DOT).

ACTION: Notice of funding opportunity.

SUMMARY: The Fixing America's Surface Transportation (FAST) Act, enacted in December 2015, authorized the establishment of a Regional Infrastructure Accelerators Demonstration Program (the Program) to assist entities in developing improved infrastructure priorities and financing strategies for the accelerated development of a project that is eligible for funding under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Credit Program. The Consolidated Appropriations Act, 2021,

enacted on December 27, 2020, appropriated $5 million for this Program. A NOFO was issued in December 2020 and five accelerators were selected from the initial round of applicants. The Build America Bureau (the Bureau) is issuing a second NOFO to further expand the Program and solicit applications for designating and funding Regional Infrastructure Accelerators (RIA) that: (1) Serve a defined geographic area; (2) act as a resource to qualified entities in the geographic area in accordance with the FAST Act; and (3) demonstrate the effectiveness of an RIA to expedite the delivery of projects eligible for the TIFIA credit program. Projects are not required to apply for or receive TIFIA credit assistance to be eligible; however, applicants who are considering the appropriateness of innovative financing methods such as TIFIA, the Railroad Rehabilitation and Improvement Financing (RRIF) credit program, Private Activity Bonds (PABs), project bundling, private investment, and other innovative financing methods to accelerate the delivery of eligible projects are strongly encouraged to apply.

SUPPLEMENTARY INFORMATION: Each section of this notice contains information and instructions relevant to the application process for the RIA grants. All applicants should read this notice in its entirety so that they have the information they need to submit eligible and competitive applications.

Table of Contents

A. Program Description

1. *Background:* The Bureau is responsible for driving transportation infrastructure development projects in the United States through innovative financing programs. Its mission is to provide access to the Bureau's credit programs in a streamlined, expedient, and transparent manner. In accomplishing its mission, the Bureau also provides technical assistance and encourages innovative best practices in project planning, financing, delivery, and monitoring. The Bureau draws upon the full resources of DOT to best utilize the expertise of DOT's Operating Administrations while promoting a culture of innovation and customer service.

Section 1441 of the FAST Act [1] authorized the Program. On December 31, 2020, the Bureau issued a NOFO (85 FR 86983) following the Further Consolidated Appropriations Act, 2020.[2] The Consolidated Appropriations Act, 2021,[3] appropriated $5 million to continue the Program, which is the source of this funding opportunity.

The intent of this Program is to demonstrate and evaluate the viability and effectiveness of a small number of accelerators in expediting the development and delivery of specific transportation projects within the geographic area of each RIA designated by the Bureau. It is the intent of the Bureau to expand the Program coverage building on the earlier designation of five RIAs in Cleveland, Chicago, Fresno, San Diego, and Seattle as result of the NOFO issued in December 31, 2020. Therefore, the Bureau continues to be keenly interested in testing several RIA models to address needs based on common transportation infrastructure make-up and challenges within regions, particularly those with less capacity or experience in using innovative financing and project delivery methods, and those supporting eligible entities that are likely to be first time users of the Bureau's credit programs, such as the TIFIA credit program. The Bureau plans to select between one and five RIAs for awards under this program based on proposals submitted by eligible applicants in response to this notice. Ideally, when considering both the first and the second rounds of awards under this program, there will be a diversity of RIAs selected for awards based on geography (*e.g.,* rural, urban, disadvantaged community), organizational structure (*e.g.,* within a State or Metropolitan Planning Organization), operational business model and focus.

2. *Regional Designation:* For the purpose of this Program, the Bureau will consider regional designation as broadly defined in the following categories:

a. *State or Multi-State:* An RIA that serves one State or a group of State entities with common interest in transportation projects being delivered.

b. *Urban or Metropolitan Planning Organization (MPO):* An RIA that serves a local government or group of local jurisdictions with transportation functions within a metropolitan area. For this Program, if the RIA serves MPOs sharing State boundaries, it would be considered under this category.

c. *Rural:* An RIA that serves a region of rural communities as defined in this notice. An RIA serving multiple rural communities across state lines would be considered under this category. To be considered a rural RIA, most of the projects listed in the proposal must meet the definition of rural in Section C.5 of this notice.

d. *Other:* Any proposal that includes multiple jurisdictions with shared priorities and interest, such as a river basin, transportation corridor, etc.

3. *Program Goals:* The primary intent for the Program is to establish regional infrastructure accelerators to assist entities in accelerating TIFIA-eligible projects through innovative financing strategies. This assistance can be in the form of any of the following, based on the needs of the project(s) that the applicant proposes to assist:

a. Project planning;

b. Studies and analysis, including feasibility, market analysis, project costs, cost-benefit analysis, value for money, public benefit, economic assessments, and environmental reviews;

c. Revenue forecasting, funding and financing options analyses, application of best practices, innovative financing/procurement, and public-private partnerships, where appropriate:

d. Preliminary engineering and design work;

e. Statutory and regulatory compliance analyses;

f. Evaluation of opportunities for private financing, project bundling and/or phasing;

g. Enhancement of rural project sponsors' capacity to use the TIFIA credit program and to the extent applicable, the RRIF credit program, PABs, and other innovative financing methods, helping to bundle projects across multiple smaller jurisdictions to create a project at a scale that is more appropriate for the Bureau's credit assistance, and pool the jurisdictions' resources to apply for TIFIA credit assistance and, to the extent applicable, RRIF credit assistance and PABs, as well as leveraging DOT's Rural Opportunities to Use Transportation for Economic Success (ROUTES) Initiatives' [4] products and offerings; and

h. Other direct, project-specific support as appropriate.

Funding, in the form of and pursuant to a cooperative agreement, will be provided for a single year, with an

[1] Public Law 114–94, 129 Stat. 1312, 1435 (Dec. 4, 2015).

[2] Public Law 116–94, div. H, tit. I, 133 Stat. 2946 (Dec. 20, 2019).

[3] Public Law 116–260, div. L, tit. I (as enrolled Dec. 27, 2020).

[4] *https://www.transportation.gov/rural.*

option for a second year for an RIA that meets or exceeds agreed-upon performance targets. Competitive proposals that demonstrate long-term self-sustainability will be given greater consideration. The Bureau intends to work closely with grant recipients in developing and, as applicable, financing projects within the RIA's geographic area.

4. *Changes from the FY 2020 NOFO:* This FY 2021 Regional Infrastructure Accelerator Demonstration Program NOFO updates the FY 2020 NOFO to reflect this Administration's priorities for creating good-paying jobs, improving safety, applying transformative technology, and explicitly addressing climate change and advancing racial equity. Therefore, the Bureau added the Transformative Projects criterion to clarify how the long-term project outcomes should align with the Administration's priorities in a competitive application. Applicants should refer to Section E of this NOFO for descriptions of the selection criteria, including the new Transformative Projects criterion. Additionally, this NOFO clarifies what would be required of the Applicant to receive a STRONG rating for evaluation Criteria, where applicable, as further described in Section E.1.

B. Federal Award Information

The Bureau hereby requests applications from all interested parties to result in the award of between one and five cooperative agreement(s), each containing substantial involvement on the part of the Federal government in accordance with Section 6305 of title 31, United States Code. The Bureau anticipates substantial Federal involvement between it and the recipient during this Program will include among others:

a. Technical assistance and guidance to the recipients;

b. Close monitoring of performance;

c. Involvement in technical decisions; and

d. Participation in status meetings including kick off meeting and annual technical and budget reviews.

1. *Program Funding and Awards:*

a. *Number of Awards:* The Bureau intends to select between one and five RIAs, based on the number and viability of applications.

b. *Size of Award:* A total of $5 million is available for this Program. The size of individual awards will be determined by the number of RIAs selected and the funding needed for each to meet the Program objectives.

2. *Funding Period:* The Bureau intends to award funds on a yearly basis for a period of two years under a cooperative agreement with the second year as an option year. A third option year of funding may be provided if the selected RIA is achieving agreed-upon performance objectives, subject to the availability of funds.

C. Eligibility Information

1. *Eligible Applicants:* To be selected as an RIA, an applicant must be an eligible applicant. An eligible applicant is: A U.S. public entity, including a state, multi-state or multi-jurisdictional group, municipality, county, a special purpose district or public authority with a transportation function including a port authority, a tribal government or consortium of tribal governments, MPO, regional transportation planning organization (RTPO), Regional Transportation Commission, or a political subdivision of a State or local government, or combination of two or more of the foregoing.

If more than one public entity is applying in a single proposal, one of the entities must be designated as the lead applicant. Such applicant will be authorized to negotiate and enter into a cooperative agreement with the Government on behalf of the entities, will be responsible for performance, and will be accountable for Federal funds. Applications will be accepted from a partnership between one or more eligible applicants and another U.S. party, such as a private entity, consulting or engineering firms, etc., as long as one of the eligible public entities is designated as the lead applicant and that entity will enter into the cooperative agreement, with the shared goal of establishing and operating the RIA. The location of all RIA application parties, their entire jurisdictions and all proposed projects must be located solely in the United States and its territories. Proposed projects and project sponsors must meet the eligibility requirements for TIFIA credit assistance as further defined in Chapter 3 of the Bureau's Credit Program Guide (*https://www.transportation.gov/sites/buildamerica.dot.gov/files/2019-08/Bureau%20Credit%20Programs%20Guide_March_2017.pdf#page=29*). In addition, the Bureau will consider the extent to which an applicant demonstrates the capacity to accelerate projects eligible for the TIFIA credit program through the use of innovative financing strategies, including but not limited to the TIFIA and RRIF credit programs, PABs, project bundling, and private investment. Further, the Bureau will consider applications from any RIA that was designated pursuant to the prior NOFO to the extent that funding is available, and only after giving primary consideration to applicants who have not received any funding under this Program.

2. *Cost sharing or Matching:* There is no requirement for cost sharing or matching the grant funds.

3. *Other:* For the purposes of this Program, the following terms apply:

a. *Rural Infrastructure Project:* Consistent with the definition of ''rural infrastructure project'' for the TIFIA credit program, ''rural'' for the purposes of this notice is defined as a surface transportation infrastructure project located outside of an urbanized area with a population greater than 150,000 individuals, as determined by the Bureau of the Census.

b. A proposed region whose geographic authority is in both an urban and a rural area will be designated as urban if the majority of the projects listed in the proposal are located in urban areas. Conversely, a proposed region located in both an urban area and a rural area will be designated as rural if the majority of the projects listed in the proposal are in rural areas.

c. *Urban/Rural Project determination:* A project located in both an urban and a rural area will be designated as urban if less than ½ of the project's costs are spent in a rural area. If ⅔ or more of a project's costs are spent in a rural area, the project will be designated as rural. For projects where between ½ and ⅔ of their costs are in a rural area, the project will be designated as rural if the applicant demonstrates that ⅔ or more of the project's benefits accrue to users in rural areas; if the applicant does not make such demonstration, the project will be designated as urban.

D. Application and Submission Information

1. *The Application Package:* Applicants must submit all applications through *www.Grants.gov.* Instructions for submitting applications can be found at *https://www.transportation.gov/buildamerica/financing/tifia/regional-infrastructure-accelerators-program.*

2. *Content and Form of Application Submission:* The application must include the Standard Form 424 (Application for Federal Assistance), cover page, and the application narrative.

a. *Cover Page:* Each application should include a cover page that contains, at minimum, name of the applicant and sponsor, if applicable, the location; the region of designation; category of designation for which the applicant is to be considered; and RIA budget amount.

b. *Application Narrative:* The application narrative should follow the basic outline below to address the Program requirements and assist evaluators in locating relevant information.

Section	Section explained
I. Applicant	See D.2.I.
II. Description of Proposed Geographic/Jurisdictional Region.	See D.2.II.
III. Accelerator Proposal	See D.2.III.
IV. Budget, Sources and Uses for Full Accelerator Funds.	See D.2.IV.
V. Selection Criteria	See D.2.V.

The application narrative should include the information necessary for the Bureau to determine that the applicant(s) proposed regional focus, the overall accelerator proposal, list of intended projects, budget, and other information satisfy the eligibility requirements set forth in this notice as described in Section C and to assess the selection criteria specified in Section E.1. To the extent practicable, applicants should provide supporting data and documentation in a form that is directly verifiable by the Bureau. The Bureau may ask any applicant to supplement data in its application but expects applications to be complete upon submission.

In addition to the information requested elsewhere in this notice, the proposal should include a table of contents, maps, and graphics, as appropriate, to make the information easier to review. The Bureau recommends that the proposal be prepared with standard formatting preferences (a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins). The proposal narrative may not exceed 30 pages in length, excluding cover pages and table of contents. The only substantive portions that may exceed the 30-page limit are documents supporting assertions or conclusions made in the 30-page project narrative. If possible, applicants should provide website links to supporting documentation rather than copies of these supporting materials. If supporting documents are submitted, applicants should clearly identify within the project narrative the relevant portion of the project narrative that each supporting document supports. The Bureau recommends using appropriately descriptive file names (*e.g.,* ''Project Narrative,'' ''Maps,'' ''Memoranda of Understanding'' and ''Letters of Support,'' etc.) for all attachments.

I. *Applicant:* This section of the narrative should include information describing the organizational structure and formal/informal relationships between parties associated with the RIA application. It should directly address the eligibility requirements discussed in section C.1 of this notice. The applicant should use this section to explain the organization's history, qualifications, and experience of key individuals who will be working in the proposed RIA. This section should also include descriptions of previous projects relevant to the RIA's activities envisioned in this notice that the organization or its individuals completed. The narrative should place the projects into a broader context of transportation infrastructure investments being pursued by the proposed RIA and its sponsors, and how it will benefit communities within the region.

II. *Description of Proposed Geographic/Jurisdictional Region:* This portion of the narrative should precisely identify the geographic region, the jurisdictions, and the agencies the RIA would serve and identify which of the four categories of RIA identified in Section A.2 that this proposal falls under, and explain why. The narrative should explain the commonalities and shared interests of parties in the proposed region as the rationale for establishing a region of this construct, along with the affiliations within the proposed region. Consistent with the Department's ROUTES Initiative (*https://www.transportation.gov/rural*), the Department encourages applicants to describe how activities proposed in their application would address the unique challenges facing rural transportation networks, regardless of the geographic location of those activities.

III. *Accelerator Proposal:* This section of the narrative should explain how the applicant(s) propose to establish the RIA and the concept of how it would operate, and provide the project-specific services identified in Section A of this notice, along with a proposed timeline for establishing the RIA, with key milestones and suggested performance targets during its operational phase. The applicant should describe, in sufficient detail, the applicant's approach to identifying and building the pipeline of projects to be undertaken and how they will develop such projects utilizing their experience and expertise, and identify an initial pipeline of projects that are eligible for TIFIA credit assistance and, to the extent applicable, RRIF credit assistance, PABs, and other innovative financing methods. The narrative should also contain a list of projects that the applicant(s) propose to assist under the RIA. This list, to the extent possible, should include, at a minimum:

a. Project name and location;
b. Project sponsor;
c. Description;
d. Bureau program most likely to apply (TIFIA, RRIF, PABs);
e. Support activities the applicant envisions the RIA would provide
f. Project costs; and
g. Project timeline.

IV. *Budget, Sources, and Uses for Full Accelerator Funds:* The applicant should include a proposed financial plan and budget including the Federal grant amount requested, non-Federal matching funds, in-kind contributions, and other sources. The proposed plan should also include a list of activities and projects as well as all associated costs of the proposed RIA. For non-Federal matching funds, the application should identify the sources as well as supporting documentation indicating the degree to which those funds are committed and dates of their availability. If the applicant proposes that the RIA will reach a point of long-term self-sustainability, the narrative should include a description of how this would happen, and where the long-term funds would be generated.

V. *Selection Criteria:* This section of the application should demonstrate how the application aligns with the criteria described in Section E.1 of this notice. The Bureau intends to select and designate RIA that demonstrate in their proposal the ability to effectively assist entities in developing improved infrastructure priorities and financing strategies for the accelerated development of one or more projects eligible for funding under the TIFIA program. DOT will consider the extent to which an RIA is likely to effectively promote investment in eligible projects, develop a pipeline of regional transportation projects, and result in the implementation of projects with innovative financing methods.

The Bureau encourages applicants to either address each criterion or expressly state that the project does not address the criterion. Applicants are not required to follow a specific format, but the outline suggested addresses each criterion separately and promotes a clear discussion that assists project evaluators. To minimize redundant information in the application, the Bureau encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application. The guidance in this section is about how the applicant should organize their application.

Guidance describing how the Bureau will evaluate projects against the Selection Criteria is in Section E.1 of this notice. Applicants also should review that section before considering how to organize their application.

3. *Unique Entity Identifier and System for Award Management (SAM):* Each applicant must: (1) Be registered in SAM before submitting its application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. The Department may not make an RIA grant to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Department is ready to make a grant, the Department may determine that the applicant is not qualified to receive a grant and use that determination as a basis for making a grant to another applicant.

4. *Submission Dates and Timelines:*

a. *Deadline:* Applications in response to this NOFO must be submitted through *Grants.gov* by 11:59 p.m. EST 90 days after publication of this notice. The *Grants.gov* ''Apply'' function will open on the date of publication. The Bureau may hold NOFO information session(s) before the due date.

To apply through *Grants.gov*, applicants must:

(1) Obtain a Data Universal Numbering System (DUNS) number;

(2) Register with the System Award for Management (SAM) at *www.sam.gov;* and

(3) Create a *Grants.gov* username and password; and

(4) The E-business Point of Contact (POC) at the applicant's organization must also respond to the registration email from *Grants.gov* and login at *Grants.gov* to authorize the POC as an Authorized Organization Representative (AOR). Please note that there can only be one AOR per organization.

Please note that the *Grants.gov* registration process usually takes 2–4 weeks to complete and that the Department will not consider late applications that are the result of failure to register or comply with *Grants.gov* applicant requirements in a timely manner. For information and instruction on each of these processes, please see instructions at *http://www.grants.gov/web/grants/applicants/applicant-faqs.html.* If interested parties experience difficulties at any point during the registration or application process, please call the *Grants.gov* Customer Service Support Hotline at 1(800) 518–4726, Monday–Friday from 7:00 a.m. to 9:00 p.m. EST.

5. *Other Submission Requirements:*

(a) *Submission Location:* Application must be submitted to *Grants.gov*.

(b) *Consideration of Application:* Only applicants who comply with all submission deadlines described in this notice and submit applications through *Grants.gov* will be eligible for award. Applicants are strongly encouraged to make submissions in advance of the deadline.

(c) *Late Applications:* Applicants experiencing technical issues with *Grants.gov* that are beyond the applicant's control must contact *RIA@dot.gov* prior to the application deadline with the username of the registrant and details of the technical issue experienced. The applicant must provide:

(1) Details of the technical issue experienced;

(2) Screen capture(s) of the technical issues experienced along with corresponding *Grants.gov* ''Grant tracking number'';

(3) The ''Legal Business Name'' for the applicant that was provided in the SF–424;

(4) The AOR name submitted in the SF–424;

(5) The DUNS number associated with the application; and

(6) The *Grants.gov* Help Desk Tracking Number.

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all the instructions in this notice of funding opportunity; and (4) technical issues experienced with the applicant's computer or information technology environment. After the Department reviews all information submitted and contacts the *Grants.gov* Help Desk to validate reported technical issues, USDOT staff will contact late applicants to approve or deny a request to submit a late application through *Grants.gov*. If the reported technical issues cannot be validated, late applications will be rejected as untimely.

6. Applications under this NOFO are not subject to the State review under E.O. 12372.

7. *Funding Restrictions:* The DOT will not reimburse any pre-award costs or application preparation costs under this proposed agreement. Construction of any project being contemplated or aided by the proposed RIA is not an allowable activity under this grant. All non-domestic travel must be approved in writing by the DOT designated agreement officer prior to incurring costs. Travel requirements under the cooperative agreement will be met using the most economical form of transportation available. If economy class transportation is not available, the request for payment vouchers must be submitted with justification for use of higher-class travel indicating dates, times, and flight numbers.

E. Application Review Information

1. *Criteria:* This section specifies the criteria that the Bureau will use to evaluate and award applications for Program grants. The criteria incorporate statutory eligibility requirements. For each proposed RIA, the Bureau will review the application for the criteria described in this section. The Bureau does not consider any criterion more important than the others.

A. *Experience/Qualifications:* The Bureau will assess whether and to what extent the applicant(s):

(1) Possess the ability to evaluate and promote innovative financing methods for local projects including the use of TIFIA and RRIF and other Federal assistance programs where applicable;

(2) Possess the ability to provide technical assistance on best practices with respect to financing projects;

(3) Have experience in increasing transparency with respect to infrastructure project analysis and using innovative financing for public infrastructure projects;

(4) Have experience in deploying predevelopment capital programs designed to facilitate the creation of a pipeline of infrastructure projects available for investment;

(5) Have a history of successfully bundling smaller-scale and rural projects into larger proposals that may be more attractive for private investment;

(6) Have demonstrated success in reducing transaction costs for public project sponsors;

(7) Demonstrate the capacity to accelerate projects eligible for the TIFIA credit program through the use of innovative financing strategies such as the TIFIA and RRIF credit programs, and PABs, but also other strategies such as project bundling, grant anticipation revenue vehicles, and incorporating private capital;

(8) Have experience in the development of project financial plans, including developing capital structures

and identifying funding and financing sources, as well as a demonstrated track record for achieving financial close and

(9) Have experience in working with private sector project sponsors disadvantaged communities, including but not limited to rural and low resources communities as well as working on revitalization projects.

An applicant that demonstrates substantial experience of 10 years or more in the development and delivery of projects, including the use of alternative delivery methods such as design-build and/or public private partnerships (P3) as related to items (1) through (9) above, and innovative financing particularly the use of TIFIA and RRIF or PABs will receive a STRONG rating in this criterion.

B. *Partnerships:* The Bureau will consider the extent to which applicant(s) demonstrate strong collaboration among a broad range of stakeholders in the proposed geographic area of the RIA. Applications with strong partnerships typically involve multiple partners in project development, funding, and finance. The Bureau will consider applicants that partner with State, local, and private entities for the development, funding, financing, and delivery of transportation projects to have strong partnerships. Evaluators will also consider the relationship of the RIA with its constituencies and authorities granted by them. The Bureau will assess the ability of the proposed RIA to develop projects quickly and effectively by having the support of its members and working across jurisdictions.

An applicant that can demonstrate effective partnerships with public, private sector and/or academic entities will receive a STRONG rating in this criterion.

C. *Regional Viability:* The Bureau will evaluate the proposed region, geographically, organizationally, and functionally, as well as its jurisdictional relevance. In evaluating this criterion, the Bureau will consider the geographic make-up of the proposed RIA and the transportation needs of the region.

D. *Business Model:* The Bureau will assess the thoroughness, viability, and efficiency that the applicant(s) can establish the RIA, commence operations, and deliver project-specific outcomes. In conducting this assessment, evaluators will consider:

(1) The effort, cost, and actions necessary to initially establish the proposed RIA, including workspaces, fixed and variable costs, staffing, and the development of relationships necessary to function effectively in the proposed region.

(2) How the proposed RIA will operate once established, including costs, organization, efficiency, availability of the technical expertise and resources needed to accelerate project delivery, work plan, and time required to achieve operational status.

An applicant that can demonstrate the ability to stand up the RIA and achieve operations status within 6 months of executing a cooperative agreement will receive a STRONG rating in this criterion.

E. *Pipeline:* The Bureau will consider the proposed pipeline of projects and assess whether and to what extent they are likely to be eligible projects and appropriate for development activities as set forth in this notice. The proposed pipeline must include one or more projects likely to be eligible for TIFIA credit assistance. In evaluating this criterion, the Bureau will consider the number of eligible projects in the pipeline, the degree of local/regional support of the projects, and the project status and timeline as they relate to the likelihood the RIA can impact the project during the performance period of the cooperative agreement. Evaluators will also assess the degree to which the skills/experience of the applicant(s) are appropriate for the proposed projects. The Bureau will also evaluate the viability and proposed approach the applicant(s) have developed for attracting new projects into the RIA's pipeline of projects and how they propose to assist and monitor the development of those projects.

F. *Readiness:* The Bureau will consider the extent to which the proposed RIA is prepared to commence operations and begin achieving project-specific results. Evaluators will also assess the viability of the proposed budget as it relates to the establishment and successful operations of the RIA as proposed. In considering this criterion, evaluators will also determine the likelihood that proposed milestones will be subject to delay and/or cost overruns and the risk that key milestones might be missed due to internal or external factors. Evaluators will also consider the readiness of the proposed RIA to commence operations, including but not limited to:

(1) Availability of facilities and equipment necessary to function;

(2) Existing governance structure as compared to proposed future structure; and

(3) Ability of existing relationships to rapidly deliver results.

G. *Value:* The Bureau will evaluate the relative value of the proposal to individual projects and the taxpayer, including but not limited to: The number of projects likely to measurably be accelerated as a result of the proposed technical assistance of the RIA, the number of projects reasonably expected to utilize innovative financing, and the asset class(es) most prevalent in the proposed project portfolio. In considering this criterion, evaluators will also consider the applicant's proposed performance targets (Section III of the application) and how they compare to the overall proposed cost of the RIA (Section IV of the application).

H. *Rural Assistance:* In support of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009), the Department encourages applicants to consider how the project will address the challenges faced by individuals and underserved communities in rural areas.

Where applicable, the Bureau will evaluate the degree to which the proposal can support individual rural project sponsors. The Bureau will consider opportunities proposed to overcome common barriers to using TIFIA and RRIF credit assistance and other innovative financing methods for rural project sponsors, such as project size or type, financial or institutional capabilities, and other issues. Consistent with the Department's ROUTES Initiative (*https://www.transportation.gov/rural*), the Department recognizes that rural transportation networks face unique challenges. To the extent that those challenges are reflected in the merit criteria listed in this section, the Department will consider how the activities proposed in the application will address those challenges, regardless of the geographic location of those activities. This can include delivering innovative technical assistance and leveraging the DOT ROUTES Initiative to provide user-friendly information and other assistance to rural project sponsors.

I. *Self-Sustainability:* The Bureau will consider whether and to what extent the proposed RIA will achieve self-sustainability during the Program's effective period of receipt of Federal funding. In the event that a proposed RIA will not achieve self-sustainability, the Bureau will evaluate the extent to which the termination of the RIA might deliver long-term benefits as the result of projects delivered during the funding period.

An applicant that can demonstrate a model of self-sustainability and continued benefits beyond the effective period of Federal funding will receive a STRONG rating in this criterion.

J. *Risk:* The Bureau will assess the risks to successful implementation and operation of the proposed RIA, and the degree to which proposed mitigation activities might address/offset those risks. Evaluators will also assess the practicality of proposed mitigation activities in terms of cost, complexity, and time required to implement the actions.

An applicant that can demonstrate the development of, at minimum, qualitative risk assessments of proposed projects in meeting Federal eligibility requirements (see Chapter 3 of the Bureau Credit Programs Guide: *https://www.transportation.gov/sites/buildamerica.dot.gov/files/2019-08/Bureau%20Credit%20Programs%20Guide_March_2017.pdf#page=29*) will receive a STRONG rating in this criterion.

K. *Transformative Projects:* The Bureau will consider the extent to which the proposed project to be aided by the RIA will address the following Department priorities:

(1) *Safety:* DOT will assess the project's ability to foster a safe transportation system for the movement of goods and people, consistent with the Department's strategic goal to reduce transportation-related fatalities and serious injuries across the transportation system.

(2) *Environmental Sustainability:* DOT will consider the extent to which the project incorporates considerations of climate change, resilience, and environmental justice in the planning stage and in project delivery, such as through incorporation of specific design elements that address climate change impacts.

(3) *Equity and Accessibility:* DOT will consider the extent to which the project: (i) Increases transportation choices and equity for individuals; (ii) expands access to essential services for communities across the United States, particularly for underserved or disadvantaged communities; (iii) improves connectivity for citizens to jobs, health care, and other critical destinations, or (iv) proactively addresses racial equity [5] and barriers to opportunity, through the planning process or through incorporation of design elements.

(4) *Innovative Technology:* Consistent with DOT's objectives to encourage transformative projects that take the lead in deploying innovative technologies and practices that drive outcomes in terms of safety, environmental sustainability, quality of life, and state of good repair, DOT will assess the extent to which the applicant uses innovative strategies, including: (i) Innovative technologies, (ii) innovative project delivery, or (iii) innovative financing.

(5) *State of Good Repair:* Consistent with the Department's strategic objective to maintain and upgrade existing transportation systems, DOT will assess whether and to what extent: (i) The project is consistent with relevant plans to maintain transportation facilities or systems in a state of good repair and address current and projected vulnerabilities; (ii) if left unimproved, the poor condition of the asset will threaten future transportation network efficiency, mobility of goods or accessibility and mobility of people, or economic growth; (iii) the project is appropriately capitalized, including whether project sponsor has conducted scenario planning and/or fiscal impact analysis to understand the future impact on public finances; (iv) a sustainable source of revenue is available for operations and maintenance of the project and the project will reduce overall life-cycle costs; (v) the project will maintain or improve transportation infrastructure that supports border security functions; and (vi) the project includes a plan to maintain the transportation infrastructure in a state of good repair. DOT will prioritize projects that ensure the good condition of transportation infrastructure, including rural transportation infrastructure, that support commerce and economic growth.

An applicant that can demonstrate a pipeline of viable projects that address at least four of the above listed Department priorities (in this Section E.1.K(1) through (5)) will receive a STRONG rating in this criterion.

2. *Review and Selection Process:* A Review Team will review all eligible applications received by the deadline. This Review Team will consist of Modal Liaisons from the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA) and Federal Transit Administration (FTA) and Bureau employees designated by the Executive Director. The Program grants review and selection process consists of two steps: (1) The Review Team will evaluate each proposal and make a determination of eligibility based on criteria outlined in Section C.1 of this notice and, if deemed eligible; and (2) the Review Team will evaluate the proposal based on the Selection Criteria in Section E.1 of this notice. In reviewing the application, each criterion will be given one of the following qualitative ratings: STRONG, MODERATE, or MARGINAL. These ratings are based on the proposal's alignment with the criteria. No one criterion is weighted higher or lower than the others. A collective overall assessment rating will be assigned to each application based on the qualitative ratings assigned for each evaluation criterion. The collective overall assessment will ultimately reflect how well the proposal meets the goals of the Program as stated in Section A.3. of the NOFO. Each application will be given an overall assessment rating of ''high'' if it receives a rating of STRONG in at least 6 of the evaluation criteria; an overall assessment rating of ''medium'' if it receives a rating of MODERATE or a combination of STRONG and MODERATE in at least 6 of the evaluation criteria; and an overall assessment rating of ''low'' if it does not meet the requirements for a ''medium'' or ''high''. The Review Team will present its findings to the Senior Review Team, which consists of Bureau Leadership, including the Executive Director. The Executive Director will finalize recommendations and present them to the Secretary. The final award decisions will be made by the Secretary of Transportation.

3. *Additional Information:* Prior to award, each selected applicant will be subject to a risk assessment as required by 2 CFR 200.205. The Department must review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). An applicant may review information in FAPIIS and comment on any information about itself. The Department will consider comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notice

Following the evaluation process outlined in Section E.2, the Secretary will announce awarded projects by posting a list of selected RIA at *https://www.transportation.gov/buildamerica/financing/tifia/regional-infrastructure-accelerators-program.* Notice of selection is not authorization to begin performance or to incur costs for the

[5] Definitions for ''racial equity'' and ''underserved communities'' are found in Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Sections 2 (a) and (b).

proposed RIA. Following that announcement, the Bureau will contact the point of contact listed in the SF 424 to initiate negotiation of the cooperative agreement.

2. Administration and National Policy Requirements

Performance under the cooperative agreement will be governed by and in compliance with the following requirements as applicable to the type of organization of the recipient and any applicable sub-recipients:

All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by DOT at 2 CFR part 1201.

Other terms and condition as well as performance requirements will be addressed in the cooperative agreement with the recipient. The full terms and conditions of the resulting cooperative agreements may vary and are subject to discussions and negotiations.

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States, statutory, regulatory, and public policy requirements, including without limitation, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination; the conditions of performance, non-discrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the Department of Transportation; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients must ensure that no concession agreements are denied, or other contracting decisions made based on speech or other activities protected by the First Amendment. If the Bureau determines that a recipient has failed to comply with applicable Federal requirements, the Bureau may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds. Additionally, Executive Order 13858 directs the Executive Branch Departments and agencies to maximize the use of goods, products, and materials produced in the United States through the terms and conditions of Federal financial assistance awards. If selected for an award, grant recipients must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials, as applicable, in establishing and operating the RIA.

3. Reporting

a. Progress Reporting on Grant Activities

Each applicant selected for RIA grant funding must submit semi-annual progress reports as agreed to in the cooperative agreement to monitor RIA progress and ensure accountability and financial transparency in the RIA grant program.

b. Performance Reporting

Each applicant selected for RIA grant funding must collect and report to the Bureau information on the RIA's performance. The specific performance information and reporting period will be determined on an individual basis. It is anticipated that the Bureau and the grant recipient will hold monthly progress meetings or calls during which the Bureau will review project activities, schedule, and progress toward mutually agreed upon performance targets in the cooperative agreement. If the award is greater than $500,000 over the period of performance, applicants must adhere to the post award reporting requirements reflected in 2 CFR part 200 Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters.

c. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported to the SAM that is made available in the designated integrity and performance system (currently FAPIIS) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

G. Federal Awarding Agency Contacts

For further information concerning this notice please contact the Bureau via email at *RIA@dot.gov,* or call Carl Ringgold at 202–366–2750. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, the Bureau will post answers to questions and requests for clarifications on the Bureau's website at *https://www.transportation.gov/buildamerica/financing/tifia/regional-infrastructure-accelerators-program.* To ensure applicants receive accurate information about eligibility or the Program, the applicant is encouraged to contact the Bureau directly, rather than through intermediaries or third parties, with questions. Bureau staff may also conduct briefings on the Program grant selection and award process upon request.

H. Other Information

1. *Protection of Confidential Business Information:* All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the applicant submits information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant must provide that information in a separate document, which the applicant may cross-reference from the application narrative or other portions of the application. For the separate document containing confidential information, the applicant must do the following: (1) State on the cover of that document that it ''Contains Confidential Business Information (CBI)''; (2) mark each page that contains confidential information with ''CBI''; (3) highlight or otherwise denote the confidential content on each page; and (4) at the end of the document, indicate whether the CBI is information the applicant keeps private and is of the type of information the applicant regularly keeps private. The Bureau/DOT will protect confidential information complying with these requirements to the extent required under applicable law. If the Bureau receives a Freedom of Information Act (FOIA) request for the information that the applicant has marked in accordance with this section, the Bureau will follow the procedures described in its FOIA regulations at 49 CFR 7.29.

2. *Publication/Sharing of Application Information:* Following the completion of the selection process and announcement of awards, the Bureau intends to publish a list of all applications received along with the names of the applicant organizations and funding amounts requested. Except for the information properly marked as

described in Section H.1, the Bureau may make application narratives publicly available or share application information within DOT or with other Federal agencies if DOT determines that sharing is relevant to the respective program's objectives.

3. *Department Feedback on Application:* The Bureau strives to provide as much information as possible to assist applicants with the application process. The Bureau will not review applications in advance, but Bureau staff are available for technical questions and assistance.

4. *Rural Opportunities:* User-friendly information and resources regarding DOT's discretionary grant programs relevant to rural applicants can be found on the Rural Opportunities to Use Transportation for Economic Success (ROUTES) website at *transportation.gov/rural.*

Issued in Washington, DC, on December 27, 2021.

Peter Paul Montgomery Buttigieg,

Secretary of Transportation.

[FR Doc. 2021–28552 Filed 1–5–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of three individuals and two entities that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On December 22, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. AL–KHATIB, Ahmad (a.k.a. AL KHATIB, Ahmad; a.k.a. EL KHATIB, Ahmad), Sao Paulo, Brazil; DOB 03 Jul 1969; nationality Egypt; alt. nationality Lebanon; Gender Male; Tax ID No. 234.904.268–51 (Brazil) (individual) [SDGT].

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, MOHAMED AHMED ELSAYED AHMED IBRAHIM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. AL–MAGHRABI, Haytham Ahmad Shukri Ahmad (a.k.a. ELMAGHRABY, Haytham Ahmed S.A.; a.k.a. ELMAGHRABY, Haytham Ahmed Shokry Ahmed; a.k.a. ELMAGHRABY, Haytham Ahmed Shukri Ahmad), Brazil; DOB 07 Sep 1986; POB Egypt; nationality Egypt; Gender Male; Passport A09538178 (Egypt); Tax ID No. 238.624.338–97 (Brazil) (individual) [SDGT].

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–QA'IDA, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. AWADD, Mohamed Sherif Mohamed Mohamed (a.k.a. AWAAD, Mohamedsherif Mohamed Mohamed; a.k.a. AWAAD, Muhammad Sharif Muhammad Muhammad), Brazil; DOB 08 Jul 1973; nationality Egypt; alt. nationality Syria; Gender Male; Passport A17058452 (Egypt); Tax ID No. 713.286.841–13 (Brazil) (individual) [SDGT].

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, MOHAMED AHMED ELSAYED AHMED IBRAHIM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. ENTERPRISE COMERCIO DE MOVEIS E INTERMEDIACAO DE NEGOCIOS EIRELI (Latin: ENTERPRISE COMÉRCIO DE MOVEIS E INTERMEDIAÇÃO DE NEGOCIOS EIRELI) (a.k.a. ''CASO E CASA''), Rua Ernesto Nazareth 18, Jardim Paraventi, Guarulhos, Sao Paulo 07120–230, Brazil; Rua Tapaciquara 54, Sala 01, Parque Renato Maia, Guarulhos, Sao Paulo 07114–220, Brazil; Organization Established Date 08 Oct 2019; Tax ID No. 35.116.112/0001–97 (Brazil) [SDGT] (Linked To: AL–KHATIB, Ahmad).

Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for being owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly, AHMAD AL–KHATIB, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. HOME ELEGANCE COMERCIO DE MOVEIS EIRELI (Latin: HOME ELEGANCE COMÉRCIO DE MOVEIS EIRELI) (a.k.a. DAIANA PORTELLA COELHO COMERCIO DE MOVEIS E COLCHOES; a.k.a. MARROCOS MOVEIS E COLCHOES; a.k.a. MOHAMED AWAAD COMERCIO DE MOVEIS EIRELI; a.k.a. ''HOME ELEGANCE''), Rua Dorezopolis, 669, Casa 03, Jardim Santa Clara, Guarulhos, Sao Paulo 07123–120, Brazil; Organization Established Date 11 Oct 2018; Tax ID No. 31.746.200/0001–11 (Brazil) [SDGT] (Linked To: AWADD, Mohamed Sherif Mohamed Mohamed).

Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for being owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly, MOHAMED SHERIF MOHAMED MOHAMED AWADD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: December 22, 2021.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–00001 Filed 1–5–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Distilled Spirits Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning guidance on the distilled spirits credit.

DATES: Written comments should be received on or before March 7, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or to *omb.unit@irs.gov.* Please include, ''OMB Number: 1545–1522—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Credit.

OMB Number: 1545–1982.

Form Number: 8906.

Abstract: Form 8906, Distilled Spirits Credit, was developed to carry out the provisions of IRC section 5011(a). This section allows eligible wholesalers and persons subject to IRC section 5055 an income tax credit for the average cost of carrying excise tax on bottled distilled spirits. The form provides a means for the eligible taxpayer to compute the amount of credit.

Current Actions: There is no change to the existing form or burden at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit, organizations, and farms.

Estimated Number of Respondents: 300.

Estimated Time per Respondent: 1 hour, 52 minutes.

Estimated Total Annual Burden Hours: 558 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 3, 2022.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2022–00024 Filed 1–5–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2022, and ending on March 31, 2022, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is .06 per centum per annum.

DATES: Rates are applicable January 1, 2022 to March 31, 2022.

ADDRESSES: Comments or inquiries may be mailed to Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328.

You can download this notice at the following internet addresses: <*http://www.treasury.gov*> or <*http://www.federalregister.gov*>.

FOR FURTHER INFORMATION CONTACT: Ryan Hanna, Manager, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 261006–1328 (304) 480–5120; Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be ''at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.'' 8 U.S.C. 1363(a). Related Federal regulations state that ''Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.'' 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [80 FR 45018]. In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect website.

The Deputy Assistant Secretary for Public Finance, Gary Grippo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Heidi Cohen, Federal Register Liaison for the Department, for purposes of publication in the **Federal Register**.

Heidi Cohen,

Federal Register Liaison.

[FR Doc. 2022–00051 Filed 1–5–22; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2022 Negro Leagues Baseball and Purple Heart Hall of Honor Commemorative Coin Programs

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing pricing for the 2022 Negro Leagues Baseball and Purple Heart Hall of Honor Commemorative Coin Programs as shown below in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Ann Bailey; Sr. Program Manager for Sales and Marketing; United States Mint; 801 9th Street NW, Washington, DC 20220; or call 202–354–7500.

SUPPLEMENTARY INFORMATION:

Coin	Introductory price	Regular price
Silver Proof (both programs)	$74.00	$79.00
Silver Uncirculated (both programs)	69.00	74.00
Clad Proof (both programs)	35.00	40.00
Clad Uncirculated (both programs)	33.00	38.00
Negro Leagues Baseball Silver Dollar with Privy Mark	N/A	85.00
Negro Leagues Baseball Silver Dollar with Jackie Robinson Silver Medal	N/A	135.00
Purple Heart Hall of Honor Colorized Silver Dollar	N/A	95.00

Products containing gold coins will be priced according to the Pricing of Numismatic and Commemorative Gold and Platinum Products Grid posted at *www.usmint.gov.*

Authority: Public Laws 116–209 & 116–247.

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2022–00048 Filed 1–5–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. app.2, that the Research Advisory Committee on Gulf War Veterans' Illnesses (RAC–GWVI) will meet by teleconference on January 27, 2022. The open session will convene at 11:00 a.m. (EST) and end at 4:00 p.m. (EST). The open session will be available to the public by connecting to: Webex URL: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=ma60df771e4c2c1ecda24b0b6290b32d4.* Or, Join by phone: 1–404–397–1596 USA Toll Number or 1–833–558–0712 Toll-free Number; Meeting number (access code): 2761 607 5692. Meeting password: GWVets1990!

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia Theater of operations during the Gulf War in 1990–1991.

The Committee will review VA program activities related to Gulf War Veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. This meeting will focus on the effects of environmental and military exposures on genetics, epigenetics and Gulf War Veteran health. Public comment will be open starting at 3:30 p.m. (EST).

The meeting will include time reserved for public comments 30 minutes before the meeting closes. Individuals who wish to address the Committee may submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may submit written statements for the Committee's review or seek additional information by contacting Dr. Karen Block, Designated Federal Officer, at 202–443–5600, or at *Karen.Block@va.gov.*

Dated: January 3, 2022.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–00043 Filed 1–5–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0576]

Agency Information Collection Activity Under OMB Review: Certification of Affirmation of Enrollment Agreement Correspondence Course

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed Reinstatement of a Previously Approved Information Collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0576.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0576'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 3686(b); 38 U.S.C. 3323(a); 10 U.S.C. 16131, and 38 CFR 21.74256(b).

Title: Certification of Affirmation of Enrollment Agreement Correspondence Course.

OMB Control Number: 2900–0576.

Type of Review: Revision of a currently approved collection.

Abstract: VA uses information from the current collection to pay education benefits for correspondence training. This information allows VA to

determine if the claimant has been informed of the 5-day reflection period required by law.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR No. 211 on November 4, 2021, page 60969.

Affected Public: Individuals or households.

Estimated Annual Burden: 3 hours.

Estimated Average Burden per Respondent: 3 minutes.

Frequency of Response: Annually.

Actual Number of Respondents: 69.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–00006 Filed 1–5–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Thursday,
No. 4 January 6, 2022

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the South Fork Offshore Wind Project; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB435]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the South Fork Offshore Wind Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to South Fork Wind, LLC (South Fork Wind) to take, by Level A harassment and Level B harassment, marine mammals during construction of a commercial wind energy project offshore New York, Rhode Island, and Massachusetts.

DATES: This IHA is valid from November 15, 2022 through November 14, 2023.

FOR FURTHER INFORMATION CONTACT: Carter Esch, Office of Protected Resources, NMFS, (301) 427–8421. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization (ITA) may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On March 15, 2019, NMFS received a request from South Fork Wind for an IHA to take marine mammals incidental to construction of an wind energy project offshore of New York, Rhode Island, and Massachusetts. Following a delay of the project, South Fork Wind submitted an updated version of the application on June 3, 2020, and then a revised version September 14, 2020. The application was deemed adequate and complete on September 15, 2020. However, on December 15, 2020, South Fork Wind submitted a subsequent application due to changes to the project scope. NMFS deemed the application adequate and complete on December 16, 2020. A notice of the proposed IHA was published in the **Federal Register** on February 5, 2021 (86 FR 8490). In response to South Fork Wind's request and in consideration of public comments, NMFS has authorized the taking of 15 species of marine mammals by harassment. Neither South Fork Wind nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Activity

South Fork Wind plans to construct a 90–180 megawatt (MW) commercial offshore wind energy project in the South Fork Wind Farm (SFWF) Lease Area OCS–A 0517 (SFWF; Figure 1 here, and see Figure 1 in the IHA application for more detail), southeast of Rhode Island within the Rhode Island-Massachusetts Wind Energy Area (RI/MA WEA), including an export cable corridor connecting the SFWF to one of two landing locations on Long Island, New York. The project would consist of the installation of up to 15 offshore wind turbine generators (WTGs) and one offshore substation (OSS), an onshore substation, offshore and onshore cabling, and onshore operations and maintenance facilities (Figure 1). Each WTG would interconnect with the OSS via an inter-array submarine cable system. The offshore export cable transmission system would connect the OSS to an existing mainland electric grid in East Hampton, New York. A temporary sheet pile cofferdam may be installed where the offshore export cable conduit exits from the seabed to contain drilling returns and prevent the excavated sediments from silting back into the Horizontal Directional Drill (HDD) exit pit. The final location of the cofferdam will be dependent upon the selected cable landing site. Alternatively, a temporary casing pipe may be used in place of the cofferdam at the same location.

Take of marine mammals may occur incidental to the construction of the project due to in-water noise exposure resulting from (1) impact pile-driving activities associated with installation of WTG and OSS foundations, (2) vibratory pile driving associated with the installation and removal of a temporary cofferdam nearshore, or impact hammering and vibratory pile driving associated with installation of a casing pipe, and (3) surveys, using high-resolution geophysical (HRG) equipment, of the inter-array cable and export cable construction area (construction surveys).

South Fork Wind plans to install the WTGs and OSS in the 55.4 square kilometer (km^2) (13,700 acre) Lease Area (Figure 1). At its nearest point, the SFWF would be approximately 30 kilometers (km) (19 miles (mi)) southeast of Block Island, Rhode Island, and 56 km (35 mi) east of Montauk Point, New York. The South Fork Wind export cable routes (SFEC) would connect SFWF to one of two landing locations on Long Island, New York, where a temporary cofferdam or casing pipe may be installed where the SFEC exits the seabed. Water depths in the SFWF and SFEC range from approximately 33–90 meters (m) (108–295 feet (ft)).

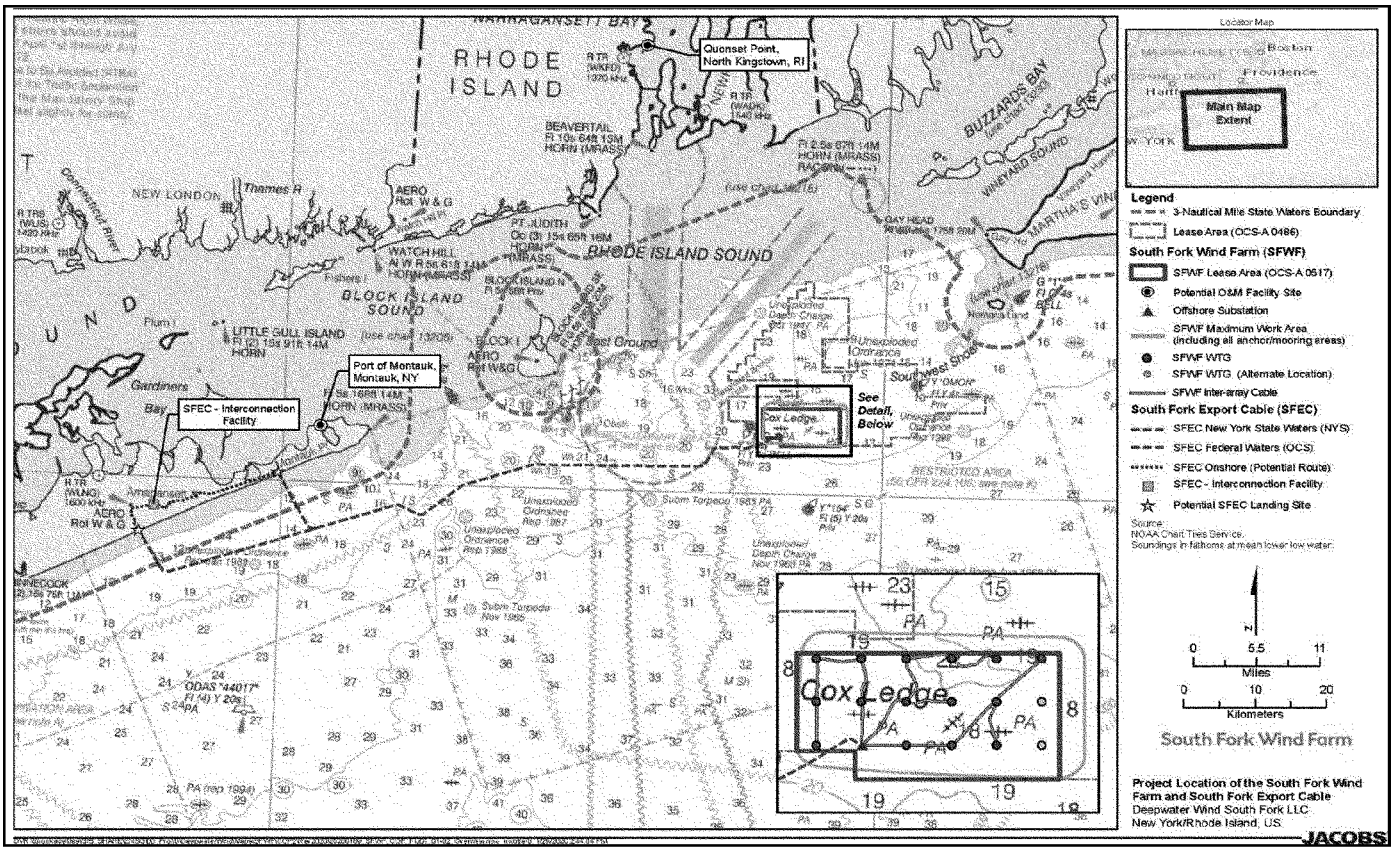

Figure 1. Location of Lease Area OSC-A 0517, South Fork Wind Farm (SFWF), and Potential Export Cable Routes (SFEC)

Since publication of the proposed IHA, South Fork Wind communicated to NMFS that construction of the project, beginning with the nearshore cofferdam or casing pipe, is now planned to commence in November 2022, rather than between April and May 2022 (as indicated in the proposed IHA). Either the temporary cofferdam or casing pile and support piles may be installed for the sea-to-shore cable connection and, if required, would likely be installed between November 2022 and May 2023 (removal could occur anytime through the expiration of the IHA). If used, installation and removal of the cofferdam are each expected to take 18 hours of vibratory pile driving. Alternatively, installation and removal of the casing pipe and support piles are each expected to take approximately four hours.

Up to 16 days of impact pile driving to install the WTGs and OSS may occur on any day between May 1, 2023 and November 14, 2023. The monopiles supporting the WTGs and OSS (the maximum number would be 16 to correspond to 1 OSS and the maximum of 15 WTGs) will be installed between May 1, 2023, and November 14, 2023. For monopile installation, a typical pile-driving operation is expected to take approximately 2–4 hours to achieve the target penetration depth. No more than one monopile could potentially be driven into the seabed per day. Accordingly, concurrent driving (*i.e.,* the driving of more than one pile at the same time) would not occur. Up to 60 days of construction surveys may be conducted throughout the 12-month period of effectiveness of the IHA.

Cable Laying

Cable burial operations will occur both in the SFWF for the inter-array cables connecting the WTGs to the OSS and in the SFEC for the cables carrying power from the OSS to land. Inter-array cables will connect the 15 WTGs to the OSS. A single offshore export cable will connect the OSS to the shore. The offshore export and inter-array cables will be buried in the seabed at a target depth of up to 1.2–2.8 m (4–6 ft). Installation of the offshore export cable is anticipated to take approximately 2 months. The estimated installation time for the inter-array cables is approximately 4 months. All cable burial operations will follow installation of the monopile foundations, as the foundations must be in place to provide connection points for the export cable and inter-array cables. Installation days are not continuous and do not include equipment preparation or downtime that may result from weather or maintenance. Equipment preparation is not considered a source of marine mammal disturbance or harassment.

Some dredging may be required prior to cable laying due to the presence of sand waves. The upper portions of sand waves may be removed via mechanical or hydraulic means in order to achieve the proper burial depth below the stable sea bottom. The majority of the export and inter-array cable is expected to be installed using simultaneous lay and bury via jet plowing. Jet plowing entails the use of an adjustable blade, or plow, which rests on the seafloor and is towed by a surface vessel. The plow creates a narrow trench at the desired depth, while water jets fluidize the sediment within the trench. The cable is then fed through the plow and is laid into the trench as it moves forward. The fluidized sediments then settle back down into the trench and bury the cable. The majority of the inter-array

cable is also expected to be installed via jet plowing. Other methods, such as mechanical plowing or trenching, may be needed in areas of coarser or more consolidated sediment, rocky bottom, or other difficult conditions in order to ensure a proper burial depth. The jet plowing tool may be based from a seafloor tractor or a sled deployed from a vessel. A mechanical plow may also deployed from a vessel. More information on cable laying associated with the project is provided in South Fork Wind's Construction and Operations Plan (SFWF COP; South Fork Wind, 2020). As the only potential impacts from these activities are sediment suspension and very low noise emissions, the potential for take of marine mammals to result from these activities is so low as to be discountable and South Fork Wind did not request, and NMFS does not authorize, any take associated with cable laying. Therefore, cable laying activities are not discussed further in this document.

Construction-Related Vessel Activity

During construction of the project, South Fork Wind anticipates that an average of approximately 5–10 vessels will operate during a typical work day in the SFWF and along the SFEC. Many of these vessels will remain in the SFWF or SFEC for days or weeks at a time, potentially making only infrequent trips to port for bunkering and provisioning, as needed. Although South Fork Wind estimates that 20 one-way transits between the SFWF and port(s) will be required per month, the actual number of vessels involved in the project at one time will be highly dependent on the project's final schedule, the final design of the project's components, and the logistics needed to ensure compliance with the Jones Act, a Federal law that regulates maritime commerce in the United States.

Existing vessel traffic in the vicinity of the project area southeast of Rhode Island is relatively high and marine mammals in the area are expected to be somewhat habituated to vessel noise. In addition, construction vessels would be stationary on site for significant periods and the large vessels would travel to and from the site at relatively low speeds. Project-related vessels would be required to adhere to several mitigation measures designed to reduce the potential for marine mammals to be struck by vessels associated with the project; these measures are described further below (see Mitigation). As part of various construction-related activities, including cable laying and construction material delivery, dynamic positioning thrusters may be utilized to hold vessels in position or move slowly. Sound produced through use of dynamic positioning thrusters is similar to that produced by transiting vessels, and dynamic positioning thrusters are typically operated either in a similarly predictable manner or used for short durations around stationary activities. Sound produced by dynamic positioning thrusters would be preceded by, and associated with, sound from ongoing vessel noise and would be similar in nature; thus, any marine mammals in the vicinity of the activity would be aware of the vessel's presence, further reducing the potential for startle or flight responses on the part of marine mammals. Construction-related vessel activity, including the use of dynamic positioning thrusters, is not expected to result in take of marine mammals and South Fork Wind did not request, and NMFS does not authorize, any takes associated with construction-related vessel activity. Accordingly, these activities are not discussed further in this document.

Installation of WTGs and OSS

A monopile, the only type of foundation that will be installed, is a single, hollow cylinder fabricated from steel that is secured in the seabed. The monopiles installed would support up to 15 WTGs and single OSS, and would be 11 m (36 ft) in diameter, up to 95 m (312 ft) in length and driven to a maximum penetration depth of 50 m (164 ft). A schematic diagram showing potential heights and dimensions of the various components of a monopile foundation are shown in Figure 3.1–2 of the SFWF COP (South Fork Wind, 2020), available online at: *https://www.boem.gov/renewable-energy/state-activities/south-fork.*

All monopiles would be installed with a hydraulic impact hammer. Impact pile driving entails the use of a hammer that utilizes a rising and falling piston to repeatedly strike a pile and drive it into the ground. Using a crane, the installation vessel would upend the monopile, place it in the gripper frame, and then lower the monopile to the seafloor. The gripper frame would stabilize the monopile's vertical alignment before and during piling. Once the monopile is lowered to the seafloor, the crane hook would be released and the hydraulic hammer would be picked up and placed on top of the monopile. A temporary steel cap called a helmet would be placed on top of the pile to minimize damage to the head during impact driving. The largest hammer South Fork Wind expects to use for driving monopiles produces up to 4,000 kilojoules (kJ) of energy (however, required energy may ultimately be far less than 4,000 kJ). As described in the Mitigation section below, South Fork Wind would utilize a single big bubble curtain (BBC) paired with an additional noise mitigation device, or a double big bubble curtain (dBBC) during all impact pile driving of monopiles.

The intensity (*i.e.,* hammer energy level) of impact pile driving of monopiles would be gradually increased based on the resistance from the sediments that is experienced. The strike rate for the monopile foundations is estimated to be 36 strikes per minute. Two impact pile-driving scenarios for monopile installation were considered for SFWF (Table 1). The standard impact pile-driving scenario would require an estimated 4,500 strikes for the pile to reach the target penetration depth, with an average installation time of 140 minutes for one pile. In the event that a pile location presents denser substrate conditions and requires more strikes to reach the target penetration depth, a difficult-to-drive pile scenario was considered, for which 8,000 strikes and approximately 250 minutes would be required to install one pile.

Installation and Removal of Temporary Cofferdam

Before cable-laying HDD begins, a temporary cofferdam could be installed at the endpoint of the HDD starting point, where the SFEC conduit exits from the seabed. The cofferdam would be less than 600 m (1,969 ft) offshore from the mean high water line (MHWL), in 7.6 to 12.2 m (25 to 40 ft) water depth, depending on the final siting point. The cofferdam, up to 22.9 m (75 ft) by 7.7 m (25 ft), would serve as containment for the drilling returns during the HDD installation to keep the excavation free of debris and silt. The cofferdam may be installed as either a sheet pile structure driven into the seabed or a gravity cell structure placed on the seafloor using ballast weight. Installation of a gravity cell cofferdam would not result in incidental take of marine mammals and is not analyzed further in this document. Installation of the 19.5 m (64 ft) long, 0.95 centimeters (cm) (0.375 inches (in)) thick Z-type sheet pile cofferdam, and drilling support, would be conducted from an offshore barge anchored near the cofferdam.

If the potential cofferdam is installed (using sheet piles), a vibratory hammer would be used to drive the sidewalls and endwalls into the seabed to a depth of approximately 1.8 m (6 ft); sections of the shoreside endwall would be

driven to a depth of up to 9 m (30 ft) to facilitate the HDD entering underneath the endwall. Cofferdam removal would consist of pile removal using a vibratory hammer, after HDD operations are complete and the conduit is installed (see Table 1 for a summary of potential vibratory pile-driving activity).

Vibratory hammering is accomplished by rapidly alternating (~250 Hertz (Hz)) forces to the pile. A system of counter-rotating eccentric weights powered by hydraulic motors is designed such that horizontal vibrations cancel out, while vertical vibrations are transmitted into the pile. The vibrations produced cause liquefaction of the substrate surrounding the pile, enabling the pile to be driven into the ground using the weight of the pile plus the impact hammer. If the gravity cell installation technique is not practicable, South Fork Wind anticipates that any vibratory pile driving of sheet piles would occur for a total of 36 hours (18 hours for installation, 18 hours for removal).

The source levels and source characteristics associated with vibratory pile driving would generally be similar to those produced through other concurrent use of South Fork Wind's vessels and related construction equipment. Any elevated noise levels produced through vibratory pile driving are expected to be of relatively short duration, and with low source level values. However, it is possible that if marine mammals are exposed to sound from vibratory pile driving, they may alert to the sound and potentially exhibit a behavioral response that rises to the level of take.

Installation of Casing Pipe

The temporary casing pipe could be installed at the currently planned exit pit location. The casing pipe would be driven into the seabed at the approach angle of the HDD, and would extend from the seabed up through the water column to the sea surface where a work vessel would be able to access the open end of the pipe. The casing pipe may require that temporary support piles be installed to ensure pipe stability. Temporary support piles would consist of up to 8 steel sheet piles temporarily driven into the seabed using a vibratory pile driver. It is anticipated that the casing pipe would consist of a steel pipe pile, approximately 48- to 60-inch diameter and approximately 300 feet in length; installation would likely be accomplished using a small pneumatic impact hammer (*e.g.,* Grundoram Taurus or similar), to drive the pipe in the seabed. It is estimated that the hammer operates at up to 18.6 kJ and that impact hammering of the casing pipe would take approximately two hours complete. Installation of the steel sheet support piles would take an additional two hours. Once the HDD operation has been completed, the casing pipe and support piles would be removed over a similar timeframe and using a similar methodology to that used for installation. As mentioned previously, acoustic impacts associated with installation of the casing pipe (and support piles, if needed) are expected to be less than or equal to, and over a much shorter duration than, impacts from installation of a cofferdam. South Fork Wind will determine whether a cofferdam or casing pipe will be installed, if required. However, installation of a cofferdam was carried forward in the analyses here, given the large size of the Level B harassment zone and the longer duration of the activity.

TABLE 1—SUMMARY OF PILE-DRIVING ACTIVITIES FOR SFWF AND SFEC

Pile-driving method	Pile size	Number of piles	Strikes/pile	Duration/pile	Number of piling days
Impact	11 m monopile	16	Standard pile: 4,500. Difficult pile: 8,000.	Standard pile: 140 minutes. Difficult pile: 250 minutes.	Standard scenario: 30. Maximum scenario: 20.
Vibratory [1]	19.5 m long/0.95 cm thick sheet pile.	[2] 80		18 hours 18 hours	Installation: 1–3. Removal: 1–3.

[1] South Fork Wind would install either the sheet pile cofferdam or casing pipe, not both. Because vibratory pile driving associated with cofferdam installation/removal results in the largest harassment zones and requires the most amount of time, this activity was carried forward in our analysis (see Estimated Take section).
[2] Approximation; the actual number will be based on final engineering design.

Construction Surveys

The construction surveys would be supported by up to four vessels working concurrently throughout the project area. Construction surveys would occur throughout the 12-month period of effectiveness for the IHA. HRG survey equipment would either be deployed from remotely operated vehicles (ROVs) or mounted to or towed behind the survey vessel at a typical survey speed of approximately 4.0 knots (kts) (7.4 km) per hour.

Table 2 identifies all the representative HRG survey equipment that operates below 180 kilohertz (kHz) (*i.e.,* at frequencies that are audible and have the potential to disturb marine mammals) that may be used in support of planned construction survey activities, and are likely to be detected by marine mammals given the source level, frequency, and beamwidth of the equipment. For discussion of acoustic terminology, please see the Potential Effects of Specified Activities on Marine Mammals and their Habitat and Estimated Take sections in the notice of the proposed IHA (86 FR 8490; February 5, 2021).

TABLE 2—SUMMARY OF REPRESENTATIVE HRG SURVEY EQUIPMENT

HRG equipment category	Specific HRG equipment	Operating frequency range (kHz)	Source level (dB rms)	Source level (dB 0-peak)	Beamwidth (degrees)	Typical pulse duration (ms)	Pulse repetition rate
Shallow Sub-bottom Profilers.	ET 216 (2000DS or 3200 top unit).	2–16; 2–8	195	-	24	20	6
	ET 424	4–24	176	-	71	3.4	2
	ET 512	0.7–12	179	-	80	9	8
	GeoPulse 5430A	2–17	196	-	55	50	10

TABLE 2—SUMMARY OF REPRESENTATIVE HRG SURVEY EQUIPMENT—Continued

HRG equipment category	Specific HRG equipment	Operating frequency range (kHz)	Source level (dB rms)	Source level (dB 0-peak)	Beamwidth (degrees)	Typical pulse duration (ms)	Pulse repetition rate
	TB Chirp III—TTV 170.	2–7	197	-	100	60	15
Medium Sub-bottom Profilers.	AA, Dura-spark UHD (400 tips, 500 J).[1]	0.3–1.2	203	211	Omni	1.1	4
	AA, Dura-spark UHD (400 + 400).[1]	0.3–1.2	203	211	Omni	1.1	4
	GeoMarine, Geo-Source or similar dual 400 tip sparker (≤800 J).[1]	0.4–5	203	211	Omni	1.1	2
	GeoMarine Geo-Source 200 tip light weight sparker (400 J).[1]	0.3–1.2	203	211	Omni	1.1	4
	GeoMarine Geo-Source 200–400 tip freshwater sparker (400 J).[1]	0.3–1.2	203	211	Omni	1.1	4
	AA, triple plate S-Boom (700–1,000 J).[2]	0.1–5	205	211	80	0.6	4

- = not applicable; NR = not reported; AA = Applied Acoustics; dB = decibel; ET = EdgeTech; J = joule; Omni = omnidirectional source.

[1] The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems proposed for the survey. The data provided in Crocker and Fratantonio (2016) represent the most applicable data for similar sparker systems with comparable operating methods and settings when manufacturer or other reliable measurements are not available.

[2] Crocker and Fratantonio (2016) provide S–Boom measurements using two different power sources (CSP–D700 and CSP–N). The CSP–D700 power source was used in the 700 J measurements but not in the 1,000 J measurements. The CSP–N source was measured for both 700 J and 1,000 J operations but resulted in a lower SL; therefore, the single maximum SL value was used for both operational levels of the S–Boom.

A detailed description of South Fork Wind's planned construction activities is provided in the notice of the proposed IHA (86 FR 8490; February 5, 2021). Since that time, South Fork Wind has not proposed any changes to its construction activities through the IHA process, other than the casing pipe alternative to installation of a temporary cofferdam at the exit pit location of the export cable (as described above and below). Therefore, a detailed description is not provided here. Please refer to that notice for the detailed description of the specified activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting below). Modifications and additions to the mitigation and monitoring measures have occurred since the proposed IHA was published. All changes since the proposed IHA have been summarized in the Changes from Proposed IHA to Final IHA section and described in detail in their respective sections and/or the comment responses below.

Comments and Responses

Comment 1: The Marine Mammal Commission (Commission) claims that ranges to the Level B harassment isopleth for impact pile driving of 11-m monopiles are underestimated by JASCO (the source of the modeling used for NMFS' analysis) for the South Fork Wind project because, primarily, Lippert *et al.* (2016) indicated that JASCO's time-domain finite difference pile-driving source model (TDFD PDSM) predicted lower sound exposure levels (SELs) in the far-field region than various finite-element (FE) models. The Commission notes that while the exact source level difference between the TDFD PDSM and FE models was not reported, Lippert *et al.* (2016) indicated that the SELs predicted by JASCO's TDFD PDSM were approximately 2.5 dB lower than the SELs predicted by the FE models at 750-m distance from the source. To help resolve this issue, the Commission suggests that JASCO could add 3 dB to the SEL predictions from the TDFD PDSM to be consistent with differences identified in Lippert *et al.* (2016). In addition, the Commission suggests that NMFS could use the dampened cylindrical spreading model (DCSM; Lippert *et al.,* 2018) to substantiate the Level B harassment zones. Finally, the Commission seeks clarity regarding the models that JASCO used, and how JASCO's model(s) would compare to the model used for the COMPILE workshop benchmark case in Lippert *et al.* (2016).

Response: The Commission (1) recommends adding 3 dB based on the COMPILE workshop comparison (Lippert *et al.* 2016), (2) recommends that NMFS use the DCSM to substantiate Level B harassment zones, and (3) seeks an explanation of the models JASCO used and how JASCO's model(s) would compare to the model used in the COMPILE workshop benchmark case. Adding 3 dB (or 2.5 dB, the value from which the Commission apparently rounded up to 3 dB) to the JASCO SEL predictions at 750 m may bring JASCO's predictions using the TDFD PDSM into line with the FE predictions for the COMPILE scenario, but it is not clear that this would be more accurate. This approach assumes that the FE models are correct, but Lippert *et al.* (2016) also state ''a drawback of [the FE] approach is that it simulates the energy loss due to friction in an indirect and rather nonphysical way.'' Therefore, NMFS has concluded that adding 3 dB to the SEL predictions from JASCO's TDFD PDSM is not warranted.

NMFS agrees that there can generally be utility in comparing the results of analogous models, but the

Commission's suggestion to use the DCSM (Lippert *et al.,* 2016) as a way to verify the range to the Level B harassment isopleth predictions estimated by JASCO is problematic. The DCSM is a modified geometric model of propagation that applies a general correction for the interaction of sound with the environmental parameters (*e.g.,* absorption, and the assumption of cylindrical spreading), whereas the full-wave parabolic-equation based propagation model (FWRAM (<2kHz)), and Gaussian beam ray-trace model (BELLHOP (>2kHz)) JASCO used take into account environmental interactions (*e.g.,* bathymetry, sound velocity profile, geoacoustic properties of the seabed) as the sound propagates. BELLHOP was inadvertently excluded from the acoustic modeling report (Denes *et al.,* 2020a), but is run along with FWRAM as part of the acoustic modeling. The DCSM assumes an apparent source level for different pile sizes and then uses a simple model of propagation. While NMFS agrees that DCSM is a valuable tool for some applications, JASCO's well-tested, range-dependent propagation models based on solutions to the wave equation represent the preferred alternative to the simpler DCSM.

The Commission seeks clarity regarding the models used by JASCO. The force at the top of each monopile, associated with the typical hammers, was computed using the GRLWEAP 2010 wave equation model (GRLWEAP, Pile Dynamics 2010), which produced forcing functions. The source signatures of each monopile were predicted using the TDFD PDSM to compute the monopile vibrations caused by hammer impact. To accurately calculate propagation metrics of an impulsive sound, a time-domain representation of the pressure wave in the water was used. To model the sound waves associated with the monopile vibration in an acoustic propagation model, the monopiles are represented as vertical arrays of discrete point sources. The discrete sources are distributed throughout the length of the monopile below the sea surface and into the sediment with vertical separation of 3 m. The length of the acoustic source is adjusted for the site-specific water depth and penetration at each energy level, and the section length of the monopile within the sediment is based on the monopile hammering schedule (Table 6). Pressure signatures for the point sources are computed from the particle velocity at the monopile wall up to a maximum frequency of 2,048 Hz. This frequency range is suitable because most of the sound energy generated by impact hammering of the monopiles is below 1 kHz.

As mentioned above, to calculate predicted propagation of sounds produced during impact pile driving of monopiles below 2 kHz, JASCO used it's FWRAM, which is an acoustic model based on the wide-angle parabolic equation (PE) algorithm (Collins 1993). FWRAM computes synthetic pressure waveforms versus range and depth for range-varying marine acoustic environments. It takes environmental inputs (*e.g.,* bathymetry, sound velocity profile, and seabed geoacoustic profile) and computes pressure waveforms at grid points of range and depth. Because the monopile is represented as a linear array and FWRAM employs the array starter method to accurately model sound propagation from a spatially distributed source (MacGillivray and Chapman 2012), using FWRAM ensures accurate characterization of vertical directivity effects in the near-field zone. JASCO used BELLHOP, a Gaussian beam ray-trace model that also incorporates environmental inputs, to model propagation of sound produced above 2 kHz during monopile installation. The beam-tracing model is basically described as an approximation of a given source by a fan of beams through the medium. Then, the quantities of interest (*e.g.,* acoustic pressure at different ranges) are computed at a specified location by summing the contribution of each of the individual beams.

The acoustic source signature of vibratory driving of sheet piles was modeled following the same steps used to model impact pile driving of monopiles. The forcing function was modeled for a single cycle of the vibrating hammer using the GRLWEAP 2010 wave equation model (Pile Dynamics 2010). The TDFD PDSM model was used to compute the resulting sheet pile vibrations from the stress wave that propagates down the sheet pile. The radiated sound waves were modeled as discrete point sources over the 18 m (60 ft) of the sheet pile in the water and sediment (9 m [30 ft] water depth, 9 m [30 ft] penetration) with a vertical separation of 10 cm. Sound propagation of the discrete point sources was predicted with JASCO's Marine Operations Noise Model (MONM). MONM computes received sound energy, the SEL, for directional sources. MONM uses a wide-angle parabolic equation solution to the acoustic wave equation (Collins 1993) based on a version of the U.S. Naval Research Laboratory's Range-dependent Acoustic Model (RAM). Similar to FWRAM and BELLHOP, MONM incorporates site-specific environmental properties. MONM treats frequency dependence by computing acoustic transmission loss at the center frequencies of 1/3-octave-bands. At each center frequency, the transmission loss is modeled as a function of depth and range from the source. Composite broadband received SELs are then computed by summing the received 1/3-octave-band levels across the modeled frequency range.

The accuracy of JASCO's TDFD PDSM has been verified by comparing its output against benchmark scenarios (Lippert *et al.,* 2016). In addition, JASCO compared the TDFD PDSM predictions to an empirical model prediction in the Institute of Technology and Applied Physics (ITAP) report (Bellmann 2020). The empirical model is based on a large data set of pile-driving sounds, measured at 750 m from the source, collected during installation of various diameter piles (up to 8 m) during wind farm installation in the North Sea (ITAP, Bellmann 2020). As no noise monitoring results exist for 11-m monopiles (yet to be installed offshore), the ITAP prediction facilitates a way of validating the source levels of the numerical FD model. The ITAP data are averaged across different scenarios—pile sizes, different hammers, water depths, depths of penetration, and environmental conditions—and the 95th percentile level is reported, whereas the aim of JASCO's modeling is to estimate the median value. While the ITAP forecast and the FD source predictions were comparable, there is variance in the underlying ITAP data and there are parametric choices for the FD model in the different environments, so an exact match is not expected. As part of the comparison, it was found that different (but reasonable) parametric input choices in the TDFD modeling can result in output differences on the order of the variance in the ITAP data, so it was concluded that the TDFD modeling approach performed as well as can be discernible given the available data.

Comment 2: The Commission claims that *in situ* measurements collected during the installation of Dominion's Coastal Virginia Offshore Wind (CVOW) project's 7.8-m monopiles suggest that the range to the Level B harassment isopleth for installation of 11-m monopiles presented here has been underestimated. Specifically, the Commission notes that JASCO estimated the Level B harassment zone for South Fork Wind's impact driving of 11-m piles to be 4,684 m, assuming a 10-dB sound attenuation, based on the use of a single BBC and up to 4,000 kJ of

hammer energy (see Tables 12 and 13; Denes *et al.* 2020a), while *in situ* measurements made during the CVOW project for impact driving of a 7.8-m pile with a measured 9–12 dB sound attenuation during use of a dBBC for a hammer operating at a maximum of 550 kJ estimated the Level B harassment zone to be 3,891 m (WaterProof 2020).

The Commission suggests that South Fork Wind's use of an impact hammer with 7.3 times more energy intensity than the impact hammer used for CVOW (4,000 kJ versus 550 kJ) spread over a 1.4 times larger circumference than the pile size used in CVOW, would result in approximately five-fold (or 7 dB) higher sound energy level than was determined for CVOW. Based on DCSM, a 7-dB difference in source levels, the measured Level B harassment zone of more than 3,800 m at Dominion, and environmental conditions for Dominion, the Commission claims that the measured Level B harassment zone would increase by 81 percent, resulting in a Level B harassment zone of approximately 6,890 m based on the increased hammer energies and pile size. Further, the Commission suggests using DCSM to relate this range to the Level B harassment isopleth to the acoustic propagation conditions in the South Fork Wind project area, which the Commission states would result in a Level B harassment zone of more than 9,600 m for the South Fork Wind project.

Response: Recent acoustic measurements associated with the installation of two 7.8-m-diameter piles, with the hammer operating at 550 kJ, driven as part of the CVOW project found the range to the Level B harassment isopleth (160 dB rms) to be 3,891 m, while JASCO's prediction for 11-m piles with hammer energy of 4000 kJ was 4,684 m. Both efforts employed comparable mitigation—JASCO assumed broadband attenuation of 10-dB for acoustic modeling, while 9–12 dB of attenuation was measured at CVOW using a dBBC situated around the pile to attenuate noise produced by impact hammering of the pile. The Commission reasons that because the hammer energy used in JASCO's acoustic propagation modeling is approximately 7.3 times the energy of the hammer employed for CVOW, JASCO's predicted range to the Level B harassment isopleth should be more than double that measured at CVOW instead of being approximately 20-percent larger. The 3,891-m range to the Level B harassment isopleth reported for CVOW was obtained by choosing the maximum measured SPL value produced during impact pile driving of the monopile. JASCO's predictive modeling produces median (expected or 50th percentile) SPL values. The 50th percentile SPL values in CVOW (Waterproof 2020; Table 4.1) are 5–6 dB lower than the maximum. Using the CVOW 50th percentile SPL values and the acoustic propagation equations in the CVOW report results in a range to Level B harassment isopleth of approximately 2,000 m, which is less than half of the 4,684-m range predicted by JASCO for installation of monopiles by South Fork Wind. JASCO uses the sound fields predicted during acoustic modeling in subsequent animal movement modeling to estimate probabilities of exposure. In the exposure analysis, the median (equivalently, 50th percentile) sound level values are preferred so that the probabilities represent likely occurrence. Using maximum or 95th percentile sound field values would systematically bias the marine mammal exposure probabilities.

Regarding the Commission's estimates of zone sizes using the DCSM, these are approximations but, in general, NMFS agrees with the logic presented by the Commission, if one were to use that model. However, as described above, JASCO's predictions are for the expected (median) SPL, while the predictions for CVOW use the maximum measured SPL values. If a 7-dB difference in source level is expected with the larger hammer and larger pile (compared to CVOW) South Fork Wind plans to use, it should be noted that there is an approximately 5-dB difference between the measured maximum SPL and the 50th percentile SPL for the CVOW project, so JASCO's approximately 20-percent increase in the range to the Level B harassment isopleth (relative to the range measured for the CVOW project) seems reasonable for a source level difference of 2 dB. It should also be noted that there is greater than 5-dB difference in the levels measured at closest location to the pile reported for the CVOW projects, indicating that concepts like source level do not really apply to distributed sources and that propagation may not be captured well with simple models like DCSM.

Comment 3: The Commission seeks clarity regarding the type and configuration of the bubble curtain South Fork Wind will utilize during impact pile driving. In addition, the Commission references Bellmann *et al.* (2020), in which the authors report an average of 9-dB sound attenuation utilizing a BBC as a noise mitigation device for installation of 8-m monopiles in 40 m of water. The authors indicated diminishing efficacy of the BBC with increasing water depth, suggesting that additional noise mitigation devices should be used for pile diameters greater than or equal to 6 m installed in water depths greater than 25 m.

Response: The Commission is correct that Bellmann (2020) reported an average of 9-dB ($7 < 9 < 11$dB) attenuation using a BBC for a water depth of 40 m, but this was for an air flow rate of $0.3 m^3/(min*m)$. South Fork Wind will use an air flow rate of at least $0.5 m^3/(min*m)$ for BBC deployments. As increased air flow results in a stronger BBC, this will effectively result in more attenuation than reported in Bellmann *et al.* (2020). Further, the final IHA requires that South Fork Wind not use a single BBC as the only means of noise mitigation, meaning they must pair a single BBC with an additional noise mitigation device; alternatively, they may use a dBBC. South Fork Wind is committed to reducing noise levels generated by pile driving to the lowest levels practicable such that they do not exceed a noise footprint modeled, assuming a 10-dB attenuation. South Fork Wind is required to prepare and submit a Pile Driving Plan to NMFS for review and approval 90 days before the start of pile driving. As part of this plan, South Fork Wind must include specifications of the bubble curtain(s) and additional noise mitigation device(s) that will be used during impact pile driving, as well details on how the bubble curtain(s) and additional noise mitigation device(s) will be deployed to reduce noise levels to the maximum extent practicable.

Comment 4: The Commission states that estimated ranges to the Level B harassment isopleth in JASCO's underwater acoustic modeling report (Denes *et al.* 2020a) are smaller than those used in its animal exposure modeling report (Denes *et al.,* 2020b), and indicated that it is not clear which zones are correct.

Response: The acoustic range estimates in the animal exposure modeling report (Denes *et al.,* 2020b; Tables 12 and 13) are approximately 100 m longer than those shown in the acoustic modeling report (Denes *et al.,* 2020a; Tables E13 and E14). Tables 12 and 13 in the animal exposure report show the acoustic ranges to the Level B harassment isopleth for the most conservative case—the impact hammer with greater range and at the highest hammer energy level for summer and winter, respectively. Tables E–13 and E14 of the acoustic modeling report show the SPL ranges to various isopleths, assuming 10-dB attenuation, for the IHC S–4000 hammer and Menck

3500S hammer, respectively, at two modeling locations (P1 and P2). The Menck 3500S operating at 3500 kJ produced slightly longer ranges (Table 14) than the IHC S–4000 operating at 4000 kJ (Table 13). Using the Menck 3500S data (Table 14), the ranges to the Level B harassment isopleth in winter are 4,769 (P1) and 4,718 (P2), for an average of 4,744 m. Likewise, the ranges to the Level B harassment isopleth in summer are 4,443 (P1) and 4,403 (P2), for an average of 4,423 m. The corresponding ranges to the Level B harassment isopleth, assuming 10-dB attenuation, in the animal movement modeling report are: 4,535 m (summer; Table 12) and 4,832 m (winter; Table 13). There is an approximately 10-m difference when comparing the summer values (4,423 m vs 4,535 m) and winter values (4,744 m vs 4,832 m). Zones are not used in animal movement modeling (3D sound fields are) so animal exposure estimates are not affected by the apparent small difference of zone radius. Zones are shown in the animal exposure modeling for reference purposes only.

Comment 5: The Commission seeks clarity regarding (1) how sound field verification (SFV) will be conducted should lesser hammer energies be required for installation of the first monopile(s), which might not be representative of the required hammer energies and associated acoustic impacts for later piles, and (2) the required mitigation and monitoring should the measured range to the Level B harassment isopleth exceed the range produced by acoustic propagation modeling, assuming 10-dB attenuation (4,684 m).

Response: South Fork Wind will be required to conduct SFV on multiple piles to capture the spectrum of hammer energies required to install monopiles in varying substrates throughout the project area. Specifically, they will monitor the first 3 piles and, if a subsequent piling location is selected that was not represented by the previous locations (*i.e.,* substrate composition, water depth), additional SFV will be required. South Fork Wind has committed to mitigating noise produced by impact pile driving, such that the ranges to harassment isopleths align with those modeled, assuming 10-dB attenuation. If the ranges measured for the first pile are larger than those modeled, South Fork Wind will be required to make a series of adjustments to the sound attenuation measures, including (and in the following order): (1) A reduction in the hammer schedule (the number of strikes at a given energy level), (2) modifications to the bubble curtain(s), and 3) implementation of an additional noise mitigation device to further refine noise mitigation. In the interim between SFV of the first evaluated pile and the next, South Fork Wind must conduct both visual and acoustic monitoring of the zones associated with the measured ranges to the Level A harassment and Level B harassment isopleths for the first pile. Should additional SFV demonstrate that the ranges to the Level A harassment and Level B harassment isopleths are still greater than those modeled assuming 10-dB attenuation, the IHA (see condition 5(f)(iv)) states that NMFS may adjust the Level A harassment and Level B harassment zones, and the associated mitigation and monitoring zones accordingly, for the installation of the remaining monopiles. In this case, visual monitoring would be adjusted accordingly by shifting the location of the secondary PSO vessel to approximately half the measured range to the Level B harassment isopleth. Clearance and shutdown zones would be adjusted according to condition 5(f)(iv) of the final IHA. In all cases, passive acoustic monitoring (PAM) will supplement visual observations. South Fork Wind is required to establish a PAM system designed to facilitate localization of baleen whale calls within a 5-km radius of the impact pile-driving vessel; however, the PAM system will likely have a detection range of 10 km or more, thus providing ample acoustic monitoring coverage should the Level B harassment zone be increased in size. Depending on the extent to which Level A harassment and Level B harassment zones are expanded, reinitiation of consultation under Section 7 of the ESA with NMFS GARFO may be required.

Comment 6: The Commission (1) claims that JASCO's assumptions used to seed its animat modeling were not appropriate, (2) questions whether the 7-day simulations used in JASCO's exposure modeling appropriately accounted for the 16 days of proposed pile driving, and (3) suggests that animal exposure modeling could have been accomplished using 100 Monte Carlo simulations for the 140 and 250 minutes of activities for installation of standard and difficult-to-drive piles, respectively, producing density scaled estimates for each activity that could then be multiplied by the number of days of activities.

Response: It is unclear what the Commission means when claiming that JASCO's seeding for animat modeling was not appropriate. However, the use of 7-day simulations can be addressed. Representative 7-day periods of project construction were simulated (*e.g.,* piling every day, or every other day). NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS 2018) recommends a 24-hour accumulation period, so 24-hour sliding windows (with 4-hour advancements) within the 7-day simulations were used to find the average exposure expected in a 24-hour period that includes pile driving. This provides a more robust probability calculation of 24-hour exposure estimates compared to a single-day simulation. The average 24-hour estimate is then scaled by the number of days of pile driving (*i.e.,* 15 days of standard pile installations plus 1 day of a difficult-to-drive pile installation). It is unclear why the Commission suggests conducting 100 Monte Carlo simulations (or to what that comment is referring); however, multiple simulations were run. For example, the piling-every-day simulations consisted of approximately 140 minutes of pile driving in each day of the simulation. JASCO simulated tens of thousands of animats and determined the average exposure probability in a 24-hour period. That probability was then scaled using the real-world density of different species to estimate the number of individuals expected to exceed a threshold. Note, if the Commission's suggested use of 100 Monte Carlo simulations is referring to a Monte Carlo approach to sampling from the different predictions in a 24-hour period, this could be done but would arrive at the same mean estimate as scaling the averaged estimates by the number of pile-driving days, and thus NMFS determined the use of Monte Carlo simulations is not warranted.

Comment 7: The Commission notes that NMFS did not increase the proposed numbers of take resulting from impact pile driving to at least the average group size (based on DoN (2017)) for Level B harassment take of sperm whales, long-finned pilot whales, and Atlantic spotted dolphins, and Level A harassment take of blue whales. In addition, the Commission claims that NMFS did not propose to authorize an appropriate number of Level A harassment takes of fin whales, Level A harassment and Level B harassment takes of humpback whales, and Level B harassment takes for common dolphins and bottlenose dolphins during impact pile driving, given the frequency of occurrence and group sizes observed in the South Fork Wind project area during previous monitoring efforts (A.I.S., Inc. 2017, Smultea Sciences, 2020).

Response: Animal movement modeling that accounts for exposure within the sound field was used to

estimate take. However, NMFS concurs that density models and animal movement models may not capture all site-specific conditions nor year-to-year fluctuations in animal distributions. Where modeled takes were zero, South Fork Wind requested Level B harassment take for the following species based on cited references rather than on DoN (2017): sperm whales (Barkaski and Kelly, 2018) and long finned pilot whales (Kenney and Vigness-Raposa, 2010).

Given that South Fork Wind already conservatively requested (and NMFS proposed to authorize) 3 Level B harassment takes of sperm whales (or one group size; Barkaski and Kelly, 2018) despite animal exposure modeling resulting in zero Level B harassment takes of sperm whales, NMFS determined that no further increases in authorized take are warranted.

Upon further review of scientific literature, NMFS updated the reference for average group size for long-finned pilot whales (n=20; CETAP 1982) and increased authorized take by Level B harassment from 12 to 20 (Table 18). Atlantic spotted dolphins were sighted on two occasions (approximately 20 individuals total; average group size of 10) during recent monitoring efforts near the South Fork Wind project area conducted over a 7-month period and covering over 11,000 km of survey trackline (Smultea Sciences, 2020). Similar monitoring efforts within the South Fork Wind project area covering 9,597 km from June through September 2020 detected zero Atlantic spotted dolphins (Gardline 2021). Barkaski and Kelly (2018) report an average group size of 13 for Atlantic spotted dolphins, which is similar to the average group size based on sighting data near the South Fork Wind project area (10; CSA 2021). To account for group size, NMFS has conservatively increased take, by Level B harassment, of Atlantic spotted dolphins from 2 to 13 (Table 18).

NMFS does not agree that take, by Level A harassment, of blue whales should be increased. Rather, upon further review, and based on the lack of blue whale sightings during previous monitoring efforts within and near the South Fork Wind project area (Smultea Sciences, 2020; Gardline 2021), NMFS has determined that any take, by Level A harassment or Level B harassment, of blue whales resulting from the project's construction activities is *de minimus* and, therefore, NMFS has not authorized take of blue whales by Level B harassment. Tables 18 and 23 have been revised to reflect this change from the notice of the proposed IHA, which included the proposal of one take, by Level B harassment, of a blue whale.

South Fork Wind requested, and NMFS proposed to authorize, one take, by Level A harassment, and 6 takes, by Level B harassment, of fin whales incidental to impact pile driving. The Level A harassment zone, assuming 10-dB attenuation, is 1,769 m for fin whales. Given that the shutdown zone for fin whales (2,000 m) is larger than the Level A harassment zone (1,769 m), and the relatively small number of monopiles planned for installation, NMFS has determined that no increases in take, by Level A harassment or Level B harassment, of fin whales incidental monopile installation, are warranted.

Because the Level A harassment zone for humpback whales (3,642 m, assuming 10-dB attenuation) is larger than the 2,000-m shutdown zone, South Fork Wind requested and NMFS proposed to authorize, 4 takes, by Level A harassment, of humpback whales in addition to 8 takes, by Level B harassment. NMFS has determined that, due to the relatively small number of monopiles planned for installation, 4 takes by Level A harassment and 8 takes by Level B harassment are appropriate for authorization.

Upon further review of scientific literature (DoN 2017; Smultea Sciences, 2020; CSA 2921; AMAPPS 2021), NMFS has conservatively selected the largest group size reported among references for common (35; AMAPPS 2021) and bottlenose (21.6; AMAPPS 2021) dolphins to incorporate into increases of take, by Level B harassment, for each species. The group size for each species was multiplied by the number of days on which impact pile driving of monopiles may occur (16), resulting in 560 common dolphin and 346 bottlenose dolphin takes, by Level B harassment.

Comment 8: The Commission noted several perceived inconsistencies, errors, and omissions in the **Federal Register** Notice of the proposed IHA (86 FR 8490; February 5, 2021) and the proposed authorization, including:

(1) Omission of shutdown, Level A harassment, and Level B harassment zones in Table 2 of the proposed IHA;

(2) Lack of alignment of mitigation and monitoring measures between the **Federal Register** notice and the proposed IHA;

(3) Need to clarify that the 5,000-m clearance and 2,000-m acoustic shutdown zones for North Atlantic right whales (NARWs) will minimize the potential for Level A harassment, but not necessarily Level B harassment (as stated in the notice of the proposed IHA).

Response: The harassment, clearance, and shutdown zone ranges (which were included in the notice of the proposed IHA but erroneously excluded from the draft IHA) are now included in the final IHA (Tables 2–6) and align with corresponding tables in this notice. All mitigation and monitoring measures now align between this notice and the final IHA. In the final IHA, NMFS is requiring that South Fork Wind shut down impact pile driving of monopiles if a NARW is sighted at any distance. On days with good visibility, shutdown may occur based on a NARW sighting entering or within the limit of the Level B harassment zone (4,684 m). While this mitigation measure will not necessarily minimize take by Level B harassment, it might reduce the duration and intensity of exposure above the Level B harassment isopleth.

Comment 9: The Commission argues that, if NMFS' intent is to minimize all impacts during impact pile driving, requiring South Fork Wind to monitor a 2,200-m clearance zone is inadequate given that the Level B harassment zone is 4,684 m. Further, the Commission asserts that a single vessel stationed a 2,200 m would not be sufficient to monitor the farther extents of the zones. The Commission claims that the range to the farthest extent would be 4,200 m based on the exclusion zone and more than 6,800 m based on the Commission's calculation of the size of the Level B harassment zone using DCSM.

Response: NMFS is requiring South Fork Wind to monitor the Level B harassment zone (4,684 m) prior to all impact pile driving, utilizing a combination of two PSOs located on the impact pile-driving vessel, two PSOs located on a dedicated vessel circling the pile-driving vessel at a radius of 2,200 m from the pile-driving vessel, and PAM capable of localizing baleen whale calls within a 5-km radius of the impact pile-driving vessel. The 2,200-m zone to which the Commission is referring is the minimum *visual* clearance zone for all baleen whale species other than the NARW (for which the clearance zone is undefined because any NARW observed by a PSO stationed on the pile-driving vessel or dedicated PSO vessel, regardless of distance, would trigger a delay in pile driving). The use of PAM to complement visual observations will be particularly important when visibility is limited to the minimum visual clearance zone rather than the full extent of the Level B harassment zone. Monitoring must begin 60 minutes prior to initiating pile driving; however, the clearance zones must be clear of marine mammals for 30

minutes before pile driving may commence. The final IHA adds and clarifies all zones and the mitigation and monitoring required to be implemented by South Fork Wind. It is unclear what method the Commission used to estimate a range of 4,200 m, or to what that range refers. Finally, as described above, NMFS does not adopt the use of DCSM to estimate or substantiate the modeled Level B harassment zone for impact pile driving, and is proceeding with 4,684 m as the range to the Level B harassment isopleth. Again, these ranges will be verified upon the onset of pile driving and the IHA contains measures that must be followed should SFV indicate ranges are larger than those predicted by the model.

Comment 10: The Commission states that the measure in the proposed IHA requiring PAM PSOs to review acoustic detections within 15 minutes of the original detection to verify whether a NARW has been detected is not real-time and would not preclude taking.

Response: PAM will occur in real-time, meaning a PAM PSO will be actively monitoring the hydrophones. However, in some cases, a PAM PSO cannot immediately identify a call as one from a NARW and requires some time to analyze the signal. Following the publication of the proposed IHA, South Fork Wind communicated to NMFS that PAM PSOs will be capable of reviewing and classifying detections within 5 minutes of the original detection, better approximating real-time monitoring of NARW presence. The final IHA and **Federal Register** notice have been revised to reflect this updated capability.

Comment 11: The Commission requested more specificity regarding South Fork Wind's proposed PAM plan (*i.e.,* minimum number, type, and location of hydrophones; bandwidth/sampling rate; estimated acoustic detection range; sensitivity of the hydrophones; detection software planned for use), noting that this information is necessary to ensure that South Fork Wind can detect, classify, and locate NARWs. ENGOs also requested that NMFS explain how the number and location of acoustic detection systems will be adequate to fully cover the area within the clearance and shutdown zones, particularly during times of high vessel traffic and development activity. Finally, the Commission recommends that NMFS consider how the direct strike pulses and reverberation from pile-driving activity could inhibit detection of marine mammal vocalizations, particularly those of NARWs.

Response: South Fork Wind is required to submit a detailed PAM plan to NMFS and BOEM for review and approval at least 90 days prior to the planned start of construction. The PAM plan must include sufficient information, including all equipment, procedures, and protocols to demonstrate that the monitoring and mitigation requirements included in the authorization will be met. Regarding the Commission's recommendation that NMFS consider the influence of direct strike pulses and reverberation on the ability to detect marine mammal vocalizations, NMFS agrees that the multipaths will potentially spread the signal out and reduce the ''quiet time'' between pulses, thus increasing masking and making the detection process during pile driving more difficult. Additional signal processing methods will be required to enhance signal detection under such circumstances. The IHA is conditioned such that hydrophones will not be placed closer than 1 km from the pile being driven to minimize interference, and that the PAM system must be capable of detecting whales to implement mitigation within 5 km. The PAM plan submitted by South Fork Wind must be approved by NMFS prior to construction.

Comment 12: The Commission noted several perceived errors and omissions regarding hydroacoustic monitoring reporting requirements for impact pile driving, recommending that the following should be included: (1) hydrophone sensitivity, (2) water depth and sediment type(s) at the pile-driving location(s), (3) ranges to the Level A SEL_{cum} harassment isopleths, (4) fitting of the hydroacoustic data using DCSM and/or a simple cylindrical spreading model (following Waterproof (2020)), and 5) ambient noise spectra for diagnosing issues with hydrophone(s), and that the visibility metrics and ambient sound level measurements should be omitted from the reporting requirements.

Response: NMFS concurs with the Commission's recommendation that the hydroacoustic monitoring report should include (1) hydrophone sensitivity, water depth and sediment type at the pile location, ranges to the Level A harassment isopleths, and ambient noise spectra and (2) omit visibility metrics, and has adjusted those requirements in both the final IHA and in the Monitoring and Reporting section. In addition, for comparison of *in situ* data to sound fields modeled *a priori,* South Fork Wind plans to conduct SFV by measuring sound levels at multiple locations, (*e.g.,* nominal distances of 750; 1,500; 3,000; and 6,000 m). The SFV results will be fitted using a geometric spreading loss model, $\alpha \cdot \mathrm{Log}(r)$, to provide the ability to predict sound levels at any range. The fitting process generates a site-dependent estimate of the transmission loss coefficient, α, in the geometric spreading model. This differs from assuming cylindrical spreading loss, $\alpha=10$, as is done in a Damped Cylindrical Spreading Model (DCSM). The DCSM includes a damping (absorption) term, which may be included when fitting the geometric model.

NMFS agrees with the Commission that ambient noise spectra should be reported and that visibility metrics are not a necessary reporting requirement, and has included these changes in the final IHA. However, despite the Commission's suggestion, NMFS supports collection of ambient sound measurements (as proposed by South Fork Wind), as these data contribute to the overall soundscape characterization within the WEA and provide context for detections of marine mammals during construction activities. NMFS has included this requirement in the final IHA.

Comment 13: The Commission claims that the Level B harassment zone presented here for vibratory pile driving is overestimated, that the modeled spectra provided in the Denes *et al.* (2020a) are inconsistent with spectra obtained from *in situ* measurements of similar activities (*e.g.,* Caltrans 2016; Illingworth and Rodkin 2017), and that the source level used to model the Level B harassment range for vibratory pile driving was too high. Using a simple transmission loss calculation and the estimated distance to the Level B harassment isopleth (36.8 km), the Commission estimates that the source level would be 173.5 dB re 1 µPa at 10 m and claims that this source level is higher than that used by NMFS for installation of smaller piles or sheet piles.

Response: The Commission appears concerned NMFS overestimated the Level B harassment zone for vibratory pile driving; however, any difference in the size of the modeled Level B harassment zone using their back-calculated source level (or any other lower source level) is minimally impactful given the very short period of activity (no more than 36 hours). NMFS recognizes that no model is exactly accurate and that *in situ* data demonstrate sound levels are not consistent both vertically and horizontally in the water column or during the same activity (*e.g.,* installing

2 different piles of the same size/configuration). JASCO maintains, and NMFS agrees, that the spectra calculated using GRLWEAP (Denes *et al.,* 2020a) are fundamentally consistent with those provided by Illingworth and Rodkin (2017), as presented in the Caltrans reports (Caltrans 2016, 2020). The spectra calculated by JASCO are low frequency (*i.e.,* primary acoustic energy occurs below approximately 1 kHz), with peaks around the oscillation frequency of the vibratory hammer. This is approximately the same finding as Illingworth and Rodkin (2017), which showed that most of the primary acoustic energy occurs below approximately 2 kHz. The calculated levels near the source exceed the expected values of SPL 160–165 dB re 1 µPa measured at 10 m for sheet pile driving in the Caltrans report (2016, 2020) and as cited in NOAA's pile-driving worksheet tool (Caltrans 2012, 2015) (*https://media.fisheries.noaa.gov/2021-02/SERO%20Pile%20Driving%20Noise%20Calculator_for%20web.xlsx?null*). JASCO estimates an SPL of 180 dB re 1 µPa at 31 m, and consequently a range to 120 dB re 1µPa of approximately 36 km. JASCO recognized this as an overestimate but considered it acceptable because the source level measurements for vibratory driving of sheet piles cited in Caltrans (2012, 2015) come from only a few examples, and were obtained when setting the pile to a shallow depth before impact pile driving was used to drive the sheet pile to full desired depth. Only vibratory driving would be used for installation of sheet piles to construct the cofferdam for the South Fork Wind project. It is likely that sheet piles, and therefore the vibratory hammer, might encounter more resistance as the desired installation depth is approached at the cofferdam location compared to the examples included in the Caltrans report (2016, 2020). This increased resistance would require an increase in vibratory hammer energy, producing an elevated level of sound propagating from the installation site. NMFS agrees with this approach and, as such, no adjustments were made to the Level B harassment zone (or Level A harassment zone) in the final IHA for vibratory driving of sheet piles.

Comment 14: The Commission claims that NMFS assumed that vibratory pile driving would occur on only two days, rather than a maximum of six days (up to three days each for installation and removal) specified elsewhere in the notice of the proposed IHA 86 FR 8490; February 5, 2021).

Response: This is an incorrect interpretation of the text. The total installation and removal will take up to six days to complete. Within that period, vibratory pile driving for the cofferdam is expected to occur for 18 hours to install the sheet piles and 18 hours to remove them, so a total of 2 days was used to estimate take. [86 FR 8490; February 5, 2021, p. 8533 states: Since NMFS expects that any exposures would be brief (no more than 3 hours per day for impact pile driving or 36 hours over 6 days for vibratory pile driving, and likely less given probable avoidance response). 36 hours over 6 days=a maximum of two 18-hour periods. p. 8521 states: Modeling of the Level A harassment exposures resulting from two 18-hour periods of vibratory pile driving and removal resulted in less than one exposure for all species for each month between October 1 and May 31. p. 8508 states: But the short-term duration (approximately 36 hours over 6 non-consecutive days, 18 hours each for installation and removal). p. 8491 states: Installation and removal of the cofferdam are each expected to take 1 to 3 days of vibratory pile driving.].

Comment 15: The Commission claims that NMFS did not increase the estimated Level B harassment takes for vibratory pile driving to an appropriate number, based on group size and frequency of occurrence in the project, for fin whales, sei whales, humpback whales, Atlantic white-sided dolphins, and common dolphins.

Response: Based on the best available scientific information and the large Level B harassment zone, NMFS agrees and has increased the number of takes by Level B harassment for humpback whales, and common and Atlantic white-sided dolphins. NMFS reviewed reported group sizes for each species (DoN 2017; Smultea Sciences, 2020; CSA 2921; AMAPPS 2021), selected the largest group size reported for humpback whales (1.6; AMAPPS) and common dolphins (35; AMAPPS), multiplied group size by the number of potential days on which vibratory pile driving could occur (18 hours over 3 days for installation, 18 hours over 3 days for removal, total of 6 days), and rounded to the nearest whole number. This approach resulted in the following increases in Level B harassment takes: Humpback whale (10) and common dolphins (210). Previous monitoring efforts in or near the South Fork Wind Lease Area reported that no Atlantic white-sided dolphins were sighted during surveys (Smultea Sciences, 2020; CSA 2021). However, AMAPPS (2021) reported sightings of Atlantic white-sided dolphins in the RI/MA WEA, with a peak group size of 50 during the summer. Based on this group size, NMFS has increased Level B harassment takes of Atlantic white-sided dolphins from 1 to 50. Finally, the Commission also recommended increasing take, by Level B harassment, of fin and sei whales incidental to vibratory pile driving. Exposure modeling resulted in exposures for each of 10 months (October–May; Table 19) for all species potentially impacted by vibratory pile driving. The amount of take proposed, by Level B harassment, of fin whales was based on the month (April) with the highest number of exposures (n=2). Of the remaining months, fin whale exposure estimates were zero (November, December, January, and February) and one (March and May). Given that the proposed amount of take was already conservatively based on modeled exposures in April and sightings of fin whales are generally more frequent in/near the Lease Area as compared to along the ECR and nearshore HDD site (*e.g.,* Smultea Sciences, 2020), NMFS does not find that increasing take of fin whales, by Level B harassment, is warranted. Exposure modeling resulted in zero exposures of sei whales in all 10 months considered (Table 19). In addition, sei whale sightings are extremely rare throughout the project area, which agrees with the generally offshore pattern of sei whale distribution (Hayes et al., 2021). Given the brief timeframe for cofferdam installation/removal, the low likelihood of sei whale occurrence in the project area during that brief timeframe, and the lack of exposures resulting from exposure modeling, NMFS does not find that increasing take of sei whales, by Level B harassment, is warranted.

Comment 16: The Commission notes that the input parameters necessary to estimate the Level A harassment zones for construction surveys using HRG equipment were not specified in the **Federal Register** notice for the proposed IHA (86 FR 8490; February 5, 2021). In addition, the Commission states that South Fork Wind specified incorrect frequencies in Table 13 of the IHA application for each functional hearing group's most sensitive frequency within the proposed operating frequencies of all impulsive sources, citing the example that South Fork Wind specified 1.5 kHz as the most sensitive frequency for all functional hearing groups within the 0.4–5 kHz operating frequency for the GeoMarine Geo-Source 400 tip sparker. The Commission states that most sensitive frequencies are 1.7 kHz for low-frequency (LF) cetaceans and 5 kHz for the other three functional hearing groups.

Response: NMFS recognizes that not all input parameters (*e.g.,* Weighting Factor Adjustments, WFAs) required to estimate Level A harassment zones were included in the notice for the proposed IHA; however, these values were included in the IHA application, which was available for review during the public comment period (please refer to the IHA application for more details on input parameters). The Commission notes that the frequencies in Table 13 of the application were incorrectly specified, and NMFS agrees. However, when the correct frequencies are applied, the resulting ranges to the Level A harassment isopleths are significantly smaller than the 500-m shutdown zone for NARWs and 100-m shutdown for all other species (excluding some delphinid species for which shutdown is waived). Further, NMFS has repeatedly indicated that the potential for Level A harassment from marine site characterization surveys is not a realistic outcome regardless of implementation of mitigation measures such as shut down (see *Take Calculation and Estimation* section); therefore, identifying inputs into any Level A harassment model is not necessary.

Comment 17: The Commission notes that the ranges to Level A harassment isopleths in Table 12 of the notice of the proposed IHA (86 FR 8490, February 5, 2021) for high-frequency cetaceans are incorrect, according to their calculations, by a margin of tenths of a meter for all impulsive sources based on SEL_{cum} thresholds (ranges were reported as zero in the notice of the proposed IHA, but should have been reported as <1), by a margin of 1.9 m for the AA triple plate S-boom based on SPL_{peak} (2.8 m versus 4.7 m, as indicated in the notice of the proposed IHA), and by a margin of tens of meters for the non-impulsive GeoPulse 5430 based on SEL_{cum} (97.7 m versus 36.5 m as indicated in the notice of the proposed IHA), assuming use of the User Spreadsheet and South Fork Wind's specified input parameters.

Response: NMFS appreciates the Commission's detailed comments regarding ranges to the Level A harassment isopleths for high-frequency cetaceans. NMFS has corrected the text in the *Take Calculation and Estimation* section to reflect that South Fork Wind estimated the range to the Level A harassment isopleth based on SEL_{cum} for the GeoPulse 5430 (36.5 m) following NMFS interim guidance (NMFS, 2019b), which accounts for beamwidth, water depth, and absorption (rather than using the User Spreadsheet). While there are minor inconsistencies between values calculated by NMFS and the Commission for the other ranges to the Level A harassment isopleths, the differences are inconsequential given that NMFS neither anticipates nor authorizes Level A harassment incidental to construction surveys. For the purposes of the exposure analysis, it was conservatively assumed that sparkers would be the dominant acoustic source for all survey days. Thus, the range to the isopleth corresponding to the threshold for Level B harassment for sparkers (141 m), which is larger than any modeled range to the Level A harassment isopleth for any hearing group, was used as the basis of the take calculation for all marine mammals.

Comment 18: The Commission seeks clarification regarding why the exclusion zones for mid-frequency cetaceans (except sperm whales), and phocids are different between Table 26 in the **Federal Register** notice of the proposed IHA (86 FR 8490; February 5, 2021) and Table 2 of the proposed authorization.

Response: The zones being referenced in Table 26 of the notice of the proposed IHA are the Level A harassment zones for HRG survey activities, which are based on the calculated ranges, whereas the zones in Table 2 of the proposed authorization represent the clearance zones to be implemented during surveys. These zones are consistent with the clearance and shutdown zones listed in Table 26 of the notice of the proposed IHA (100 m).

Comment 19: The Commission notes that the Level B harassment zones for CHIRPS are inconsistent in Tables 12 and 26 of the **Federal Register** notice of the proposed IHA (86 FR 8490; February 5, 2021).

Response: The Level B harassment zones for CHIRPS have been corrected to 54 m in Table 28 of this notice.

Comment 20: The Commission recommends that NMFS publish a revised **Federal Register** notice and draft authorization with another 30-day comment period because it believes there were errors in the proposed IHA notice that prevented the public from fully understanding NMFS' proposed action and NMFS's preliminary findings are questionable given these perceived errors.

Response: NMFS does not agree with the Commission assertions and does not adopt the recommendation. Specifically, NMFS disagrees that the information presented in association with the proposed IHA was insufficient to make the relevant findings under the MMPA. What the Commission claims are ''inconsistencies, omissions, errors, and deficiencies'' are, for the most part, differences of opinion on how available data should be applied to our analysis. For example, the Commission states that installing 16 monopiles, with one pile installed every other day, would take 31 rather than 30 days as specified in South Fork Wind's application and the **Federal Register** notice. Neither the IHA application nor the **Federal Register** notice state that monopiles would actually be installed every other day. Animal exposure modeling required a piling schedule within which to conduct animat modeling; therefore, two construction schedules were considered, one in which piles are installed every day and one in which piles are installed every other day. It is likely that neither of these absolute representative schedules will be adhered to during installation of the monopiles (*e.g.,* pile installation may occur on consecutive days if conditions allow, or might be interrupted by days of inclement weather or other mitigating circumstances, etc.). The 30-day timeframe for monopile installation was proposed by South Fork Wind in the IHA application and, therefore, included in the notice of the proposed IHA. Regardless of the detailed schedule, up to 16 monopiles will be installed, no more than one per day, over the course of the South Fork Wind construction project.

As described in responses to comments 1 and 3, a majority of the Commission's comments were centered around the recommendation to use a different, but not necessarily more accurate, acoustic model (*i.e.,* DCSM and associated spreadsheet tool, DCSiE (Heaney *et al.,* 2020)). NMFS does not agree that utilizing DCSM and the DCSiE spreadsheet tool would provide more appropriate acoustic propagation distances because the DCSM and DCSIE approach would include a simpler model of propagation (with limitations beyond 5 km from the acoustic source) that approximates some aspects of environmental interaction (namely absorption). NMFS believes that the well-tested, range-dependent propagation models based on solutions to the wave equation used by JASCO (described in Denes *et al.,* 2020a) are more appropriate. Where we did agree that there was an error or that the Commission's logic was more appropriate to implement, we have made the recommended changes. However, the recommendations by the Commission we did adopt were predominately to either provide additional clarification or detail and do not provide additional conservation

value or meaningfully influence any of the analyses underlying the necessary findings. NMFS strongly disagrees with the Commission's suggestion that NMFS' negligible impact and least practicable adverse impact determinations may be invalid, and we note that the Commission does not provide any information supporting this comment, whether NMFS retained the take numbers and mitigation requirements from the proposed IHA or adopted those recommended by the Commission. Since publication of the proposed IHA, NMFS included additional monitoring and mitigation measures, including multiple additions to the vessel strike avoidance requirements. In addition, the **Federal Register** notice for issuance of the final IHA includes installation of a casing pipe as an alternative to a cofferdam. Given the shorter installation time and fewer number of piles, potential impacts associated with installation of a casing pipe are anticipated to be equal to or less than those associated with installation of the cofferdam. Overall, these changes are not sufficient to lead NMFS to reach any other conclusions regarding the impact to marine mammals. For these reasons, NMFS is not republishing a notice of proposed IHA.

Comment 21: The Commission states that NMFS must provide consistent and informed guidance to the numerous industry operators that have submitted or soon will submit incidental take authorization applications for wind energy surveying, siting, and construction projects.

Response: NMFS appreciates the Commission recommendation and will consider developing broader/general guidance that allows for proper and consistent mitigation and monitoring during various stages of offshore wind development. NMFS will continue to prioritize pre-application engagement with applicants seeking incidental take authorizations.

Comment 22: The Commission recommended that NMFS consider whether, in situations involving marine site characterization surveys using HRG equipment, IHAs are necessary. The Commission makes reference to comments on previously proposed IHAs for marine site characterization surveys, in which the Commission states that the small size of the Level B harassment zones, the various shutdown requirements, and BOEM's lease-stipulated requirements support the claim that NMFS should consider the Commission's recommendation. In addition, the Commission recommended that NMFS should evaluate whether take needs to be authorized for those sources that are not considered *de minimis,* including sparkers, and for which implementation of the various mitigation measures should be sufficient to avoid Level B harassment takes.

Response: NMFS thanks the Commission for its recommendation. However, as NMFS has noted previously to comments (*e.g.,* 85 FR 60424; September 25, 2020), NMFS has evaluated whether taking needs to be authorized for those sources that are not considered *de minimis,* including sparkers and boomers, factoring into consideration the effectiveness of mitigation and monitoring measures, and we have determined that implementation of mitigation and monitoring measures cannot ensure that all take can be avoided during all marine site characterization survey activities under all circumstances at this time. If and when we are able to reach such a conclusion, we will re-evaluate our determination that an incidental take authorization is warranted for these activities.

Comment 23: The ENGOs recommended that NMFS reduce the number of Level A harassment takes for large whales to as close to zero as possible and ensure zero Level A harassment takes of NARWs. The ENGOs feel that the number of individuals projected to experience permanent threshold shift (PTS), including humpback, minke, and endangered fin whales, is relatively high for a project comprising only 15 turbines.

Response: South Fork Wind has not requested, nor has NMFS authorized, incidental take by Level A harassment of NARWs. The mitigation and monitoring measures included in the IHA help ensure this level of harassment does not occur. The estimated Level A harassment exposures for humpback, minke, and endangered fin whales resulting from animal movement modeling are conservatively based on the maximum design scenario including one difficult-to-drive pile, the maximum densities across the proposed construction months, and a 24-hour accumulation period. This sophisticated model produces a reliable, but conservative, estimate of how many marine mammals may experience PTS incidental to the project. Although modeling does take into account the seasonal moratorium on impact pile driving of monopiles, it does not account for any additional mitigation. In addition, the proposed Level A harassment (in the form of PTS) take numbers, which are based on animal movement modeling, do not fully account for the likelihood that whales will avoid a stimulus (*i.e.,* aversion) when possible before the individual accumulates enough acoustic energy to potentially cause auditory injury. Any adjustments to the model considering mitigation or avoidance behavior are uncertain; therefore, to be conservative, NMFS is authorizing the amount of take, by Level A harassment (PTS), predicted by the model. Any Level A harassment would be expected to be in the form of slight PTS (*i.e.,* minor degradation of hearing capabilities) which is not likely to meaningfully affect the ability to forage or communicate with conspecifics. Even absent mitigation, no serious injury or mortality from construction activities is anticipated.

Comment 24: The ENGOs recommended that NMFS require the seasonal prohibition on impact pile driving to be effective from December 1 through April 30.

Response: Since publication of the proposed IHA, South Fork Wind communicated to NMFS that construction activities will not commence until November 2022, rather than between April and May 2022 (as indicated in the proposed IHA). Therefore, the period of effectiveness of the IHA is November 15, 2022, to November 14, 2023. In the final IHA, NMFS is requiring a seasonal restriction on impact pile driving of monopiles from December 1 through April 30, unless unanticipated delays due to weather or technical problems, notified to and approved by the Bureau of Ocean Energy Management (BOEM), arise that necessitate extending impact pile driving of monopiles into December. South Fork Wind's revised project schedule includes, as the first construction activity during the period of effectiveness of the IHA, installation of a cofferdam or casing pipe where the export cable conduit exits from the seabed to contain drilling returns and prevent the excavated sediments from silting back into the Horizontal Directional Drill (HDD) exit pit. Based on the seasonal restriction on monopile installation and South Fork Wind's revised construction schedule, monopile installation would not begin until May 2023. Therefore, the timeframe in which South Fork Wind would install monopiles is limited to May 1, 2023, through November 14, 2023.

Comment 25: The ENGOs recommended that NMFS take measures to minimize Level B harassment exposure of NARWs to noise from pile driving beyond the 5,000-m clearance

zone by requiring stringent noise reduction and attenuation devices.

Response: While the clearance zone (using a combination of visual and acoustic observation) for NARWs is 5,000 m, NMFS is including measures to minimize exposure beyond that zone. For example, any observation of a NARW at any distance by PSOs on the pile-driving platform or dedicated PSO vessel will trigger a delay in impact pile driving. Because PSOs on the pile-driving platform will be equipped with enhanced vision capabilities (*e.g.,* big eye binoculars), it may well be that NARWs are observed beyond 5,000 m on days with good visibility conditions. The final IHA clarifies that the minimum visibility zone to begin pile driving is 2,200 m and that PAM PSOs must confirm that there have been no PAM detections of NARWs out to 5,000 m prior to commencing pile driving (during the clearance period). The IHA does require noise reduction such that the model results, assuming 10-dB attenuation, are not exceeded. If acoustic monitoring reveals greater than anticipated zone sizes, the IHA requires South Fork Wind to take additional noise mitigation measures to prevent further exceedance of the modeled zones. If all measures are exhausted and monitoring reveals South Fork Wind was not successful in meeting the modeled zones, harassment, minimum visibility, and shutdown zones will be expanded and monitoring enhanced.

Comment 26: The ENGOs recommended that if a NARW is visually or acoustically detected within the 5,000-m clearance zone, or visually detected at any distance from the pile at any time, that pile driving be shutdown, unless continued pile-driving activities are necessary for reasons of human safety or installation feasibility. In addition, they suggest that NMFS should consider expanding these same protections to other endangered species, as well as those currently experiencing a UME that are in the same functional hearing group as the NARW.

Response: NMFS agrees with the ENGOs that impact pile driving should be delayed or shutdown, if already initiated, if a NARW is sighted at any distance from the pile and, thus, NMFS included those conditions in the proposed IHA and has carried them over to the final authorization as well. South Fork Wind is required to delay pile driving if a NARW call is localized to a position within the 5,000-m clearance zone and, if pile driving has already commenced, South Fork Wind must shutdown pile driving if a NARW call is localized to a position within the 2,000-m PAM shutdown zone. NMFS has determined that the combination of a PAM shutdown zone that is larger than the Level A harassment zone for NARWs (1,621 m) and the requirement to shutdown if a NARW is sighted at any distance are sufficiently protective to prevent Level A harassment.

The ENGOs suggested that NMFS should also require a 5,000-m shutdown zone during monopile installation if other endangered species (*i.e.,* fin and sei whales) as well as those currently experiencing a UME (*i.e.,* humpback and minke whales), are detected visually or acoustically within the 5,000-m clearance zone specific to NARWs. NMFS is not authorizing *any* take by Level A harassment (*i.e.,* PTS) for NARWs; therefore, the shutdown requirements when a NARW is detected (visually or acoustically) must afford the greatest practicable protection to avoid any Level A harassment. NMFS is authorizing take by Level A harassment of fin, sei, and minke whales (one take for each species), although both the clearance (2,200 m) and shutdown zones (2,000 m) are hundreds of meters larger than the exposure-based modeled ranges to the Level A harassment isopleths for these species. Animal movement modeling resulted in the Level A harassment exposure of one fin whale and one minke whale; however, animal movement modeling does not account for mitigation measures or potential avoidance behavior and, as mentioned above, the shutdown zone is larger than the ranges to the Level A harassment isopleths for both fin (1,756 m) and minke whales (1,571 m). Although animal movement modeling resulted in zero Level A exposures of sei whales, South Fork Wind requested and NMFS is authorizing take, by Level A harassment, of one sei whale based on (1) rare observations of singleton sei whales in the Lease Area during previous monitoring effects (Kenney and Vigness-R,aposa, 2010; Smultea Sciences, 2020; AMAPPS 2021), and (2) difficulty distinguishing fin and sei whales at sea (observers sometimes report a sei/fin whale complex). NMFS is authorizing take, by Level A harassment, of 4 humpback whales based on the results of animal movement modeling, and the possibility that humpback whales might remain in the area between the shutdown zone (2,000 m) and the furthest extent of the Level A harassment zone (3,642 m), (assuming 10-dB attenuation) for a long enough timeframe to incur PTS.

If any large whale (including NARWs) enters the Level B harassment zone undetected or if visibility conditions limit visual monitoring to the minimum visibility zone, it is possible that individuals might be exposed to impact pile-driving noise sufficient to cause behavioral effects rising to the level of take under the MMPA. NMFS expects those effects would be temporary in nature and unlikely to cause any perceptible longer-term consequences to individuals or populations.

While NMFS analyzed Level A harassment exposures as requested by South Fork Wind and authorized them as appropriate, NMFS finds that such exposures are unlikely given (1) the short duration of monopile installation (2–4 hours), (2) the fact that authorized take numbers do not account for mitigation measures, and (3) the potential for a whale's averse behavior in response to impact pile driving. Level B harassment of some smaller number of individuals as a subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Accordingly, NMFS does not find it warranted to require shutdown if a fin, sei, humpback, or minke whale is detected between 2,000 m and 5,000 m of the pile.

Comment 27: The ENGOs stated that NMFS should provide more detail (both a written description and diagram of potential ''blind spots'' during monitoring) on how the secondary vessel will be deployed during the 60-minute clearance period (*e.g.,* vessel speed, configuration of PSOs on the vessel, etc.) to monitor the entire clearance zones as well as the 3,642-m Level A harassment zone for humpback whales and, if it is not possible to provide full coverage of the clearance zone for the full 60-minute period, the ENGOs recommended that NMFS require additional monitoring vessels and PSOs.

Response: South Fork Wind is required to visually monitor a minimum clearance zone with a 2.2-km radius from the pile-driving vessel, and to use a combination of visual and acoustic methods to ensure that a 5-km radius clearance zone is clear of NARWs prior to initiating pile driving. Further, on days when PSOs are able to observe beyond 5 km, any detection of a NARW by PSOs on the pile-driving and/or dedicated PSO vessels, regardless of distance, would trigger a delay in pile driving. Each of the two PSOs deployed on the pile-driving vessel will be responsible for visually surveying 180 degrees (for a total of 360 degrees) out to a minimum of 2.2 km from the pile-driving vessel, the minimum visibility requirement for clearance to occur, thereby providing total visual coverage

of the large whale clearance zone without any potential ''blind spots.'' The PSOs on the pile-driving vessel will likely be positioned at a higher elevation above the waterline than the PSOs on the dedicated PSO vessel and will, therefore, have a range of vision well beyond 2.2 km on days with good visibility. The two additional PSOs deployed on the dedicated PSO vessel, surveying at a radius of 2.2 km from the pile-driving vessel, are expected to be positioned at an elevation above the waterline similar to PSOs on HRG vessels used in marine site characterization surveys. Each of these PSOs will also be responsible for surveying 180 degrees, with one PSO providing visual coverage between the dedicated PSO vessel and the pile-driving vessel (the 2.2-km clearance zone), and the second PSO visual monitoring the area beyond the 2.2-km clearance zone. Visibility conditions may, at times, prevent 100-percent visual coverage of the humpback Level A harassment zone beyond 2.2 km from the piling vessel; therefore NMFS is authorizing 4 takes, by Level A harassment, of humpback whales.

PSOs on board the pile-driving and dedicated PSO vessels will coordinate to the extent practicable to visually cover discrete zones while monitoring. The dedicated PSO vessel will travel at a maximum speed of 10 kts, allowing it to make a complete trip around the piling vessel at a distance of 2.2 km in one hour or less. The use of a real-time data collection platform, including the software program Mysticetus, will allow PSOs on the pile-driving vessel to see detections made by PSOs on the dedicated PSO vessel, and vice versa.

Comment 28: The ENGOs recommended that all project-associated vessels should adhere to a 10-kt speed restriction at all times, except in circumstances where the best available scientific information demonstrates that whales do not use a particular area within the overall project area.

Response: South Fork Wind is required to operate all vessels at 10 kts or less when overlapping with a DMA and in any designated SMA. Further, if a vessel is operating faster than 10 kts, a dedicated observer is required to be onboard that vessel. While NMFS acknowledges that vessel strikes can result in injury or mortality, and that risk of vessel strike increases with speed, NMFS has analyzed the potential for ship strike resulting from South Fork Wind's activity and has determined that, based on the number and frequency of vessels South Fork Wind will be operating and the required mitigation measures specific to vessel strike avoidance included in the IHA, the potential for vessel strike is so low as to be discountable. These mitigation measures, most of which were included in the proposed IHA and all of which are required in the final IHA, include, but are not limited to the following requirements: (1) All vessel operators must comply with 10-kt (18.5 km/hour) or less speed restriction in any SMA while underway, (2) in the event that a DMA is established that overlaps with an area where a project-associated vessel would operate, that vessel, regardless of size, will transit that area at 10 kts (18.5 km/hour) or less, and (3) vessels of all sizes must operate port to port at 10 kts (18.5 km/hour) or less between November 1 and April 30, except while transiting inside Narragansett Bay or Long Island Sound. NMFS has determined that the ship strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, NMFS is not aware of any documented vessel strikes involving vessels associated with offshore wind development, including vessels used for marine site characterization surveys (for which IHAs were issued by NMFS) during the survey activities themselves or while transiting to and from project sites.

Comment 29: The ENGOs recommended that NMFS require South Fork Wind to use the best commercially feasible technology and methods to minimize sound levels from pile driving. Specifically, they stated that NMFS should require a combination of noise mitigation systems to (1) obtain the greatest noise reduction and attenuation using technically and commercially feasible measures considering factors such as project design and seabed conditions, and (2) achieve no less than 10-dB SEL in combined noise reduction and attenuation, taking as a baseline, projections from prior noise measurements of unmitigated piles from Europe and North America.

Response: NMFS agrees with the ENGOs recommendation that South Fork Wind should use the best available technology to reduce acoustic impacts to marine mammals incidental to impact pile driving of monopiles. In the IHA application, South Fork Wind proposed to use a single BBC to attenuate noise produced during monopile installation. However, the final IHA requires that South Fork Wind use either a single BBC coupled with an additional noise mitigation device (*e.g.,* Hydro Sound Damper), or a dBBC to achieve measured ranges to the Level A harassment and Level B harassment isopleths that are equal to or less than those predicted by acoustic modeling, assuming 10-dB attenuation. NMFS has determined that this mitigation measure will help to ensure that take of marine mammals, including NARWs, is reduced to the level of least practicable adverse impact.

Comment 30: The ENGOs recommended that NMFS should require South Fork Wind to report all visual observations and acoustic detections of NARWs to NMFS or the Coast Guard as soon as possible and no later than the end of the PSO shift, and that South Fork Wind should also be required to immediately report an entangled or dead NARW to NMFS, the Marine Animal Response Team (1–800–900–3622) or the United States Coast Guard via one of several available systems (*e.g.,* phone, app, radio).

Response: NMFS agrees with the recommendation that NARW detections, both visual and acoustic, should be reported as soon as possible. The IHA requires that if a NARW is observed at any time by PSOs or personnel on any project vessels, during any project-related activity or during vessel transit, South Fork Wind must report sighting information to the NMFS NARW Sighting Advisory System, the U.S. Coast Guard via channel 16, and the WhaleAlert app as soon as feasible but no longer than 24 hours after the sighting. We anticipate that most sightings will be reported by the end of the PSO shift as recommended by the ENGOs; however, we also recognize that communications at sea can sometimes be interrupted (*e.g.,* poor cellular or satellite service). Therefore, we are allowing the 24-hour maximum delay in reporting a sighting(s) (with the caveat they report a sighting as soon as feasible). If a NARW is detected via PAM, a report of the detection must be submitted to NMFS as soon as is feasible, but no longer than 24 hours after the detection. In addition, within 48 hours, metadata associated with the detection(s) must be submitted to the Northeast Passive Acoustic Reporting System (*nmfs.pacmdata@noaa.gov*). We note that given the gravity of a situation associated with the unauthorized take by ship strike, the IHA requires South Fork Wind to report any such taking to NMFS immediately, dedicating all resources to ensure that the incident is reported. Such dedication, including ceasing activities (as required if a ship strike occurs) is not necessary for a sighting or acoustic detection report. See the Mitigation section below for details. In addition, NMFS agrees with the recommendation that South Fork

Wind should be required to immediately report a dead or entangled whale to NMFS, a Marine Animal Response Team, and the USCG, and has included this requirement in the final authorization.

Comment 31: The ENGOs and a commenter from the general public recommended that NMFS incorporate additional data sources into calculations of marine mammal density and take estimates. Similarly, RODA stated the NMFS' analyses should rely on the best available data for estimating marine mammal take and developing robust mitigation measures, and that the impacts to NARWs be fully considered prior to the issuance of the IHA.

Response: Habitat-based density models produced by the Duke University Marine Geospatial Ecology Lab (MGEL; Roberts *et al.,* 2016, 2017, 2018, 2020) represent the best available scientific information concerning marine mammal occurrence within the U.S. Atlantic Ocean (more information, including the model results and supplementary information for each of those models, is available at *https://seamap.env.duke.edu/models/Duke/EC/*). Density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). These models provided key improvements over previously available information, by (1) incorporating additional aerial and shipboard survey data from NMFS and other organizations collected over the period 1992–2014, (2) incorporating data from 60-percent more shipboard and 500-percent more aerial survey hours than did previously available models, (3) controlling for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting, and (4) modeling density from an expanded set of 8 physiographic and 16 dynamic oceanographic and biological covariates. In subsequent years, certain models have been updated on the basis of availability of additional data as well as methodological improvements. In addition, a new density model for seals was produced as part of the 2017–18 round of model updates. Of particular note, Roberts (2020) further updated density model results for NARWs by incorporating additional sighting data and implementing three major changes: Increasing spatial resolution, generating monthly estimates based on three periods of survey data, and dividing the study area into 5 discrete regions. Model Version 9 for NARWs was undertaken with the following objectives (Roberts 2020): (1) To account for recent changes to NARW distributions, the model should be based on survey data that extend through 2018, or later if possible. In addition to updates from existing collaborators, data should be solicited from two survey programs not used in prior model versions, including aerial surveys of an area overlapping the Massachusetts (MA) and RI/MA WEAs from 2011–2015 led by New England Aquarium (Kraus *et al.,* 2016), and continued from 2017–2018, and recent surveys of New York waters, either traditional aerial surveys initiated by the New York State Department of Environmental Conservation in 2017, or digital aerial surveys initiated by the New York State Energy Research and Development Authority in 2016, or both; (2) to reflect a view in the NARW research community that spatiotemporal patterns in NARW density changed around the time the species entered a decline in approximately 2010, consider basing the new model only on recent years, including contrasting ''before'' and ''after'' models that might illustrate shifts in density, as well as a model spanning both periods, and specifically consider which model would best represent NARW density in the near future; (3) to facilitate better application of the model to near-shore management questions, extend the spatial extent of the model farther in-shore, particularly north of New York; and (4) increase the resolution of the model beyond 10 km, if possible. All of these objectives were met in developing the Version 9 update to the NARW density model.

Accordingly, NMFS has determined that the Roberts *et al.* suite of density models represent the best available scientific information, and this determination was incorporated into NMFS' analysis for this IHA. NMFS' reliance on the best available scientific evidence in our analysis of potential impacts of the project on marine mammals and the development of take estimates further includes recent survey data. For example, where marine mammal sighting data collected by PSOs during marine site characterization surveys in or near the project area indicated that the potential for take may be higher than indicated by the modeled exposures, we adjusted take numbers accordingly, when appropriate. For NARWs, exposure modeling was based on the most recent density data (Roberts 2020), which, as described above, incorporated more recent survey data (through 2018) and that for the first time included data from the 2011–2015 surveys of the MA and RI/MA WEAs (Kraus *et al.* 2016) as well as the 2017–2018 continuation of those surveys, known as the Marine Mammal Surveys of the Wind Energy Areas (MMS–WEA) (Quintana *et al.,* 2018). In addition, Pace (2021) describes that the stock abundance of NARW is lower than that considered when the proposed IHA was published; we have evaluated that new information and incorporated it into the final IHA. In developing the final IHA, NMFS also consulted the NARW sighting database, WhaleMap, which aggregates both visual and acoustic sighting information from 2010 to present day. Contributors to the database include the Department of Fisheries and Oceans Canada, Transport Canada, NOAA's Protected Species Branch, Woods Hole Oceanographic Institution/robots4whales, New England Aquarium, Center for Coastal Studies, Canadian Whale Institute, Mingan Island Cetacean Study, Ocean Tracking Network, Dalhousie University, University of New Brunswick, and Nick Hawkins Photography, making it an extensive database and useful tool in identifying spatial and temporal occurrence of whales as well as locations and timing of management actions such as implementation of DMAs.

NMFS invests heavily in conserving NARWs and, in analyzing the impacts to NARWs from project construction, has considered and leveraged the wealth of data collected by NOAA and partners to make appropriately conservative management decisions in consideration of our statutory authority under the MMPA. NMFS has applied the best available (and most recent) science and has made the determinations necessary to issue this IHA.

For future IHAs, NMFS will continue to review other recommended data sources that become available to evaluate their applicability in a quantitative sense (*e.g.,* to an estimate of take numbers) and, separately, to ensure that relevant information is considered qualitatively when assessing the impacts of the specified activity on the affected species or stocks and their habitat. NMFS will continue to use the best available scientific information, and we welcome future input from interested parties on data sources that may be of use in analyzing the potential presence and movement patterns of marine mammals, including NARWs, in U.S. Atlantic waters.

Comment 32: The ENGOs recommended that NMFS should acknowledge the potential for take from vessel strikes and vessel noise. RODA similarly expressed concern that the vessel traffic associated with construction and operation of offshore wind farms may increase the risk of ship strike of NARWs, and suggests that

NMFS should focus restrictions on increases in vessel traffic rather than vessel speed restrictions alone. In addition, RODA stated that increased vessel travel might contribute to elevated noise levels that will disrupt NARW behavior.

Response: South Fork Wind did not request authorization for take incidental to vessel strike during construction of South Fork Wind Farm. Nevertheless, as mentioned in the response to a previous comment, NMFS analyzed the potential for vessel strikes to occur during the construction phase of the project, and determined that the potential for vessel strike is so low as to be discountable. NMFS does not authorize any take of marine mammals incidental to vessel strike resulting from the construction phase of the project. If South Fork Wind strikes a marine mammal with a vessel, it would be in violation of the MMPA. This gives South Fork Wind a strong incentive to operate its vessels with all due caution and to effectively implement the suite of vessel strike avoidance measures called for in the IHA. South Fork Wind proposed a very conservative suite of mitigation measures related to vessel strike avoidance, including measures specifically designed to avoid impacts to NARWs. Section 4(d) in the IHA contains a suite of non-discretionary requirements pertaining to ship strike avoidance, including vessel operation protocols and monitoring. Since publication of the proposed IHA, NMFS included several new vessel strike avoidance measures that further reduce the likelihood of take incidental to vessel strike (see Changes from Proposed IHA to Final IHA). Construction of the project will likely be based out of ProvPort, RI or Port of New London, CT, both of which require a 50–60 mile one-way trip by vessel to the Lease Area. South Fork Wind has indicated that during construction, the number of crew transfer vessel transits will be limited to 20 per month. To date, NMFS is not aware of any wind industry vessel (*e.g.,* marine site characterization survey vessel) reporting a ship strike. When considered in the context of the low overall probability of any vessel strike by South Fork Wind vessels, given the limited additional project-related vessel traffic relative to existing traffic in the project area, the comprehensive visual and PAM monitoring required in transit routes, and that construction would occur during the time of year when NARW density is lowest, NMFS believes these measures are sufficiently protective to avoid ship strike; thus, we did not authorize take from ship strike. These measures are described fully in the Mitigation section below, and include, but are not limited to: training for all vessel observers and captains, daily monitoring of the NARW Sighting Advisory System, WhaleAlert app, and USCG Channel 16 for situational awareness regarding NARW presence in the project area (including transit corridors), communication protocols if whales are observed by any South Fork Wind personnel, vessel operational protocols should any marine mammal be observed, and visual and passive acoustic monitoring to clear transit routes of NARWs.

The potential impacts of overall increases in the amount of vessel traffic related to OSW development, which is separate from the analysis of the potential for vessel strike during South Fork Wind's construction phase under the final authorization, were addressed in BOEM's EIS for the South Fork Wind project, which can be found here: *https://www.boem.gov/renewable-energy/state-activities/south-fork.* In summary, BOEM determined that it is likely that mobile marine mammals would avoid behavioral disturbance from exposures like those resulting from vessel noise, meaning that the duration of exposure to noise from slow-moving, or closely clustered and stationary construction vessels would be limited. Moreover, a substantial portion of construction vessel activity would occur in an area having high existing levels of vessel traffic. In these areas, construction vessel noise would contribute to, but may not substantially alter, ambient noise generated by existing large vessel traffic in the vicinity.

As described above, South Fork Wind estimates that 20 crew transfer vessel transits per month will be required. While some individual marine mammals may exhibit short-term behavioral responses, and given the possibility that elevated background noise from vessels and other sources could interfere with the detection or interpretation of acoustic cues among NARW conspecifics, brief exposures to one or two South Fork Wind vessels transporting crew between the Lease Area and a nearby port would be unlikely to disrupt behavioral patterns in a manner that would rise to the level of take.

Comment 33: The ENGOs and a commenter from the general public recommended that NMFS analyze cumulative impacts to NARWs and other endangered and protected marine mammals species and stocks as part of the take estimation and permitting process, and suggest that NMFS advance a programmatic incidental take regulation for offshore wind development activities that takes into account risks from other sectors.

Response: The ENGOs conflate the requirements of the MMPA and NEPA in their contention that NMFS must analyze the cumulative impacts from multiple proposed wind development activities on NARWs and other endangered and protected species and stocks, and that appropriate mitigation must be prescribed to mitigate those cumulative impacts. Neither the MMPA nor NMFS' codified implementing regulations specifically call for consideration of impacts on marine mammals and their habitat from activities other than those specified in the request for authorization. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (*e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors). Section 101(a)(5)(D) of the MMPA requires NMFS to modify, suspend, or revoke the IHA if it finds that the activity is having more than a negligible impact on the affected species or stocks of marine mammals. NMFS will closely monitor baseline conditions before and during the period when the IHA is effective and will exercise this authority if appropriate. Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity,'' as opposed to other activities not specified in the request for an IHA, will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, South Fork Wind was the applicant for the IHA, and NMFS is responding to the specified activity as described in their application (and

making the necessary findings on that basis). Through the response to public comments in the 1989 implementing regulations, we also indicated (1) that NMFS would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis and (2) that reasonably foreseeable cumulative effects would also be considered through the section 7 consultation for ESA-listed species. In this case, cumulative impacts have been adequately addressed under NEPA in BOEM's Environmental Impact Statement regarding South Fork Wind's proposed project. NMFS is a cooperating agency under NEPA on that EIS and has adopted the Final Environmental Impact Statement (FEIS) for purposes of issuing the IHA to South Fork Wind. In addition, NMFS was a signatory to the associated Record of Decision issued on November 24, 2021. Separately, NMFS engaged in intra-agency consultation under section 7 of the ESA. The resulting Biological Opinion, issued October 1, 2021, determined that NMFS' action of issuing the IHA is not likely to adversely affect listed marine mammals or adversely modify their critical habitat. The Biological Opinion considered activities both within (related to construction) and outside (*e.g.,* operation and decommissioning) the scope of NMFS' IHA and included Terms and Conditions aimed at reducing the potential impacts of the project on marine mammals, including NARWs.

With respect to the recommendation that NMFS advance programmatic incidental take regulations for offshore wind development that take into account risks from other sectors, NMFS may issue regulations upon request. To date, neither the offshore wind industry nor BOEM has expressed interest in applying for such regulations. We note that the footnote the ENGOs provided in the letter including this comment cites the request to BOEM for a programmatic EIS. Again, it appears the ENGOs are conflating the NEPA and MMPA processes. NMFS does agree with the ENGOs that consistency in mitigation measures, where appropriate, provides efficiencies and helps to ensure adequate measures are being prescribed. To this end, NMFS is working on developing best management practice guidelines that will assist NMFS in developing mitigation measures common to all offshore wind IHAs.

Comment 34: The ENGOs recommended that NMFS avoid describing potential changes resulting from offshore wind development as ''beneficial,'' as it is unclear what implications these changes may have on the wider ecosystem, and instead use terminology such as ''increase,'' ''decrease,'' and ''change.''

Response: In the proposed IHA notice, NMFS identified that impacts from the permanent structures (*i.e.,* WTGs and OSS) on marine mammal habitat may be beneficial as a result of increased presence of prey due to the WTGs (and OSS) potentially acting as artificial reefs (Russell *et al.,* 2014). However, we recognize that the long-term impact from foundation presence is outside the scope of the effective period of the IHA and that this analysis is more appropriate in the context of the ESA consultation and NEPA analysis as it relates to marine mammal habitat. We agree that the long-term ecosystem effects from offshore wind development in the Northwest Atlantic are still being evaluated and that those ecosystem effects are likely to be complex. Thus, while we acknowledge that there is currently insufficient information to draw a conclusion regarding longer-term impacts to marine mammals, we agree with the commenters that the term ''beneficial'' should be avoided when describing potential outcomes of offshore wind development for marine mammals.

Comment 35: The ENGOs recommended that NMFS prohibit extensions of any 1-year authorizations through a truncated 15-day comment period as it is contrary to the MMPA. A member of the general public echoed this concern and suggested that there is not adequate time in the review process to comment on the proposed IHA or any potential renewal IHA.

Response: NMFS did not include language in the final IHA for the South Fork Wind project related to renewal. While this does not necessarily preclude a Renewal IHA, we think a Renewal IHA is unlikely in this case, given the potential for changes over the next three years that could affect our analyses. However, NMFS' IHA renewal process meets all statutory requirements. In prior responses to comments about IHA renewals (*e.g.,* 84 FR 52464; October 02, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, provides additional efficiencies beyond the use of abbreviated notices and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the renewal process. The notice of the proposed IHA published in the **Federal Register** on February 5, 2021 (86 FR 8490) made clear that the agency was seeking comment on both the initial proposed IHA and the potential issuance of a renewal for this project. Because any renewal is limited to another year of identical or nearly identical activities in the same location or the same activities that were not completed within the 1-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one. While there would be additional documents submitted with a renewal request, for a qualifying renewal these would be limited to documentation that NMFS would make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS would also need to confirm, among other things, that the activities would occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request would also contain a preliminary monitoring report in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information, and comment on whether they think the criteria for a renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days.

In addition to the IHA renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for renewals in the regulations, description of the process and express invitation to comment on specific potential renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through

responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and Renewals respectively, NMFS has ensured that the public is ''invited and encouraged to participate fully in the agency's decision-making process'' as Congress intended.

Comment 36: The ENGOs recommended that NMFS work with relevant experts and stakeholders towards developing a robust and effective near real-time monitoring and mitigation system for NARWs and other endangered and protected species (*e.g.,* fin, sei, minke, and humpback whales) during offshore wind development.

Response: NMFS is generally supportive of this concept. A network of near real-time baleen whale monitoring devices are active or have been tested in portions of New England and Canadian waters. These systems employ various digital acoustic monitoring instruments, which have been placed on autonomous platforms including slocum gliders, wave gliders, profiling floats, and moored buoys. Systems that have proven to be successful will likely see increased use as operational tools for many whale monitoring and mitigation applications. A recent report published by NMFS summarizes a workshop NMFS convened to address objectives specifically related to monitoring NARWs and presents the Expert Working Group's recommendations for a comprehensive monitoring strategy to guide future analyses and data collection (''Technical Memorandum NMFS-OPR-64: North Atlantic Right Whale Monitoring and Surveillance: Report and Recommendations of the National Marine Fisheries Service's Expert Working Group,'' which is available at: *https://www.fisheries.noaa.gov/resource/document/north-atlantic-right-whale-monitoring-and-surveillance-report-and-recommendations*). Among the numerous recommendations found in the report, the Expert Working Group encouraged the widespread deployment of auto-buoys to provide near real-time detections of NARW calls that visual survey teams can then respond to for collection of identification photographs or biological samples. Similar approaches utilizing real-time or archival PAM could be utilized to monitor other marine mammal species throughout the life cycles of offshore wind farms.

Comment 37: For comments and recommendations on high-resolution geophysical survey activities, the ENGOs directed NMFS to their letter submitted on September 9, 2020, regarding NMFS' failure to adequately protect endangered and protected marine mammals during marine site characterization surveys required for offshore wind development.

Response: NMFS refers the ENGOS to the **Federal Register** notice 85 FR 63508 (October 8, 2020) for previous responses to the ENGOs' previous letter.

Comment 38: The ENGOs recommended that NMFS coordinate with BOEM to establish and fund a robust, long-term scientific plan to monitor the effects of offshore wind development on marine mammals and other species before, during, and after large-scale commercial projects are constructed.

Response: NMFS appreciated the ENGOs' recommendation and will continue working with BOEM to develop strategies for monitoring the impacts of offshore wind development on protected species.

Comment 39: RODA expressed concern about potential negative impacts (*i.e.,* increased restrictions or other constraints) to Atlantic fisheries, local fisherman, and coastal communities resulting from any potential adverse impacts to NARWs and other protected species from offshore wind construction projects, noting that impacts on the fishing industry were not addressed in the proposed IHA.

Response: The socio-economic impacts of the South Fork Wind's activities are evaluated in the Final Environmental Impact Statement (FEIS) prepared by BOEM to assess the effects of construction and operation of the project, and which NMFS adopted to support the issuance of the IHA. However, neither the MMPA nor our implementing regulations require NMFS to analyze impacts to other industries (*e.g.,* fishermen) or coastal communities from issuance of an ITA. In order to issue an ITA, Sections 101(a)(5)(A) and 101(a)(5)(D) of the MMPA require NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals, and will not result in an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. NMFS has made the required determinations.

Comment 40: RODA expressed concern that the presence of offshore wind turbines may impact low altitude aerial surveys conducted by NOAA/NMFS to monitor protected species, including NARWs, as the height of the turbines would exceed the survey altitude.

Response: NMFS has determined that offshore wind development projects in the Northeast will impact several NEFSC surveys, including the aerial surveys for protected species. NEFSC has developed a federal survey mitigation program to mitigate the impacts to these surveys, and is in the early stages of implementing this program. However, this impact is outside the scope of analysis related to issuance of take incidental to the specified activity under the MMPA.

Comment 41: RODA stated that offshore wind site characterization surveys using HRG equipment could result in long-term and high-intensity impacts on marine mammals. In addition, RODA questions the efficacy of mitigation measures prescribed for such surveys, stating that it is presumptive to assume that mitigation measures are sufficient to eliminate adverse impacts to marine mammals and guarantee that no NARWs will be harmed during site characterization surveys.

Response: This IHA does not cover site characterization surveys—nevertheless, the construction surveys covered similarly utilize HRG equipment. RODA provides no evidence that site characterization surveys could result in long-term and high-intensity impacts on marine mammals, and that NARWs could be harmed during these surveys. The surveys utilizing HRG equipment SFEC (construction surveys) that will be conducted under the South Fork Wind IHA are specifically to assess the inter-array and export cables during construction of the SFWF, are relatively small scale (*i.e.,* no more than 60 days of survey activities), and use HRG equipment with small associated Level A harassment and Level B harassment zones (maximum of 141 m for Level B harassment). Both the clearance and shutdown zones for NARWs are more than three times the size of the Level B harassment zone (*i.e.,* 500 m), making it unlikely that NARWs would even experience Level B harassment from surveys, let alone more significant or long-term impacts. In contrast to RODA's comment, the Commission, the agency charged with advising federal agencies on the impacts of human activity on marine mammals, has questioned in its comments whether incidental take authorizations are even necessary for surveys utilizing HRG equipment (*i.e.,* take is unlikely to occur).

BOEM (2021a) reviewed underwater noise levels produced by the available types of HRG survey equipment as part of a programmatic biological assessment for this and other activities associated

with regional offshore wind energy development. NMFS (2021) concurred with BOEM's determination that planned marine site characterization survey activities using even the loudest available equipment types would be unlikely to injure or measurably affect the behavior of ESA-listed marine mammals. The rationale supporting this conclusion also applies to non-listed marine mammal species. Specifically, the noise levels produced by HRG survey equipment are relatively low, meaning that an individual marine mammal would have to remain very close to the sound source for extended periods to experience auditory injury. This type of exposure is unlikely as the sound sources are continuously mobile and directional (*i.e.,* pointed at the bottom). Along those lines, on June 29, 2021, NMFS GARFO concluded ESA consultation with BOEM and NMFS, finding that marine site assessment surveys using HRG equipment similar to that used by the surveys planned under this South Fork Wind IHA, may effect, but are not likely to adversely affect, ESA-listed marine mammals provided the project design criteria (PDC) and best management practices (BMP) proposed by BOEM are incorporated. NMFS has included those PDCs and BMPs in South Fork Wind's IHA, including the use of protected species observer (PSO) monitoring of species-specific clearance zones around specified HRG equipment (*i.e.,* boomers, sparkers, and Chirps), and mandatory shutdown procedures to further minimize exposure risk. While individual marine mammals may be exposed to marine site characterization survey noise sufficient to cause behavioral effects rising to the level of take under the MMPA, those effects would be temporary in nature and unlikely to cause any perceptible longer-term consequences to individuals or populations. Upon request, NMFS has conservatively issued take, by Level B harassment, incidental to construction surveys using HRG equipment.

Comment 42: RODA expressed interest in understanding the outcome if the number of actual takes exceed the number authorized during construction of an offshore wind project (*i.e.,* would the project be stopped mid-construction or mid-operation), and how offshore wind developers will be held accountable for impacts to protected marine species such that impacts are not inadvertently assigned to fishermen.

Response: It is important to recognize that an IHA does not authorize the activity but authorizes take of marine mammals incidental to the activity. As described in condition 3(b) and (c) of the IHA, authorized take, by Level A harassment and Level B harassment only, is limited to the species and numbers listed in Table 1 of the final IHA, and any taking exceeding the authorized amounts listed in Table 1 is prohibited and may result in the modification, suspension, or revocation of the IHA. As described in condition 3(f), if an individual from a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized take number has not been met, is observed entering or within the Level B harassment zone (construction surveys) or clearance zone (both impact and vibratory piles driving), HRG acoustic sources and pile-driving activities must be shut down immediately (when technically feasible as described under condition 4(a)(ix)(1) of the final IHA). Pile driving and reinitiation of HRG acoustic sources must not resume until the animal has been confirmed to have left the relevant clearance zone or the observation time (as indicated in conditions 4(a)(xi)(2), 4(b)(i)(6)), and 4(c)(i)(4) of the final IHA) has elapsed with no further sightings.

It is unclear why RODA would be concerned that impacts would be ''inadvertently assigned'' to fishermen. Fishing impacts generally center on entanglement in fishing gear, which is a very acute, visible, and severe impact. In contrast, the pathway by which impacts occur incidental to construction is primarily acoustic in nature. Regardless, any take beyond that authorized is unlawful. If the authorized takes were exceeded, but the project could proceed without additional take of marine mammals, it would be lawful. It is BOEM's responsibility as the permitting agency to make decisions regarding ceasing the project. If the case suggested by RODA does occur, NMFS would work with BOEM and South Fork Wind to determine the most appropriate means by which to ensure compliance with the MMPA.

Comment 43: A commenter from the general public suggested that there is a lack of baseline auditory physiology data and adequate conservation metrics for sea turtles, finfish, and other marine species in the project area. The commenter correctly noted that the mitigation measures included in the proposed IHA do not include protections for sea turtles.

Response: Under the MMPA, NMFS is charged with analyzing the impacts from the specified activity to marine mammals and their habitat, including their prey (*e.g.,* fish and invertebrates), and to prescribe the permissible means of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat. In the *Effects to Prey* section of the notice of the proposed IHA (84 FR 8690, February 5, 2021), NMFS provides a summary and discussion of the ways noise produced by construction activities might impact fishes. The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing range, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality. However, the most likely impact to fishes from impact and vibratory pile-driving activities in the project areas would be temporary avoidance of the area. The duration of fish avoidance of an area is unknown, but given the relatively short duration of vibratory pile driving (18 hours each for installation and removal), and the small number of monopiles planned for installation, NMFS anticipates a rapid return to normal recruitment, distribution, and behavior. In general, impacts to marine mammal prey species are expected to be minor and temporary.

Because sea turtles are not marine mammals, no protections are afforded to them under the MMPA. However, we refer the commenter to NMFS' Biological Opinion, issued October 1, 2021. The Biological Opinion, issued pursuant to the ESA, contains an analysis on the impacts to ESA-listed fish and all sea turtles (as all sea turtle species are listed as endangered or threatened under the ESA). Impacts to non-listed fishes may be found in BOEM's Final EIS for the project, issued August 20, 2021, and found here: *https://www.boem.gov/renewable-energy/state-activities/south-fork.*

Comment 44: A commenter from the general public identified several scientific journal articles that discuss the diving physiology of marine mammals, and stated that NMFS should consider this information as it relates to potential avoidance behavior marine mammals might demonstrate as a result of impact pile driving.

Response: NMFS used the best available science in developing its impact analysis and making the findings required to issue the requested IHA. The proposed IHA notice acknowledges avoidance as a potential response of a marine mammal when exposed to noise from project construction and identifies that such a response may reduce the potential of more severe impacts such as PTS. While the commenter was not specific about how NMFS should consider the suggested literature related

to diving behavior, the Level A Harassment exposure estimates modeled by JASCO incorporated known dive behavior via animat modeling. However, NMFS has found that incorporating a behavior such as avoidance into an exposure model is extremely complex and contains a high degree of uncertainty. For this reason, the exposure modeling, and resulting take, do not consider avoidance behavior. NMFS reviewed the references provided by the commenter and determined that that the information contained therein was not sufficient to lead NMFS to reach any other conclusions regarding the impacts of pile driving on marine mammals.

Comment 45: A commenter from the general public stated that the proposed IHA would have benefited from NMFS' consideration of input from public comments on the DEIS and subsequent corrections in BOEM's Final Environmental Impact Statement (FEIS), which assesses the physical, biological, and social/human impacts of the South Fork Wind project and all reasonable alternatives.

Response: NMFS' proposal to issue an IHA under the MMPA to authorize the taking of marine mammals incidental to South Fork Wind's in-water construction activities was a major federal action for purposes of the National Environmental Policy Act (NEPA), necessitating preparation of an appropriate level NEPA document. NMFS chose to satisfy this obligation by actively working with BOEM as a cooperating agency on the Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS) for the South Fork Wind offshore wind project. Once the FEIS was completed, NMFS independently evaluated it and determined the FEIS was sufficient to satisfy NMFS' independent NEPA responsibilities. NMFS drafted a memorandum for the record documenting its rationale for adopting BOEM's FEIS. NMFS then signed a Joint Record of Decision (ROD) in which it selected the alternative of issuing the IHA to South Fork Wind, explained the factors it considered in doing so, and specified the mitigation measures that would be imposed.

Changes From Proposed IHA to Final IHA

In the final IHA, NMFS Office of Protected Resources (OPR) adopted the Terms and Conditions of the October 2021 Biological Opinion for the South Fork Offshore Energy Project, the August 2021 Programmatic Consultation on marine site assessment surveys, and made other modifications as a result of public input on the proposed IHA, which resulted in changes to mitigation and monitoring measures from proposed to final IHA. NMFS provides a summary here, and the changes are also described in the specific applicable sections below (*e.g.,* Mitigation). A complete list of final measures may be found in the issued IHA (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*).

Please note that since publication of the notice of the proposed IHA, NMFS has changed terminology from exclusion zone to shutdown zone to clarify the mitigation action to be taken when a marine mammal enters this zone. In addition, in order to distinguish surveys using HRG equipment to obtain a baseline assessment of seabed, ecological, and archeological conditions within the footprint of future offshore wind development (marine site characterization) from those surveys planned under this IHA (also using HRG equipment) to assess the inter-array and export cables throughout construction of the SFWF and SFEC, NMFS has changed terminology from HRG surveys to construction surveys.

Since publication of the proposed IHA, South Fork Wind communicated to NMFS that construction activities will not commence until November 2022, rather than between April and May 2022 (as indicated in the proposed IHA). Therefore, the period of effectiveness of the IHA is November 15, 2022 to November 14, 2023.

In addition to the seasonal restriction on impact pile driving of monopiles from January 1 through April 30 included in the proposed IHA, the final IHA specifies that impact pile driving of monopiles must not occur in December unless an unanticipated delay due to weather or technical problems, notified to and approved by BOEM, arises that necessitates extending impact pile driving of monopiles through December.

After further consideration, NMFS modified several zone sizes associated with monitoring and mitigation measures to provide additional protection for NARWs. The final IHA includes the condition that any large whale visually observed by a PSO within 2,000 m, or as modified based on SFV measurements, of the impact pile-driving vessel that cannot be identified to species must be treated as if it were a NARW for clearance and shutdown purposes. The distance has been increased from 1,000 m (included in the proposed IHA) to 2,000 m to align with the large whale shutdown zone. Similarly, the distance within which PSOs must treat an unspecified large whale as a NARW during vibratory pile driving has been increased from 1,000 m to 1,500 m for the same reason. In the final IHA, NMFS has defined the minimum visibility zone, or the area over which PSOs must be able to clearly observe marine mammals to begin the clearance process, as 2.2 km. In addition, NMFS has clarified that the 2.2 km large whale clearance zone included in the notice of proposed IHA (Table 24) is the minimum *visual* clearance zone (*i.e.,* the zone that must be both fully visible and clear of NARWs and other large whales for 30 minutes immediately prior to commencing impact pile driving of monopiles)—beyond that distance, PAM, in conjunction with visual monitoring (recognizing the visibility limitations under certain conditions), must be used to confirm that the 5 km NARW clearance zone is clear of NARW's and other large whales prior to commencing impact pile driving of monopiles.

Since publication of the proposed IHA, South Fork Wind communicated to NMFS that the PAM system will be designed such that the PAM PSO will be capable of reviewing acoustic detections within 5 minutes of the original detection, rather than 15 minutes (as indicated in the proposed IHA), to determine if a NARW was detected. This reduced evaluation time provides improved support for near real-time mitigation actions, should they be required. While the proposed IHA required a PAM PSO to have 75-percent confidence that a vocalization originated from a NARW to call for a delay or shutdown of impact pile driving of monopiles, the final IHA only requires that a PAM PSO categorize a call as having a probable (or greater) likelihood of originating from a NARW (scale: No, possible, probable, yes). In addition, South Fork Wind is required to communicate detections of all marine mammals detected at any distance (*i.e.,* not limited to the 5 km Level B harassment zone) to visual PSOs for situational awareness. Finally, the final IHA now specifies that the PAM system(s) must not be placed closer than 1 km to the pile being driven.

The final IHA includes several additional vessel strike avoidance measures to provide enhanced protection for NARWs. South Fork Wind must use available sources of information on NARW presence, including (1) daily monitoring of the Right Whale Sightings Advisory System, (2) consulting the WhaleAlert app, and (3) monitoring of Coast Guard VHF

Channel 16 throughout the day to receive notifications of any sightings and information associated with any Dynamic Management Areas (DMAs), to plan construction activities and vessel routes, if practicable, to minimize the potential for co-occurrence with NARWs. This measure was not included in the proposed IHA but affords increased protection of NARWs by raising awareness of NARW presence in the area through monitoring efforts outside of South Fork Wind's efforts. In addition, whenever multiple project-associated vessels (*e.g.,* construction survey, crew transfer) are operating concurrently, any visual observations of ESA-listed marine mammals must be communicated to PSOs and/or vessel captains associated with other vessels to increase situational awareness. While the proposed IHA only required vessels greater than or equal to 65 ft (19.8 m) to immediately reduce speed to 10 kts or less when a NARW is sighted at any distance by the observer or anyone on the underway vessel (or any other large whale, mom/calf pair, or large assemblage of non-delphinoid cetaceans are observed near (within 100 m) of an underway vessel), the final IHA includes vessels of all sizes in this requirement. The final IHA requires that confirmation of marine mammal observer training (including an understanding of the IHA requirements) must be documented on a training course log sheet and reported to NMFS for those dedicated visual observers required on vessels that are traveling over 10 knots. In addition, NMFS now requires that when a marine mammal is observed during vessel transit, the following data must be collected: Time, date and location (latitude/longitude); the vessel's activity, heading and speed; sea state, water depth and visibility; marine mammal identification to the best of the observer's ability (*e.g.,* NARW, whale, dolphin, seal); initial distance at which the marine mammal was observed from the vessel and closest point of approach; and any avoidance measures taken in response to the marine mammal sighting.

South Fork Wind is required to implement a noise mitigation system to reduce noise during impact pile driving of monopiles such that the measured ranges to Level A harassment and Level B harassment isopleths are equal to or less than those predicted by acoustic modeling, assuming 10-dB attenuation. The proposed IHA included the use of a single BBC, while the final IHA specifies that South Fork Wind must use (at a minimum) a single BBC coupled with an additional noise mitigation device, or a dBBC.

The final IHA requires verification of the Level A harassment and Level B harassment zones through sound field verification (SFV), whereas the proposed IHA only required verification of the Level B harassment zone. Additionally, the final IHA now specifies that NMFS may expand the relevant clearance and shutdown zones in the event that field measurements indicate ranges to Level A harassment and Level B harassment isopleths are consistently greater than the ranges predicted by modeling, assuming 10-dB attenuation (see *Acoustic Monitoring for Sound Field and Harassment Isopleth Verification* section). However, if harassment zones are expanded beyond an additional 1,500 m, additional PSOs must be deployed on additional platforms, with each observer responsible for maintaining watch in no more than 180°, and of an area with a radius no greater than 1,500 m. Depending on the extent of zone size expansion, reinitiation of consultation under Section 7 of the ESA may be required. Conversely, if initial acoustic field measurements indicate ranges to the isopleths corresponding to Level A harassment and Level B harassment thresholds are less than the ranges predicted by modeling (assuming 10-dB attenuation), South Fork Wind may request a modification of the clearance and shutdown zones for impact pile driving of monopiles. However, for a modification request to be considered by NMFS, South Fork Wind must have conducted SFV on at least three piles in representative monopile installation locations (*e.g.,* substrate type, water depth) to verify that zone sizes are consistently smaller than those predicted by modeling, assuming 10-dB attenuation. In the event that subsequently driven monopiles require greater hammer energy or substrate conditions suggest noise generated from the activity could produce larger sound fields, SFV must be conducted for those subsequent piles. Should NMFS approve reductions in zone sizes *(i.e.,* Level A harassment, Level B harassment, clearance and/or shutdown) for impact pile driving of monopiles, the minimum visibility zone will not be decreased to a size smaller than 2.2 km. The shutdown and clearance zones would be equivalent to the measured range to the Level A harassment isopleth plus 10 percent and 20 percent, respectively, rounded up to the nearest 100 m for PSO clarity. The shutdown zone for sei, fin, and sperm whales must not be reduced to a size less than 1,000 m. The visual and PAM clearance and shutdown zones for NARWs must not be decreased, regardless of acoustic field measurements. The Level B harassment zone would be equal to the largest measured range to the Level B harassment isopleth. Finally, the final IHA requires South Fork Wind to report hammer energies required for each monopile installation, as well as ambient noise spectra.

There are several additional planning and reporting requirements included in the final IHA. Specifically, NMFS is requiring that South Fork Wind prepare and submit Pile Driving and Marine Mammal Monitoring Plans to NMFS for review and approval at least 90 days before the start of any pile driving. The plans must include final project design related to all pile driving (*e.g.,* number and type of piles, hammer type, noise mitigation equipment, anticipated start date, etc.), and all information related to PAM PSO protocols and visual PSO protocols (including alternative monitoring technology (*i.e.,* IR/Thermal camera)), for all activities. South Fork Wind must also submit a NARW vessel strike avoidance plan 90 days prior to commencement of vessel use. The plan will describe, at a minimum, how PAM will be conducted to ensure the transit corridor(s) is clear of NARWs and provide details on vessel-based observer protocols on transiting vessels. Submission of the above plans was not required in the proposed IHA.

When reporting the results of SFV, South Fork Wind must include (in addition to the information that was included as a requirement in the proposed IHA) the bandwidth, hydrophone sensitivity, a description of the depth and sediment type at the recording *and pile-driving* locations, and any action taken to adjust the noise mitigation system. In addition to the final report, the IHA requires South Fork Wind to provide the initial results of SFV to NMFS in an interim report after each monopile installation for the first three piles as soon as they are available, but no later than 48 hours after each installation.

If a NARW is detected via PAM, the date, time, location of the detection, and the recording platform must be reported to NMFS as soon as feasible but no longer than 24 hours after the detection. Full detection data and metadata must be submitted on the 15th of every month for the previous month. Prior to initiation of the project activities, South Fork Wind must demonstrate in a report submitted to NMFS (*itp.esch@noaa.gov*) that all required training has been completed for South Fork Wind personnel (including vessel crew and

captains, and PSOs). This report was not required in the proposed IHA. The proposed IHA only required that South Fork Wind submit a draft report on all monitoring conducted under the IHA within 90 days of completion of the monitoring efforts. Since that time, NMFS determined that more frequent reviews of South Fork Wind's monopile installation activities and monitoring data are warranted. In the final IHA, South Fork Wind is required to submit weekly and monthly reports (see Reporting section for details). Finally, NMFS has updated the contact information for reporting injured or dead marine mammals, or a vessel strike, in the event that South Fork Wind needs to report either.

From the proposed IHA to the final IHA, NMFS modified the take number for blue whales. The proposed IHA allocated one take, by Level B harassment, of a blue whale incidental to impact pile driving of monopiles, even though animal exposure modeling resulted in zero blue whale exposures (by Level A harassment or Level B harassment). However, after further examination, NMFS has determined that the potential for even Level B harassment of this species is *de minimus* and NMFS is not authorizing take by Level B harassment. The area is not a preferred blue whale habitat, as the species generally prefers deeper water and bathymetric features such as the continental shelf edge. In addition, there have been no blue whale sightings during previous monitoring efforts within and near the SFWF and SFEC (*e.g.,* CSA 2020; Smultea Environmental Sciences 2020; Gardline 2021). For these reasons, NFMS does not adopt the Commission's recommendation to authorize (in addition to the proposed single take, by Level B harassment, which is now considered *de minimus*) one take, by Level A harassment (PTS), of a blue whale incidental to impact pile driving of monopiles.

Per the Commission's recommendation, NMFS has modified take, by Level B harassment, incidental to impact pile driving of monopiles for long-finned pilot whales, Atlantic spotted dolphins, common dolphins, and bottlenose dolphins. The take numbers, by Level B harassment, included in the proposed IHA for these species were those requested by South Fork Wind in the IHA application. Upon further review of scientific literature (DoN 2017; Smultea Sciences, 2020; CSA 2921; AMAPPS 2021), NMFS updated the reference for average group size for each species and conservatively selected the largest average group size for each species reported among references as the basis for increasing take numbers from the proposed to the final IHA. NMFS selected the group size reported for long-finned pilot whales (n=20) in CETAP (1982) and increased take, by Level B harassment, from 12 (included in the proposed IHA) to 20 (Table 18). Barkaski and Kelly (2018) report an average group size of 13 for Atlantic spotted dolphins, which is similar to the average group size based on sighting data within and near the SFWF and SFEC (Smultea Sciences, 2020). To account for group size, NMFS conservatively increased take, by Level B harassment, of Atlantic spotted dolphins from 2 to 13 (Table 18). To account for the frequent occurrence of common dolphins and bottlenose dolphins in the project area, NMFS increased take, by Level B harassment, by multiplying the largest group size (common dolphins (35), bottlenose dolphins (21.6); AMAPPS 2021) by the maximum number of days on which monopile installation might occur (n=16), resulting in 560 common dolphin takes and 346 bottlenose dolphins takes. Given the large size of the Level B harassment zone for vibratory pile driving (approximately 36 km), NMFS agreed with the Commission's recommendation to modify take, by Level B harassment, of humpback whales, as well as common dolphins and Atlantic white-sided dolphins. NMFS based take increases on the largest estimated group sizes for each species using the best available science (DoN 2017; Smultea Sciences, 2020; CSA 2921; AMAPPS 2021). For humpback whales and common dolphins, the largest estimated group sizes (humpback whales (1.6), common dolphins (35); AMAPPS (2021)) were multiplied by the number of days over which vibratory pile driving might occur (18 hours over 3 days for installation, 18 hours over 3 days for removal, total = 6 days). This approach resulted in the following increases in takes, by Level B harassment, from the proposed IHA to the final IHA: Humpback whales (from 1 to 9.6, rounded to 10) and common dolphins (from 4 to 210). Animal exposure modeling predicted one take, by Level B harassment, of an Atlantic white-sided dolphin incidental to vibratory pile driving, although sightings of this species are uncommon in the project area. However, NMFS has conservatively authorized 50 takes (or the equivalent of the largest seasonal group size, reported for summer; AMAPPS 2021), by Level B harassment, of Atlantic white-sided dolphins. As described in the Comments and Responses section, the Commission also recommended increasing take, by Level B harassment, of fin and sei whales incidental to vibratory pile driving. Exposure modeling resulted in exposures for each of 10 months (October–May; Table 19) for all species potentially impacted by vibratory pile driving. Of the remaining months, fin whale exposure estimates were zero (November–February) and one (in both March and May). The proposed take estimate was already conservatively based on the month with the highest number of modeled exposures (April; n=2), and sightings of fin whales are less frequent along the ECR and nearshore HDD site as compared to in/near the Lease Area (*e.g.,* Smultea Sciences, 2020). For these reasons, NMFS does not find that increasing take of fin whales, by Level B harassment, is warranted. As for sei whales, exposure modeling resulted in zero exposures in all 10 months considered (Table 19). As described in the Comments and Responses section, sei whale sightings are relatively rare throughout the project area, which agrees with the generally offshore pattern of sei whale distribution (Hayes et al., 2021). Given the brief timeframe for cofferdam installation/removal, the low likelihood of sei whale occurrence in the project area during that brief timeframe, and the lack of exposures resulting from exposure modeling, NMFS does not find that increasing take, by Level B harassment, is warranted.

After review of the scientific literature, NMFS has increased take of long-finned pilot whales, by Level B harassment, incidental to construction surveys from 4 (proposed) to 20 (authorized) based on the largest estimated group size (CETAP 1982).

Since publication of the proposed IHA, South Fork Wind proposed the installation of a temporary casing pipe using a small pneumatic impact hammer at the horizontal directional drilling (HDD) exit pit location for the SFEC as an alternative to the previously assessed sheet pile cofferdam at the same location. The cofferdam, but not the casing pipe alternative, was considered in the acoustic impact analysis performed by JASCO in support of the South Fork Wind Construction Operation Plan (COP) (Denes *et al.,* 2020a,b). However, JASCO recently provided NMFS with an general assessment of the potential acoustic impacts of casing pipe installation, showing that it is expected to have less than, or equal, acoustic impact relative to vibratory pile driving to construct a cofferdam. No potential injurious exposures are expected for installation

of the cofferdam (see Estimated Take), and are, therefore, not expected for installation of the casing pipe. The range to behavioral disruption is less for casing pipe driving using a small impact hammer (approximately 2,154 m) than for cofferdam construction using vibratory pile driving (approximately 36,000 m). If temporary supports for the casing pipe are needed during the HDD installation, vibratory pile driving of up to 8 sheet piles may be required (resulting in a 36,000 m range to behavioral disruption during installation of the support sheet piles). South Fork Wind estimates that the entire installation and removal will each take approximately four hours to complete. In comparison, installation of a temporary cofferdam would require vibratory pile driving of approximately 80–100 sheet piles for up to 18 hours for installation and an additional 18 hours for removal. If vibratory pile driving of support sheet piles for the casing pile is required, the range to the Level B harassment isopleth may be the same as for cofferdam construction, but the potential for take would occur over a shorter duration. Regardless of the construct selected for installation at the exit pit location, South Fork Wind will adhere to the more conservative mitigation and monitoring requirements for the installation of the cofferdam (as proposed by South Fork Wind and described in the notice of the proposed IHA (86 FR 8490; February 5, 2021)). NMFS agrees with this approach, given that the larger zone sizes and longer duration for cofferdam installation/removal encompass the potential spatial and temporal scales for installation of the casing pipe alternative. Accordingly, authorized take (by Level B harassment only) in the final IHA is conservatively based on take incidental to vibratory pile driving associated with installation/removal of the cofferdam.

In addition to the changes described above, NMFS has also (1) revised tables in the **Federal Register** notice and IHA so all the harassment, clearance, and shutdown zones align between the **Federal Register** notice and final IHA, (2) corrected the reported maximum water depth in the project area to 90 m, (3) corrected a typographical error in Table 8 to reflect the fact that the mean Level A harassment zone for a difficult-to-drive pile based on the cumulative SEL (SEL_{cum}) thresholds for low-frequency cetaceans is 7,868 m rather than 7,846 m, 4) aligned the Level A harassment zones in Tables 10 and 24 based on the SEL_{cum} thresholds for gray seals and in Tables 7 and 24 based on the peak sound pressure level (SPL_{peak}) thresholds for harbor porpoises, and gray and harbor seals, 5) corrected the Level B harassment zone for Chirps to 54 m in Table 28, 6) corrected the Level A harassment zone ($SPL_{0\text{-}pk}$) for high-frequency cetaceans for AA Triple plate S-Boom (700/1,000 J) to 2.8 m in Table 12, 7) removed visibility metrics from the reporting requirements for SFV, and 8) added a target air flow rate of at least 0.5 m^3/(min*m) for the bubble curtain(s) used for noise mitigation during impact pile driving of monopiles. In addition, the final IHA specifies that if a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes has been met, approaches or is observed within the *Level B harassment zone* (rather than the clearance zone, as specified in the proposed IHA), impact pile driving of monopiles must not commence or resume until the animal has been confirmed to have left the Level B harassment zone or a full 15 minutes (small odontocetes and seals) or 30 minutes (for all other marine mammals) have elapsed with no further sightings. Finally, NMFS did not include language in the final IHA related to a Renewal IHA. This does not necessarily preclude a Renewal IHA but, as described above, NMFS thinks a Renewal IHA is unlikely in this case, given the potential for changes over the next two years that could affect the analyses germane to construction of the SFWF and SFEC.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the IHA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/find-species*).

There are 36 marine mammal species that could potentially occur in the project area and that are included in Table 16 of the IHA application. However, the temporal and/or spatial occurrence of 21 of these species is such that take is not expected to occur or authorized, and they are, therefore, not discussed further beyond the explanation provided here. The following species are not expected to occur in the project area due to their more likely occurrence in habitat that is outside the SFWF and SFEC, based on the best available information: The blue whale (*Balaenoptera musculus*), beluga whale (*Delphinapterus leucas*), northern bottlenose whale (*Hyperoodon ampullatus*), killer whale (*Orcinus orca*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), melon-headed whale (*Peponocephala electra*), pygmy sperm whale (*Kogia breviceps*), Cuvier's beaked whale (*Ziphius cavirostris*), Mesplodont beaked whales (spp.), short-finned pilot whale (*Globicephala macrorhynchus*), pantropical spotted dolphin (*Stenella attenuata*), Fraser's dolphin (*Lagenodelphis hosei*), white-beaked dolphin (*Lagenorhynchus albirostris*), rough-toothed dolphin (*Steno bredanensis*), Clymene dolphin (*Stenella clymene*), spinner dolphin (*Stenella longirostris*), and striped dolphin (*Stenella coeruleoalba*). The following species may occur in the project area, but at such low densities that take is not anticipated: Hooded seal (*Cystophora cristata*) and harp seal (*Pagophilus groenlandica*). There are two pilot whale species (long-finned (*Globicephala melas*) and short-finned (*Globicephala macrorhynchus*)) with distributions that may overlap in the latitudinal range of the SFWF (Hayes *et al.,* 2021; Roberts *et al.,* 2016). Because it is difficult to differentiate between the two species at sea, sightings, and thus the densities calculated from them, are generally reported together as *Globicephala* spp. (Hayes *et al.,* 2021; Roberts *et al.,* 2016). However, based on the best available information, short-finned pilot whales generally occur in habitat that is both further offshore on the shelf break and further south than the project area (Hayes *et al.,* 2021). Therefore, NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

In addition, the Florida manatee (*Trichechus manatus*) may be found in the coastal waters of the project area. However, Florida manatees are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Between October 2011 and June 2015, a total of 76 aerial surveys were conducted throughout the MA and RI/MA WEAs. As mentioned previously, the SFWF is contained within the RI/MA WEA (along with several other offshore renewable energy Lease Areas). Between November 2011 and March 2015, Marine Autonomous Recording Units (MARUs; a type of static PAM recorder) were deployed at nine sites in the MA and RI/MA WEAs. The goal of

the study was to collect visual and acoustic baseline data on distribution, abundance, and temporal occurrence patterns of marine mammals (Kraus *et al.,* 2016). The lack of acoustic detections or sightings of any of the species listed above reinforces the fact that these species are not expected to occur in the project area. In addition, during recent marine site characterization surveys of the South Fork Wind Lease Area, none (other than long-finned pilot whales) of the aforementioned species were observed during marine mammal monitoring (Smultea Sciences, 2020; CSA, 2021). Further, acoustic detections of four species of baleen whales in data collected from 2004–2014 show important distributional changes over the range of these baleen whale species (Davis *et al.,* 2020). That study showed blue whales were more frequently detected in the northern latitudes of the study area after 2010, and no detections occurred in the project area in spring, summer, and fall when impact pile driving of monopiles would occur (Davis *et al.,* 2020). As the species identified above are not expected to occur in the project area during the planned activities, they are not discussed further in this document.

NMFS expects that the 15 species listed in Table 3 will potentially occur in the project area and may, therefore, be taken as a result of the project. Table 3 summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, NMFS follows the Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR is included here as a gross indicator of the status of the species and other threats. Four marine mammal species that are listed under the Endangered Species Act (ESA) may be present in the project area and may be taken incidental to the planned activity: The NARW, fin whale, sei whale, and sperm whale.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in Table 3 are the most recent available at the time of publication, which can be found in the NMFS' 2021 Draft SARs (Hayes *et al.,* 2021), available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 3—MARINE MAMMALS KNOWN TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY SOUTH FORK WIND'S CONSTRUCTION ACTIVITIES

Common name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [3]	Occurrence and seasonality in project area
Toothed whales (Odontoceti)						
Sperm whale (*Physeter macrocephalus*).	North Atlantic	E; Y	4,349 (0.28; 3,451; 2016).	3.9	0	Rare.
Long-finned pilot whale (*Globicephala melas*).	W. North Atlantic	--; N	39,215 (0.3; 30,627; 2016).	306	29	Rare.
Atlantic spotted dolphin (*Stenella frontalis*).	W. North Atlantic	--; N	39,921 (0.27; 32,032; 2016).	320	0	Rare.
Atlantic white-sided dolphin (*Lagenorhynchus acutus*).	W. North Atlantic	--; N	93,233 (0.71; 54,443; 2016).	544	27	Common year round.
Bottlenose dolphin (*Tursiops truncatus*).	W. North Atlantic, Offshore.	--; N	62,851 (0.23; 51,914; 2019).	519	28	Common year round.
Common dolphin (*Delphinus delphis*).	W. North Atlantic	--; N	172,974 (0.21; 145,216; 2016).	1,452	390	Common year round.
Risso's dolphin (*Grampus griseus*).	W. North Atlantic	--; N	35,215 (0.19; 30,051; 2016).	301	34	Rare.
Harbor porpoise (*Phocoena phocoena*).	Gulf of Maine/Bay of Fundy.	--; N	95,543 (0.31; 74,034; 2019).	851	164	Common year round.
Baleen whales (Mysticeti)						
North Atlantic right whale (*Eubalaena glacialis*).	W. North Atlantic	E; Y	368 (0; 364; 2019) ...	0.7	7.7	Year round in continental shelf and slope waters, occur seasonally.
Humpback whale (*Megaptera novaeangliae*).	Gulf of Maine	--; N	1,396 (0.15; 1,375; 2016).	22	58	Common year round.
Fin whale (*Balaenoptera physalus*).	W. North Atlantic	E; Y	6,802 (0.24; 5,573; 2016).	11	1.8	Year round in continental shelf and slope waters, occur seasonally.

TABLE 3—MARINE MAMMALS KNOWN TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY SOUTH FORK WIND'S CONSTRUCTION ACTIVITIES—Continued

Common name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [3]	Occurrence and seasonality in project area
Sei whale (*Balaenoptera borealis*).	Nova Scotia	E; Y	6,292 (1.02; 3,098 ; 2016).	6.2	0.8	Year round in continental shelf and slope waters, occur seasonally.
Minke whale (*Balaenoptera acutorostrata*).	Canadian East Coast	--; N	21,968 (0.31; 17,002; 2016).	170	10.6	Year round in continental shelf and slope waters, occur seasonally.
Earless seals (Phocidae)						
Gray seal [4] (*Halichoerus grypus*).	W. North Atlantic	--; N	27,300 (0.22; 22,785; 2016).	1,389	4,453	Common year round.
Harbor seal (*Phoca vitulina*).	W. North Atlantic	--; N	61,336 (0.08; 57,637; 2012).	1,729	339	Common year round.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS' 2021 Draft SARs, available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS' SAR, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] The NMFS stock abundance estimate applies to U.S. population only, however the actual stock abundance is approximately 451,431.

A detailed description of the species for which take has been authorized, including brief introductions to the relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (86 FR 8490; February 5, 2021). Since that time, the status of some species and stocks have been updated, most notably for large whales. In particular, Pace (2021) and NMFS' 2021 Draft SARS (Hayes *et al.,* 2021) provide an updated population estimate of 368 for NARWs, a decrease from the estimate of 412 reported in the notice of the proposed IHA (86 FR 8490; February 5, 2021). Table 3 includes the most recent population abundances, PBR, and annual mortality and serious injury (M/SI) rates for all species. NMFS refers the reader to the proposed IHA **Federal Register** notice for basic descriptions of each species' status, and provides a summary of updates below where necessary. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts, and note that Oleson *et al.* (2020) have established the project area as year-round foraging habitat for NARWs.

As described in the proposed IHA notice, beginning in 2017, elevated mortalities in the NARW population have been documented, primarily in Canada but also in the U.S., and were collectively declared an Unusual Mortality Event (UME). As of December 2021, 34 NARWs have been confirmed dead and an additional 16 have been determined to be seriously injured. Entanglement and vessel strikes are the primary causes of M/SI.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To assess the potential effects of exposure to sound appropriately, it is necessary to understand the frequency ranges marine mammals are able to hear. Data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into functional hearing groups based on directly measured, or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible; in this case, the lower bound from Southall *et al.* (2007) was retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more details concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Fifteen marine mammal species (13 cetacean and 2 pinniped (both phocid species); Table 3) have the reasonable potential to co-occur with South Fork Wind's construction activities. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), seven are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from South Fork Wind's construction activities have the potential to result in harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA (86 FR 8490; February 5, 2021) included a discussion of the effects of anthropogenic noise on marine mammals, and the potential effects of underwater noise from South Fork Wind's construction activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; for more details, please refer to the notice of proposed IHA (86 FR 8490; February 5, 2021).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination. As noted in the summary of Changes from Proposed IHA to Final IHA, changes have been made to the number of takes for the given species incidental to: Impact pile driving of monopiles (blue whales, pilot whales, Atlantic spotted dolphins, common dolphins, and bottlenose dolphins); vibratory pile driving (humpback whales, common dolphins, white-sided dolphins); and construction surveys (pilot whales). Detailed descriptions are provided in the Comments and Responses and Changes from Proposed IHA to Final IHA sections, and below.

Harassment is the only type of take expected to result from South Fork Wind's construction activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized take would primarily be by Level B harassment, as noise from impact and vibratory pile driving and construction surveys has the potential to result in disruption of behavioral patterns for individual marine mammals, either directly or as a result of masking or temporary hearing impairment (also referred to as temporary threshold shift (TTS), as described in the notice of proposed IHA (86 FR 8490, February 5, 2021)). There is also some potential for auditory injury (Level A harassment) to result for select marine mammals. Mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. No serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, NMFS estimates take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) and the number of days of activities. NMFS notes that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, NMFS describes the factors considered here in more detail and presents the authorized take.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely

to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above a received level of 160 dB re 1 μPa (rms) for impulsive and/or intermittent sources. South Fork Wind's activities includes the use of impulsive and intermittent sources (*e.g.,* impact pile driving, HRG acoustic sources), and thus the 160 dB threshold applies. Quantifying Level B harassment in this manner is also expected to capture any qualifying changes in behavioral patterns that may result from TTS.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The components of South Fork Wind's activities that may result in take of marine mammals include the use of impulsive and non-impulsive sources.

These thresholds are provided in Table 5. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, NMFS describes operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Impact Pile Driving of Monopiles: Acoustic Range

As described above, South Fork Wind plans install up to 15 WTGs and one OSS in the SFWF (*i.e.,* a maximum of 16 foundations). Two piling scenarios may be encountered during construction and were, therefore, considered in the modeling conducted to estimate the potential number of marine mammal exposures above relevant harassment thresholds: (1) Maximum design, including one difficult-to-drive pile, and (2) standard design with no difficult-to-drive pile included.

The two piling scenarios were modeled separately to conservatively assess the potential impacts of each. The two scenarios modeled were:

(1) The ''maximum design'' consisting of 15 piles requiring ~4,500 strikes per pile (per 24 hours), and one difficult-to-drive pile requiring ~8,000 strikes (per 24 hours)

(2) The ''standard design'' consisting of 16 piles requiring ~4,500 strike per pile (per 24 hours).

Representative hammering schedules of increasing hammer energy with increasing penetration depth were modeled, resulting in generally higher intensity sound fields as the hammer energy and penetration increases (Table 6).

TABLE 6—HAMMER ENERGY SCHEDULE FOR MONOPILE INSTALLATION

Energy level (kilojoule[kJ])	Standard pile strike count (4,500 total)	Difficult pile strike count (8,000 total)	Pile penetration (m)
1,000	500	800	0–6
1,500	1,000	1,200	6–23.5
2,500	1,500	3,000	23.5–41
4,000	1,500	3,000	41–45

Monopiles were assumed to be vertical and driven to a penetration depth of 45 m. While pile penetration across the sites would vary, this value was chosen as a reasonable maximum penetration depth. All acoustic modeling was performed assuming that only one pile is driven at a time.

Additional modeling assumptions for the monopiles were as follows:

- One pile installed per day.
- 10.97-m steel cylindrical piling with wall thickness of 10 cm.
- Impact pile driver: IHC S–4000 (4000 kilojoules (kJ) rated energy; 1977 kilonewtons (kN) ram weight).
- Helmet weight: 3234 kN.

As described in the Comments and Responses section, sound fields produced during monopile installation were estimated by first computing the force at the top of each pile associated with typical hammers using the GRLWEAP 2010 wave equation model (GRLWEAP, Pile Dynamics 2010), which produced forcing functions. The source signatures of each monopile were predicted using the TDFD PDSM to compute the monopile vibrations caused by hammer impact. To accurately calculate propagation metrics of an impulsive sound, a time-domain representation of the pressure wave in the water was used. To model the sound waves associated with the monopile vibration in an acoustic propagation model, the monopiles are represented as vertical arrays of discrete point sources. The discrete sources are distributed throughout the length of the monopile below the sea surface and into the sediment with vertical separation of 3 m. The length of the acoustic source is adjusted for the site-specific water depth and penetration at each energy level, and the section length of the monopile within the sediment is based on the monopile hammering schedule (Table 6). Pressure signatures for the point sources are computed from the particle velocity at the monopile wall up to a maximum frequency of 2,048 Hz. This frequency range is suitable because most of the sound energy generated by impact hammering of the monopiles is below 1 kHz.

As described previously, to calculate predicted propagation of sounds produced during impact pile driving of monopiles below 2 kHz, JASCO used it's FWRAM, which is an acoustic model based on the wide-angle parabolic equation (PE) algorithm (Collins 1993). FWRAM computes synthetic pressure waveforms versus range and depth for range-varying marine acoustic environments. It takes environmental inputs (*e.g.,* bathymetry, sound velocity profile, and seabed geoacoustic profile) and computes pressure waveforms at grid points of range and depth. Because the monopile is represented as a linear array and FWRAM employs the array starter method to accurately model sound propagation from a spatially distributed source (MacGillivray and Chapman 2012), using FWRAM ensures accurate characterization of vertical directivity effects in the near-field zone. JASCO used BELLHOP, a Gaussian beam ray-trace model that also incorporates environmental inputs, to model propagation of sound produced above 2 kHz during monopile installation. The beam-tracing model is described as an approximation of a given source by a fan of beams through the medium. Then, the quantities of interest (*e.g.,* acoustic pressure at different ranges) are computed at a specified location by summing the contribution of each of the individual beams.

Two locations within the SFWF were selected to provide representative propagation and sound fields for the project area (see Figure 1 in SFWF COP, Appendix J1). The two locations were selected to span the region from shallow to deeper water and varying distances to dominant bathymetric features (*i.e.,* slope and shelf break). Water depth and environmental characteristics (*e.g.,* bottom-type) are similar throughout the SFWF, and therefore minimal differences were found in sound propagation results for the two sites (Denes *et al.,* 2018). Propagation modeling also incorporated two different sound velocity profiles (based on *in situ* measurements of temperature, salinity, and pressure within the water column) to account for variations in the acoustic propagation conditions between summer and winter. Estimated impact pile driving of monopiles schedules (Table 6) were used to calculate the SEL sound fields at different points in time during monopile installation.

The sound propagation modeling incorporated site-specific environmental data that describes the bathymetry, sound speed in the water column, and seabed geoacoustics in the construction area. Sound level estimates were calculated from three-dimensional sound fields and then at each horizontal sampling range, the maximum received level that occurs within the water column is used as the received level at that range. These maximum-over-depth (R_{max}) values are then compared to predetermined threshold levels to determine acoustic ranges to Level A harassment and Level B harassment isopleths. However, the ranges to an isopleth typically differ among radii from a source, and might not be continuous because sound levels may drop below threshold at some ranges and then exceed threshold at farther ranges. To minimize the influence of these inconsistencies, 5 percent of such footprints were excluded from the model data. The resulting range, $R_{95percent}$, is used because, regardless of the shape of the maximum-over-depth footprint, the predicted range encompasses at least 95 percent of the horizontal area that would be exposed to sound at or above the specified threshold. The difference between R_{max} and $R_{95percent}$ depends on the source directivity and the heterogeneity of the acoustic environment. $R_{95percent}$ excludes ends of protruding areas or small isolated acoustic foci not representative of the nominal ensonified zone (see Figure 12; SFWF COP Appendix J1).

The modeled source spectrum is provided in Figure 7 of the SFWF COP (Appendix J1). The dominant energy for both impact pile-driving scenarios (''maximum'' and ''standard'') is below 1000 Hz. Please see Appendix J1 of the SFWF COP for further details on the modeling methodology (Denes *et al.,* 2020a).

South Fork Wind will employ a noise mitigation system during all impact pile driving of monopiles. Bubble curtains, one type of noise mitigation technology, are sometimes used to decrease the sound levels radiated from a source. Bubbles create a local impedance change that acts as a barrier to sound transmission. The size of the bubbles determines their effective frequency band, with larger bubbles needed to attenuate lower frequencies. There are a variety of bubble curtain systems, confined or unconfined, and some with encapsulated bubbles or panels. Attenuation levels also vary by type of system, frequency band, and location. Small bubble curtains have been shown to reduce sound levels, but effective attenuation is highly dependent on depth of water, current, and configuration and operation of the curtain (Austin, Denes, MacDonnell, & Warner, 2016; Koschinski & Lüdemann, 2013). Bubble curtains vary in terms of the sizes of the bubbles. Those with larger bubbles tend to perform a bit better and more reliably, particularly when deployed with two separate rings (*i.e.,* dBBC) (Bellmann, 2014; Koschinski & Lüdemann, 2013; Nehls, Rose, Diederichs, Bellmann, & Pehlke, 2016).

Encapsulated bubble systems (*e.g.,* Hydro Sound Dampers (HSDs)), can be effective within their targeted frequency ranges, *e.g.,* 100–800 Hz, and when used in conjunction with a bubble curtain appear to create the greatest attenuation. The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design, as well as differences in site conditions and difficulty of properly installing and operating in-water attenuation devices. A California Department of Transportation (CalTrans) study tested several systems and found that the best attenuation systems resulted in 10–15 dB of attenuation (Buehler *et al.,* 2015). Similarly, Dähne *et al.* (2017) found that single BBCs that reduced sound levels by 7–10 dB reduced the overall sound

level by ~12 dB when combined with a dBBC for 6-m steel monopiles in the North Sea. Bellmann *et al.* (2020) provide a review of the efficacy of using bubble curtains (both single and double) as noise abatement systems in the German EEZ of the North and Baltic Seas. For 8-m diameter monopiles, single BBCs achieved an average of 11-dB broadband noise reduction (Bellmann *et al.,* 2020). In modeling the sound fields for South Fork Wind's activities, hypothetical broadband attenuation levels of 0-, 6-, 10-, 12-, and 15-dB were modeled to gauge the effects on the ranges to isopleths given these levels of attenuation. Although five attenuation levels (and associated ranges) are provided, South Fork Wind anticipates that the use of a noise mitigation system will produce field measurements of the ranges to the Level A harassment and Level B harassment isopleths that accord with those modeled assuming 10-dB attenuation. To account for variability, ensure harassment zone sizes are no larger than those assumed in this analysis, and ensure that sound levels are reduced to the lowest level practicable, South Fork Wind is required to employ an additional noise mitigation device if using a single BBC. Alternatively, a dBBC may be used without use of additional noise mitigation equipment.

The acoustic thresholds for impulsive sounds (such as impact pile driving) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both SEL_{cum} and SPL_{peak} (Table 5). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

Tables 7 and 8 shows the modeled acoustic ranges to the Level A harassment isopleths, with 0, 6 10, 12, and 15-dB sound attenuation incorporated. For the peak level, the greatest ranges expected within a given hearing group are shown, typically occurring at the highest hammer energy (Table 7). The SEL_{cum} Level A harassment threshold is the only metric that is affected by the number of strikes within a 24-hour period; therefore, it is only this acoustic threshold that is associated with differences in range estimates between the standard scenario and the difficult-to drive pile scenario (Table 8). The maximum ranges for SPL_{peak} are equal for both scenarios because this metric is used to define characteristics of a single impulse and does vary based on the number of strikes (Denes *et al.,* 2020a). The radial ranges shown in Tables 7 and 8 are the mean ranges from the piles, averaged between the two modeled locations and between summer and winter sound velocity profiles.

TABLE 7—MEAN ACOUSTIC RANGE ($R_{95\%}$) TO LEVEL A PEAK SOUND PRESSURE LEVEL (SPL_{peak}) HARASSMENT ISOPLETHS FOR MARINE MAMMALS DUE TO IMPACT PILE DRIVING OF MONOPILES

Marine mammal hearing group	Threshold SPL_{peak} (dB re 1 μPa)	Mean range (m) to isopleth				
		0 dB attenuation	6 dB attenuation	10 dB attenuation	12 dB attenuation	15 dB attenuation
Low-frequency cetaceans	219	87	22	9	7	2
Mid-frequency cetaceans	230	8	2	1	1	1
High-frequency cetaceans	202	1,545	541	243	183	108
Phocid pinnipeds	218	101	26	12	8	2

dB re 1 μPa = decibel referenced to 1 micropascal.

TABLE 8—MEAN ACOUSTIC RANGE ($R_{95\%}$) TO LEVEL A SOUND EXPOSURE LEVEL (SEL_{cum}) HARASSMENT ISOPLETHS FOR MARINE MAMMALS DUE TO IMPACT PILE DRIVING OF A STANDARD MONOPILE (S; 4,500 STRIKES *) AND A DIFFICULT-TO-DRIVE-MONOPILE (D; 8,000 STRIKES *)

Marine mammal hearing group	Threshold SEL_{cum} (dB re 1 μPa^2s)	Mean range (m) to isopleth									
		0 dB attenuation		6 dB attenuation		10 dB attenuation		12 dB attenuation		15 dB attenuation	
		S	D	S	D	S	D	S	D	S	D
Low-frequency cetaceans	183	16,416	21,941	8,888	11,702	6,085	7,846	5,015	6,520	3,676	4,870
Mid-frequency cetaceans	185	107	183	43	59	27	32	27	26	26	26
High-frequency cetaceans	155	9,290	13,374	4,012	6,064	2,174	3,314	2,006	2,315	814	1,388
Phocid pinnipeds	185	3,224	4,523	1,375	2,084	673	1,080	437	769	230	415

dB re 1 μPa^2s = decibel referenced to 1 micropascal squared second.
* Approximation.

Table 9 shows the acoustic ranges to the Level B harassment isopleth with no attenuation, 6-, 10-, 12-, and 15-dB sound attenuation incorporated. Acoustic propagation was modeled at two representative sites in the SFWF, as described above. The radial ranges shown in Table 8 are the mean ranges to the Level B harassment isopleth, derived by averaging the $R_{95percent}$ to the Level B harassment threshold for summer and winter (see Appendix P2 of the SFWF COP for more details). The range estimated assuming 10-dB attenuation (4,684 m) was used to identify the extent of the Level B harassment zone for impact pile driving of monopiles.

TABLE 9—MEAN ACOUSTIC RANGES ($R_{95percent}$) TO LEVEL B HARASSMENT ISOPLETH (SPL_{rms}) DUE TO IMPACT PILE DRIVING OF MONOPILES

Threshold SPL_{rms} (dB re 1 µPa)	Mean range (m) to isopleth				
	0 dB attenuation	6 dB attenuation	10 dB attenuation	12 dB attenuation	15 dB attenuation
160	11,382	6,884	4,684	4,164	3,272

dB re 1 µPa = decibel referenced to 1 micropascal.

Impact Pile Driving of Monopiles: Exposure-Based Ranges

Modeled acoustic ranges to harassment isopleths may overestimate the actual ranges at which animals receive exposures meeting the Level A (SEL_{cum}) harassment threshold criterion. Therefore, such ranges are not realistic, particularly for accumulating metrics like SEL_{cum}. Applying animal movement and behavior (Denes *et al.,* 2020c) within the propagated noise fields provides the exposure range, which results in a more realistic indication of the ranges at which acoustic thresholds are met. For modeled animals that have received enough acoustic energy to exceed a given threshold, the exposure range for each animal is defined as the closest point of approach (CPA) to the source made by that animal while it moved throughout the modeled sound field, accumulating received acoustic energy. The resulting exposure range for each species is the 95th percentile of the CPA ranges for all animals that exceeded threshold levels for that species (termed the 95 percent exposure range ($ER_{95percent}$)). Notably, the $ER_{95percent}$ are species-specific rather than categorized only by hearing group, which affords more biologically-relevant data (*e.g.,* dive durations, swim speeds, etc.) to be considered when assessing impact ranges. The $ER_{95percent}$ values for SEL_{cum} provided in Table 10 are smaller than the acoustic ranges calculated using propagation modeling alone (Table 7 and 8). Please see the Estimated Take section below and Appendix P1 of the SFWF COP for further detail on the acoustic modeling methodology. The $ER_{95percent}$ ranges assuming 10-dB attenuation for a difficult-to-drive pile were used to determine the Level A harassment zones for impact pile driving of monopiles.

TABLE 10—EXPOSURE-BASED RANGES ($ER_{95percent}$) TO LEVEL A HARASSMENT SOUND EXPOSURE LEVEL (SEL_{cum}) HARASSMENT ISOPLETHS DUE TO IMPACT PILE DRIVING OF A STANDARD MONOPILE (S; 4,500 STRIKES*) AND A DIFFICULT-TO-DRIVE-MONOPILE (D; 8,000 STRIKES*)

Species	$ER_{95\%}$ to SEL_{cum} isopleths (m)									
	0 dB attenuation		6 dB attenuation		10 dB attenuation		12 dB attenuation		15 dB attenuation	
	S	D	S	D	S	D	S	D	S	D
Low-Frequency Cetaceans										
Fin whale	5,386	6,741	2,655	2,982	1,451	1,769	959	1,381	552	621
Minke whale	5,196	6,033	2,845	2,882	1,488	1,571	887	964	524	628
Sei whale	5,287	6,488	2,648	3,144	1,346	1,756	1,023	1,518	396	591
Humpback whale	9,333	11,287	5,195	5,947	3,034	3,642	2,450	2,693	1,593	1,813
North Atlantic right whale	4,931	5,857	2,514	3,295	1,481	1,621	918	1,070	427	725
Mid-Frequency Cetaceans										
Sperm whale	0	0	0	0	0	0	0	0	0	0
Atlantic spotted dolphin	0	0	0	0	0	0	0	0	0	0
Atlantic white-sided dolphin	20	6	20	6	0	0	0	0	0	0
Common dolphin	0	0	0	0	0	0	0	0	0	0
Risso's dolphin	24	13	24	0	0	0	0	0	0	0
Bottlenose dolphin	13	13	0	0	0	0	0	0	0	0
Long-finned pilot whale	0	0	0	0	0	0	0	0	0	0
High-Frequency Cetaceans										
Harbor porpoise	2,845	3,934	683	996	79	365	26	39	21	26
Pinnipeds in Water										
Gray seal	1,559	1,986	276	552	46	117	0	21	0	21
Harbor seal	1,421	2,284	362	513	22	85	22	0	21	0

dB re 1 μPa^2s = decibel referenced to 1 micropascal squared second.
*Approximation.

Cofferdam Installation and Removal

Similar to cylindrical piles, sheet piles are a distributed acoustic source that can be treated as a linear array of point sources. The acoustic source modeling of vibratory driving of sheet piles was conducted following the same steps used to model impact pile driving. An American Pile-driving Equipment APE Model 200T with Model 200 Universal Clamp was modeled driving a19.5-meter-long (64-foot-long), 0.95 cm (3⁄8 in) thick, Z-type sheet pile 9 m (30 feet) into the sediment in 9 m (30 ft) of water. The forcing function was modeled for a single cycle of the vibrating hammer using GRLWEAP 2010 wave equation model (GRLWEAP, Pile Dynamics 2010). The finite difference (FD) model was used to compute the resulting pile vibrations from the stress wave that propagates down the sheet pile. The radiated sound waves were modeled as discrete point sources over the 18 m (60 ft) of the pile in the water and sediment (9 m [30 ft] water depth, 9 m [30 ft] penetration) with a vertical separation of 10 cm. The source level spectrum for vibratory pile driving of a sheet pile for a cofferdam at the export cable landfall site is shown in Figure 9 in Denes *et al.* (2020a).

Underwater sound propagation (*i.e.,* transmission loss) as a function of range from each point source was modeled at one construction site using JASCO's Marine Operations Noise Model (MONM). MONM computes received sound energy, the sound exposure level (SEL), for directional sources. MONM uses a wide-angle parabolic equation solution to the acoustic wave equation (Collins 1993) based on a version of the U.S. Naval Research Laboratory's Range-dependent Acoustic Model (RAM), which has been modified to account for a solid seabed (Zhang and Tindle 1995). The parabolic equation method has been extensively benchmarked and is widely employed in the underwater acoustics community (Collins et al. 1996). MONM's predictions have been validated against experimental data from several underwater acoustic measurement programs conducted by JASCO (Hannay and Racca 2005, Aerts et al. 2008, Funk et al. 2008, Ireland et al. 2009, O'Neill et al. 2010, Warner et al. 2010, Racca et al. 2012a, Racca et al. 2012b). MONM accounts for the additional reflection loss at the seabed due to partial conversion of incident compressional waves to shear waves at the seabed and sub-bottom interfaces, and it includes wave attenuations in all layers. MONM incorporates site-specific environmental properties, such as bathymetry, underwater sound speed as a function of depth, and a geoacoustic profile the seafloor. MONM treats frequency dependence by computing acoustic transmission loss at the center frequencies of 1/3-octave-bands. At each center frequency, the transmission loss is modeled as a function of depth and range from the source. Composite broadband received SELs are then computed by summing the received 1/3-octave-band levels across the modeled frequency range.

For computational efficiency, MONM and similar models such as PE–RAM, do not track temporal aspects of the propagating signal (as opposed to the models used for impact pile driving that can output time-domain pressure signals). It is the total sound energy transmission loss that is calculated. For our purposes, that is equivalent to propagating the SEL acoustic metric. For continuous, steady-state signals SPL is readily obtained from the SEL.

Removal of the cofferdam using a vibratory extractor is expected to be acoustically comparable to installation activities. No noise mitigation system will be used during vibratory piling. Summaries of the maximum ranges to Level A harassment isopleths and the Level B harassment isopleth resulting from propagation modeling of vibratory pile driving are provided in Table 11. Peak thresholds were not reached for any marine mammal hearing group.

The large range to the Level B harassment isopleth resulting from vibratory piling installation and removal is, in part, a reflection of the threshold set for behavioral disturbance from a continuous noise (*i.e.,* 120 dB rms). In addition (as discussed in the Comments and Responses section), the source level (SPL of 180 dB re 1 µPa at 31 m) for installation of sheet piles for the cofferdam is likely an overestimate but was considered acceptable for the following reasons: (1) The source level (SPL 160–165 dB re 1 µPa measured at 10 m) for vibratory pile driving of sheet piles cited in Caltrans (2016, 2020) and provided in NOAA's Pile Driving Noise Calculator spreadsheet (Caltrans 2012, 2015) (available at *https://media.fisheries.noaa.gov/2021-02/SERO%20Pile%20Driving%20Noise%20Calculator_for%20web.xlsx?null*) is based on measurements of a small number of piles for which vibratory pile driving was only used to set the pile prior to impact pile driving to the final desired penetration depth, whereas South Fork Wind would be vibratory pile driving sheet piles to the full extent of the desired penetration depth, and (2) the pile (and vibratory hammer) will potentially encounter more resistance with depth and, therefore, require more hammer energy, during installation of the cofferdam because the piles will be driven to a deeper depth than those included in Caltrans (2016, 2020). Finally, Level B harassment is highly contextual for different species and the range to the isopleth does not represent a definitive impact zone or a suggested mitigation zone; rather, the information serves as the basis for assessing potential impacts within the context of the project and potentially exposed species.

TABLE 11—RANGES TO LEVEL A CUMULATIVE SOUND EXPOSURE LEVEL (SEL_{cum}) HARASSMENT ISOPLETH AND LEVEL B ROOT-MEAN-SQUARE SOUND PRESSURE LEVEL (SPL_{rms}) HARASSMENT ISOPLETH DUE TO 18 HOURS OF VIBRATORY PILE DRIVING [1]

Marine mammal hearing group	Level A harassment threshold SEL_{cum} (dB re 1 µPa ^{2}s)	Maximum range (m) to level A harassment isopleth	Level B harassment threshold SPL_{rms} (dB re 1 µPa)	Maximum range (m) to level B harassment isopleth
Low-frequency cetaceans	199	1,470	120	36,766
Mid-frequency cetaceans	198	0	120	36,766
High-frequency cetaceans	173	63	120	36,766
Phocid pinnipeds	201	103	120	36,766

[1] Although South Fork Wind may conduct a combination of impact and vibratory pile driving to install a casing pipe alternative to the cofferdam, mitigation and monitoring will be implemented based on ranges presented here.

dB re 1 µPa = decibel referenced to 1 micropascal; µPa^{2}s = decibel referenced to 1 micropascal squared second.

Construction Surveys

Ranges to Level A harassment isopleths for HRG equipment planned for use and all marine mammal functional hearing groups were modeled using the NMFS User Spreadsheet and NMFS Technical Guidance (2018), which provides a conservative approach to exposure estimation. However, sources that project a narrower beam, often in frequencies above 10 kHz directed at the seabed, are expected to have smaller distances to isopleths and less horizontal propagation due to the directionality of the source and faster attenuation rate of higher frequencies. Narrow beamwidths allow these HRG sources to be highly directional, focusing energy in the vertical direction and minimizing horizontal propagation, which greatly reduces the possibility of direct path exposure to receivers (*i.e.,* marine mammals) from sounds emitted by these sources.

NMFS has developed a user-friendly methodology for determining the sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purposes of estimating the extent of Level B harassment isopleths associated with HRG survey equipment (NMFS, 2020). This methodology incorporates frequency-dependent absorption and some directionality to refine estimated ensonified zones. South Fork Wind used NMFS' methodology with additional modifications to incorporate a seawater absorption formula and account for energy emitted outside of the primary beam of the source. Therefore, for sources with beamwidths less than 180°, ranges to the Level B harassment isopleth were calculated following NMFS's methodology (NMFS, 2020) to account for the influence of beamwidth and frequency on the horizontal propagation of these sources. For sources that operate with different beam widths, the maximum beam width was used (see Table 2). The lowest frequency of the source was used when calculating the absorption coefficient (Table 2).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate ranges to the Level A harassment and Level B harassment isopleths. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 2 shows the HRG equipment types that may be used during the construction surveys and the sound levels associated with those HRG equipment types.

Results of modeling using the methodology described above indicated that, of the HRG equipment planned for use by South Fork Wind that has the potential to result in Level B harassment of marine mammals, sound produced by the Applied Acoustics Dura-Spark UHD sparkers and GeoMarine Geo-Source sparker would propagate furthest to the Level B harassment isopleth (141 m; Table 12). For the purposes of the exposure analysis, it was conservatively assumed that sparkers would be the dominant acoustic source for all survey days. Thus, the range to the isopleth corresponding to the threshold for Level B harassment for sparkers (141 m) was used as the basis of the take calculation for all marine mammals.

TABLE 12—RANGE TO WEIGHTED LEVEL A HARASSMENT AND UNWEIGHTED LEVEL B HARASSMENT ISOPLETHS FOR EACH HRG SOUND SOURCE OR COMPARABLE SOUND SOURCE CATEGORY FOR MARINE MAMMAL HEARING GROUPS

Source	Range to level A harassment isopleth (m)					Range to level B harassment isopleth (m)
	LF (SEL_{cum} threshold)	MF (SEL_{cum} threshold)	HF (SEL_{cum} threshold)	HF ($SPL_{0\text{-}pk}$ threshold)	PW (SEL_{cum} threshold)	All species
Shallow SBPs						
ET 216 CHIRP	<1	<1	2.9	-	0	12
ET 424 CHIRP	0	0	0	-	0	4
ET 512i CHIRP	0	0	<1	-	0	6
GeoPulse 5430	<1	<1	36.5	-	<1	29
TB CHIRP III	1.5	<1	16.9	-	<1	54
Medium SBPs						
AA Triple plate S-Boom (700/1,000 J)	<1	0	0	4.7	<1	76
AA, Dura-spark UHD (500 J/400 tip)	<1	0	0	2.8	<1	141
AA, Dura-spark UHD 400+400	<1	0	0	2.8	<1	141
GeoMarine, Geo-Source dual 400 tip sparker	<1	0	0	2.8	<1	141

- = not applicable; µPa = micropascal; AA = Applied Acoustics; Chirp = Compressed High-Intensity Radiated Pulse; dB = decibels; ET =EdgeTech; HF = high-frequency; J = joules; LF = low-frequency; MF = mid-frequency; PW = Phocids in water; re = referenced to; SBP = sub-bottom profiler; SEL_{cum} = cumulative sound exposure level in dB re 1 μPa^2s; $SPL_{0\text{-}pk}$ = zero to peak sound pressure level in dB re 1 µPa; TB = teledyne benthos; UHD = ultra-high definition; USBL = ultra-short baseline.

Marine Mammal Occurrence

This section provides information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. The best available information regarding marine mammal densities in the project area is provided by habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018, 2020). Density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016); more information, including the model results and supplementary information for each of those models, is available at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.* In subsequent years, certain models have been updated on the basis of additional

data as well as certain methodological improvements. Although these updated models (and a newly developed seal density model) are not currently publicly available, our evaluation of the updates leads to the conclusion that these modeled densities represent the best scientific evidence available. Marine mammal density estimates in the SFWF (animals/km^2) were obtained using these model results (Roberts *et al.,* 2016, 2017, 2018, 2020). As noted in the Comments and Responses section, the updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys from 2010–2016, which included some aerial surveys over the RI/MA WEAs (NEFSC & SEFSC, 2011a, 2011b, 2012, 2014a, 2014b, 2015, 2016). In addition, the 2020 update to the NARW density model (Roberts *et al.,* 2020) includes, for the first time, data from the 2011–2015 surveys of the MA and RI/MA WEAs (Kraus *et al.* 2016) as well as the 2017–2018 continuation of those surveys, known as the Marine Mammal Surveys of the Wind Energy Areas (MMS–WEA) (Quintana *et al.,* 2018).

Densities of marine mammals and their subsequent exposure risk are different for the SFWF area (where impact pile driving of monopiles will occur), the nearshore export cable landing area (where vibratory pile driving will occur), and the construction survey area. Therefore, density blocks (Roberts *et al.,* 2016; Roberts *et al.,* 2018) specific to each activity area were selected for evaluating the potential numbers of take for the 15 assessed species. The Denes *et al.* (2020b) model analysis utilized NARW densities from the most recent survey period, 2010–2018, as suggested by Roberts *et al.* (2020).

Monopile Installation

Mean monthly densities for all animals were calculated using a 60 km (37.3 mi) square centered on SFWF and overlaying it on the density maps from Roberts *et al.* (2016, 2017, 2018, 2020). The relatively large area selected for density estimation encompasses and extends beyond the estimated ranges to the isopleth corresponding to Level B harassment (with no attenuation, as well as with 6, 10, 12 and 15-dB sound attenuation) for all hearing groups using the unweighted threshold of 160 dB re 1 µPa (rms) (Table 9). Please see Figure 3 in the SFWF COP (Appendix P2) for an example of a density map showing Roberts *et al.* (2016, 2017, 2018, 2020) density grid cells overlaid on a map of the SFWF.

The mean density for each month was determined by calculating the unweighted mean of all 10 × 10 km (6.2 × 6.2 mi) grid cells partially or fully within the buffer zone polygon. Mean values from the density maps were converted from units of abundance (animals/100 km^2 [38.6 miles^2]) to units of density (animals/km^2). Densities were computed for the months of May to December to coincide with planned impact pile driving of monopile activities (as described above, no impact pile driving of monopiles may occur from December (with caveats) through April). In cases where monthly densities were unavailable, annual mean densities (*e.g.,* pilot whales) and seasonal mean densities (*e.g.,* all seals) were used instead. Table 13 shows the monthly marine mammal density estimates for each species incorporated in the exposure modeling analysis. To obtain conservative exposure estimates, South Fork Wind used the maximum of the mean monthly (May to December) densities for each species to estimate the number of individuals of each species exposed to sound above Level A harassment and Level B harassment thresholds. The maximum densities applied are denoted by an asterisk.

TABLE 13—ESTIMATED DENSITIES (ANIMALS/km^{-2}) USED FOR MODELING MARINE MAMMAL EXPOSURES INCIDENTAL TO MONOPILE INSTALLATION WITHIN SOUTH FORK WIND FARM

Common name	Monthly density (animals km^{-2})							
	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Fin whale	0.00201	0.00219	*0.00264	0.00251	0.00217	0.00145	0.00102	0.00105
Minke whale	*0.00163	0.00143	0.00047	0.00026	0.00027	0.00049	0.00022	0.00032
Sei whale	*0.00019	0.00013	0.00003	0.00002	0.00003	0.00000	0.00001	0.00001
Humpback whale	0.00133	0.00148	0.00069	0.00094	*0.00317	0.00156	0.00042	0.00061
North Atlantic right whale	*0.00154	0.00011	0.00002	0.00001	0.00001	0.00005	0.00029	0.00151
Blue whale	*0.00001							
Sperm whale	0.00002	0.00008	*0.00031	0.00024	0.00010	0.00007	0.00007	0.00001
Atlantic white-sided dolphin	*0.03900	0.03600	0.02500	0.01300	0.01500	0.02200	0.02100	0.02800
Atlantic spotted dolphin	0.00012	0.00016	0.00034	0.00041	0.00051	*0.00058	0.00037	0.00007
Bottlenose dolphin	0.00496	0.01800	0.03700	0.03800	*0.04000	0.02000	0.00962	0.00846
Pilot whales [1]	*0.00596							
Risso's dolphin	0.00005	0.00005	0.00018	*0.00026	0.00015	0.00005	0.00009	0.00019
Common dolphin	0.04400	0.04600	0.04300	0.06200	0.10200	0.12800	0.09800	*0.20400
Harbor porpoise	*0.03800	0.00236	0.00160	0.00172	0.00161	0.00399	0.02400	0.02300
Gray seal	*0.03900	0.02600	0.00874	0.00357	0.00529	0.00955	0.00630	0.03400
Harbor seal	*0.03900	0.02600	0.00874	0.00357	0.00529	0.00955	0.00630	0.03400

* Denotes the highest monthly density estimated.
[1] Long- and short-finned pilot whales are grouped together to estimate the total density of both species.

Cofferdam Installation and Removal

Marine mammal densities in the nearshore export cable landing area were estimated from the 10 × 10 km habitat density blocks that contained the anticipated potential locations (separated by 22 km) of the cofferdam. Monthly marine mammal densities for the potential construction locations of the cofferdam are provided in Table 14. The maximum densities (denoted by an asterisk) were incorporated in the

exposure modeling to obtain the most conservative estimates of potential take by Level A harassment or Level B harassment.

The species listed in each respective density table represent animals that could be reasonably expected to occur within the Level B harassment zone, in the months during which the cofferdam could potentially be installed and extracted (*e.g.,* installation likely between November and April; removal could occur anytime up to expiration of the IHA). Several of the outer continental shelf and deeper water species that appear in the SFWF area are not included in the cofferdam species list because the densities were zero for those species.

TABLE 14—ESTIMATED DENSITIES (ANIMALS/km^{-2}) USED FOR MODELING MARINE MAMMAL EXPOSURES WITHIN THE AFFECTED AREA AND CONSTRUCTION SCHEDULE OF THE COFFERDAM INSTALLATION

Species [1]	Jan	Feb	Mar	Apr	May	Oct	Nov	Dec
Fin whale	0.0001	0.0001	0.0002	*0.0005	0.0002	0.0002	0.0001	0.0001
Minke whale	0.0005	*0.0008	0.0008	0.0000	0.0000	0.0000	0.0005	0.0005
Sei whale	0.0001	0.0001	0.0001	0.0000	0.0000	0.0000	0.0000	0.0001
Humpback whale	*0.0002	0.0002	0.0002	0.0000	0.0000	0.0000	0.0000	0.0002
North Atlantic right whale	*0.0014	0.0014	0.0013	0.0008	0.0003	0.0000	0.0002	0.0008
Atlantic white-sided dolphin	0.0001	0.0000	0.0001	0.0002	*0.0003	0.0003	0.0003	0.0002
Common dolphin	0.0003	0.0001	0.0001	0.0003	0.0007	0.0007	*0.0010	0.0008
Bottlenose dolphin	0.0694	0.0296	0.0157	0.0474	0.3625	*0.4822	0.2614	0.0809
Harbor porpoise	0.0007	0.0005	0.0005	0.0011	0.0007	*0.0026	0.0003	0.0006
Gray seal	*0.3136	0.3136	0.3136	0.3136	0.3136	0.3136	0.3136	0.3136
Harbor seal	*0.3136	0.3136	0.3136	0.3136	0.3136	0.3136	0.3136	0.3136

* Denotes density used for take estimates.
[1] Only species with potential exposures are listed.

Construction Surveys

Densities for construction surveys were combined for the SFWF area (inter-array cables) and the SFEC using density blocks that encompassed those areas. The densities used for construction surveys are provided in Table 15. Average annual, rather than maximum monthly, densities were estimated to account for spatial variability in the distribution of marine mammals throughout the SFWF and SFEC and temporal variability in distribution over the 12-month timeframe during which construction surveys would occur.

Table 15. Estimated Densities (animals/km^2) Of Marine Mammals Within the Construction Survey Area (Export Cable Routes and Inter-Array Cables)

Species	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	Annual Average*
Fin whale	0.0020	0.0015	0.0016	0.0027	0.0022	0.0022	0.0025	0.0024	0.0018	0.0018	0.0016	0.0022	0.0020
Minke whale	0.0006	0.0007	0.0006	0.0004	0.0005	0.0006	0.0006	0.0004	0.0002	0.0001	0.0006	0.0006	0.0005
Sei whale	0.0001	0.0001	0.0001	0.0002	0.0004	0.0002	0.0001	0.0000	0.0000	0.0000	0.0000	0.0001	0.0001
Humpback whale	0.0008	0.0007	0.0008	0.0006	0.0009	0.0013	0.0008	0.0010	0.0013	0.0013	0.0013	0.0007	0.0010
North Atlantic right whale	0.0038	0.0053	0.0060	0.0054	0.0016	0.0001	0.0000	0.0000	0.0000	0.0000	0.0003	0.0017	0.0020
Sperm whale	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001
Atlantic white-sided dolphin	0.0227	0.0103	0.0078	0.0172	0.0326	0.0276	0.0178	0.0126	0.0202	0.0267	0.0298	0.0352	0.0217
Atlantic spotted dolphin	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001
Common dolphin	0.0218	0.0100	0.0085	0.0182	0.0568	0.0645	0.0417	0.0456	0.0468	0.0538	0.0600	0.0506	0.0399
Bottlenose dolphin	0.0081	0.0033	0.0014	0.0035	0.0241	0.0324	0.0544	0.0405	0.0393	0.0392	0.0271	0.0108	0.0237
Risso's dolphin	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Long-finned pilot whale	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033
Harbor porpoise	0.0871	0.0584	0.0475	0.0964	0.0547	0.0182	0.0037	0.0014	0.0024	0.0150	0.0046	0.0482	0.0365
Gray seal	0.0151	0.0151	0.0151	0.0151	0.0151	0.0030	0.0030	0.0030	0.0151	0.0151	0.0151	0.0151	0.0121
Harbor seal	0.0151	0.0151	0.0151	0.0151	0.0151	0.0030	0.0030	0.0030	0.0151	0.0151	0.0151	0.0151	0.0121

*Average annual density used for take estimates.

Take Calculation and Estimation

Below is a description of how the information provided above is brought together to produce a quantitative take estimate. The following steps were performed to estimate the potential numbers of marine mammal exposures above Level A harassment and Level B harassment thresholds as a result of the planned activities.

Monopile Installation

JASCO's Animal Simulation Model Including Noise Exposure (JASMINE) animal movement model was used to predict the probability of marine mammal exposure to impact pile driving sound generated by monopile installation. Sound exposure models like JASMINE use simulated animals (also known as ''animats'') to forecast behaviors of animals in new situations and locations based on previously documented behaviors of those animals. The predicted 3D sound fields (*i.e.,* the output of the acoustic modeling process described earlier) are sampled by animats using movement rules derived from animal observations. The output of the simulation is the exposure history for each animat within the simulation.

The precise location of animats (and their pathways) are not known prior to a project, therefore, a repeated random sampling technique (Monte Carlo) is used to estimate exposure probability with many animats and randomized starting positions. The probability of an animat starting out in or transitioning into a given behavioral state can be defined in terms of the animat's current behavioral state, depth, and the time of day. In addition, each travel parameter and behavioral state has a termination function that governs how long the parameter value or overall behavioral state persists in the simulation.

The output of the simulation is the exposure history for each animat within the simulation, and the combined history of all animats gives a probability density function of exposure during the project. Scaling the probability density function by the real-world density of animals (Table 13) results in the mean number of animats expected to be exposed over the duration of the project. Due to the probabilistic nature of the process, fractions of animats may be predicted to exceed threshold. If, for example, 0.1 animats are predicted to exceed threshold in the model, that is interpreted as a 10-percent chance that one animat will exceed a relevant threshold during the project, or equivalently, if the simulation were re-run ten times, one of the ten simulations would result in an animat exceeding the threshold. Similarly, a mean number prediction of 33.11 animats can be interpreted as re-running the simulation where the number of animats exceeding the threshold may differ in each simulation but the mean number of animats over all of the simulations is 33.11. A portion of an individual marine mammal cannot be taken during a project, so it is common practice to round mean number animat exposure values to integers using standard rounding methods. However, for low-probability events it is more precise to provide the actual values. For this reason, mean number values are not rounded.

Sound fields were input into the JASMINE model and animats were programmed based on the best available information to ''behave'' in ways that reflect the behaviors of the 15 marine mammal species expected to occur in the project area during the activity. The various parameters for forecasting realistic marine mammal behaviors (*e.g.,* diving, foraging, surface times, etc.) are determined based on the available literature (*e.g.,* tagging studies). When literature on these behaviors was not available for a particular species, it was extrapolated from a similar species for which behaviors would be expected to be similar to the species of interest. Please refer to the footnotes on Tables 16 and 17, and Appendix P2 of SFWF COP for a more detailed description of the species that were used as proxies when data on a particular species was not available. The parameters used in JASMINE describe animat movement in both the vertical and horizontal planes (*e.g.,* direction, travel rate, ascent and descent rates, depth, bottom following, reversals, inter-dive surface interval). More information regarding modeling parameters can be found in Denes *et al.* (2020b).

The mean numbers of animats that may be exposed to noise exceeding acoustic thresholds were calculated for two construction schedules, one representing the most likely schedule, and one representing a more aggressive, or maximum schedule (Denes *et al.,* 2019). The most likely schedule assumes that three foundations are installed per week with an average of one pile installed every other day. The maximum schedule assumes six monopile foundations are installed per week with one pile installation per day. Within each of the construction schedules, a single difficult-to-drive pile was included in the model assumptions to account for the potential for additional strikes (Denes *et al.,* 2019). Animats were modeled to move throughout the three-dimensional sound fields produced by each construction schedule for the entire construction period. For PTS exposures, both SPL_{peak} and SPL_{cum} were calculated for each species based on the corresponding acoustic criteria. Once an animat is taken within a 24-hour period, the model does not allow it to be taken a second time in that same period but rather resets the 24-hour period on a sliding scale across 7 days of exposure. An individual animat's exposure levels are summed over that 24-hour period to determine its total received energy, and then compared to the threshold criteria. Potential behavioral exposures are estimated when an animat is within the area ensonified by sound levels exceeding the corresponding thresholds. It should be noted that the estimated numbers of individuals exceeding any of the thresholds is conservative because the 24-hour evaluation window allows individuals to be counted on multiple days (or can be interpreted as different individuals each 24-hour period) when in the real world it may in fact be the same individual experiencing repeated exposures (Denes *et al.,* 2019). Please note that animal aversion was not incorporated into the JASMINE model runs that were the basis for the take estimate for any species. See Appendix P2 of the SFWF COP for more details on the JASMINE modeling methodology, including the literature sources used for the parameters that were input in JASMINE to describe animal movement for each species that is expected to occur in the project area.

In summary, exposures were estimated in the following way:

(1) The characteristics of the sound output from the pile-driving activities were modeled using the GRLWEAP (wave equation analysis of pile driving) model and JASCO's TDFD PDSM;

(2) Acoustic propagation modeling was performed within the exposure model framework using FWRAM and BELLHOP, which combined the outputs of the source model with the spatial and temporal environmental context (*e.g.,* location, oceanographic conditions, seabed type) to estimate sound fields;

(3) Animal movement modeling integrated the estimated sound fields with species-typical behavioral parameters in the JASMINE model to estimate received sound levels for the animals that may occur in the operational area; and

(4) The number of potential exposures above Level A harassment and Level B harassment thresholds was calculated for each potential piling scenario (standard, maximum).

All scenarios were modeled with no sound attenuation and 6, 10, 12, and 15-dB sound attenuation. The results of marine mammal exposure modeling for the potentially more impactful maximum piling scenarios are shown in Tables 16 and 17, as these form the basis for authorized take.

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Table 16. Modeled Potential Level A Harassment Exposures[1] Due to Impact Pile Driving Using the Maximum Design Scenario With the Inclusion of 1 Difficult-to-Drive pile and 0, 6, 10, 12, and 15-dB Broadband Attenuation

Species	0 dB attenuation		6 dB attenuation		10 dB attenuation		12 dB attenuation		15 dB attenuation	
	SEL_{cum}	SPL_{pk}	SEL_{cum}	SPL_{pk}	SEL_{cum}	SPL_{pk}	SEL_{cum}	SPL_{pk}	SEL_{cum}	SPL_{pk}
Low-Frequency Cetaceans										
Fin whale	7	< 1	3	< 1	1	< 1	1	< 1	< 1	< 1
Minke whale[2]	7	< 1	3	< 1	1	< 1	1	< 1	< 1	< 1
Sei whale[3]	1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1
Humpback whale[2]	21	< 1	9	< 1	4	< 1	3	< 1	3	< 1
North Atlantic right whale[2]	4	< 1	1	< 1	< 1	< 1	< 1	< 1	< 1	< 1
Blue whale	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1
Mid-Frequency Cetaceans										
Sperm whale	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1
Atlantic spotted dolphin[4]	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1
Atlantic white-sided dolphin[4]	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1
Bottlenose dolphin	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1
Common dolphin[4]	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1
Risso's dolphin[4]	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1
Pilot whale[5]	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1	< 1
High-Frequency Cetaceans										
Harbor porpoise	33	23	4	7	1[7]	3	1	3	< 1	1
Pinnipeds in Water										
Gray seal[6]	6	< 1	1	< 1	< 1	< 1	< 1	< 1	< 1	< 1
Harbor seall	8	1	2	< 1	< 1	< 1	< 1	< 1	< 1	< 1

dB=decibel; SEL_{cum}=sound exposure level in units of dB referenced to 1 micropascal squared second; SPL_{pk}=peak sound pressure level in units of dB referenced to 1 micropascal.

[1]The maximum density available for any month was used for each species to estimate the maximum potential exposures (*i.e.*, exposure estimates for all species are not for the same month).

[2]Subset of fin whale behaviors used to approximate model parameters.

[3]Fin whale used as proxy species for exposure modeling.

[4]Subset of sperm whale and Atlantic spotted dolphin behaviors used to approximate model parameters.

[5]Subset of sperm whale behaviors used to approximate model parameters.

[6]Harbor seal used as proxy species for exposure modeling.

[7]Calculated exposures with 10 dB for harbor porpoises were < 1 but >0.5; therefore they were rounded up to the nearest whole number.

Again, only the estimated Level B harassment exposures for the maximum design impact pile driving of monopiles schedule are presented here (Table 17).

Table 17. Modeled Potential Level B Harassment Exposures[1] Due to Impact Pile Driving Using the Maximum Design Scenario With 1 Difficult-to Drive pile and 0, 6, 10, 12, and 15-dB broadband attenuation

Species	Level B Exposures by Noise Attenuation Level				
	0 dB attenuation	6 dB attenuation	10 dB attenuation	12 dB attenuation	15 dB attenuation
Low-Frequency Cetaceans					
Fin whale	21	10	6	5	4
Minke whale[2]	27	15	10	8	6
Sei whale[3]	< 1	< 1	< 1	< 1	< 1
Humpback whale[2]	26	13	8	7	6
North Atlantic right whale[2]	16	7	4	3	3
Blue whale	< 1	< 1	< 1	< 1	< 1
Mid-Frequency Cetaceans					
Sperm whale	< 1	< 1	< 1	< 1	< 1
Atlantic spotted dolphin[4]	6	3	2	1	< 1
Atlantic white-sided dolphin[4]	322	152	107	85	48
Bottlenose dolphin	1,261	459	197	148	73
Common dolphin[4]	2	1	< 1	< 1	< 1
Risso's dolphin[4]	212	85	43	34	14
Pilot whale[5]	< 1	< 1	< 1	< 1	< 1
High-Frequency Cetaceans					
Harbor porpoise	272	129	78	67	40
Pinnipeds in Water					
Gray seal[6]	307	116	60	52	28
Harbor seal	319	119	54	45	28

dB=decibel

[1]The maximum density available for any month was used for each species to estimate the maximum potential exposures (*i.e.*, exposure estimates for all species are not for the same).

[2]Subset of fin whale behaviors used to approximate model parameters.

[3]Fin whale used as proxy species for exposure modeling.

[4]Subset of sperm whale and Atlantic spotted dolphin behaviors used to approximate model parameters.

[5]Subset of sperm whale behaviors used to approximate model parameters.

[6]Harbor seal used as proxy species for exposure modeling.

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Although exposures are presented according to a range of attenuation levels, take numbers are based on an assumption of 10-dB attenuation and are shown below in Table 18. South Fork Wind considers an attenuation level of 10-dB achievable using a dBBC, which is the most likely noise mitigation technology that will be used during construction of SFWF. Recently reported *in situ* measurements during installation of monopiles (~8 m) for more than 150 WTGs in comparable water depths (>25 m) and conditions in Europe indicate that attenuation of 10-dB is readily achieved (Bellmann, 2019; Bellmann *et al.,* 2020) using single BBCs for noise mitigation. Designed to gather additional data regarding the efficacy of BBCs, the Coastal Virginia Offshore Wind (CVOW) pilot project systematically measured noise resulting from the impact driven installation of two 7.8-m monopiles, one installation using a dBBC and the other installation using no noise mitigation system (CVOW, unpublished data). Although many factors contributed to variability in received levels throughout the installation of the piles (*e.g.,* hammer energy, technical challenges during operation of the dBBC), reduction in broadband SEL using the dBBC (comparing measurements derived from the mitigated and the unmitigated monopiles) ranged from approximately 9–15 dB. The effectiveness of the dBBC as a noise mitigation system was found to be frequency-dependent, reaching maximum efficacy around 1 kHz; this finding is consistent with other studies (*e.g.,* Bellman, 2014; Bellman *et al.,* 2020). The noise measurements were incorporated into a dampened cylindrical transmission loss model to estimate ranges to Level A harassment and Level B harassment isopleths. The ranges to Level A harassment and Level B harassment isopleths estimated for the monopile with the dBBC were more than 90 percent and 74 percent smaller than those estimated for the unmitigated pile, respectively (CVOW unpublished data).

South Fork Wind conservatively based their exposure modeling on the maximum piling scenario, including one difficult-to-drive monopile (out of 16) and a compressed buildout schedule (16 piles installed over 20 days).

In addition, the acoustic modeling scenario represents only that which produced the largest harassment zones, and does not reflect all the mitigation measures that must be employed during piling operations to reduce the ensonified zone or increase mitigation

actions, which may reduce take (see the Mitigation section for details).

Variability in monthly species densities is not considered in South Fork Wind's take estimates for impact pile driving of monopiles, which are based on the highest mean density value for any month for each species. Given that all monopile installations will potentially occur within an approximately 30-day timeframe, it is unlikely that maximum monthly densities would be encountered for all species.

Finally, start delays and shutdowns of monopile installation are not considered in the exposure modeling parameters for monopile driving. However, South Fork Wind must delay impact pile driving of monopiles if a NARW is observed at any distance prior to initiating pile driving to avoid take, and if any other marine mammal is observed entering or within the respective clearance zone during the clearance period. If monopile installation has already commenced, South Fork Wind is required to shutdown if a NARW is sighted at any distance or detected via PAM within 2 km of the monopile location, and if any other marine mammal enters its respective shutdown zone (unless South Fork Wind and/or its contractor determines shutdown is not practicable due to an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk of injury or loss of life for individuals). There are two scenarios, approaching pile refusal and pile instability, where this imminent risk could be a factor. These scenarios are considered unlikely and it is expected that shutdowns will predominantly be practicable during operations. See Mitigation section for shutdown procedural details.

Although exposure modeling for monopile installations indicated that take by Level A harassment (PTS) is only expected for a three species of baleen whales (fin whale, minke whale, and humpback whale), South Fork Wind requested, and NMFS has authorized, take, by Level A harassment, of one sei whale based on (1) rare observations of sei whales in/near the Lease Area during prior monitoring efforts, and (2) difficulty distinguishing fin and sei whales at sea (observers sometimes report a fin/sei complex). In addition, South Fork Wind requested authorization of take, by Level B harassment, equal to the mean group size for several species, based on the following: Seals, Herr *et al.,* (2009); long-finned pilot whale, Kenney and Vigness-Raposa (2010); sperm whale, and Risso's dolphin, Barkaszi and Kelly (2018). NMFS generally agrees that this approach is appropriate in cases where instantaneous exposure is expected to result in harassment (*e.g.,* Level B harassment) and calculated take estimates are either zero or less than the group size. Upon further review of scientific literature, NMFS has increased take, by Level B harassment, of long-finned pilot whales from 12 to 20, based on the largest reported group size (n=20; CETAP, 1982). Similarly, NMFS increased take, by Level B harassment, of Atlantic spotted dolphins from 2 to 13 based on Barkaski and Kelly (2018); this group size is similar to average group size estimated from observations of Atlantic spotted dolphins within or near the project area (n=10), as reported in Smultea (2020). Common dolphins are frequently sighted in the project area, although the average group size varies by season (AMAPPS, 2021). During previous monitoring efforts in or near the SFWF and SFEC, the average group size ranged from 9.6 (CSA, 2021) to 35 (AMAPPS 2021). To account for the frequency of occurrence in the project area, NMFS conservatively increased take of common dolphins, by Level B harassment, from 197 to 560 by multiplying the largest reported group size (35; AMAPPS, 2021) by the number of days on which impact pile driving of monopiles may occur (n=16). AMAPPS (2021) reports the largest average group size for bottlenose dolphins (n=21.6) among the literature reviewed (DoN, 2017; Smultea, 2020; CSA, 2021; AMAPPS, 2021). NMFS increased take, by Level B harassment, of bottlenose dolphins from 43 to 346 by multiplying group size (n=21.6; AMAPPS, 2021) by the number of days on which monopile installation may occur (n=16). Finally, as described in the Comments and Responses and Changes from Proposed to Final IHA sections, one take, by Level B harassment, of a blue whale was originally proposed for authorization. However, given the lack of observations of blue whales within or near the project area and the species' preference for deeper water and bathymetric features such as continental shelf edges, NMFS has determined that the potential for Level B harassment for this species is *de minimus* and NMFS has not authorized take of a blue whale, by Level B harassment. Please see Table 18 for the number of takes proposed and authorized, by species, incidental to impact pile driving of monopiles.

TABLE 18—PROPOSED AND AUTHORIZED LEVEL A HARASSMENT AND LEVEL B HARASSMENT TAKE OF MARINE MAMMALS RESULTING FROM IMPACT PILE DRIVING OF UP TO 16, 11-m MONOPILES WITH INCLUSION OF A SINGLE DIFFICULT-TO-DRIVE PILE AT SOUTH FORK WIND FARM ASSUMING 10-DB BROADBAND SOUND ATTENUATION

Species/stock	Abundance [1] estimate	Proposed take [2]		Authorized take [3]	
		Level A harassment	Level B harassment	Level A harassment	Level B harassment
Fin whale	6,802	1	6	1	6
Minke whale	21,968	1	10	1	10
Sei whale	6,292	1(0)	1	1	1
Humpback whale	1,396	4	8	4	8
North Atlantic right whale	368	0	4	0	4
Sperm whale	4,349	0	3(0)	0	3
Long-finned pilot whale	39,215	0	2	0	20
Atlantic spotted dolphin	39,921	0	2	0	13
Atlantic white-sided dolphin	93,233	0	107	0	107
Common dolphin	172,974	0	197	0	560
Risso's dolphin	35,215	0	30(1)	0	30
Bottlenose dolphin	62,851	0	43	0	346
Harbor porpoise	95,543	0	78	0	78
Gray seal	27,300	0	60	0	60

TABLE 18—PROPOSED AND AUTHORIZED LEVEL A HARASSMENT AND LEVEL B HARASSMENT TAKE OF MARINE MAMMALS RESULTING FROM IMPACT PILE DRIVING OF UP TO 16, 11-m MONOPILES WITH INCLUSION OF A SINGLE DIFFICULT-TO-DRIVE PILE AT SOUTH FORK WIND FARM ASSUMING 10-dB BROADBAND SOUND ATTENUATION—Continued

Species/stock	Abundance [1] estimate	Proposed take [2]		Authorized take [3]	
		Level A harassment	Level B harassment	Level A harassment	Level B harassment
Harbor seal	61,336	0	54	0	54

[1] The best available abundance estimates are derived from the NMFS' 2021 Draft SARs (Hayes *et al.,* 2021). NMFS stock abundance estimate for gray seals in Table 3 applies to U.S. population only; actual stock abundance is approximately 451,431.

[2] Parentheses denote animal exposure model estimates. For species with no modeled exposures for Level A harassment or Level B harassment, proposed takes are based on mean group sizes (*e.g.,* sei whale, long-finned pilot whale: Kenney and Vigness-Raposa (2010); sperm whale, Risso's dolphin: Barkaszi and Kelly, (2018)).

[3] Authorized take is based on largest group size reported from observations in or near the project area (*e.g.,* long-finned pilot whale: CETAP 1982; Atlantic spotted dolphin: Barkasky and Kelly (2018); common dolphin, bottlenose dolphin: AMAPPS 2021).

Cofferdam Installation and Removal

Animal movement and exposure modeling was not used to determine potential exposures from vibratory pile driving. Rather, the modeled acoustic ranges to isopleths corresponding to the Level A harassment and Level B harassment thresholds were used to calculate the area around the cofferdam predicted to be ensonified daily to levels that exceed the thresholds, or the Zone of Influence (ZOI). ZOI is calculated as the following:

$ZOI = \pi r^2$,

where r is the linear acoustic range from the source to the isopleth corresponding to Level A harassment or Level B harassment thresholds. This area was adjusted to account for the portion of the ZOI truncated by the coastline of Long Island, NY.

The daily area was then multiplied by the maximum monthly density of a given marine mammal species. Roberts *et al.* (2018) produced density models for all seals, but did not differentiate by seal species. Because the seasonality and habitat use by gray seals roughly overlaps with that of harbor seals in the project area, it was assumed that the mean annual density of seals could refer to either of the respective species and was, therefore, divided equally between the two species.

Finally, the resulting value was multiplied by the number of activity days that contain the potential duration of actual vibratory pile driving (36 hours total) which is, for cofferdam installation and removal, conservatively estimated as two days. Modeling of the Level A harassment exposures resulting from an 18-hour period of vibratory pile driving for installation and another 18-hour period for removal resulted in less than one exposure for all species for each month between October 1 and May 31. South Fork Wind plans to install a cofferdam or casing pipe, if required, as one of the first activities in the construction schedule; removal could occur at any time through the expiration of the IHA. Modeled potential Level B harassment exposures resulting from installation and removal of the cofferdam are shown in Table 19.

TABLE 19—MODELED LEVEL B HARASSMENT EXPOSURES RESULTING FROM VIBRATORY PILE DRIVING TO INSTALL AND REMOVE THE COFFERDAM

Species	Jan	Feb	Mar	Apr	May	Oct	Nov	Dec
Fin whale	0	0	1	2	1	1	0	0
Minke whale	2	3	3	0	0	0	2	2
Sei whale	0	0	0	0	0	0	0	0
Humpback whale	1	1	1	0	0	0	0	1
North Atlantic right whale	6	6	5	3	1	0	1	3
Atlantic white-sided dolphin	0	0	0	1	1	1	1	1
Common dolphin	1	0	0	1	3	3	4	3
Bottlenose dolphin	289	123	65	197	1,509	2,007	1,088	337
Harbor porpoise	3	2	2	5	3	11	1	2
Gray seal	1,305	1,305	1,305	1,305	1,305	1,305	1,305	1,305
Harbor seal	1,305	1,305	1,305	1,305	1,305	1,305	1,305	1,305

Maximum 18-hour period of vibratory pile driving for installation and 18-hour period for removal will be separated by at least 24 hours of no vibratory sound source operating at the cofferdam.

Modeled vibratory pile-driving activities for the SFEC (SFWF COP Appendix J1 [Denes *et al.,* 2018]) resulted in mean acoustic ranges to the Level A harassment isopleth for low-frequency cetaceans (LFCs), ranging from 742 m for 6 hours of piling to 1,470 m for 18 hours of piling (Denes *et al.,* 2018). Maximum acoustic ranges to Level A harassment isopleths for other marine mammal hearing groups are all under 103 m. Level A harassment exposures are not expected, due to relatively low population densities of LFC species near the installation area, animal movement and required accumulation periods (Denes *et al.,* 2019), the short duration of vibratory pile driving, and mitigation measures (including a 1,500 m shutdown zone for LFCs; see Mitigation section).

Vibratory pile driving during cofferdam installation and removal for the SFEC HDD exit pit does have the potential to elicit behavioral responses in marine mammals. However, predicting Level B harassment exposure estimates resulting from vibratory pile driving is complicated by the nearshore location, short duration of cofferdam installation and removal, and static species density data that are not

indicative of animals transiting the nearshore environment. Marine mammal densities were estimated from the 10 x 10 km habitat density block from Roberts *et al.* (2016) and Roberts *et al.* (2018) that contained the anticipated location of the temporary cofferdam. However, density estimates are not provided for the area adjacent to the shoreline, although some density blocks do intersect the shore. Due to this structure, densities are artificially weighted to the nearest 100 km^2 offshore and do not adequately represent the low numbers expected for some groups like large whales. In addition, the species densities represented in the Roberts *et al.* (2016) and Robert *et al.* (2018) are provided as monthly estimates and are, therefore, not indicative of a single-day distribution of animals within the potential ensonified zone. The modeled range to the behavioral harassment isopleth extends beyond 36 km from the source (Table 11); despite this extensive Level B harassment zone, only bottlenose dolphin, harbor seal, and gray seal exposure estimates are comparatively large. However, the relatively low densities of most species nearshore, the seasonality of occurrence, and the transitory nature of marine mammals coupled with the small period of vibratory pile driving significantly reduces the risk of behavioral harassment exposures. In addition, marine mammal species in this region are not expected to remain in proximity to the cofferdam location for an extended amount of time. Although the modeled Level B harassment exposure estimates for harbor and gray seals were relatively large (1,305), seals are only expected to be seasonally present in the region, and there are no known rookeries documented near the cofferdam location. Seals typically haul-out for some portion of their daily activities, often in large groups (Hayes *et al.,* 2020); however, the in-water median group size is estimated to be 1–3 animals, depending on the distance to shore (Herr *et al.,* 2009), with larger groups typically being associated with direct proximity to a haul-out site. There are a few documented haul-out sites around Long Island, New York; the nearest site is Montauk Point, approximately 20 km northeast of the northern potential cofferdam location, where seals are primarily observed in winter (CRESLI, 2019). Potential exposures of offshore bottlenose dolphins varied substantially across the construction months, with a minimum number of potential Level B harassment exposures in March (65) and a maximum in October (2,007). The impact of vibratory pile driving on this species (and both seal species) will be largely dependent on the timing of the installation and removal of the cofferdam.

Given the possibility that vibratory pile driving (for installation and removal of the cofferdam, or the casing pipe support piles) could occur anytime in the construction schedule, the maximum modeled exposure across months for each species (Table 19) was used to conservatively predict take numbers and assess impacts resulting from vibratory pile driving (Table 20). However, in response to a comment from the Commission on the proposed IHA and as described in the Changes from Proposed IHA to Final IHA, NMFS has increased take, by Level B harassment, of humpback whales, white-sided dolphins, and common dolphins. Please see Table 20 for all proposed and authorized take, by Level B harassment, incidental to vibratory pile driving.

TABLE 20—PROPOSED AND AUTHORIZED LEVEL B HARASSMENT TAKE RESULTING FROM VIBRATORY PILE DRIVING

Species/stock	Population estimate [1]	Proposed Level B harassment take	Authorized Level B harassment take
Fin whale	6,802	2	2
Minke whale	21,968	3	3
Sei whale	6,292	0	0
Humpback whale	1,396	1	10
North Atlantic right whale	368	6	6
Atlantic white-sided dolphin	93,233	1	50
Common dolphin	172,974	4	210
Bottlenose dolphin	62,851	2,007	2,007
Harbor porpoise	95,543	11	11
Gray seal	27,300	1,305	1,305
Harbor seal	61,336	1,305	1,305

[1] The best available abundance estimates are derived from the NMFS' 2021 Draft SARs (Hayes *et al.,* 2021). NMFS' stock abundance estimate for gray seals in Table 3 applies to U.S. population only; actual stock abundance is approximately 451,431.

Construction Surveys

Potential exposures of marine mammals to acoustic impacts from construction survey activities were estimated using an approach similar to that described for installation and removal of a cofferdam. For construction surveys, however, the ZOI was calculated as follows:

$ZOI = 2rd + \pi r^2$

where r is the linear acoustic range from the source to the largest estimated ranges to Level A harassment (36.5 m) and Level B harassment (141 m) isopleths, and d is the survey trackline distance per day (70 km).

The daily area was then multiplied by the mean annual density of a given marine mammal species. Finally, the resulting value was multiplied by the number of survey days (60).

Modeled ranges to isopleths corresponding to the Level A harassment threshold are very small (<1 m) for three of the four marine mammal functional hearing groups that may be impacted by the planned activities (*i.e.,* low-frequency and mid-frequency cetaceans, and phocid pinnipeds; see Table 12). Based on the extremely small Level A harassment zones for these functional hearing groups, the potential for species within these functional hearing groups to be taken by Level A harassment is considered so low as to be discountable. These three functional hearing groups encompass all but one of the marine mammal species listed in Table 3 that may be impacted by the planned activities. There is one species (harbor porpoise) within the high-frequency functional hearing group that may be impacted by the planned activities. However, the largest modeled range to the Level A harassment

isopleth for the high-frequency functional hearing group was only 36.5 m (Table 12). More importantly, Level A harassment would also be more likely to occur at close approach to the sound source, or as a result of longer duration exposure to the sound source. Mitigation measures (including a 100-m shutdown zone for harbor porpoises) are expected to minimize the potential for exposure to HRG sources that would result in Level A harassment. In addition, harbor porpoises are a notoriously shy species, known to avoid vessels, and would be expected to avoid a sound source prior to that source reaching a sound level that would result in injury (Level A harassment). Therefore, NMFS has determined that the potential for take by Level A harassment of harbor porpoises is so low as to be discountable. The modeled Level B harassment exposures of marine mammals resulting from construction survey activities are shown in Table 21.

TABLE 21—MODELED LEVEL B HARASSMENT EXPOSURES RESULTING FROM CONSTRUCTION SURVEYS OF THE SFWF AND SFEC

Species	Population estimate [1]	Estimated Level B harassment exposures
Fin whale	6,802	3
Minke whale	21,968	1
Sei whale	6,292	<1
Humpback whale	1,396	1
North Atlantic right whale	368	3
Sperm whale	4,349	<1
Atlantic spotted dolphin	39,215	<1
Atlantic white-sided dolphin	93,233	26
Common dolphin	172,974	47
Bottlenose dolphin	62,851	28
Risso's dolphin	35,215	<1
Long-finned pilot whale	39,215	4
Harbor porpoise	95,543	43
Gray Seal	27,300	14
Harbor seal	61,336	14

[1] The best available abundance estimates are derived from the NMFS' 2021 Draft SARs (Hayes *et al.,* 2021). NMFS' stock abundance estimate for gray seals in Table 3 applies to U.S. population only; actual stock abundance is approximately 451,431.

The proposed and authorized number of takes by Level B harassment resulting from construction surveys are shown in Table 22. Again, as NMFS has determined that the likelihood of take of any marine mammals in the form of Level A harassment occurring as a result of the planned surveys is so low as to be discountable, and South Fork Wind did not request any take by Level A harassment associated with construction surveys, NMFS does not authorize take by Level A harassment of any marine mammals.

The seasonal mean number of minke whales sighted during marine site characterization surveys in or near the Lease Area in 2017 and 2018 was 19; therefore, South Fork Wind increased the number of takes requested for minke whales from 1 to 19. Preliminary PSO reports from similar surveys in or near the Lease Area in 2019 and 2020 show a high number of common dolphin detections within the estimated Level B harassment zones. Using a mean group size of 25 (based on sightings during monitoring efforts in the project area), South Fork Wind multiplied the mean group size by the number of Level B harassment exposures modeled (47) to produce the number of takes, by Level B harassment, they requested (1,175). There were zero exposures estimated for several species; however, as a precautionary measure, South Fork Wind requested, and NMFS has authorized, Level B harassment takes for those species based on published values of mean group sizes (Atlantic spotted dolphin, Risso's dolphin, Barkaszi and Kelly (2018)). After review of the scientific literature, NMFS has increased authorized take, by Level B harassment, of long-finned pilot whales from 4 to 20, based on the largest reported group size (CETAP 1982). Please see Table 22 for all proposed and authorized take, by Level B harassment, incidental to construction surveys.

TABLE 22—PROPOSED AND AUTHORIZED LEVEL B HARASSMENT TAKE RESULTING FROM CONSTRUCTION SURVEYS OF THE SFWF AND SFEC

Species/stock	Population estimate [1]	Proposed Level B harassment take [2]	Authorized Level B harassment take
Fin whale	6,802	3	3
Minke whale	21,968	19 (1)	19
Sei whale	6,292	1 (0)	1
Humpback whale	1,396	1	1
North Atlantic right whale	368	3	3
Sperm whale	4,349	3 (0)	3
Long-finned pilot whale	39,215	4	20
Atlantic spotted dolphin	39,921	13 (0)	13
Atlantic white-sided dolphin	93,233	26	26

TABLE 22—PROPOSED AND AUTHORIZED LEVEL B HARASSMENT TAKE RESULTING FROM CONSTRUCTION SURVEYS OF THE SFWF AND SFEC—Continued

Species/stock	Population estimate [1]	Proposed Level B harassment take [2]	Authorized Level B harassment take
Common dolphin	172,974	1,175 (47)	1,175
Risso's dolphin	35,493	30 (0)	30
Bottlenose dolphin	62,851	28	28
Harbor porpoise	95,543	43	43
Gray seal	27,300	14	14
Harbor seal	61,336	14	14

[1] The best available abundance estimates are derived from the NMFS' 2021 Draft SARs (Hayes *et al.,* 2021). NMFS stock abundance estimate for gray seals in Table 3 applies to U.S. population only; actual stock abundance is approximately 451,431.
[2] The modeled number of takes is shown in parentheses.

Combined Activity Authorized Take

The number of takes, by Level A harassment and Level B harassment, authorized incidental to the combined activities (impact pile driving of monopiles using a noise mitigation system, vibratory pile driving, and construction surveys) are provided in Table 23. NMFS also presents the percentage of each stock taken based on the total amount of take. The mitigation and monitoring measures provided in the Mitigation and Monitoring and Reporting sections are activity-specific and are designed to minimize acoustic exposures to marine mammal species.

The take numbers NMFS has authorized (Table 23) are considered conservative for the following key reasons:

- Authorized take numbers for impact pile driving of monopiles assume a maximum piling schedule (16 monopiles installed in 20 days);
- Authorized take numbers for vibratory pile driving assume that a sheet pile temporary cofferdam will be installed (versus the alternative installation of a casing pipe for which less take is expected);
- Authorized take numbers for impact pile driving of monopiles are conservatively based on maximum densities across the planned construction months;
- Authorized Level A harassment take numbers do not fully account for the likelihood that marine mammals will avoid a stimulus when possible before that stimulus reaches a level that would have the potential to result in injury;
- Authorized take numbers do not fully account for the effectiveness of mitigation and monitoring measures in reducing the number of takes to effect the least practicable adverse impact (with the exception of the seasonal restriction on impact pile driving of monopiles, which is accounted for in the authorized take numbers).

TABLE 23—AUTHORIZED TAKE BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FOR ALL ACTIVITIES [1] CONDUCTED DURING SFWF AND SFEC CONSTRUCTION

Species/stock	Population [2] estimate	Authorized take for all construction activities		Total authorized take (Level A + Level B)	Percentage of population or stock (%) [3]
		Level A harassment take	Level B harassment take		
Fin whale	6,802	1	11	12	0.28
Minke whale	21,968	1	32	33	0.15
Sei whale	6,292	1	2	3	0.06
Humpback whale	1,396	4	19	23	1.65
North Atlantic right whale	368	0	13	13	3.53
Sperm whale	4,349	0	6	6	0.14
Pilot whales (long-finned)	39,215	0	40	40	0.10
Atlantic spotted dolphin	39,921	0	26	26	0.07
Atlantic white-sided dolphin	93,233	0	183	183	0.20
Common dolphin	172,974	0	1,945	1,945	1.12
Risso's dolphin	35,215	0	60	60	0.17
Bottlenose dolphin	62,851	0	2,381	2,318	3.79
Harbor porpoise	95,543	0	132	132	0.14
Gray seal	451,431	0	1,379	1,379	0.31
Harbor seal	61,336	0	1,373	1,373	1.81

[1] Activities include impact pile driving of monopiles using a noise mitigation system, vibratory pile driving, and construction surveys.
[2] The best available abundance estimates are derived from the NMFS' 2021 Draft SARs (Hayes *et al.,* 2021). NMFS' stock abundance estimate for gray seals in Table 3 applies to U.S. population only; actual stock abundance is approximately 451,431.
[3] Calculations of percentage of stock taken are based on the best available abundance estimate.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS carefully considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

The mitigation strategies described below are consistent with those required and successfully implemented under previous incidental take authorizations issued in association with in-water construction activities (*e.g.,* ramp-up, establishing harassment zone, implementing shutdown zones, etc.). Additional measures have also been incorporated to account for the fact that some of the planned activities would occur offshore. Modeling was performed to estimate ensonified areas or ZOIs; these ensonified area values were used to inform mitigation measures for all analyzed construction activities to minimize Level A harassment and Level B harassment to the extent possible, while providing estimates of the areas within which Level B harassment might occur. Several measures have been added or modified since the proposed IHA was published, and are identified and described in detail below.

In addition to the specific measures described later in this section, South Fork Wind must conduct briefings for construction supervisors and crews, the marine mammal and acoustic monitoring teams, and South Fork Wind staff prior to the start of all pile-driving and construction survey activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocols, and operational procedures. South Fork Wind must use available sources of information on NARW presence, including daily monitoring of the Right Whale Sightings Advisory System, monitoring of Coast Guard VHF Channel 16 throughout the day to receive notifications of any sightings, and information associated with any DMAs. This measure was not included in the proposed IHA, but affords increased protection of NARWs by raising awareness of NARW presence in the area through ongoing visual and passive acoustic monitoring efforts (outside of South Fork Wind's efforts), and allows for planning of construction activities, when practicable, to minimize potential impacts on NARWs.

Monopile Installation

Seasonal Restriction on Impact Pile Driving of Monopiles

Based on the best available information (Kraus *et al.,* 2016; Roberts *et al.,* 2017, 2020), the highest densities of NARWs in the project area are expected from January through April. As described in the proposed IHA, impact pile driving of monopiles must not occur January 1 through April 30. In addition, impact pile driving of monopiles must not occur in December unless unanticipated delays due to weather or technical problems, notified to and approved by BOEM, arise that necessitate extending impact pile driving of monopiles into December. NMFS is requiring this seasonal restriction to minimize the potential for NARWs to be exposed to noise incidental to impact pile driving of monopiles. However, South Fork Wind's revised project schedule includes installation of a cofferdam or casing pipe (in preparation for HDD) as the first construction activity during the period of effectiveness of the IHA (starting November 15, 2022). Therefore, based on South Fork Wind's construction schedule, impact pile driving of monopiles will not occur from November 15, 2022 through April 30, 2023. Impact pile driving of monopiles will occur between May 1, 2023 and November 14, 2023. No more than one monopile will be driven per day. Monopiles must be no larger than 11 m in diameter. For all monopiles, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the monopiles must be used. Hammer energies must not exceed 4,000 kJ.

Clearance and Shutdown Zones

South Fork Wind must use PSOs and PAM PSOs to establish clearance zones around the impact pile-driving location to ensure these zones are clear of marine mammals prior to the start of impact pile driving. The purpose of ''clearance'' of a particular zone is to prevent potential instances of auditory injury, and more severe behavioral disturbance as a result of exposure to impact pile-driving noise, by delaying the activity before it begins if marine mammals are detected within certain pre-defined distances of the impact pile-driving vessel. The primary goal in this case is to prevent auditory injury (PTS) of NARWs and reduce the risk of PTS for other marine mammals where there is potential for it to occur. The clearance zones are larger than the modeled ranges to isopleths (based on $ER_{95percent}$ SEL_{cum}), assuming 10-dB attenuation, corresponding to Level A harassment thresholds for all marine mammal species except humpback whales. These zone sizes vary by species and are shown in Tables 24 and 25. All distances to the perimeter of clearance zones are the radii from the center of the pile. The clearance zones for large whales (excluding humpback whales), harbor porpoises, and seals are based on the maximum range to the Level A harassment isopleth plus a 20-percent buffer, rounded up for PSO clarity. For mid-frequency cetaceans, modeled ranges to the Level A harassment isopleth are 0 m, based on $ER_{95percent}$ SEL_{cum} (assuming 10-dB attenuation). Although the Level A harassment zones based on SPL_{peak} are small for mid-frequency cetaceans, clearance zones are defined using a precautionary distance of 100-m, and will extend to that distance or just beyond the placement of the noise mitigation system, whichever is further.

The Level A harassment zone (based on $ER_{95percent}$ SEL_{cum}) is larger for humpback whales than other low-frequency baleen whales because the animal movement modeling used to

estimate the associated range to the Level A harassment isopleth relies on behavior-based exposures with no aversion (based on the best available data that inform the animat models). Specific movement parameters help drive the larger zone size for humpback whales, including a modeled preference for slightly deeper water than the depths in the SFWF. This modeled preference resulted in fewer exposures, but each exposure was farther from the impact piling location, producing the larger Level A harassment zone. While the clearance zone (2,200 m) for humpback whales is smaller than the Level A harassment zone (3,642 m), visual monitoring must be conducted from both the impact pile driving vessel and a secondary, smaller vessel (on which dedicated PSOs must be deployed) surveying the circumference of the pile-driving vessel at a radius approximate to the clearance zone for non-NARW large whales (2,200 m). NMFS expects that, depending on visibility conditions, this additional visual monitoring will facilitate detection of humpback whales within the Level A harassment zone (3,642 m) for the species, beyond the farthest extent of the clearance zone.

The NARW clearance zone is conservatively based on the Level B harassment zone (4,684 m), rounded up to 5,000 m for PSO clarity. PSOs and PAM PSOs may use a combination of visual observation and real-time PAM to clear this zone (see Monitoring and Reporting); however, as noted in the Changes from Proposed IHA to Final IHA, the 2.2-km minimum visibility zone is defined as the area over which PSOs must be able to clearly observe marine mammals, including NARWs, to begin the clearance process. When visibility conditions permit (*i.e.,* on clear days), PSOs will be able to detect marine mammals at farther distances. Under all circumstances, a visual detection of a NARW at any distance by a PSO on the impact pile-driving or dedicated PSO vessel will trigger a delay. Further, any large whale sighted by a PSO within 2,000 m of the pile that cannot be identified to species must be treated as if it were a NARW, triggering a delay in impact pile driving of monopiles. In addition, an acoustic detection of a NARW localized to a position within the 5-km radius clearance zone will trigger a delay. Finally, the PAM system will likely be capable of detecting NARW over an approximately 10-km radius from the pile, providing PAM PSOs with the capacity to monitor an area larger than the NARW clearance zone. Detections of potential NARW vocalizations originating from outside the PAM clearance zone will provide situational awareness to PSOs.

TABLE 24—IMPACT PILE DRIVING OF MONOPILES: RADIAL DISTANCES (m) TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS, REQUIRED CLEARANCE AND SHUTDOWN ZONES, AND VESSEL SEPARATION DISTANCES

Species	Level A harassment zone (SEL)	Level A harassment zone (PK)	Level B harassment zone	Clearance zone	Shutdown zone	Vessel separation distance from marine mammals
Low-Frequency Cetaceans						
Fin whale [E]	1,756	≤10	4,684	2,200	2,000	100
Minke whale	1,571	≤10	4,684	2,200	2,000	100
Sei whale [E]	1,769	≤10	4,684	2,200	2,000	100
Humpback whale	3,642	≤10	4,684	2,200	2,000	100
North Atlantic right whale [E]	1,621	<10	4,684	See Table 25	See Table 26	500
Mid-Frequency Cetaceans						
Sperm whale [E]		≤10	4,684	2,200	2,000	100
Atlantic spotted dolphin		≤10	4,684	100	50	50
Atlantic white-sided dolphin		≤10	4,684	100	50	50
Common dolphin		≤10	4,684	100	50	50
Risso's dolphin		≤10	4,684	100	50	50
Bottlenose dolphin		≤10	4,684	100	50	50
Long-finned pilot whale		≤10	4,684	100	50	50
High-Frequency Cetaceans						
Harbor porpoise	365	243	4,684	450	450	50
Phocid Pinnipeds in Water						
Gray seal	117	12	4,684	150	150	50
Harbor seal	85	12	4,684	150	150	50

[1] Upon receipt of an interim SFV report, NMFS may adjust the zones to reflect SFV measurements. However, minimum visibility zone will not be decreased, and zones for fin, sei, and sperm whales must not be decreased to a size less than 1 km. Zone sizes for NARWs must not be reduced.

[2] dB = decibel; SEL = cumulative sound exposure level; PK = peak sound pressure level.

[2] SEL values are the 95% Exposure Ranges ($ER_{95\%}$) and assume 10-dB attenuation.

[E] ESA-listed.

TABLE 25—REQUIRED NARW CLEARANCE AND REAL-TIME PAM MONITORING ZONES (RADIAL DISTANCES FROM THE PILE) FOR MONOPILE INSTALLATION

Minimum visibility zone [1 2 3]	PAM clearance zone [4]	PAM monitoring zone [5]
2.2 km	5 km	10 km

[1] Defined as the area over which PSOs must be able to clearly observe marine mammals, including NARWs, to begin clearance process. This zone size cannot be reduced.
[2] A visual detection of a NARW at any distance from the pile by a PSO on the pile-driving vessel or dedicated PSO vessel triggers a delay in pile driving.
[3] Any large whale sighted by a PSO within 2,000 m of the pile that cannot be identified to species must be treated as if it were a NARW.
[4] A confirmed PAM detection of a NARW within the PAM clearance zone must be treated as a visual detection, triggering a delay in pile driving.
[5] Calls detected outside of the PAM clearance zone must be reported to the lead PSO immediately for situational awareness, but will not trigger a delay in pile driving.
[6] Zone sizes for NARWs must not be decreased.

TABLE 26—REQUIRED NARW SHUTDOWN ZONES FOR MONOPILE INSTALLATION

NARW shutdown zone [1 2] (Visual and PAM)	
Visual	PAM
Any distance	2 km

[1] If NARW is sighted at any distance, a shutdown of pile driving must be implemented when practicable, as described under Condition 4(a)(ix)(1–3) of this IHA.
[2] A confirmed PAM detection of a NARW within the PAM shutdown zone must be treated as a visual detection, triggering a shutdown of pile driving.
[3] Zone sizes for NARWs must not be decreased.

Prior to the start of impact pile driving of monopiles, both visual and PAM (for NARWs) clearance zones will be monitored for 60 minutes to ensure that they are clear of the relevant species of marine mammals. The entire minimum visibility zone must be visible (*i.e.,* not obscured by dark, rain, fog, etc.) for a full 30 minutes immediately prior to commencing impact pile driving. Impact pile driving may only commence once PSOs and PAM PSOs have declared the respective clearance zones clear of marine mammals. If a marine mammal is observed approaching or entering the relevant clearance zones prior to the start of impact pile driving, pile-driving activity must be delayed until either the marine mammal has voluntarily left the respective clearance zone and been visually confirmed beyond that clearance zone, 30 minutes have elapsed without re-detection of the animal in the case of mysticetes (including NARWs), sperm whales, Risso's dolphins and pilot whales, or 15 minutes have elapsed without re-detection of the animal in the case of all other marine mammals. For NARWs, there is an additional requirement that the clearance zone may only be declared clear if no confirmed NARW acoustic detections (in addition to visual) have occurred during the 30-minute monitoring period.

The shutdown zones for non-NARW large whales, harbor porpoises, and seals are based on the maximum Level A harassment zone for each group (excluding humpback whales), increased by a 10-percent buffer and rounded up for PSO clarity (Table 24). Similar to clearance zones, mid-frequency cetacean (except sperm whale) shutdown zones will extend to the larger of two distances: 50 m, or just outside the noise mitigation system. For NARWs, a visual detection at any distance by a PSO (from the impact pile-driving vessel or dedicated PSO vessel) or acoustic detection localized to a position within 2,000 m of the pile will trigger shutdown of impact pile driving (Table 26).

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes has been met, approaches or is observed within the Level B harassment zone, impact pile-driving activities must be shut down immediately or delayed if impact pile driving has not commenced. Impact pile driving must not commence or resume until the animal has been confirmed to have left the Level B harassment zone on its own volition, or a full 30 minutes have elapsed with no further sightings.

Soft Start of Impact Pile Driving

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning them, or providing them with a chance to leave the area prior to the hammer operating at full capacity. Soft start typically involves initiating hammer operation at a reduced energy level (relative to full operating capacity) followed by a waiting period. South Fork Wind must utilize a soft start protocol for impact pile driving of monopiles by performing 4–6 strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes. NMFS notes that it is difficult to specify a reduction in energy for any given hammer because of variation across drivers. For impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes''; however, as mentioned previously, South Fork Wind will target less than 20 percent of the total hammer energy for the initial hammer strikes during soft start. Soft start will be required at the beginning of each day's monopile installation, and at any time following a cessation of impact pile driving of 30 minutes or longer.

Shutdown of Impact Pile-Driving

The purpose of a shutdown is to prevent some undesirable outcome, such as auditory injury or severe behavioral disturbance of sensitive species, by halting the activity. If a marine mammal is observed entering or within the respective shutdown zone (Table 24) after impact pile driving has

begun, the PSO will request a temporary cessation of impact pile driving.

In situations when shutdown is called for but South Fork Wind determines shutdown is not practicable due to imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk of injury or loss of life for individuals, reduced hammer energy must be implemented when the lead engineer determines it is practicable. After shutdown, impact pile driving may be reinitiated once all clearance zones are clear of marine mammals for the minimum species-specific periods, or, if required to maintain installation feasibility. Installation feasibility refers to ensuring that the pile installation results in a usable foundation for the WTG (*e.g.,* installed to the target penetration depth without refusal).

Visibility Requirements

Impact pile driving of monopiles must not be initiated at night, or when the full extent of the clearance zones (Table 24) cannot be confirmed to be clear of marine mammals, as determined by the lead PSO on duty. As mentioned previously, the 2.2 km clearance zone for non-NARW baleen whales may only be declared clear when the full extent of the minimum visibility zone is visible (*i.e.,* when not obscured by dark, rain, fog, etc.) and PSOs have not detected marine mammals for a full 30 minutes prior to impact pile driving. Impact pile driving of monopiles may continue after dark only when driving of the same pile began no less than 90 minutes prior to civil sunset, when the minimum visibility zone for impact pile driving of monopiles was fully visible, and must proceed for human safety or installation feasibility reasons. PSOs must utilize alternative technology (Infrared (IR) and/or Thermal camera) to monitor clearance zones if impact pile driving of monopiles continues past civil sunset.

Sound Attenuation

South Fork Wind must implement noise mitigation technology designed to result in the targeted reduction in sound levels that would produce measured ranges to Level A harassment and Level B harassment isopleths corresponding to those modeled assuming 10-dB sound attenuation, pending results of SFV (see *Acoustic Monitoring for Sound Field and Harassment Isopleth Verification* section below). The noise mitigation system must be either (1) a single BBC coupled with an additional noise mitigation device, or (2) a dBBC.

The bubble curtain(s) must distribute air bubbles using a target air flow rate of at least 0.5 $m^3/(min*m)$, and must distribute bubbles around 100 percent of the piling perimeter for the full depth of the water column. The lowest bubble ring must be in contact with the seafloor for the full circumference of the ring, and the weights attached to the bottom ring must ensure 100-percent seafloor contact. No parts of the ring or other objects should prevent full seafloor contact. South Fork Wind must require that construction contractors train personnel in the proper balancing of airflow to the bubble ring, and must require that construction contractors submit an inspection/performance report for approval by South Fork Wind within 72 hours following the performance test. Corrections to the attenuation device to meet the performance standards must occur prior to impact driving. If South Fork Wind uses a noise mitigation device in addition to a BBC, similar quality control measures must be required.

Cofferdam Installation and Removal

Vibratory pile driving or impact driving of a casing pipe must occur at the export cable landing site only.

Visibility Requirements

Vibratory pile driving of sheet piles may continue after dark only when the driving of the same pile began no less than 90 minutes prior to civil sunset, when the clearance zones were fully visible for a full 30 minutes immediately prior to commencing pile driving, and installation of sheet piles must proceed for human safety or installation feasibility reasons.

Clearance and Shutdown Zones

South Fork Wind must implement visual monitoring of the clearance zones for 30 minutes immediately prior to the initiation of ramp-up of vibratory piling equipment (Table 27). During this period, the clearance zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is detected within its respective clearance zone. If a marine mammal is observed within a clearance zone during the clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective clearance zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

TABLE 27—INSTALLATION AND REMOVAL OF A TEMPORARY COFFERDAM: RADIAL DISTANCES (m) TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS, REQUIRED CLEARANCE AND SHUTDOWN ZONES, AND VESSEL SEPARATION DISTANCES.

Species	Level A harassment zone (SEL)	Level B harassment zone (SPL)	Clearance zone	Shutdown zone	Vessel separation distance from marine mammals
Low-Frequency Cetaceans					
Fin whale	1,470	36,766	1,500	1,500	100
Minke whale	1,470	36,766	1,500	1,500	100
Sei whale	1,470	36,766	1,500	1,500	100
Humpback whale	1,470	36,766	1,500	1,500	100
North Atlantic right whale	1,470	36,766	1,500	1,500	500
Mid-Frequency Cetaceans					
Sperm whale	.....	36,766	1,500	1,500	100
Atlantic spotted dolphin	.....	36,766	100	50	50
Atlantic white-sided dolphin	.....	36,766	100	50	50
Common dolphin	.....	36,766	100	50	50
Risso's dolphin	.....	36,766	100	50	50
Bottlenose dolphin	.....	36,766	100	50	50

TABLE 27—INSTALLATION AND REMOVAL OF A TEMPORARY COFFERDAM: RADIAL DISTANCES (m) TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS, REQUIRED CLEARANCE AND SHUTDOWN ZONES, AND VESSEL SEPARATION DISTANCES.—Continued

Species	Level A harassment zone (SEL)	Level B harassment zone (SPL)	Clearance zone	Shutdown zone	Vessel separation distance from marine mammals
Long-finned pilot whale	.....	36,766	100	50	50
High-Frequency Cetaceans					
Harbor porpoise	63	36,766	100	100	50
Phocid Pinnipeds in Water					
Gray seal	103	36,766	150	125	50
Harbor seal	103	36,766	150	125	50

SEL = cumulative sound exposure level in units of decibels referenced to 1 micropascal squared second.
SPL = root-mean-square sound pressure level in units of decibels referenced to 1 micropascal.

Shutdown of Vibratory Pile Driving

An immediate shutdown of vibratory pile-driving equipment must be implemented if a marine mammal(s) is sighted entering or within its respective shutdown zone after cofferdam installation has commenced. Resumption of vibratory pile driving may begin if the animal(s) has been observed exiting its respective shutdown zone or an additional time period has elapsed without a resighting *(i.e.,* 15 minutes for small odontocetes and seals and 30 minutes for all other species). If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes has been met, approaches or is observed within the Level B harassment zone, vibratory pile-driving activities must be shut down immediately or delayed if vibratory pile driving has not commenced. Vibratory pile driving must not must not recommence until the animal(s) has been confirmed to have left the Level B harassment zone or a full 15 min (small odontocetes and seals) or 30 min (all other marine mammals) have elapsed with no further sightings.

Construction Surveys

Clearance and Shutdown Zones

South Fork Wind must implement a 30-minute clearance period of the clearance zones (Table 28) immediately prior to the initiation of ramp-up of boomers, sparkers, and Chirps. Since publication of the proposed IHA, the clearance zones for ESA-listed species have been increased from 100 to 500 m to align with standard marine site characterization mitigation and monitoring measures. Any large whale sighted by a PSO within 1,000 m of boomers, sparkers, and Chirps that cannot be identified to species must be treated as if it were a NARW. The clearance zones will be monitored by PSOs, using the appropriate visual technology. If a marine mammal is observed within a clearance zone during the clearance period, ramp-up (described below) may not begin until the animal(s) has been observed voluntarily exiting its respective clearance zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species). In cases when the clearance process has begun in conditions with good visibility, including via the use of night vision equipment (IR/thermal camera), and the lead PSO has determined that the clearance zones are clear of marine mammals, survey operations may commence (*i.e.,* no delay is required) despite periods of inclement weather and/or loss of daylight. In cases when the shutdown zones become obscured for brief periods due to inclement weather, survey operations may continue (*i.e.,* no shutdown is required).

TABLE 28—CONSTRUCTION SURVEYS OPERATING CHIRP SUB-BOTTOM PROFILERS, BOOMERS, AND SPARKERS: RADIAL DISTANCES (m) TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS, REQUIRED CLEARANCE AND SHUTDOWN ZONES, AND VESSEL SEPARATION DISTANCES.

Species	Level A harassment zone (SEL)	Level A harassment zone (PK)	Maximum extent of zones				Vessel separation distance from marine mammals
			Level B harassment zones		Clearance zone	Shutdown zone	
			Chirps	Boomers and sparkers			
Low-Frequency Cetaceans							
Fin whale	<1	<1	54	141	500	100	100
Minke whale	<1	<1	54	141	100	100	100
Sei whale	<1	<1	54	141	500	100	100
Humpback whale	<1	<1	54	141	100	100	100
North Atlantic right whale	<1	<1	54	141	500	500	500

TABLE 28—CONSTRUCTION SURVEYS OPERATING CHIRP SUB-BOTTOM PROFILERS, BOOMERS, AND SPARKERS: RADIAL DISTANCES (m) TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS, REQUIRED CLEARANCE AND SHUTDOWN ZONES, AND VESSEL SEPARATION DISTANCES.—Continued

Species	Level A harassment zone (SEL)	Level A harassment zone (PK)	Maximum extent of zones				Vessel separation distance from marine mammals
			Level B harassment zones		Clearance zone	Shutdown zone	
			Chirps	Boomers and sparkers			
Mid-Frequency Cetaceans							
Sperm whale	<1	<1	54	141	500	100	100
Atlantic spotted dolphin	<1	<1	54	141	100	.....	50
Atlantic white-sided dolphin	<1	<1	54	141	100	.....	50
Common dolphin	<1	<1	54	141	100	.....	50
Risso's dolphin	<1	<1	54	141	100	.....	50
Bottlenose dolphin	<1	<1	54	141	100	.....	50
Long-finned pilot whale	<1	<1	54	141	100	.....	50
High-Frequency Cetaceans							
Harbor porpoise	37	5	54	141	100	100	50
Phocid Pinnipeds in Water							
Gray seal	<1	<1	54	141	100	.....	50
Harbor seal	<1	<1	54	141	100	.....	50

Ramp-Up of HRG Survey Equipment

At the start or restart of the use of boomers, sparkers, and/or Chirps, a ramp-up procedure must be implemented. Ramp-up must begin with the powering up of the specified HRG equipment at the lowest power output appropriate for the survey. When practicable, the power must then be gradually turned up, and then any other acoustic sources added. The ramp-up procedure must be used at the beginning of construction survey activities using the specified HRG equipment to provide additional protection to marine mammals in or near the survey area by allowing them to vacate the area prior to operation of survey equipment at full power.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective clearance zone. Ramp-up will continue if the animal(s) has been observed exiting its respective clearance zone or until additional time has elapsed with no further sighting (*i.e,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

Shutdown of Construction Survey Equipment

An immediate shutdown of boomers and sparkers is required if a marine mammal(s) is sighted entering or within its respective shutdown zone. No shutdown is required for Chirp sub-bottom profilers. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment may be initiated if the animal(s) has been observed exiting its respective shutdown zone or until an additional period has elapsed *(i.e.,* 15 minutes for small odontocetes and seals and 30 minutes for all other marine mammals).

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes has been met, approaches or is observed within the Level B harassment zone, boomers and sparkers must be shut down immediately, or use delayed if not yet activated. Use of boomers and sparkers must not must not commence or resume until the animal(s) has been confirmed to have left the Level B harassment zone or a full 15 minutes (small odontocetes and seals) or 30 minutes (for all other marine mammals) have elapsed with no further sightings.

If a boomer, sparker, or Chirp is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective shutdown zones. If a boomer, sparker, or Chirp is shut down for a period longer than 30 minutes, then clearance and ramp-up procedures must be initiated as described in the previous section.

The shutdown requirement will be waived for small delphinids of the following genera: *Delphinus, Stenella,* and *Tursiops.* Specifically, if a delphinid from the specified genera is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use their best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid that belongs to a genus other than those specified is detected in the shutdown zone.

Vessel Strike Avoidance

The IHA contains numerous vessel strike avoidance measures. South Fork Wind is required to comply with these measures except under circumstances when doing so would create an imminent and serious threat to a person or vessel, or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

South Fork Wind must submit a NARW vessel strike avoidance plan 90 days prior to commencement of vessel use. The plan will describe, at a minimum, how PAM will be conducted

to ensure the transit corridor is clear of NARWs. The plan must also provide details on the vessel-based observer protocols on transiting vessels. The requirement to submit this plan was not included in the proposed IHA.

Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal as a NARW, other whale (defined in this context as sperm whales or baleen whales other than NARWs), or other marine mammal. South Fork Wind must adhere to the following measures:

- Year-round, operators of all vessels associated with South Fork Wind must use all available sources of information on NARW presence, including daily monitoring of the Right Whale Sightings Advisory System, WhaleAlert app, and Coast Guard VHF Channel 16 throughout the day to receive notifications of any sightings and/or information associated with any Slow Zones (*i.e.,* DMAs or acoustically-triggered slow zones) to plan vessel routes, if practicable, to minimize the potential for co-occurrence with any NARWs.
- For construction surveys, members of the PSO monitoring team must consult the Right Whale Sightings Advisory System, WhaleAlert app, and monitor Coast Guard VHF Channel 16 for reports of NARW presence in the survey area.
- On all vessels associated with South Fork Wind, regardless of size or speed of travel, operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course as appropriate to avoid striking any marine mammal.
- Whenever multiple project-associated vessels (*e.g.,* construction survey, crew transfer) are operating concurrently, any visual observations of ESA-listed marine mammals must be communicated to PSOs and/or vessel captains associated with other vessels to increase situational awareness.
- Vessels of all sizes associated with South Fork Wind must operate port to port at 10 kts or less between November 1 and April 30, and while operating in the Lease Area, along the SFEC, or transit area to and from ports in NY, CT, RI, and MA, except for vessels transiting inside Narragansett Bay or Long Island Sound (unless during a DMA). Vessels transiting from other ports outside those described must operate at 10 kts or less when within any active Seasonal Management Area (SMA) or within the Lease Area.
- For vessels of all sizes, vessel speeds must immediately be reduced to 10 kts when any large whale, mother/calf pairs, or large assemblages of non-delphinoid cetaceans are observed near (within 100 m) an underway vessel. In the proposed IHA, this measure only applied to vessels greater than or equal to 65 ft (19.8 m).

The measures above were not included in the proposed IHA, but are included in the final IHA. The measures below were included in the proposed IHA and are carried over to the final IHA.

- All vessels 65-ft (19.8 m) or greater in length must comply with the 10-kt speed restriction rule in any SMA, per the NOAA ship strike reduction rule (74 FR 60173; October 10, 2008).
- All underway vessels (*e.g.,* transiting, surveying) must have a dedicated visual observer on duty at all times to monitor for marine mammals within a 180° direction of the forward path of the vessel (90° port to 90° starboard). Visual observers must be equipped with alternative monitoring technology for periods of low visibility (*e.g.,* darkness, rain, fog, etc.). The dedicated visual observer must receive prior training on protected species detection and identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements in this IHA. Visual observers may be third-party observers (*i.e.,* NMFS-approved PSOs) or crew members. Observer training related to these vessel strike avoidance measures must be conducted for all vessel operators and crew prior to the start of in-water construction activities. Confirmation of the observers' training and understanding of the IHA requirements must be documented on a training course log sheet and reported to NMFS.
- Vessel speed must immediately be reduced to 10 kts or less when a NARW is sighted by an observer or anyone else on the underway vessel.
- In the event that any Slow Zone (designated as a DMA) is established that overlaps with an area where a project-associated vessel must operate, that vessel, regardless of size, must transit that area at 10 kts or less.
- If a vessel is traveling at greater than 10 kts between May 1 and October 31, in addition to the required dedicated observer, real-time PAM of transit corridors must be conducted prior to and during transits. If a NARW is detected via visual observation or PAM within or approaching the transit corridor, all crew transfer vessels must travel at 10 kts or less for the following 12 hours. Each subsequent detection will trigger a 12-hour reset. A slow-down in the transit corridor expires when there has been no further visual or acoustic detection in the transit corridor in the past 12 hours.
- All vessels must maintain a minimum separation distance of 500 m from NARWs. If a whale is observed but cannot be confirmed as a species other than a NARW, the vessel operator must assume that it is a NARW and take appropriate action.
- If underway, all vessels must steer a course away from any sighted NARW at 10 kts or less such that the 500-m minimum separation distance requirement is not violated. If a NARW, or a large whale that cannot be confirmed to species, is sighted within 500 m of an underway vessel, that vessel must shift the engine to neutral. Engines will not be engaged until the whale has moved outside of the vessel's path and beyond 500 m.
- All vessels must maintain a minimum separation distance of 100 m from sperm whales and non-NARW baleen whales. If one of these species is sighted within 100 m of an underway vessel, that vessel must shift the engine to neutral. Engines will not be engaged until the whale has moved outside of the vessel's path and beyond 100 m.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all delphinoid cetaceans and pinnipeds, with an exception made for those that approach the vessel (*e.g.,* bow-riding dolphins). If a delphinoid cetacean or pinniped is sighted within 50 m of an underway vessel, that vessel must shift the engine to neutral, with an exception made for those that approach the vessel (*e.g.,* bow-riding dolphins). Engines will not be engaged until the animal(s) has moved outside of the vessel's path and beyond 50 m.
- When a marine mammal(s) is sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distances (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the

area). If a marine mammal(s) is sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engine(s) until the animal(s) is clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

- All vessels underway must not divert or alter course in order to approach any marine mammal. Any vessel underway must avoid excessive speed or abrupt changes in direction.
- For in-water construction heavy machinery activities other than impact or vibratory pile driving, if a marine mammal comes within 10 m of equipment, South Fork Wind must cease operations (when practicable) until the marine mammal has moved more than 10 m on a path away from the activity.

With the measures described herein, NMFS has prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Marine Mammal Observations

South Fork Wind must collect sighting data and behavioral responses to construction activities for marine mammals species observed in the region of activity during the period of activity. All observers must be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. PSOs will monitor all clearance and shutdown zones prior to, during, and following impact and vibratory pile driving, and while boomers, sparkers, and Chirps are active. PSOs will also monitor Level B harassment zones and will document any marine mammals observed within these zones, to the extent practicable (noting that some zones are too large to fully observe). As mentioned, South Fork Wind must conduct monitoring before, during, and after construction activities (monitoring durations specified below), with observers located at the best practicable vantage points on the pile driving and dedicated PSO vessels. Full details regarding marine mammal monitoring must be included in a Pile Driving and Marine Mammal Monitoring Plan that, under the IHA, South Fork Wind is required to submit to NMFS for approval at least 90 days in advance of commencement of construction activities. Please note submission of this plan was not included in the proposed IHA. The following additional measures apply to visual monitoring:

(1) Monitoring must be conducted by qualified, trained PSOs who will be placed on the pile-driving and dedicated PSO vessels (monopile), installation or nearby construction vessel (cofferdam or casing pipe), and construction survey vessels, in positions which represent the best vantage point to monitor for marine mammals and implement shutdown procedures when applicable;

(2) PSOs may not exceed 4 consecutive watch hours; must have a minimum 2-hour break between watches; and may not exceed a combined watch schedule of more than 12 hours in a 24-hour period;

(3) PSOs must have no other construction-related tasks while conducting monitoring;

(4) PSOs should have the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Ability to conduct field observations and collect data according to assigned protocols;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to document observations including, but not limited to: The number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury of marine mammals from construction noise within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Observer teams employed by South Fork Wind in satisfaction of the mitigation and monitoring requirements described herein must meet the following additional requirements:

- Independent observers (*i.e.,* not construction personnel) are required;
- At least one observer must have prior experience working as an observer;
- Other observers may substitute education (degree in biological science or related field) or training for experience;
- One observer will be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and
- All PSOs must be approved by NMFS. South Fork Wind must submit the CVs of the initial set of PSOs necessary to commence the project to NMFS OPR for approval at least 60 days

prior to the first day of construction activities.

South Fork Wind must conduct briefings between construction supervisors and crews and the PSO team prior to the start of all construction activities, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocols, and operational procedures. An informal guide must be included with the Marine Mammal Monitoring Plan to aid in identifying species if they are observed in the vicinity of the project area.

The following are measures specific to each activity.

Monopile Installation

South Fork Wind must implement the following procedures for impact pile driving of monopiles:

- A minimum of two PSOs on the impact pile-driving vessel must maintain watch at all times when impact pile driving is underway.
- A minimum of two PSOs on a dedicated PSO vessel located at the outer edge of the 2,200 m (or as modified based on SFV) large whale clearance zone must maintain watch at all times when impact pile driving of monopiles is underway.
- PSOs must be located at the best vantage point(s) on the impact pile-driving vessel and dedicated PSO vessels in order to ensure 360° visual coverage of the entire clearance and shutdown zones around the vessels, and as much of the Level B harassment zone as possible.
- The clearance zones must be monitored for the presence of marine mammals for 60 minutes before, throughout the installation of the monopile, and for 30 minutes after monopile installation.
- During all observation periods, PSOs must use high magnification (25X) binoculars, standard handheld (7X) binoculars, and the naked eye to search continuously for marine mammals. During periods of low visibility (*e.g.,* darkness, rain, fog, etc.), PSOs must use alternative technology (*e.g.,* IR/Thermal camera) to monitor clearance and shutdown zones.
- Monopile installation may only commence when the minimum visibility zone (2.2 km) is fully visible (*e.g.,* not obscured by darkness, rain, fog, etc.) and clearance zones are clear of marine mammals for at least 30 minutes, as determined by the lead PSO, immediately prior to initiation of impact pile driving of monopiles.
- If the minimum visibility zone (2.2 km) is obscured by fog or poor lighting conditions while impact pile driving of monopiles is underway, the activity must be halted when practicable, as described above. Following a shutdown, monopile installation may not recommence until the minimum visibility zone is fully visible and clear of marine mammals for 30 minutes, as described above.

During vessel transits within or to/from the SFWF (*e.g.,* crew transfer, etc.), an observer must be stationed on vessels at the best vantage points to ensure maintenance of standoff distances between marine mammals and vessels (as described above). South Fork Wind must implement the following measures during vessel transit when there is an observation of a marine mammal:

- PSOs or dedicated observers will record the time, date, vessel's position, heading and speed, sea state, water depth, and visibility, marine mammal species identification, initial distance and bearing from the vessel to the marine mammal, closest point of approach, and any avoidance measures taken in response to the marine mammal sighting. Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. PSOs will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to the protocol will be coordinated between NMFS and South Fork Wind.

Cofferdam or Casing Pipe Installation and Removal

South Fork Wind must implement the following procedures for impact and vibratory pile driving associated with installation of a cofferdam or casing pipe:

- A minimum of two PSOs will maintain watch at all times when vibratory pile driving or impact hammering is underway.
- PSOs must be located at the best vantage point(s) on the impact or vibratory pile-driving platform, or platform in the immediate vicinity of the impact or vibratory pile-driving platform, in order to ensure visual coverage of the entire visual clearance zones and as much of the Level B harassment zone as possible.
- The clearance zones will be monitored for the presence of marine mammals for 30 minutes before, throughout the installation of the sheet piles (and casing pipe, if installed), and for 30 minutes after all vibratory pile-driving or impact-hammering activity.
- During all observation periods related to impact and vibratory pile driving, PSOs must use high-magnification (25X), standard handheld (7X) binoculars, and the naked eye to search continuously for marine mammals. During periods of low visibility (*e.g.,* darkness, rain, fog, etc.), PSOs must use alternative technology (*e.g.,* IR/Thermal camera) to monitor clearance and shutdown zones.
- Sheet pile or casing pipe installation may only commence when visual clearance zones are fully visible (*e.g.,* not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the lead PSO, for at least 30 minutes immediately prior to initiation of impact or vibratory pile driving.

Construction Surveys

South Fork Wind must implement the following procedures for construction surveys:

- At least one PSO must be on duty on each survey vessel during daytime operations, conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset).
- A minimum of two PSOs must be on watch during nighttime operations.
- The clearance zones must be monitored for the presence of marine mammals for 30 minutes before, throughout, and for 30 minutes after use of boomers, sparkers, and Chirps.
- During all observation periods, PSOs must use standard handheld (7X) binoculars and the naked eye to search continuously for marine mammals. During periods of low visibility (*e.g.,* darkness, rain, fog, etc.), PSOs must use alternative technology (*e.g.,* IR/Thermal camera) to monitor clearance and shutdown zones.
- Ramp-up of boomers, sparkers, and Chirps may only commence when visual clearance zones are fully visible (*e.g.,* not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the lead PSO, for at least 30 minutes immediately prior to initiation of survey activities utilizing the specified acoustic sources.
- In cases where multiple vessels are surveying concurrently, any observations of marine mammals must be communicated to PSOs on all nearby survey vessels.
- During daylight hours when survey equipment is not operating, South Fork Wind must ensure that visual PSOs conduct, as rotation schedules allow, observations for comparison of sighting rates and behavior with and without use of the specified acoustic sources. Off-effort PSO monitoring must be reflected in the monthly PSO monitoring reports.

Data Collection

NMFS requires that observers use standardized forms. In addition to other data, South Fork Wind must record detailed information about any implementation of delays or shutdowns, including the distance of the animal(s) to the pile or specified HRG equipment and a description of specific actions that ensued and resulting behavior of the animal, if any. NMFS requires that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* wind speed, percent cloud cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- All marine mammal sightings, regardless of distance from the construction activity;
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity;
- Distance and bearing of each marine mammal observed relative to the pile being driven or specified HRG equipment for each sighting, and time spent within harassment zones;
- Type of construction activity (*e.g.,* vibratory or impact pile driving, construction survey) and specific phase of activity (*e.g.,* ramp-up of HRG equipment, HRG acoustic source on/off, soft start for impact pile driving, active pile driving, etc.) when marine mammals are observed.
- Description of implementation of mitigation measures (*e.g.,* delay or shutdown).
- Locations of all marine mammal observations; and
- Other human activity in the area.

Marine Mammal Passive Acoustic Monitoring

South Fork Wind must utilize a PAM system to supplement visual monitoring for all monopile installations. The PAM system must be monitored by a minimum of one PAM PSO beginning at least 60 minutes prior to soft start of impact pile driving of monopiles, at all times during monopile installation, and 30 minutes post-completion of installation. PAM PSOs must immediately communicate all detections of marine mammals at any distance (*i.e.,* not limited to the 5-km Level B harassment zone) to visual PSOs, including any determination regarding species identification, distance, and bearing and the degree of confidence in the determination.

PAM PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches. PAM PSOs must be required to demonstrate that they have completed specialized training for operating PAM systems, including identification of species-specific mysticete vocalizations. PSOs can act as PAM PSOs or visual PSOs (but not simultaneously) as long as they demonstrate that their training and experience are sufficient to perform each task.

A Passive Acoustic Monitoring Plan must be submitted to NMFS and BOEM for review and approval at least 90 days prior to the planned start of monopile installations. PAM must follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind (Van Parijs *et al.,* 2021). The plan must describe all proposed PAM equipment, procedures, and protocols. Please see the IHA for additional PAM requirements.

Acoustic Monitoring for Sound Field and Harassment Isopleth Verification

During the first three monopile installations, South Fork Wind must empirically determine the ranges to the isopleths corresponding to Level A harassment and Level B harassment thresholds. For verification of the range to the Level B harassment isopleth, South Fork Wind must report the measured or extrapolated ranges where the received levels SPL_{rms} decay to 160 dB, as well as integration time for such SPL_{rms}. South Fork Wind may also estimate ranges to the Level A harassment and Level B harassment isopleths by extrapolating from *in situ* measurements conducted at several distances from the pile being driven. In addition, South Fork Wind must measure received levels at a standard distance of 750 m from the pile, or an alternative distance as agreed to in the SFV Plan.

If acoustic field measurements for installation of the first monopile indicate ranges to the isopleths corresponding to Level A harassment and Level B harassment isopleths are greater than the ranges predicted by modeling (assuming 10-dB attenuation), South Fork Wind must implement additional noise mitigation measures prior to installing the second monopile. Initial additional measures may include improving the efficacy of the implemented noise mitigation technology (*e.g.,* BBC, dBBC) and/or modifying the piling schedule to reduce the sound source. Each sequential modification must be evaluated empirically by acoustic field measurements. In the event that field measurements indicate ranges to isopleths corresponding to Level A harassment and Level B harassment thresholds are consistently greater than the ranges predicted by modeling (assuming 10-dB attenuation), NMFS may expand the relevant harassment, clearance, and shutdown zones and associated monitoring protocols. If harassment zones are expanded beyond an additional 1,500 m, additional PSOs must be deployed on additional platforms, with each observer responsible for maintaining watch in no more than 180° and of an area with a radius no greater than 1,500 m. Depending on the extent of zone size expansion, reinitiation of consultation under Section 7 of the ESA may be required.

If acoustic measurements indicate that ranges to isopleths corresponding to the Level A harassment and Level B harassment thresholds are less than the ranges predicted by modeling (assuming 10-dB attenuation), South Fork Wind may request a modification of the clearance and shutdown zones for impact pile driving of monopiles. For a modification request to be considered by NMFS, South Fork Wind must have conducted SFV on three or more monopile installations to verify that zone sizes are consistently smaller than predicted by modeling (assuming 10-dB attenuation). In addition, if a subsequent monopile installation location is selected that was not represented by previous three locations (*i.e.,* substrate composition, water depth), SFV must be conducted. Upon receipt of an interim SFV report, NMFS may adjust zones (*i.e.,* Level A harassment, Level B harassment, clearance, and/or shutdown) to reflect SFV measurements. The shutdown and clearance zones would be equivalent to the measured range to the Level A harassment isopleths plus 10 percent (shutdown zone) and 20 percent (clearance zone), rounded up to the nearest 100 m for PSO clarity. However, the minimum visibility zone must not be decreased to a radius smaller than 2.2 km from the pile. The shutdown zone for sei, fin, and sperm whales must not be reduced to a size less than 1,000 m. The visual and PAM clearance and shutdown zones for NARWs must not be decreased, regardless of acoustic field measurements. The Level B harassment zone would be equal to the largest

measured range to the Level B harassment isopleth.

Reporting

A draft final report must be submitted to NMFS within 90 days of the completion of activities occurring under this IHA. The report must include marine mammal observations pre-activity, during-activity, and post-activity for all pile-driving and construction survey days, and must also provide descriptions of any changes in marine mammal behavioral patterns resulting from construction activities. The report must detail the implemented monitoring protocol, summarize the data recorded during monitoring including an estimate of the number of marine mammals that may have been harassed during the period of the report, and describe any mitigation actions taken (*i.e.,* delays or shutdowns due to detections of marine mammals, documentation of when shutdowns were called for but not implemented and why). The report must also include results from acoustic monitoring including, but not limited to, dates and times of all detections, types and nature of sounds heard, whether detections were linked with visual sightings, water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, a record of the PAM PSO's review of any acoustic detections, and any other notable information. A final report must be submitted within 30 days following resolution of comments on the draft report.

South Fork Wind will be required to provide the initial results of SFV (including measurements) to NMFS in interim reports after each monopile installation for the first three piles as soon as they are available, but no later than 48 hours after each installation. If SFV is required for subsequent monopile installations, the same reporting timeline and data requirements apply. In addition to *in situ* measured ranges to the Level A harassment and Level B harassment isopleths, the acoustic monitoring report must include: SPL_{peak}, SPL_{rms} that contains 90 percent of the acoustic energy, single strike sound exposure level, integration time for SPL_{rms}, SEL_{ss}, and 24-hour cumulative SEL extrapolated from measurements. All these levels must be reported in the form of median, mean, max, and minimum. The acoustic monitoring report must also include a description of the hydrophones used, hydrophone and water depth, distance to the pile driven, and sediment type at the recording location. Final results of SFV must be submitted as soon as possible, but no later than within 90 days following completion of impact pile driving of monopiles. Please see the IHA for a full list of reporting requirements.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. NMFS also assesses the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Impact and vibratory pile-driving and construction survey activities associated with South Fork Wind's project, as described previously, have the potential to disturb or temporarily displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment (PTS, from impact pile driving only) or Level B harassment (potential behavioral disturbance) from underwater sounds generated by pile driving (impact and vibratory) and certain HRG active acoustic sources used for construction surveys. Potential take could occur if individual marine mammals are present in the ensonified zone when any pile-driving or construction survey activities are occurring.

To avoid repetition, the majority of our analyses apply to all the species listed in Table 3, given that many of the anticipated effects of South Fork Wind's project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks—as is the case of the NARW—they are included as separate subsections below.

Non-NARW Marine Mammal Species

Impact pile driving has source characteristics (short, sharp pulses with higher peak levels and sharper rise time to reach those peaks) that are potentially injurious or more likely to produce severe behavioral reactions. However, modeling indicates there is limited potential for injury (*i.e.,* PTS), even in the absence of the mitigation measures (Table 16). The potential for injury is expected to be greatly minimized through implementation of mitigation measures including soft start, use of a noise mitigation system, and the implementation of clearance zones that would facilitate a delay of impact pile driving of monopiles if marine mammals were observed (visually and/or acoustically) approaching or within areas that could be ensonified above sound levels that could result in auditory injury. Given sufficient notice through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious (*i.e.,* PTS) or resulting in more severe behavioral reactions. The requirement that the clearance process for impact and vibratory pile driving may only commence when the full extents of the respective visual clearance zones are entirely visible to PSOs will facilitate a high rate of success in marine mammal detection and implementation of mitigation measures (*i.e.,* delay) to avoid injury.

NMFS expects that any take resulting from exposures above the Level A harassment threshold would be in the form of slight PTS (minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving (*i.e.,* the low-frequency region below 2 kHz)), not severe hearing impairment. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics, much less impact reproduction or survival.

Additionally, the amount of authorized take, by Level A harassment,

is very low for all marine mammal stocks and species. For 11 of 15 stocks, NMFS authorizes no Level A harassment take over the duration of South Fork Wind's planned activities; for the other four stocks, NMFS authorizes no more than 4 takes by Level A harassment. As described above, NMFS expects that marine mammals would likely move away from an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start, thereby minimizing the degree of PTS that would be incurred. Even absent mitigation, no serious injury or mortality from construction activities is anticipated or authorized.

NMFS has authorized an amount of Level B harassment take for all marine mammal species based on either modeling or information reflected in field data (*e.g.,* monitoring reports, published group sizes); NMFS based the number of authorized takes on whichever approach resulted in a greater amount. This authorized take, by Level B harassment, reflects behavioral disturbance directly in response to noise exposure (*e.g.,* avoidance) or indirectly from associated impacts such as TTS or masking. Both the amount and intensity of Level B harassment will be reduced to the level of least practicable adverse impact through use of required mitigation measures. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014). Most likely, individuals will simply move away from the sound source and temporarily avoid the area where impact or vibratory pile driving is occurring. Therefore, NMFS expects that animals annoyed by project sound would simply avoid the area during impact or vibratory pile driving in favor of other, similar habitats. NMFS expects that any avoidance of the project area by marine mammals would be temporary in nature and that any marine mammals that avoid the project area during construction would not be permanently displaced.

Feeding behavior is not likely to be significantly impacted, as most prey species are mobile, broadly distributed throughout the project area, and likely to only respond temporarily to exposure to impact or vibratory pile-driving noise; therefore, marine mammals that may be temporarily displaced during construction activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Soft starts would allow mobile prey to move away from the source prior to exposure to any noise levels that may cause physical injury. The use of noise mitigation devices during impact pile driving of monopiles should reduce sound levels to the degree that any mortality or injury of prey will minimized. Use of bubble curtains, for example, is a key mitigation measure in reducing injury and mortality of ESA-listed salmon on the west coast during impact pile driving. NMFS recognizes some mortality, physical injury and/or hearing impairment in marine mammal prey may still occur but anticipates the amount of prey impacted in this manner is minimal compared to overall prey availability. Any behavioral responses by mobile marine mammal prey are expected to be brief. For example, Jones *et al.* (2020) found that when squid (*Doryteuthis pealeii*) were exposed to impact pile-driving noise, body pattern changes, inking, jetting, and startle responses were observed and nearly all squid exhibited at least one response. However, these responses occurred primarily during the first eight impulses and diminished quickly, indicating potential rapid, short-term habituation. NMFS expects that other impacts such as stress or masking would occur in fish that serve as marine mammal prey (Thomas *et al.* 2006); however, those impacts would be limited to the duration of impact or vibratory pile driving and, if prey were to move out the area in response to noise, these impacts would be minimized.

Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. There are no notable areas of biological significance for non-NARW marine mammals, other than fin whales, known to exist within the Lease Area or potential export cable route corridors. Although the SFWF and SFEC will be constructed within a fin whale foraging BIA that exists east of Montauk Point, NY, from March through October, the BIA is considerably larger than the relatively small area within which impacts from monopile installations may occur; this difference in scale will provide ample access to foraging opportunities for fin whales within the remaining area of the BIA. Vibratory pile-driving for installation of the cofferdam will occur sometime between November 2022 and April 2023 (removal could occur any time prior to expiration of this IHA); this schedule indicates that the overlap between cofferdam installation and the fin whale foraging BIA would occur for only 36 non-continuous hours. Monopiles will be installed on up to 16 days, which is a small percentage of the duration of the fin whale foraging BIA. Impact pile driving of one monopile per day (the limit under the IHA), and the associated potential disturbance of foraging fin whales, will only occur for 2–4 hours per day. The remaining 20–22 hours of the day will provide fin whales the opportunity to forage undisturbed by noise produced during monopile installation. Any disruption of feeding behavior or avoidance of the project area by fin whales is expected to be temporary, with habitat utilization by fin whales returning to baseline once the disturbance ceases. In addition, a second, larger, year-round fin whale foraging BIA, as well as foraging BIAs for sei, humpback, and minke whales, are delineated to the east of the project area. This second fin whale BIA will provide alternate suitable habitat and food resources for foraging fin whales during construction activities within the SFWF and SFEC. Please see LeBrecque *et al.* (2015) for maps of all East Coast BIAs. It is extremely unlikely that feeding (or non-feeding) whales would be able to detect any impact or vibratory pile-driving noise, even near the western-most edges of the BIAs, given the absorption of sound over the large propagation distances between the Lease Area and the BIAs. Finally, there are no rookeries, mating, or calving areas known to be biologically important to marine mammals within the project area.

Repeated exposures of individuals to relatively low levels of sound outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole.

NMFS concludes that exposures to marine mammals due to South Fork Wind's activity would result in only short-term effects to individuals exposed. Marine mammals may temporarily avoid the immediate area but are not expected to permanently abandon the area. Impacts to breeding, feeding, sheltering, resting, or migration are not expected, nor are shifts in

habitat use, distribution, or foraging success. NMFS does not anticipate the marine mammal takes that would result from the planned activity would impact annual rates of recruitment or survival.

As described in the notice of the proposed IHA (86 FR 8490; February 5, 2021), humpback and minke whales, and gray and harbor seals are experiencing ongoing UMEs. For minke whales and seals, although the ongoing UME is under investigation (as occurs for all UMEs), this event does not provide cause for concern regarding population-level impacts. The minke whale population abundance is greater than 20,000 whales. Even though the PBR value is based on an abundance for U.S. waters that is negatively biased and a small fraction of the true population abundance, annual M/SI does not exceed the calculated PBR value for minke whales. For harbor seals, the population abundance is over 75,000 and annual M/SI (345) is well below PBR (2,006) (Hayes *et al.,* 2018). For gray seals, the population abundance is over 27,000, and abundance is likely increasing in the U.S. Atlantic EEZ and in Canada (Hayes *et al.,* 2018). For harp seals, the current population trend in U.S. waters is unknown, as is PBR (Hayes *et al.,* 2018); however, the population abundance is over 7 million seals, suggesting that the UME is unlikely to result in population-level impacts (Hayes *et al.,* 2018). With regard to humpback whales, the population is facing a UME wherein elevated strandings have occurred since 2016 and are ongoing. A portion of the whales have shown evidence of pre-mortem vessel strike; however, this finding is not consistent across all whales examined and investigations are ongoing. Animals involved in this UME primarily belong to the West Indies Distinct Population Segment (DPS), of which the Gulf of Maine stock is a part. While the MMPA designated Gulf of Maine stock is relatively small (n=1,393), the most recent population estimate for the ESA-designated West Indies DPS (of which animals belonging to the Gulf of Maine stock also belong) is approximately 10,400 animals (Smith *et al.,* 2009). The UME is a cause for concern to the Gulf of Maine stock; however, the taking associated with the issuance of the IHA is not anticipated to contribute to the UME or impact the stock such that it would affect annual rates or recruitment or survival. Authorized take numbers, by Level A harassment, for the potentially impacted species are very low (*i.e.,* no more than 4 takes by Level A harassment authorized for any of these species) and as described above, any Level A harassment would be expected to be in the form of slight PTS (*i.e.,* minor degradation of hearing capabilities) which is not likely to meaningfully affect the ability to forage or communicate with conspecifics. The suite of measures for vessel operation and monitoring ensure risk of serious injury or mortality from ship strikes is minimized such that the probability of a strike is *de minimus.* Mortality and serious injury is neither expected, even absent mitigation, nor authorized, and Level B harassment of humpback whales and minke whales and gray, harbor, and harp seals will be reduced to the level of least practicable adverse impact through implementation of mitigation measures. As such, the authorized take of these species would not exacerbate or compound the ongoing UMEs in any way.

North Atlantic Right Whales

NARWs are currently threatened by low population abundance, higher than average mortality rates, and lower than average reproductive rates. Pace *et al.* (2021) recently released an update of his NARW abundance model. From 1990–2014, the female apparent survival rate fluctuated around 0.96. In 2014, survival decreased to approximately 0.93 and hit an all-time low of 0.89 in 2017. However, in 2018, survival increased dramatically back to around 0.95. The average survival rate, based on the Pace *et al.* (2021) regime model from 2014–2018, is approximately 0.93, slightly lower than the average long-term rate from 1990–2014 (0.96). Since 1990, the estimated number of new entrants (which can be used as a proxy for recruitment rates) has widely fluctuated between 0 and 39 (Pace *et al.,* 2021, NMFS 2021). In the last 10 years (2011–2020), the average number of calves born into the population is approximately 11. Unfortunately, not all calves born into the population survive. For example, on December 22, 2020, a newborn calf was sighted off El Hierro, an island in the Canary Islands, but has not been subsequently detected with its mother, suggesting it did not survive. More recently, a dead NARW calf was reported stranded on February 13, 2021, along the Florida coast.

On November 24, 2021, a NARW and newborn calf were sighted east of Pawleys Island, SC. On December 2, 2021, a second NARW and newborn calf were sighted east of the northern tip of Cumberland Island, GA; the NARW in this pair is currently entangled. On December 10, 2021, a third NARW and newborn calf were sighted off Ossabaw Island, GA, and a fourth pair was sighted off Morris Island, SC, on the same day. The fifth and sixth NARW/calf pairs were sighted off Fernandina Beach, FL, and near Nassau Sound, FL, respectively, on December 16, 2021. On December 18, 2021, a seventh NARW and calf were sighted off Amelia Island, FL, and an eighth NARW/calf pair was sighted in Florida off the St. Johns River entrance. A ninth NARW/calf pair was sighted off St. Simons Sound, GA, on December 26, 2021. The most recent information on the status of NARWs can be found in NMFS' 2021 Draft Stock Assessment Reports, available online at: (*www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

As described above, the project area represents part of an important migratory area for NARWs. In addition, core year-round foraging habitats have been identified south of Martha's Vineyard and Nantucket to the east of the project area (Oleson *et al.,* 2020); however, abundance in this area in summer months remains low compared to winter. It also appears the majority of sightings from June through October (when South Fork Wind would be conducting most, if not all, monopile installations) are concentrated approximately 90 km east of the Lease Area, on Nantucket Shoals (sightings which triggered DMAs in 2019, 2020, and 2021) with occasional sightings or acoustic detections within the project area triggering DMAs or acoustic Slow Zones. In general, due to the current status of NARWs, and the spatial overlap of the planned project with an area of biological significance for NARWs, the potential impacts of the planned project on NARWs warrant particular attention.

The IHA includes the following nine overarching mitigation measures related to impact pile driving of monopiles, which are intended to reduce both the number and intensity of NARW takes: (1) Time of year restrictions; (2) time of day restrictions; (3) implementation of clearance zones; (4) implementation of shutdown zones; (5) use of soft-start; (6) use of noise mitigation technology; (7) use of PSOs to visually observe for NARWs (with any detection within designated zones triggering delay or shutdown); (8) use of PAM to acoustically detect NARWs (with any detection within designated zones triggering delay or shutdown); and (9) enhanced awareness of NARW presence (*e.g.,* requirement to monitor NARW sighting network platforms to be aware of NARW presence within or near the project area and/or transit corridors). The specifics regarding these measures are dependent upon the time of year. In

addition, the IHA includes mitigation measures for cofferdam installation (and removal) which mirror a subset of those prescribed for monopile installation (measures (2–5), (7) and (9)). There is no time of year restriction on vibratory pile driving at the HDD site; however, installation and removal will only require a maximum of 36 hours (18 hours for installation, 18 hours for removal). Finally, mitigation measures for construction surveys include ramp up, and measures (3–4), (7), and (9) listed above.

As described in Oleson *et al.* (2020), NARWs respond to environmental changes and may use habitats intermittently over time. They have been known to nearly abandon a frequently used foraging habitat only to come back in future years in large numbers. In recent years, NARWs have demonstrated actual shifts in distribution, frequenting previously unrecognized foraging habitats. Sighting data also indicate that NARWs may investigate a previously preferred habitat, but not stay if the prey resource is insufficient, so some habitats previously used no longer have high densities of NARWs (Davis *et al.* 2017; Davies *et al.* 2019). As described above, NARW presence in the project area is year-round; however, abundance during summer months is low compared to winter months with spring and fall serving as ''shoulder seasons,'' wherein abundance waxes (fall) or wanes (spring). During aerial surveys conducted from 2011–2015 in the project area, NARW sightings occurred only December through April, with no sightings from May through November (Kraus *et al.,* 2016). There was not significant variability in sighting rate among years, indicating consistent annual seasonal use of the area by NARWs during those years (Kraus *et al.,* 2016). More recently, seasonal distribution patterns of NARWs have been less consistent, with NARWs observed near the project area in late summer and fall. As mentioned previously, in 2019, 2020, and 2021, NARWs were observed in August and September around Nantucket Shoals, triggering NMFS to establish a DMA that last several weeks each year; however, as noted above, these sightings around Nantucket Shoals are approximately 90 km east of the eastern-most edge of the project area, well outside the Level B harassment zones created by project activities. Given this year-round habitat usage and in recognition that where whales may actually occur during project activities is largely influenced by unpredictable, patchy prey availability, NMFS has included a suite of mitigation measures designed to reduce impacts to NARWs to the maximum extent practicable. However, even in consideration of these recent habitat-use and distribution shifts, South Fork Wind would be installing monopiles when the presence of NARWs is lower (compared to winter), as reflected in the density data (Roberts *et al.,* 2020; Table 13). Up to a maximum of 16 monopiles will be installed, making for relatively brief elevated sound levels in/near NARW habitat (1 pile per day (at a maximum of 4 hours per day) for 16 intermittent days).

The most significant measure to minimize impacts to individual NARWs during monopile installations is the seasonal moratorium on impact pile driving of monopiles from January 1 through April 30, when NARW abundance in the project area is expected to be greatest. In addition, monopile installation must not occur in December unless an unanticipated delay due to weather or technical problems, notified to and approved by BOEM, arises that necessitates extending monopile installation through December. NMFS also expects this measure to greatly reduce the potential for mother-calf pairs to be exposed to impact pile-driving noise above the Level B harassment threshold during their annual migration through the project area. Mitigation and monitoring measures outside of those months will greatly minimize any take that may otherwise occur.

When monopile installation does occur, South Fork Wind is committed to reducing the noise levels generated by pile driving to the lowest levels practicable, such that they do not exceed a noise footprint above that which was modeled, assuming a 10-dB attenuation. Use of a soft start will allow animals to move away from (*i.e.,* avoid) the sound source prior to the elevation of the hammer energy to the level maximally needed to install the pile (South Fork Wind will not use a hammer energy greater than necessary to install piles). To reduce the daily amount of time the area may be ensonified (and thereby decrease daily exposure risk), South Fork Wind will drive no more than one monopile per day. NMFS is also requiring South Fork Wind to apply a dBBC, or a single BBC coupled with an additional noise mitigation device, to ensure sound generated from the project does not exceed that modeled (assuming 10-dB reduction) at given ranges to harassment isopleths, and to minimize noise levels to the lowest level practicable. Double BBCs are successfully and widely applied across European wind development efforts, and are known to reduce noise levels more than single BBC alone (*e.g.,* see Table 3, Bellman *et al.,* 2020). Further, NMFS will be reviewing South Fork Wind's BBC (or dBBC) operational reports to ensure that deployments are successful (*e.g.,* the maximum air flow rate is being used during pile driving).

NMFS expects that any avoidance of the project area by NARWs due to exposure to monopile installation, cofferdam/casing pipe installation, and construction surveys would be temporary in nature, and that any NARW that avoids the project area during construction would not be permanently displaced. The IHA authorizes a total of 13 takes, by Level B harassment only, of NARWs (4 based on the maximum impact pile-driving design scenario for impact pile driving, 6 from vibratory pile driving, and 3 from construction survey using boomers and/or sparkers). Although unlikely, this may comprise 13 individuals taken once or fewer than 13 individuals taken on multiple days. For those individuals where take is limited to occurring once, behavioral disturbance and other Level B harassment impacts that may occur during exposure to elevated noise levels (*e.g.,* masking, stress) are likely insignificant. As described in the notice of proposed IHA, nearly all Population Consequences of Disturbance (PCOD) studies and experts agree that infrequent exposures from a single day or less are unlikely to impact individual fitness, let alone lead to population-level effects.

There is potential for the same individual NARW to be exposed on multiple days; however, the risk is low, and given the total number of anticipated exposures, even if a single individual were exposed on more than one day, it would not be more than a few (and that would mean that fewer total individuals were exposed). Impact pile driving of monopiles is limited to one pile per day and may only begin in the absence of NARWs (based on clearance zones, as determined by visual and PAM PSOs). If impact pile driving has commenced, NMFS anticipates NARWs would avoid the area, utilizing nearby habitats not impacted by monopile installation. However, impact pile driving must be shutdown if a NARW is sighted at any distance, unless a shutdown is not feasible due to risk of injury or loss of life. Depending on visibility conditions, shutdown may occur based on a NARW sighting in the Level B harassment zone, thereby minimizing the duration and intensity of exposure above the Level B harassment threshold. NMFS anticipates

that if NARWs go undetected and they are exposed to impact pile-driving noise from monopile installation, it would be at noise levels only slightly above the Level B harassment threshold, as it is unlikely a NARW would approach the impact pile-driving locations to the degree that they would purposely expose themselves to very high noise levels. NMFS also anticipates that the combination of PAM and visual observers (as well as communication protocols with other South Fork Wind vessels, and other heightened awareness efforts such as daily monitoring of NARW sighting databases) will result in maximum detection effectiveness such that as a NARW approaches the source (and thereby could be exposed to higher noise energy levels), PSO detection efficacy will increase, the whale will be detected, and a shutdown (if feasible) will occur. In addition, the implementation of a soft start will provide an opportunity for whales to move away from the source, reducing received levels. Although the Level B harassment zone for vibratory pile driving is large (approximately 36 km), the cofferdam, if South Fork Wind chooses to install one, would be installed nearshore over a short timeframe, at a distance approximately 70 km from the Lease Area. Further, South Fork Wind has indicated that vibratory pile driving for cofferdam installation would likely occur upon the effectiveness of the IHA in 2022, while monopile driving is likely to occur several months later in 2023. NARWs will, therefore, not be exposed to both vibratory and impact pile driving on any given day. Finally, for construction surveys, the maximum distance to the Level B harassment isopleth is 141 m. The authorized take, by Level B harassment only, associated with construction surveys is to account for any NARW PSOs may miss when HRG acoustic sources are active. However, because of the short maximum distance to the Level B harassment isopleth (141 m), the requirement that vessels maintain a distance of 500 m from any NARWs, and the fact whales are unlikely to remain in close proximity to a construction survey vessel for any length of time, any exposure to Level B harassment (the only type that is authorized for construction survey), if any, would be very brief and exposure of the same individual on multiple days is unlikely. To further minimize exposure, ramp-up of boomers, sparkers, and Chirps must be delayed during the clearance period if PSOs detect a NARW (or any other ESA-listed species) within 500 m of the acoustic source. Operation of this equipment (if active) must be shut down if a NARW is sighted within 500 m. Overall, given the information above, the magnitude of any Level B harassment is expected to be low.

There are no known NARW mating or calving areas within the project area; however, as described above, it is on the far western edge of a larger core foraging area (Oleson *et al.,* 2020). If a NARW does avoid foraging within the project area, there is ample foraging habitat adjacent to the project area that would not be not ensonified by the project's impact or vibratory pile-driving noise. For example, the presence of NARWs on Nantucket Shoals in the fall in recent years indicates that this habitat is a foraging hotspot. Given that the nearest NARWs detections on Nantucket Shoals are approximately 90 km away from the eastern-most edge of the project area where impact pile driving monopiles would occur, noise from the project would not impact NARW foraging in this habitat. Further, monopile driving would be limited to a maximum of four hours per day; therefore, if foraging activity is disrupted due to pile driving, any disruption would be brief as NARWs would likely resume foraging after pile driving ceases.

As described above, due to the temporary nature of disturbance from South Fork Wind's project activities and the availability of similar habitat and resources in the surrounding area, the impacts to NARWs and the food sources that they utilize are not expected to cause significant or long-term consequences for individual NARWs or their population. Feeding NARWs that may be temporarily displaced during South Fork Wind's construction activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise or when the activity ceases. Even repeated Level B harassment of some smaller number (13 or less) of individuals, as a subset of the overall stock, over several days is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole.

With respect to potential vessel strike, the IHA includes an extensive suite of mitigation measures designed to avoid ship strike and close approaches, including, but not limited it: Separation distances; limiting vessel speed to 10 kts or less (except in the case of transiting crew transfer vessels in the transit route under specific conditions, including use of observers and PAM for crew transfer vessels travelling in excess of 10 kts (outside of any DMA or SMA); training and communication protocols; and monitoring of NARW sighting resources. As described above, given the anticipated effectiveness of these measures in addition to the already very low probability of a vessel strike, take from vessel strike is not anticipated or authorized.

As described above, NARWs are experiencing an ongoing UME, the primary drivers of which are entanglement and ship strikes leading to serious injury or mortality. The loss of even one individual could significantly impact the population. However, no mortality, serious injury, or injury of NARWs as a result of the project is expected or authorized. Any disturbance to NARWs due to exposure to impact or vibratory pile-driving noise (Level B harassment) or construction surveys is expected to result in temporary avoidance of the immediate area of construction. As no injury or mortality is expected or authorized, and Level B harassment of NARWs will be reduced to the level of least practicable adverse impact through use of mitigation measures, the authorized number of takes of NARWs would not exacerbate or compound the effects of the ongoing UME in any way.

NMFS concludes that (1) exposures of NARWs to impact pile-driving noise from monopile installation will be greatly reduced due to seasonal restrictions on monopile installation, and (2) additional required mitigation measures would ensure that any exposures above the Level B harassment threshold during months outside of the seasonal restriction on monopile installation would result in only short-term effects to individuals exposed. With implementation of the mitigation requirements, take by Level A harassment is not expected to occur and is therefore not authorized. Potential impacts associated with Level B harassment would include low-level, temporary behavioral modifications, most likely in the form of avoidance behavior or potential alteration of vocalizations (due to masking). Although unlikely given the NARW-specific mitigation, TTS is another potential form of Level B harassment that could result in brief periods of slightly reduced hearing sensitivity, affecting behavioral patterns by making it more difficult to hear or interpret acoustic cues within the frequency range (and slightly above) of sound produced during impact pile driving; however, it is unlikely that any individuals would be exposed to impact or vibratory pile driving, or active specified HRG acoustic sources at distances or for durations that would

have more than brief and minor impacts, which would not be expected to affect the fitness of any individuals.

Although acoustic masking may occur, based on the acoustic characteristics of noise associated with pile driving (*e.g.,* frequency spectra, short duration) and construction surveys (*e.g.,* intermittent signals), NMFS expects masking effects to be minimal (*e.g.,* impact or vibratory pile driving) to none (*e.g.,* construction surveys). Masking events that might be considered Level B harassment have already been accounted for in the exposure analysis as they would be expected to occur within the behavioral harassment zones predetermined for impact and vibratory pile driving.

Avoidance of the SFWF or SFEC during construction would represent a potential manifestation of behavioral disturbance. Although the project area is located within the migratory BIA for NARWs, impact pile driving of monopile foundations would only occur on up to 16 days (one pile would be driven per day for a maximum of 4 hours), and vibratory pile driving for cofferdam installation/removal would be limited to a maximum of 36 hours (18 hours for installation and an additional 18 hours for removal) of the 12 months of activities covered in this IHA. If a casing pipe and support piles are installed, impact hammering and vibratory pile driving would be limited to a total of 8 hours. Further, seasonal restrictions preclude monopile installation during the months in which NARW occurrence is expected to be highest (January through April). Monopile installation is also prohibited in December, unless unanticipated delays due to weather or technical problems arise that necessitate extending installations into December. If avoidance of the project area by NARWs occurs, it is expected to be temporary. Finally, consistent NARW utilization of the habitat south of Martha's Vineyard and Nantucket (Oleson *et al.,* 2020) indicates that suitable alternative nearby habitat would be available to NARWs that might avoid the project area during construction.

In order to evaluate whether or not individual behavioral responses (in combination with other stressors) impact animal populations, scientists have developed theoretical frameworks which can then be applied to particular case studies when the supporting data are available. One such framework is the Population Consequences of Disturbance Model (PCoD), which attempts to assess the combined effects of individual animal exposures to stressors at the population level (NAS 2017). Nearly all PCoD studies (considering multiple marine mammal species) and experts agree that infrequent exposures of a single day or less are unlikely to impact individual fitness, let alone lead to population-level effects (Christiansen and Lusseau 2015; Dunlop *et al.,* 2021; Harwood *et al.,* 2014; Harwood and Booth 2016; Keen *et al.,* 2021; King *et al.,* 2015; New *et al.,* 2014; Pirotta *et al.,* 2018; Southall *et al.,* 2007; Villegas-Amtmann *et al.,* 2015). Since NMFS expects that any exposures would be brief (no more than 4 hours per day for impact pile driving of monopiles, 36 hours over 6 days for vibratory pile driving of a cofferdam, or 8 hours over 2–4 days for impact hammering and vibratory pile driving if the casing pipe is installed (and likely less given probable avoidance response)), and the likelihood or repeat exposures across multiple days to the same individuals is low (but possible), any behavioral responses that would occur due to animals being exposed to noise produced during construction activities are expected to be temporary, with behavior returning to a baseline state shortly after the acoustic stimuli ceases. NARWs may temporarily avoid the immediate project area, but are not expected to permanently abandon the habitat that contains the SFWF and SFEC. Given this, and NMFS' evaluation of the available PCoD studies, any such behavioral responses are not expected to impact an individual animal's health or fitness, or have effects on individual animal's survival or reproduction, much less impact the population.

In the IHA, up to 13 individual NARWs could be behaviorally disturbed incidental to all construction activities, or some fewer number of individual NARWs could be behaviorally disturbed on more than one day, but no more than 13 total instances of take would occur. Since most monopile installations would occur during a period when NARW occurrence is much lower than January through April (when impact pile driving of monopiles is, under no circumstances, allowed to proceed) and considering the required mitigation and monitoring, it is highly unlikely a single NARW would incur all the authorized take (*i.e.,* the same whale taken on 13 different days). Because the project area is both a migratory corridor and foraging area (although to a lesser extent than the area south of Martha's Vineyard and Nantucket), it is more likely that a subset of whales will be exposed only once and some subset would potentially be exposed on more than one day (*e.g.,* 7 individuals taken in one day each and 3 individuals taken on two days each).

While there may be temporary impacts to behaviors such as foraging near impact and vibratory pile-driving activities, meaningful shifts in habitat use, distribution, or foraging success are not anticipated. As described above, NMFS expects NARWs to avoid areas with high noise levels. Given the suite of monitoring and mitigation measures in the IHA specific to NARWs, if an individual is exposed to noise levels that may result in Level B harassment, this exposure would likely occur at distance (*i.e.,* farther from the noise source). Because sound loses energy as it moves away from the source, more distant received levels would be relatively low; any resulting behavioral changes are also anticipated to be low in severity. Based on the information above, NMFS does not anticipate that any Level B harassment of NARWs that may result from South Fork Wind's planned impact and vibratory pile driving would impact the reproduction or survival of any individual NARWs, much less annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support NMFS' determination that the impacts resulting from the South Fork Wind's construction activites are not expected to adversely affect any marine mammal species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- Where Level A harassment is authorized, the amount of Level A harassment is low for all impacted species and would be in the form of a slight PTS;
- Level B harassment would be in the form of behavioral disturbance, primarily resulting in avoidance of the project area around where impact or vibratory pile driving is occurring, and some low-level TTS and masking that may limit the detection of acoustic cues for relatively brief amounts of time.
- Repeated disturbance to some individuals, including a very limited number of NARWs (potentially up to a few individuals on a few days), may occur; however, any resulting behavioral reactions from exposure to acoustic impacts from the specified HRG acoustic sources, and impact and vibratory pile driving (*e.g.,* avoidance, short-term cessation of foraging) are not expected to result in impacts to any stock's reproduction or survival.
- Total authorized take as a percentage of population is very low for all species and stocks impacted (*i.e.,* less than 4 percent for all stocks, and less than 1 percent for 10 of 15 stocks);

• Areas of similar habitat value are available for marine mammals that may temporarily vacate the project area during construction activities covered in this IHA;

• Effects on species that serve as prey for marine mammals from the activity are expected to be short-term and are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations;

• A biologically important migratory area exists for NARWs within the Lease Area and potential export cable route corridors; however, the required seasonal moratorium on monopile installations is expected to largely avoid impacts to the NARW migration, as described above. The project area encompasses a subset of a core year-round foraging habitat; however, there are areas within this core foraging habitat that would not be impacted by project noise. Further, any noise within the project area would be temporary given the limitation to the amount of pile driving for the project, the limitations on the number of piles installed per day, and time of day restrictions limiting when pile driving could occur. Moreover, potential for exposure from noise causing behavioral disruptions such as a cessation of foraging is further reduced through implementation of the required mitigation measures (*e.g.,* requiring a delay in pile driving should a NARW be observed at any distance by PSOs on the pile-driving/dedicated PSO vessels would limit any disruption of foraging).

• There are no known important feeding, breeding or calving areas in the project area for any other marine mammals, except fin whales. A foraging BIA exists for fin whales from March through October within the Lease Area and ECR, but ample alternate suitable foraging habitat is available in the immediate vicinity of the project area. A second fin whale BIA, and BIAs for humpback, sei, and minke whales are delineated to the east of the project area; however, received levels (if any) within these areas would be extremely low given the distance to the BIAs from the project area; therefore, exposure to these low levels (while possibly audible) are not expected to result in disruption of foraging within the BIAs.

• The required mitigation measures, including visual and acoustic monitoring, clearance zones, soft start, and ramp-up, are expected to minimize potential impacts to marine mammals and effect the least practicable adverse impact on all marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from South Fork Wind's planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is less than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS authorizes incidental take of 15 marine mammal stocks. The total amount of take authorized is less than 4 percent for five of these stocks, and less than 1 percent for the 10 remaining stocks (Table 23), which NMFS finds are small numbers of marine mammals relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of all affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources Permits and Conservation Division is authorizing the incidental take of four species of marine mammals that are listed under the ESA: The NARW, fin, sei and sperm whale. NMFS requested initiation of consultation under Section 7 of the ESA with NMFS GARFO on February 8, 2021, for the issuance of this IHA. On October 1, 2021, NMFS GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of NARW, fin, sei and sperm whales or adversely modify their critical habitat. The Biological Opinion can be found at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-south-fork-wind-llc-construction-south-fork-offshore-wind.*

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. In compliance with NEPA, as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508 (1978)), BOEM prepared an Environmental Impact Statement (EIS) to consider the direct, indirect and cumulative effects to the human environment resulting from the South Fork Wind project. NMFS has participated as a cooperating agency on BOEM's EIS and provided technical expertise to BOEM in development of the document as it pertains to NMFS trust resources, including marine mammals. BOEM's Draft EIS was made available for public comment from January 8, 2021 to February 22, 2021 online at: *https://www.boem.gov/renewable-energy/state-activities/south-fork.* BOEM published a Notice of Availability of the Final EIS on August 20, 2021. As a cooperating agency, NMFS reviewed and provided comments related to NMFS trust resources, including marine mammals, on the Draft EIS and cooperating agency review draft of the Final EIS. In

compliance with NEPA and the CEQ regulations (40 CFR 1506.3), as well as NOAA Administrative Order 216–6 and its Companion Manual, NMFS has reviewed BOEM's Final EIS, determined it to be sufficient, and adopted that Final EIS which adequately evaluates the direct, indirect and cumulative impacts of NMFS's proposed action to issue an IHA under the MMPA to South Fork Wind for its offshore commercial wind project. NMFS has further determined that its comments and suggestions as a cooperating agency have been satisfied and recirculation of BOEM's EIS is therefore unnecessary (40 CFR 1506.3(c)). NMFS signed a joint Record of Decision (ROD) on November 24, 2021.

Authorization

NMFS has issued an IHA to South Fork Wind authorizing take of marine mammals incidental to pile driving (vibratory and impact) and surveys utilizing specified HRG equipment associated with construction of the South Fork Wind Offshore Wind Project offshore New York, Massachusetts, and Rhode Island, for a period of one year, from November 15, 2022, through November 14, 2023. South Fork Wind is required to abide by all mitigation, monitoring, and reporting requirements in the IHA.

Dated: January 3, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–00041 Filed 1–5–22; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 87 Thursday,
No. 4 January 6, 2022

Part III

The President

Federal Register
Vol. 87, No. 4
Thursday, January 6, 2022

Presidential Documents

Title 3—

The President

Proclamation 10331 of December 30, 2021

National Human Trafficking Prevention Month, 2022

By the President of the United States of America

A Proclamation

Human trafficking—whether in the form of forced labor, sex trafficking, or other offenses—is an abhorrent abuse of power and a profoundly immoral crime that strikes at the safety, health, and dignity of millions of people worldwide. During National Human Trafficking Prevention Month, we reaffirm our commitment to protect and empower survivors of all forms of human trafficking, to prosecute traffickers, and to bring an end to human trafficking in the United States and around the world.

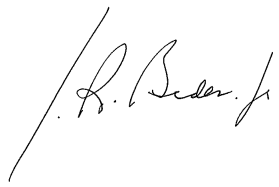
My Administration is committed to stopping human trafficking wherever it occurs. This month, we released the updated *National Action Plan to Combat Human Trafficking*—a whole-of-government approach to combating human trafficking in the United States and abroad. The plan links anti-trafficking initiatives to our wider efforts to counter illicit financing; advance gender and racial equity; expand the rights and dignity of working people; and promote safe, orderly, and humane migration.

My Administration is also dedicated to ensuring that our justice system holds accountable any individuals or entities engaged in this horrendous crime—and that our domestic and global economic systems offer no safe harbor to forced labor or other abuses. In addition to helping survivors on their road to recovery, we must also learn from their expertise in order to better detect trafficking crimes that are often hidden in plain sight, bring perpetrators to justice, and improve our prevention efforts. Since human trafficking disproportionately impacts racial and ethnic minorities, women and girls, LGBTQI+ individuals, vulnerable migrants, and other historically marginalized and underserved communities, our mission to combat human trafficking must always be connected to our broader efforts to advance equity and justice across our society.

During National Human Trafficking Prevention Month, let us resolve to counter injustice and fortify our commitment to pursue dignity and freedom for all people. The National Human Trafficking Hotline (1–888–373–7888) is an important resource to report a tip or ask for help.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2022 as National Human Trafficking Prevention Month. I call upon businesses, civil society organizations, communities of faith, families, and all Americans to recognize the vital role we play in combating human trafficking, and to observe this month with appropriate programs and activities aimed at preventing all forms of human trafficking.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of December, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2022–00162
Filed 1–5–22; 11:15 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10332 of December 30, 2021

National Mentoring Month, 2022

By the President of the United States of America

A Proclamation

I often say that America can be defined in one word—possibilities. No matter our background or circumstance, every child in America has the right to go as far as their dreams will take them. But those dreams are rarely reached alone. We all benefit from the support, wisdom, and nurturing of mentors who navigated the path before us.

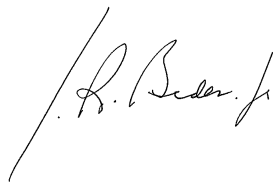
By standing on the shoulders of mentors, young people have led America forward at each inflection point in our history. I will never forget the many mentors who encouraged and empowered me as a student, as a local elected official in my twenties, and as a young United States Senator finding my way. During National Mentoring Month, we honor all those parents and family members, teachers and coaches, employers and co-workers, community and faith leaders, and so many others who devote time, care, and energy to helping our young people thrive.

As we continue to build back from the pandemic, my Administration is making unprecedented investments to set the next generation up for success. Earlier this year, the Department of Labor awarded $89 million through its YouthBuild program and over $20 million through its Workforce Pathways for Youth programs to dedicated mentors who share their wisdom and experience and provide employment and counseling services to young people. We also proudly support initiatives across our executive departments and agencies that provide tutoring, community service opportunities, school-based and after-school programs, summer learning and enrichment, and work-based learning opportunities.

As advocate and activist Marian Wright Edelman said, ''It is the responsibility of every adult—especially parents, educators, and religious leaders—to make sure that children hear what we have learned from the lessons of life and to hear over and over that we love them and that they are not alone.'' Mentorship is vital to fulfilling this responsibility, expanding opportunity, and helping our children fulfill their God-given potential.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2022 as National Mentoring Month. I call upon Americans across the country to observe this month with mentoring, appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of December, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2022–00167
Filed 1–5–22; 11:15 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10333 of December 30, 2021

National Stalking Awareness Month, 2022

By the President of the United States of America

A Proclamation

All people deserve to feel safe and protected—whether in their home, at work or school, online, or in any other public or private spaces. During National Stalking Awareness Month, we support all those who are threatened and harmed by the pervasive crime of stalking, recognize those who raise awareness and advocate for survivors, and recommit to eradicating stalking nationwide.

Stalkers employ multiple tactics to instill fear, intimidate, surveil, and exert control over the people they target. Studies show that 1 in 6 women and 1 in 17 men have been subjected to stalking in their lifetime, the majority of whom were threatened by someone they know—often a current or former intimate partner. Survivors often suffer physical, psychological, and social harms, such as higher than average rates of depression, anxiety, and insomnia. Stalking also can take a serious economic toll, as those who are stalked may have to uproot their lives at their own expense to evade their stalkers, or take unpaid time off from work in order to protect themselves and their families.

In recent years, the most prevalent form of stalking crimes has involved the use of smartphones, computers, and other devices. With schools, workplaces, and social interactions relying on virtual platforms, the risk of stalking has grown considerably. As technology continues to advance, we must ensure that all people—especially women, girls, and LGBTQI+ individuals who are at greatest risk—can engage in online spaces freely and safely. We must also seek accountability for individuals or systems that perpetrate or enable stalking.

Given the disproportionate impact of stalking and other forms of digital abuse on women and girls, my Administration's National Strategy on Gender Equity and Equality includes a commitment to launch a task force to address online harassment and abuse. This task force will be specifically focused on technology-facilitated, gender-based violence and will be charged with developing concrete recommendations to improve prevention, response, and protection efforts domestically and worldwide.

The task force will seek input from survivors, advocates, law enforcement professionals, civil and human rights groups, technology platforms, and other experts to ensure that those with expertise and lived experiences are able to directly inform these recommendations. My Administration has also committed to developing the first-ever National Action Plan to End Gender-Based Violence, which will further our efforts to prevent and respond to stalking and other forms of gender-based violence.

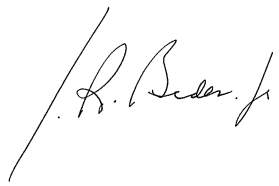
This effort has been one of the central causes of my career. To address these abuses of power—stalking, domestic violence, dating violence, and sexual assault—I wrote and championed the Violence Against Women Act nearly three decades ago to begin to change our culture and ensure that survivors of these appalling crimes receive the services and support they need. Through the years, I have worked to reauthorize the Act several times—each time expanding its protections. Now, I am calling on the Congress to once again reauthorize and modernize this landmark legislation

with enhanced provisions to expand the way our country responds to and prevents stalking and other forms of gender-based violence.

Stalking operates in the shadows and is fueled by silence and inaction. As we begin this new year, let us commit to shining a brighter light on this insidious crime, to broadening our support for those affected, and to ensuring that all people can live in a world free from violence and fear.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2022 as National Stalking Awareness Month. I call on all Americans to speak out against stalking and to support the efforts of advocates, courts, service providers, and law enforcement to help those who are targeted and send the message to perpetrators that this crime will not go unpunished.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of December, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2022–00169
Filed 1–5–22; 11:15 am]
Billing code 3395–F2–P

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Federal Register

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FEDERAL REGISTER PAGES AND DATE, JANUARY

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List December 30, 2021

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